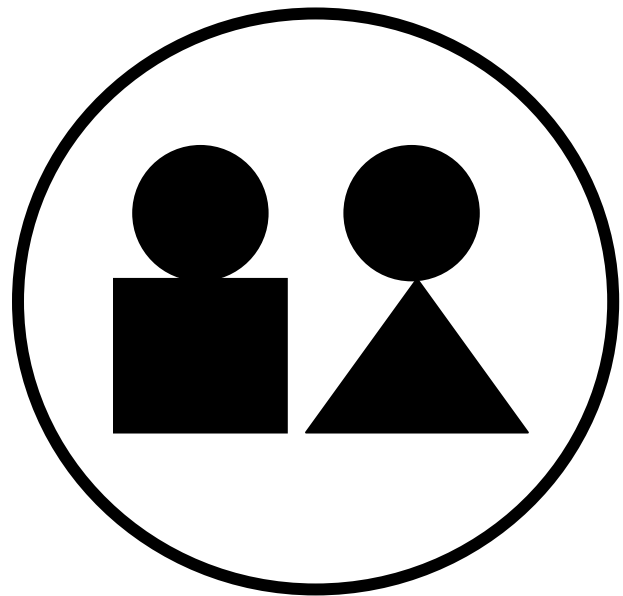


**OPERATIONAL GUIDELINES FOR
MANAGING THE SPECIAL
EDUCATION PROCESS**

CURRICULUM & INSTRUCTION DEPARTMENT
(revised 2010)



Newport News Public Schools
Newport News, Virginia

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Introduction

Newport News Public Schools ensures that all children with disabilities, aged two to 21, inclusive, residing in Newport News have a right to a free appropriate public education, including:

1. Children with disabilities who are migrant;
2. Children with disabilities who are homeless;
 - a. Requests for training with respect to the McKinney-Vento Homeless Assistance Act, or to obtain services for students to whom the act applies should contact the Newport News Public Schools office of Equity and Accountability.
3. Children with disabilities who are in need of special education and related services, even though they are advancing from grade to grade;
4. Children with disabilities who are served in a charter school in accordance with the Code of Virginia, when and if the Newport News Public School Board establishes a charter school;
5. Children with disabilities who have been suspended or expelled from school;
6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail with the exception of those provisions identified in 8 VAC 20-80-62;
7. Children with disabilities who are residents of Newport News and who are on house arrest, as ordered by a court of competent jurisdiction; services shall be provided at a mutually agreed upon location;
8. Children with disabilities regardless of citizenship or immigration status;
9. Children with disabilities who are in foster care and residents of Virginia, but not residents of Newport News, under the following conditions:
 - a. The child has been placed in foster care or other custodial care within the geographical boundaries of Newport News, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children;
 - b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia that is located within the geographical boundaries of Newport News; and

- c. If the child's individualized education program prescribes placement in a private day or residential special education facility, the responsibility for a free and appropriate public education shall transfer to the school division that is a participant in the Community Policy and Management Team of the locality that has responsibility for the child under the Comprehensive Services Act (§ 2.1-745 et seq. of the Code of Virginia);
10. Children with disabilities who are placed in a private residential placement by a Comprehensive Services Act team. The local school division that is part of the Comprehensive Services Act team that places the child in the private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement;
11. Children with disabilities who are placed for noneducational reasons and are not physically present in Newport News Public Schools, but whose parent or parents continue to reside in Newport News Public Schools in accordance with § 22.1-3 of the Code of Virginia;
 - a. For the purpose of determining residency, the residence of the child with a disability shall be determined as follows:
 - (1) If placed for noneducational reasons in a nursing facility, a long-stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent or parents reside.
 - (2) If placed for noneducational reasons in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division in which the parent resides.
 - (3) If aged 18 or older, placed for noneducational reasons in a nursing facility, a long-stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.

- (4) If aged 18 or older, placed for noneducational reasons in a group home by a community services board and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.
 - b. If there is a dispute between local school divisions regarding the parent's, parents', or legal guardian's residence, the local school division of the parent's, parents', or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's, parents', or legal guardian's residence is established in Newport News.
 - c. If there is a dispute between the parent or legal guardian of a student with a disability and the school division regarding residency, the school division where the student is last enrolled remains responsible for providing the student with a free appropriate public education until resolution of the dispute.
12. Students who attend a home school or private school which is located within the geographical boundaries of the City of Newport News;
13. Students placed in sponsored residential homes, licensed in accordance with 12VAC35-105, and whose parent(s) reside in Newport News;
14. Children who reside within the jurisdiction of Newport News, including wards of the state, who are not home-schooled or attending a private school;
15. Children with disabilities, aged 18 or older, who have not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions and who reside in Newport News, the adult child's residence shall be Newport News. No adult child shall have more than one residence at a time.
16. Children with disabilities, aged 18 or older, who have been declared incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions and guardian resides in Newport News; the adult child's residence shall be Newport News. No adult child with a disability shall have more than one residence at a time.

17. A student with a disability will not be required to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation, or receiving services. However, teachers and other school personnel may consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.
18. Every child with a disability is deemed to be a resident of Newport News when:
 - a. The child is living with a biological parent whose parental rights have not been terminated
 - b. The child is living with adoptive parents
 - c. The child is living with other than the custodial parent but who is defined as a parent under the Code of Virginia not solely for educational purposes
 - d. The parent of the child is deceased and the child is living with a person in loco parentis who resides within the school division
 - e. The parents of the child are not able to care for the child and the child is living, not solely for school purposes with another person who resides in Newport News and is either the court appointed guardian or acting in loco parentis pursuant to placement by a person or entity authorized to do so
 - f. The child is living in the school division, not solely for school purposes, as an emancipated minor under the provisions of the §16.1-334 of the Code of Virginia
 - g. The child is living in the school division, not solely for school purposes, as a validly married minor who has not pursued emancipation, under §16.1-334 of the Code of Virginia, but who asserts implied emancipation based on the minor's marriage record.

Further: The policies and procedures of the Newport News Public Schools and the parental guidelines contained in this document are designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

In Newport News, qualified professionals complete minimum assessment components as specified by the Virginia Department of Education, Division of Special Education, prior to review by the Eligibility Committee for children suspected of being disabled. This school division, when determining a disabling condition, strictly adheres to the following definitions:

1. Age of eligibility means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year.
2. Age of majority means the age when the procedural safeguards and other rights afforded to the parent or parents of a student with a disability transfer to the student. In Virginia, the age of majority is 18.
3. Alternate assessment (VAAP) means assessment for children with significant intellectual disabilities who are unable to participate in the state or division-wide assessment programs even with appropriate accommodations and modifications.
4. Assistive technology service as a related service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device, but excludes a medical device that is surgically implanted or the replacement of such a device.

5. Audiology as a related service means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes:
- a. Identification of children with hearing loss;
 - b. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss;
 - c. Counseling and guidance of pupils, parents, and teachers regarding hearing loss;
 - d. Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
6. Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability as defined in this section. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied. (Refer to Criteria Handbook.)

7. Behavioral intervention plan (BIP) means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action. (Refer to FBA/BIP Handbook.)
8. Business days means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8 VAC 20-81-150 B 4 a.(2))
9. Case Manager refers to the building administrator or teacher or other designee assigned to administer the child study process in a school; or to initiate and track the IEP process, including the evaluation of students identified as having a disability.
10. Change in placement means
 - a. The child's initial placement from general education to special education and related services;
 - b. The expulsion or long-term suspension of a student with a disability;
 - c. The placement change which results from a change in the identification of a disability;
 - d. The change from a public school to a private day, residential, or state-operated program; from a private day, residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;
 - e. Termination of all special education and related services; or
 - f. Graduation with a standard or advanced studies high school diploma.

11. Change in placement for the purposes of discipline means:
 - a. A removal of a student from the student's current educational placement is for more than 10 consecutive school days; or
 - b. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:
 - (1) The length of each removal;
 - (2) The total amount of time the student is removed; or
 - (3) The proximity of the removals to one another.
 - (4) The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.
12. Child study committee (CSC) means a committee that enables school personnel, and nonschool personnel, as appropriate, to meet the needs of individual children who are having difficulty in the educational setting. The committee reviews existing data to make recommendations to meet children's needs and reviews the results of implementation of the recommendations. The child study committee may refer children for evaluation for special education and related services.
13. Contact Person. The individual from the Special Education Department assigned to chair the Eligibility Committee meetings for students being referred for possible special education placement for the first time, for a student who is being considered for a change in categorical placement, or for a student who is being considered for termination from special education services.

14. Correctional facility means any state facility of the Department of Corrections or the Department of Juvenile Justice, any regional or local detention home, or any regional or local jail.
15. Counseling services as a related service means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.
16. Day means calendar day unless otherwise specified.
17. Deaf-Blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or blindness.
18. Deafness means hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects educational performance.
19. Developmental Delay (DD) means a disability affecting a child ages two through six (inclusive) who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, or who has an established physical or mental condition that has a high probability of resulting in a developmental delay. (Refer to Criteria Handbook)

20. Emotional Disability (ED) means as follows:
- a. The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:
 - (1) An inability to learn which cannot be explained by intellectual, sensory, or health factors;
 - (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - (3) Inappropriate types of behavior or feelings under normal circumstances;
 - (4) A general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms of fears associated with personal or school problems.
 - (a) The term includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined that they have an emotional disability. (Refer to the Criteria Handbook)
21. Extended school year services (ESY) means special education and related services that:
- a. Are provided to a child with a disability:
 - (1) Beyond the normal school year of the local educational agency;
 - (2) In accordance with the child's individualized education program;
 - (3) At no cost to the parent or parents of the child; and
 - (4) Meet the standards established by the Virginia Department of Education.
(Refer to Newport News Extended School Year Services Technical Assistance Resource Document)

22. Free appropriate public education (FAPE) means special education and related services that:
- a. Are provided at public expense, under public supervision and direction, and without charge;
 - b. Meet the standards of Virginia Board of Education;
 - c. Include an appropriate preschool, elementary school, middle school, or secondary school education in the state; and
 - d. Are provided in conformity with an individualized education program that meets the requirements of this section.
23. Functional behavioral assessment (FBA) means a process to determine the underlying cause or functions of a child's behavior that impede the learning of the child with a disability or the learning of the child's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team. (Refer to FBA/BIP Handbook.)
24. General curriculum means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.
25. Hearing Impairment (HI) means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but which is not included under the definition of "deafness" in the section.

26. Home-based instruction means services that are delivered in the home setting (or other agreed upon setting) in accordance with the child's individualized education program.
27. Homebound instruction means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP must determine the delivery of services, including the number of hours of services.
28. Home instruction means instruction of a child or children by a parent or parents, guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling.
29. Home tutoring means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is often used as an alternative form of home schooling but is not home instruction as defined in the Code of Virginia.
30. Homeless children has the meaning given the term “homeless children and youth” of the McKinney-Vento Homeless Assistance Act as amended. It also means individuals who lack a fixed, regular and adequate nighttime residence within the meaning of the McKinney-Vento Homeless Assistance Act.
31. Independent educational evaluation (IEE) means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question.

32. Individualized education program (IEP) means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the needs.
33. Individualized family service plan (IFSP) under Part C means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family.
34. Individualized service plan (ISP) means a written statement for a child with a disability in a private school that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The ISP specifies the individual educational needs of the child and what special education and related services are necessary to meet the needs.
35. Infant and toddler with a disability means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who:
- a. Has delayed functioning;
 - b. Manifests atypical development or behavior;
 - c. Has behavioral disorders that interfere with acquisition of developmental skills; or
 - d. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.
36. Intellectual Disability means the definition formerly known as mental disability and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

37. Interpreting means translating from one language to another (e.g., sign language to spoken English); for the purposes of this chapter, this includes oral interpreting and transliterating for signed English systems or for cued speech/cued language.
38. Learning disability (LD) also known as specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, or intellectual disabilities, or emotional disabilities, or of environmental, cultural, or economic disadvantage. (Refer to Criteria Handbook)
39. Least restrictive environment (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature of severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

40. Level I services (previously known as Resource) means the provision of special education and related services to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the Individualized Education Program, rather than the location of services.
41. Level II services (previously known as Self-Contained) means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the Individualized Education Program, rather than the location of services.
42. Local educational agency (LEA) means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia, or the Virginia School for the Deaf and the Blind at Staunton.
43. Manifestation determination review (Causality) means a process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.
44. Medical services as a related service means services provided by a licensed physician or nurse practitioner to determine child's medically related disability that results in the child's need for special education and related services.

45. Multiple Disabilities (MD) means two or more impairments at the same time (such as intellectual disability/blindness, intellectual disability/orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.
46. NIMAS - National Instructional Materials Accessibility Standard means the standard established by the United States Secretary of Education to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specified formats. NIMAC refers to the national center that provides print instructional materials, including textbooks, in accessible media, free of charge, to blind or other students with print disabilities in elementary and secondary schools.
47. Native language, if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

48. Nonacademic services and extracurricular services may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.
49. Notice means written statements in English or in the primary language of the home of the parent, or, if the language or other mode of communication of the parent is not a written language, oral communication in the primary language of the home of the parent. If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as language, Braille, or oral communication).
50. Occupational therapy as a related service (OT) means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes:
- a. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
 - b. Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
 - c. Preventing, through early intervention, initial or further impairment or loss of function.

51. Orientation and mobility services as a related service means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community.
52. Orthopedic Impairment (OI) means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fracture or burns which cause contractures).
53. Other Health Impairment (OHI) means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environments that is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, arthritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, Tourette's syndrome, or attention deficit disorder/attention deficit hyperactivity disorder which adversely affects a child's educational performance. (Refer to Criteria Handbook.)

54. Parent means a biological or adoptive parent or parents of a child, a guardian, a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), a foster parent under the circumstances described below, or a surrogate parent who has been appointed in accordance with this chapter. A minor who has been emancipated under Section 16.1-333 of the Code of Virginia and validity married minors who have not pursued emancipation but who may assert implied emancipation based on the minor's marriage record, may assume the responsibilities of "parent" under this chapter. The term means either parent, unless the Division has been provided with evidence that there is a legally binding instrument, state law, or court order that has terminated the parent's or parents' rights. A foster parent may also serve as a parent:
- a. If the biological parent's or parents' authority to make educational decisions on the child's behalf has been extinguished under § 16.1-283, § 16.1-277.01, or § 16.1-277.02 of the Code of Virginia or a comparable law in another state;
 - b. The child is in permanent foster care pursuant to Chapter 9 § 63.2-900 of the Code of Virginia or comparable law in another state; and
 - c. The foster parent or parents (i) have an ongoing, long-term parental relationship with the child; (ii) are willing to make the educational decisions required of the parent or parents under this chapter; and (iii) have no interest that would conflict with the interests of the child.
 - d. The term "parent or parents" does not include local or state agencies or their agents, including local departments of social services, if the child is in the custody of such an agency.

55. Parent counseling and training means:
- a. Assisting parents in understanding the special needs of their child;
 - b. Providing parents with information about child development; and
 - c. Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
56. Part B. That section of the Individuals with Disabilities Education Act that provides for services to students, ages 2 – 21, inclusive.
57. Part C. That section of the Individuals with Disabilities Education Act that provides for services to infants and toddlers, ages 0 – 3 years, inclusive.
58. Physical education means the development of:
- a. Physical and motor fitness
 - b. Fundamental motor skills and patterns; and
 - c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
- The term includes special physical education, adapted physical education, movement education, and motor development.
59. Physical therapy as a related service (PT) means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction.
60. Positive behavioral interventions and supports means interventions and supports designed to assist the student in reaching behavioral goals which will enhance the student's learning and, as appropriate, the learning of others.

61. Preschool student with a disability means a child (ages 2-5, inclusive) whose birthday falls on or before September 30, who is eligible to receive services under Part B.
62. Psychological services as a related service means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist.
63. Recreation includes:
 - a. Assessment of leisure function;
 - b. Therapeutic recreation services;
 - c. Recreation program in schools and community agencies; and
 - d. Leisure education.
64. Rehabilitation counseling services as a related service means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973.

65. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting and transliterating; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation and psychological counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; school health services; social work services in schools; and parent counseling and training. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education. The definition excludes a medical device that is surgically implanted or the replacement of such a device. Note: Other definitions not included in this section may be found in *The Regulations Governing Special Education Programs for Children With Disabilities in Virginia*. Once eligibility has been determined, adding a related service to an existing IEP is an IEP Committee function.

a. Transition services as a related service means a coordinated set of activities for a student, designed as a results-oriented process that is focused on improving the academic and functional achievement of the student with a disability, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities described must:

- (1) Be based on the individual student's needs, taking into account the student's preferences and interests; and
- (2) Include:
 - (a) The development of employment and other post-school adult living objectives;
 - (b) Instruction;
 - (c) Community experiences; and
 - (d) If appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education if they are provided as specially designed instruction, or related services if they are required to assist a student with a disability to benefit from special education.

b. School health services as related service means services provided by a qualified school nurse or other qualified person.

66. Screening means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.
67. Section 504 students with disabilities are protected by Section 504 of the Rehabilitation Act of 1973. Students whose disabilities are not recognized by the Individuals with Disabilities Education Act (IDEA) are covered under the civil rights of Section 504. Students with 504 plans have their accommodations addressed by general educators.
68. Services Plan means a written statement that describes the special education and related services the local educational agency will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services including the location of services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-22-660); 34 CFR 300.34(c)(14)
69. Social work services in schools means those services provided by a school social worker or qualified visiting teacher, including:
- a. Preparing a social or developmental history on a child with a disability;
 - b. Group and individual counseling with the child and family;
 - c. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
 - d. Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and
 - e. Assisting in developing positive behavioral intervention strategies for the child.

70. Special education means specially designed instruction, at no cost to the parent or parents, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education:
- a. Speech/language pathology services;
 - b. Vocational education; and
 - c. Travel training.
71. Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:
- a. To address the unique needs of the child that result from the child's disability; and
 - b. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.
72. Specific Learning Disability (see learning disability)
73. Speech or Language Impairment (SLI) means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.
74. Speech/language pathology (primary services or related service) means the following:
- a. Identification of children with speech or language impairments;
 - b. Diagnosis and appraisal of specific speech or language impairments;
 - c. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

- d. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - e. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
75. State assessment program (VSAP) means the state assessment program in Virginia under the Individuals with Disabilities Education Act that is the component of the state assessment system used for accountability.
76. State-operated programs (SOPs) means programs which provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions.
77. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with the Virginia Regulations governing special education programs for children with disabilities in Virginia.
78. Surrogate parent means a person appointed in accordance with the operational guidelines set forth later in this document to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education.

79. Transportation as a related service provides:
- a. Transportation to each child with a disability, placed in an education program by the school division, to and from such program at no cost, if such transportation is necessary to enable the child to benefit from educational programs and opportunities at school. If the school division enters an agreement with another LEA for the provision of special education and/or related services for a child with a disability, the child shall be transported to and from the program at no cost to the parent;
 - b. Travel to and from school and between schools;
 - c. Travel in and around school buildings; and
 - d. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.
80. Traumatic Brain Injury (TBI) means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

81. Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:
- a. Develop an awareness of the environment in which they live; and
 - b. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
82. Virginia School for the Deaf and the Blind at Staunton means the Virginia school authorized by the Virginia Board of Education and administered and supervised by the Superintendent of Public Instruction.
83. Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
84. Vocational education for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Note: Other definitions not included in this section may be found in *The Regulations Governing Special Education Programs for Children With Disabilities in Virginia*.

Free and Appropriate Public Education

I. Age of Eligibility

A. Newport News Public Schools provides a free appropriate public education to all children with disabilities who need special education and related services, aged two to 21, inclusive, **who meet the definition of age of eligibility** residing within the jurisdiction of the City of Newport News, Virginia. This includes children with disabilities who are in need of special education and related services even though they are advancing from grade to grade or who have been suspended or expelled from school with the provisions of 8 VAC 20-81-160. Newport News Public Schools provides a full educational opportunity for all children with disabilities, aged two to 21, inclusive, residing within Newport News.

1. The services provided to the child with disabilities must address all of the child's identified special education and related services needs.
2. The services and placement needed by each child with a disability to receive a free appropriate public education must be based on the child's unique needs and not on the child's disability.

B. Exceptions. The obligation to provide a free appropriate public education to all children with disabilities does not apply to:

1. Children in Newport News with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to students who have graduated but have not been awarded a standard or advanced studies high school diploma **or to those students who have been awarded a General Educational Development credential (GED).**

2. Children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP.
3. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities.
4. Children with disabilities who are eligible under Part B, Subpart H of the Individuals with Disabilities Education Act, but who receive early intervention services under Part C.

II. Program options

Newport News Public Schools ensures that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities, including art, music, industrial arts, consumer and homemaking education, and vocational education.

III. Residential Placements

Newport News Public Schools provides residential placement if a placement in a public or private residential program is necessary to provide special education and related services to a child with a disability. The program, including non-medical care and room and board, is at no cost to the parents of the child.

IV. Proper functioning of hearing aids

Newport News Public Schools addresses proper functioning of hearing aids. The Division ensures that the hearing aids **and external components of surgically implanted devices** worn in school by children with hearing impairments, including deafness, are functioning properly.

- V. **Assistive technology.** Newport News Public Schools addresses assistive technology needs as follows:
- A. The Division ensures that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's special education and related services or as a supplementary aid or service.
 - B. On a case-by-case basis, the use of Division purchased or leased assistive technology devices in a child's home or in other settings will be provided if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

VI. **Transportation**

- A. Each child with a disability placed in an education program, including private special education day or residential placements, by Newport News Public Schools is entitled to transportation to and from the program at no cost if such transportation is necessary to enable the child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities share the same transportation, unless a child's IEP requires specialized transportation.

- B. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications are provided in the least restrictive environment. Newport News Public Schools' transportation personnel may be on the IEP team or be consulted before any modifications or accommodations are written into the student's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.
- C. If the Division enters an agreement with another school division or educational agency for the provision of special education or related services for a child with a disability, the child will be transported to and from the program at no cost to the parent.
- D. Newport News ensures that a student with a disability is provided a commute to and from an education program that is comparable in length to the commute provided students without disabilities, unless the student's IEP team determines that a longer or shorter commute is necessary for the student to receive a free, appropriate education.
- E. If a child with a disability is placed in a residential placement at the Virginia School for the Deaf, Blind at Staunton, the Virginia School is responsible for the provision of transportation services.

VII. Nonacademic and extracurricular services and activities

- A. The Division takes steps, **including the provision of supplementary aids and services determined and necessary by the IEP team**, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- B. Nonacademic and extracurricular services and activities may include but not be limited to counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the division and assistance in making outside employment available.

VIII. Physical education

- A. General. Physical education services, specially designed if necessary, are made available to every child with a disability receiving a free appropriate public education, if included in the individualized education program.
- B. Regular physical education. Each child with a disability is afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:
 - 1. The child is enrolled full time in a separate facility; or
 - 2. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.

- C. Special physical education. If specially designed physical education is prescribed in a child's IEP, the Division is responsible for the education of that child and will provide the services directly or make arrangements for those services to be provided through other public or private programs.
- D. Education in separate facilities. The Division is responsible for the education of a child with a disability who is enrolled in a separate facility and makes certain that the child receives appropriate physical education services.

IX. Extended school year services

- A. Newport News Public Schools provides extended school year services as necessary to provide a free appropriate public education.
- B. Extended school year services are provided only if a child's IEP team determines on an individual basis that the services are necessary for the provision of a free appropriate public education to the child **because the benefits the child will gain during the regular school year will be significantly jeopardized if extended school year services are not provided. .**
- C. In implementing the requirements for extended school year, the Division does not limit extended school year services to:
 - 1. Particular categories of disability or
 - 2. Unilaterally limit the type, amount, or duration of those services, **or the time of year in which they are offered.** (Refer to ESY Technical Assistance Document).

- X. **Children with disabilities in public charter schools.** A free and appropriate public education will be provided to charter school students in Newport News in accordance with their IEPs.

- XI. **Length of school day.** The Division's school-aged students with disabilities must be provided a school day comparable in length to the day provided to school-aged students without disabilities, unless their IEPs specify otherwise. **For preschool-aged children with disabilities, the IEP team determines the length of the school day.**
- XII. **Disproportionality/Overidentification.** The Division strives to prevent the overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.
- A. The Director of Special Education and the Supervisor of Referrals and Assessments will regularly review the representation of racial and ethnic groups in special education and related services, or in specific disability categories and in the process of child study committee referral to determine if there is a disproportionate representation.
- B. When that is seen to be the case they will work with individual schools and take corrective actions on a timeline for their implementation.
- XIII. When carrying out the requirements of IDEA '04 with respect to homeless students, Newport News Public Schools will meet the requirements of Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.)

Newport News Public Schools understands the need to retain highly qualified and appropriately and adequately trained personnel with the knowledge and skills to provide special education and related services to students with disabilities and takes all measurable steps to recruit, hire, train, and retain such personnel. All special education teachers K-12 must be highly qualified by July 1, 2006.

- I. **School age programs.** The following specifies the staffing patterns for special education services for children, aged 2 to 21, inclusive, residing in Newport News and attending Division classrooms:
 - A. Staffing in classrooms for students with disabilities is in accordance with the requirements of 8VAC20-81-340 in the following settings:
 1. Students with disabilities are instructed with students without disabilities in general education settings and classrooms, as appropriate and in accordance with the student's IEP. The service level, Level I or II is based upon the amount of time the student receives special education.
 2. When children with disabilities are removed from the general education setting and classroom to provide instruction, special education and related services, they may receive services with students with the same disability or with students with different disabilities.
 - B. Personnel assignment
 1. Each student with a disability receives special education services from special education personnel assigned accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22). See Figure A, page 8 of this section.

2. Special education teachers who are teachers of record must be highly qualified.
3. General education qualified personnel who are knowledgeable about the students and their special education may implement special education services in collaboration with special education personnel.
4. Special education services include those services provided directly to the student and those services provided indirectly.
5. Personnel providing services to a child who has more than one disability are not required to be endorsed in all areas of the child's disabilities. The child shall receive some services for each disability from appropriately endorsed personnel.

C. Caseload standards

1. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See Figure 1 of the Virginia Regulations for the funded caseloads. Special education services for children with visual impairments shall be established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.
2. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

- a. A building average is computed by dividing the total weights (found in Figure 2 of the Virginia Regulations) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision C4 of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.
 - b. The building average shall not exceed 20 points if services are provided to students receiving level I (resource) services and to children receiving level II (self-contained) services. The building average shall not exceed 24 points if services are provided only to children receiving level I services.
 - c. No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students shall be assigned to a single class period when there are varying achievement levels and more than one subject area and level are taught.
3. Special education personnel may also be assigned to serve children who are not eligible for special education and related services under this chapter, as long as special education personnel hold appropriate licenses and endorsements for such assignments.

4. When special education personnel are assigned to provide services for children who do not have a disability under this chapter or are assigned to administrative duties, a reduction in the caseload specified in the Virginia Appropriation Act must be made in proportion to the percentage of school time on such assignment.
 - a. This provision does not apply when special education and related services are provided in a general education class, based on the goals and objectives of the IEP of at least one child in that classroom, and children without disabilities incidentally benefit from such services.
 - b. When special education personnel provide services in a general education classroom based on the IEP goals and objectives of at least one child in that classroom, the special education caseloads do not include children with disabilities who incidentally benefit from such services.

II. Programs for early childhood special education

- A. Children of preschool ages (two to five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's Individualized Education Program team. A full 5½ hour day is provided if determined appropriate by the IEP team.
- B. Staffing requirements
 1. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.
 2. Personnel assignment standards are listed in Figure B on page 8 of this section.

3. The maximum special education caseloads, with and without teacher assistants, are set and funded in the Virginia Appropriation Act. See Appendix A of the Policy & Procedures for the funded caseloads. Special education services for children with visual impairment shall be established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

III. Staffing for education programs in regional and local jails

Special education personnel with any special education endorsement, except early childhood special education and speech/language impairment, may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.

VI. Alternative special education staffing plan

The Division and private special education schools may offer alternative staffing patterns, as long as the requirements of this section are met. An alternative staffing plan that reduces the number of staff positions is not acceptable. If the Division or private special education director plans to implement a different staffing pattern from those specified in this section of the regulations, the Superintendent, or private special education school director, must receive approval to implement an alternative staffing plan from the Virginia Department of Education in accordance with the procedures established by the Virginia Department of Education. Information on alternative staffing plan requests and approvals will be available to teachers and parents.

V. Educational interpreting services

- A. The qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing are as follows:

1. Personnel providing educational interpreting services for children using sign language shall have a valid Virginia Quality Assurance Screening (VQAS) Level III, or have a passing score on the EIPA Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation), recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.
 2. Personnel providing educational interpreting services for children using cued speech or cued language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit).
 3. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics.
- B. Personnel who provide educational interpreting services for children who use sign language or cued speech or cued language and do not hold the required qualifications may be employed if the following conditions are met:
1. Personnel shall have a Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard-of-Hearing; or
 2. Shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon date of hiring.

- C. Additional Provisions for personnel providing interpreting services to become effective in 2010 are as follows.
 - 1 Personnel providing educational interpreting services for students using sign language will hold:
 - a. A valid VQAS Level III; or
 - b. A passing score on the EIPA Written Test along with a minimum Level of 3.5 on the EIPA Performance Test or any other state qualification (excluding Certificate of Deaf Interpretation) recognized by the Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.
- D. Students who are not deaf or hard of hearing.
 - 1. For students who are not identified as deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements as determined appropriate by Newport News Public School Personnel.

Figure A. Special education personnel assignment requirements for children with disabilities ages 2 to 21, inclusive, in local school divisions

Disability Category	Endorsement
Autism	any special education endorsement, as appropriate to student needs
Deaf-blindness	severe disabilities K-12 or any other special education endorsement, as appropriate to student needs
Developmental Delay: ages 2-5	early childhood special education endorsement, or endorsement as appropriate to student needs
Emotional Disability	emotional disturbance K-12
Hearing Impairment/Deaf	hearing impairment preK-12
Learning Disabilities	learning disabilities K-12
Intellectual Disabilities	mental retardation K-12
Multiple Disabilities	severe disabilities or any other special education endorsement, as appropriate to student needs
Orthopedic Impairment	any special education endorsement, as appropriate to student needs
Other Health Impairment	any special education endorsement, as appropriate to student needs
Speech or Language Impairment	speech or language disorders preK-12
Traumatic Brain Injury	any special education endorsement, as appropriate to student needs
Visual Impairment	visual impairments preK-12

Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.)

Figure B. Special education personnel assignment requirements for preschool children, ages two to five, inclusive, in local school divisions

Disability Category	Endorsement
Developmental Delay: ages 2-5	early childhood special education
Hearing Impairment/Deaf	hearing impairments preK-12
Speech or language impairment	speech or language disorders preK-12
Visual Impairment	visual impairments preK-12
All other disability categories	early childhood special education

Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.)

It is the Newport News School Board's policy to ensure that all children and youth, ages 2-21, inclusive, residing in the school district, who are suspected of or identified as having a disability and in need of special education and related services, are identified, located, evaluated, and placed in a free and appropriate educational program. This includes children who are highly mobile, such as migrant and homeless children; those who are wards of the state; or attend private schools, including students who are home instructed or home tutored; children who are suspected of being disabled, even though they are advancing from grade to grade; and those who 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 within Newport News for 10 days or more.

The child find process is designed to include the location, identification and evaluation of parentally placed students in private schools including religious elementary and secondary schools within Newport News, regardless of the child's residency, to ensure equitable participation of private school students and to maintain an accurate accounting of those students. Child find activities for private school students are similar in scope and timing to that for all other groups of students.

Also, it is the Board's policy for the special education staff to work cooperatively through the Interagency Coordinating Council to ensure that services are provided appropriately to children who reside in the City of Newport News who are birth to two years of age.

The Director of Special Education and Assessment Services and the Supervisor of Referrals and Assessments are responsible for division-wide Child Find efforts. Requests for translated materials should be made to the above individuals so that information can be provided in a person's native language or primary mode of communication.

Local agencies participating in the child identification, location, and evaluation efforts include the following:

- Exceptional Family Member Program (Ft. Eustis)
- Speech and Hearing Clinic at Riverside Hospital
- Peninsula Child Development Clinic
- Mental Health and Mental Retardation Services Board
- Newport News Health Department
- Newport News Social Services Department
- Infant Parent Education Program at Sarah Bonwell Hudgins Regional Program
- Infant Development Program at Riverside Hospital
- Williamsburg Child Development Resources
- Head Start
- Juvenile Court System
- Representatives from private schools, including parents of students with disabilities
- Representatives of students with disabilities being home instructed and home tutored

Other organizations participating in location of children with a disability by providing awareness programs and distributing information brochures are:

- Ministerial Alliance
- Special Education Advisory Committee
- Area private and parochial schools

These agencies serve as major sources for community-based referrals. They assist in the evaluation process, and when appropriate, participate in the eligibility and IEP process. Also,

personnel from clinics and early intervention programs conduct follow-up activities on preschool children who were previously served in infant/toddler programs.

Child Find is an ongoing process—activities continue throughout the year, and in addition to those described above, include notices posted on the website and the area TV channel. School-based child study committees and monthly preschool screenings serve as major sources for locating children (ages 0-21) in need of special education and related services.

All referrals from school and community services are processed according to the Newport News Public School Division's *Special Education Procedures* and these *Operational Guidelines for Managing the Special Education Process*.

New Student Screening

Documentation of New Student Screening NNPS 618-B 5/89
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Newport News Public Schools maintains screening procedures to assure the identification of children with suspected disabilities residing within its jurisdiction and requiring special education. The Division provides all applicable procedural safeguards. These include written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening.

I. Written Notice

- A. Each school shall include the following announcement in its school opening newsletter/information packet to parents of first-time enterers.

The Commonwealth of Virginia (Code of Virginia, Section 22-24 and Regulations Governing Special Education Programs for Children With Disabilities in Virginia effective July 7, 2009) require that students entering public schools for the first time be screened. All children through grade three within 60 business days of initial enrollment in a public school shall be screened in speech, voice, language and scoliosis to determine if a referral for an evaluation for special education and related services is indicated. All children, with 60 business days of initial enrollment, shall be screened in the areas of vision and hearing to determine if a referral for an evaluation for special education and related services is indicated. In addition, the vision and hearing of all children in grades three, seven, and ten shall be screened during the school year. All children through grade three within 60 business days of initial enrollment, shall be screened for fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated. The screening may take place up to 60 business days prior to the start of school. The division may recognize screenings reported as part of the child's pre-school physical examination required

under the Code of Virginia if completed within the above prescribed time line. Children who fail any of the screenings may be re-screened if the initial results are not considered valid.

II. Screening Procedure

A. Children shall be screened in the following areas to determine if a formal assessment is indicated:

1. Speech, Voice, Language

Primary and elementary students through grade three shall be screened by speech/language pathologist.

2. Vision and Hearing

All students will be screened by the school nurse.

3. Fine- and Gross-Motor Functions

All children (through grade three) shall be screened for fine- and gross-motor functions by physical education teachers.

4. Scoliosis

Parents of students in grades 5-10 shall be provided education and information on screening for scoliosis.

B. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening.

C. Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services.

III. Confidentiality

Results of screening shall be maintained in a confidential manner.

IV. Maintenance of Student's Scholastic Record

A. Results will be maintained on the "school health record."

B. The principal shall maintain individual student results documented on NNPS "school health record" and maintain in the student's file until the student graduates.

V. Screening Techniques and Operational Guidelines

A. Specific instruments and measures shall include observation and student performance on selected tasks in each area of screening.

B. Techniques used for screening shall guarantee nondiscrimination.

VI. Newport News Public Schools, at least annually, conducts a public awareness campaign to:

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

B. Generate referrals; and

C. Explain the nature of disabilities, the early warning signs of disabilities, and the need for services to begin early.

VII. The guidelines for informing the community show evidence of the use of a variety of materials and media and:

A. Provide for personal contacts with community groups, public and private agencies, and organizations; and organizations, and

B. Provide information in the person's native language or primary mode of

communication.

The Division includes the involvement of parents and community members in the required child find and community awareness campaign.

Formal Child Study

The operational guidelines in this section pertain to the general child study process for all students and the specific operational guidelines for identifying students suspected to have disabling conditions that adversely affect educational performance. A flow chart of the process may be viewed in Figure 1 (p. 13, end of Section 6). In Figure 2 (p. 14, end of Section 6), timelines for the complete special education process are summarized.

I. Purposes of the Child Study Process

The formal child study process is a screening activity to identify children and youth experiencing learning and adjustment problems. Primarily, the process involves administrative, instructional, and support personnel in providing alternatives and interventions within the regular education setting. Every effort should be made to accommodate students in regular education programs. The child study process includes the following objectives:

- A. Analyze the student's learning and behavioral characteristics and needs.
- B. Assess aspects of the curriculum, teaching methods and materials, and school and home environmental factors that influence the student's learning and adjustment.
- C. Develop, implement, and monitor written instructional modifications in the regular education program to improve the student's performance. Examples of modifications include individualized programming within classes, changing class placement, assigning the student to alternative or compensatory programs involving building specialists, and rescheduling subjects.
- D. Determine and justify the need for formal assessment, with documentation of unsuccessful results of the Child Study Action Plans, implemented systematically in the regular program.

II. Referral to the Child Study Committee

File SE-1 Request for
Education Assistance

A teacher, parent, guardian, student, or others including the SEA or a state agency may initiate a referral to the Child Study Committee. A child may also be referred as a result of poor performance on the initial screening. Referrals may be in written, electronic or oral form. In most instances, the classroom teacher(s) will submit the Request for Educational Assistance (SE-1) to the principal. However, parents, other school personnel, representatives of community agencies, or others may request that the principal of the school where the student is enrolled initiate a referral to the Child Study Committee. When a student has more than one teacher, the principal/designee shall obtain existing and current information from all possible sources so that complete information is available to the Child Study Committee. Formal assessment components needed for special education eligibility determination shall not be initiated or collected before referral to the Supervisor of Referrals and Assessments has been made and signed parental consent for evaluation has been obtained. (SE-5)

III. Parent Notification

File Notification
Sample Letter #1
to Parent file.

The principal/designee shall notify the student's parent/surrogate parent/ legal guardian of the request for educational assistance. While parent permission is not required to initiate the child study process, parents shall be invited and encouraged to participate in the child study process.

Parents must be notified in their native language if they are not fluent in English, or in another mode of communication if the parents are not able to read. If assistance is needed in writing a letter or translating forms in a language other than English, the principal/designee shall contact the Supervisor of Referrals and Assessments located in the administration building. If a sign language interpreter is required, the principal/designee shall contact the Special Education Supervisor for Speech/Language And Hearing Impaired.

IV. Scheduling Child Study Committee Meetings

A Child Study Committee meeting must be held within 10 business days from the date of the Request for Educational Assistance (SE-1).
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The principal/designee maintains the child study referrals and minutes in the student's educational record, Part I.

V. Child Study Committee Participants

The Child Study Committee shall consist of at least three persons, including:

- A. The principal/designee who schedules and conducts meetings and maintains records of committee actions.
- B. Teacher(s): Usually the student's classroom teacher participates, but may include personnel who have conducted school entry screenings.
- C. Specialists in the problem area stated in the Request for Educational Assistance (SE-1); i.e., reading specialist, audiologist, school nurse, physical education teacher, psychologist, social worker, speech/language pathologist, special education teacher.

1. Personnel from the Special Education Assessment Team may/may not participate in the child study process as members of the Child Study Committee. However, when the Child Study Committee believes it has exhausted all in-school options available, a member of the Special Education and Assessment Team should be invited to attend the Child Study Committee.
 2. Instructional supervisors or specialists in the subject content areas may provide consultative assistance upon request of the principal.
- D. Referring source as appropriate (except when referring source would breach confidentiality of the student).
- E. Parent(s) shall be provided an opportunity to attend the meeting at a mutually agreed upon date and time and share observations and information about their child. When the parent is the referring source and an evaluation is requested, he/she must be invited and encouraged to attend to share information/observation about the child. A record of notices and contacts informing the parent of the meeting must be maintained.
- F. At least 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 meeting the student's educational needs.

VI. Steps in the Child Study Process

- A. Gather background information.

Review records and other performance evidence of student referred through the pre-referral process or other referral source, such as:

1. School entry or more recent screening data;
 2. Cumulative educational records, including academic achievement and related developmental needs;
 3. Test scores, including both local and state assessments;
 4. Health records (conduct vision and hearing screenings, if appropriate, and investigate certain health concerns that appear to impact on learning or adjustment);
 5. Available confidential reports;
 6. Attendance records;
 7. Work samples, anecdotal records, classroom observation reports;
 8. Written reports of intervention implemented by school staff; or
 9. Classroom-based observations.
 10. A teacher or specialist may screen a student for the purposes of determining appropriate instructional strategies for curriculum implementation. This screening should not be considered an evaluation for eligibility for special education and related services and does not require parental consent.
- B. Identify the previous or current alternative instructional programs or services provided to the student, and the student's progress in these programs; e.g., Reading Recovery, Title I, and alternative programs through the Equity and Accountability Department.
- C. Involve parents/guardians in supplying information about the student's development, learning and personal characteristics, and in providing suggestions for educational planning.

- D. Discuss the student's current academic functioning.
1. Identify how the student learns best and the types of learning tasks and situations that enhance or inhibit the student's learning.
 2. Identify skill areas in which the student's performance is strong or weak. The team may use a process based on the student's response to scientific, research based interventions or other alternative research based procedures.
 3. Investigate the student's relationship to other students and adults in and out of the classroom.
 4. Investigate health factors which may influence the student's performance or adjustment. Certain conditions such as vision or hearing problems may be addressed during the child study process. Vision/hearing screenings should be combined as a part of school-wide screening and only after parental permission has been obtained.
- E. Identify resources within the school or community and generate a list of options which may enable the student to achieve satisfactorily in the regular classroom program.

File SE-2 Child Study Action Plan

- F. Develop a written Child Study Action Plan (SE-2) that considers background information, the student's academic functioning, and the instructional options, to include the following components:
1. Identify learning and/or behavioral problems;
 2. Identify the appropriate strategies and materials to assist the learner to make satisfactory progress in academic and/or behavior;

3. Identify the personnel responsible for implementing the strategies;
4. Establish the methods of evaluating the effect of the strategies on the student's achievement and/or adjustment;
5. Establish the timelines for monitoring and adjusting the educational program;
6. Indicate the signatures of Child Study Committee members; and
7. Identify a date to review and evaluate results of the Child Study Action Plan.
There is no timeline for concluding the child study process. Steps E through F may be repeated as often as necessary.
8. For students whose child study action plan involves Response to Intervention activities, the parent must be informed regarding the amount and nature of student performance data that will be collected and the general education services that will be provided. The instructional strategies used and the student-centered data collected will need to be reflected on the eligibility minutes if the student is subsequently referred for review by the eligibility committee.

G. Complete the child study process when:

1. The student is responding to strategies and modifications and is not suspected to be disabled. Continue in-school modifications.
2. The student is not responsive to modifications and is suspected of having a disabling condition. Request a formal assessment and determine components needed to determine the educational needs of the child. (See next section.)

SE-3 Student Referral for Special Education Assessments

3. The student exhibits a severe problem or constitutes a threat to self or others. An emergency referral for formal assessment may be initiated immediately. Indicate EMERGENCY on SE-3 and send all copies of the SE-3 form to the attention of the Supervisor of Referrals and Assessments following the operational guidelines described in the next section.

H. Prior Written Notice

1. The Notice of Intent form must be completed and presented to the parent prior to the Permission to Evaluate form and signed by the parent and the case manager.
 - a. The written forms indicate that an evaluation to consider the student's need for special education and related services is being proposed.

I. When the referring source asks for an evaluation prior to a child study referral due to a suspected disability:

1. The timeline for evaluation begins on the date of the request;
2. A Child Study Committee should be convened as soon as possible;
3. If the Child Study Committee agrees that an evaluation is appropriate, it should:
 - a. Complete sections G and H above, indicating the referral date as the date of the initial request for evaluation;
4. If the Child Study Committee does not agree that an evaluation is appropriate, it should:
 - a. Continue with the development of a Child Study Action Plan; and

- b. Provide written notice on the Notice of Intent form to the referral source, indicating that the evaluation is being denied and inform the parent of the right to appeal through the due process hearing.
 - 1) This stops the evaluation timeline; however, child study activities must not be used as a tool to delay a child's Referral for Evaluation.

The Referral for Formal Assessment—New Referrals

Record Keeping
Requirement

File SE-3 Student Referral For
Special Education Assessments

The principal/designee of the referring school or other referring source shall notify the Supervisor of Referrals and Assessments within 3 business days of the Child Study Committee's decision to request a formal assessment to determine the student's eligibility for special education.

The operational guidelines in this section are to be implemented for students not in special education programs but who the Child Study Committee suspects of having a disabling condition.

I. Assignment of the Case Manager

New referrals generated by the Child Study Committee may be managed by the principal, assistant principal, special education lead teacher, or other school-based designee. Listed below are the case manager's responsibilities through the referral process.

A. The principal/designee will notify the Supervisor of Referrals and Assessments of the request of formal assessment by forwarding the following forms and documents (Referral Packet) to the Special Education Department where the following data will be recorded:

1. The pink, yellow, and goldenrod (and in most cases, white) copies of the Student Referral For Special Education Assessment (SE-3) (multi-copy referral card), including student demographic data, date of referral, reason for referral, names of persons or agency making the referral and requested assessment components;
2. Request for Educational Assistance (SE-1);

3. Child Study Action Plan (SE-2) documenting the information upon which the decision to refer was based;
 4. Informal child study information;
 5. Vision and hearing screening reports (completed after parental permission obtained);
 6. Any non-school division information collected during the child study process;
 7. Permission to Evaluate (SE-5) indicating component reports to be collected. Components checked on the Permission to Evaluate should match the components checked on the SE-3;
 8. Notice of Intent to deny or change identification, evaluation, or educational placement form proposing the evaluation; and
 9. Copy of child study meeting notification letter.
- B. Referral packet must be sent to the Supervisor of Referrals and Assessments within three (3) business days of the decision to refer. If the school is unable to obtain parent's signature on SE-5, the referral information must still be sent to Supervisor of Referrals and Assessments within three (3) business days of the decision to refer. The school must continue to seek informed parental consent and forward upon receipt. No assessments can be completed until parent permission has been received by the Supervisor of Referrals and Assessments.
- C. Implement operational guidelines for maintaining confidentiality of personally identifying data and for complying with procedural safeguards in assessment.

Record Keeping
Requirement

Sample letter #2 & Procedural Safeguards Booklet

1. Once the decision to refer for a full evaluation has been reached, child study and referral documents shall be maintained in the student's record—Part II.
2. Inform and advise parents orally and in writing of the referral in their native language or other mode of communication. Include a procedural safeguards booklet in their native language with the oral or written notice of the referral for formal assessment and prior written notice (Notice of Intent) of the proposed evaluation.
3. Explain the nature of the formal assessment process, the timelines for completion of assessment components, parental opportunity to assist in determining areas to be assessed, parental involvement required to complete the assessments, the opportunity for independent evaluation, impartial hearing, and the opportunity to examine records.
4. Advise parents/guardians of their legal rights during assessment, eligibility, and placement processes in their native language or primary mode of communication.
5. For initial evaluation, a surrogate parent must be appointed when:
 - a. No parent (see Glossary of Terms) can be identified or located; or
 - b. The rights of the parents to make educational decisions have been subrogated by a judge and permission to evaluate has been given by an individual appointed by the judge to represent the child. The division may

proceed with the assessment without finalizing the appointment of a surrogate parent.

- c. Custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by court order. (A surrogate parent would not be required if the natural parents or guardians have allowed relatives or private individuals to act as parents). To obtain a surrogate parent for students who meet the above criteria, contact the Coordinator of the Parent Resource Center (See Surrogate Parent section of this manual to determine when a surrogate parent is needed).

Permission to Evaluate, SE-5

- 6. Secure written permission from the parent(s)/guardian(s) for formal assessment after providing prior written Notice of Intent.
- 7. Dispute resolution may be used if the parent does not provide consent for the initial evaluation but the division is not required to pursue the use of mediation or due process. For children in private schools at the parent’s expense, and for those students who are home instructed or home tutored the division may not use mediation or due process to pursue consent for initial evaluation.

Record Keeping Requirement

- D. Initiate the formal assessment.

Eligibility for special education and related services must be determined within 65 business days from the date of receipt by the special education administrator

1. Within 3 business days of the Child Study Committee's decision to refer for a full evaluation, send all referral information to the Supervisor of Referrals and Assessments. If parents' permission for the evaluation has not been secured within 2 business days following the Child Study decision, send the existing referral information to the Supervisor of Referrals and Assessments where it will be held awaiting the permission before being acted upon.
2. After obtaining parental permission and comment on evaluation, the case manager will:
 - a. Indicate the selected assessment components on the SE-3 that are necessary to evaluate the student in all areas of suspected disability.

Before any action is taken with respect to the initial placement of a child with a disability in a special education program, a full and individual evaluation of the child's educational needs must be conducted;

Record Keeping
Requirement
 - b. Assign the speech, vision/hearing, and medical assessments to appropriately qualified assessment personnel for data collection, testing, observations, and interviews required to complete their respective assessment components. All other assessment components such as psychological, sociocultural, class observation, physical therapy, psychiatric components, etc. must be requested through, and arranged by, the office of Referrals and Assessments;
 - c. Make certain that selected assessment components (SE-3) to determine eligibility for special education and related services are completed and

eligibility is held within 65 business days. No single measure or assessment shall be used as the sole criterion for determining an appropriate educational program for a student. The student shall be assessed in all areas related to the suspected disability, as identified by the Child Study Committee. Testing and evaluation materials and operational guidelines used for the purposes of evaluation and placement of children with disabilities in Newport News Public Schools are:

- (1) Selected and administered so as not to be racially or culturally discriminatory;

Record Keeping
Requirement

- (2) Provided and administered in the child's native language or other mode of communication most likely to yield accurate information and not the child's English language skills, unless it is clearly not feasible to do so;
- (3) Are valid and reliable for the specific purpose for which they are used;
- (4) Administered by trained, qualified personnel in conformance with the instructions provided by their producers. When an assessment is conducted under non-standard conditions a description of the extent to which it varied from standard conditions is included in the evaluation report.

- (5) Tailored to assess specific areas of educational need and gather functional, developmental and academic information, and not merely those which are designed to provide a single general intelligence quotient; and
 - (6) Selected and administered so as best to ensure that when an assessment is administered to a child with impaired sensory, manual, or speaking skills, these test results accurately reflect the child's aptitude or achievement level or whatever other factors the assessment purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).
3. All assessment components selected to provide a complete analysis of the student's current level of performance shall be requested, completed, and available for review by all team members and the parents 2 business days prior to the Eligibility Committee meeting.
4. A written copy of the evaluation report(s) are provided to the parents at no cost prior to, or at the eligibility meeting, or immediately following the meeting but no later than 10 days after the meeting.
5. All requested assessments will be conducted in the child's native language or primary mode of communication most likely to yield accurate information when appropriate.

Record Keeping
Requirement

a. Vision and hearing screenings

RESPONSIBILITY: School Nurse

b. Educational or developmental

- (1) Educational: written report describing current educational performance and identifying instructional strengths and weaknesses in basic academic skills and language performance.

RESPONSIBILITY: School Psychologist/Reading Resource Teacher
(Middle School)

- (2) Developmental (for preacademic and suspected or identified students with disabilities): written report of how the child functions in the major areas of development such as cognition, motor, social/adaptive behavior, perception, and communication.

RESPONSIBILITY: School Psychologist

- c. Medical: written report from a licensed physician indicating general medical history and any medical/health problems which may impede learning, behavior, or adjustment. Request for Educational Assistance (SE-1) shall be sent with the MCH-213 to the physician or health facility conducting the examination.

RESPONSIBILITY: School Nurse

Record Keeping
Requirement

- d. Sociocultural: written report from a qualified visiting teacher or school social worker based on the use of information collected through social appraisal instruments which may include background and social/adaptive behavior in home, school, and community. The information is obtained through interviews with parents or primary caretakers in addition to other social appraisal methods.

RESPONSIBILITY: School Social Worker

- e. Psychological: written report from a qualified psychologist based on the use of a battery of appropriate instruments which may include individual intelligence test(s), psychoeducational test(s), perceptual test(s), personality test(s), and a classroom observation.

RESPONSIBILITY: School Psychologist

- f. Observation: must be completed in the student's learning environment, including the general education classroom to document the student's academic performance and behavior in the areas of difficulty. In the case of a child less than school age or out of school the child should be observed in an environment appropriate for the age of that child.

RESPONSIBILITY: School personnel as identified by the committee.

- g. Other assessment components may be requested as appropriate through the Supervisor of Referrals and Assessments.

(1) Speech/language evaluations may be requested:

- (a) When the student is receiving speech/language as a primary service or as a related service at the time of the referral;

- (b) When there is no evidence of a previous screening or evaluation in the student's records and the student is exhibiting suspected speech/language problems as indicated on the referral for educational assistance.

RESPONSIBILITY: Speech Language Pathologist

Record Keeping Requirement

(2) Audiological evaluations

- (a) To be conducted if the student fails two hearing screenings.

The second hearing screening shall be completed no less than 15 days and no more than 45 calendar days after administration of the first screening test.

RESPONSIBILITY: School Nurse

- (3) Occupational therapy, physical therapy, neurological, psychiatric, and central auditory processing evaluations will be processed through the Supervisor of Referrals and Assessments.

II. Tracking Responsibilities of the Case Manager are as follows:

Log received component on SE-3

- A. Establish and implement building guidelines to record receipt of, and access to, assessment components and other confidential information maintained for the referred student.

- B. Monitor the student's progress and manage implementation of instructional recommendations derived from assessment components throughout the 65 business-day assessment period using the semi-monthly tracking report.
- C. Communicate with the Supervisor of Referrals and Assessments regarding circumstances which could delay the timely completion of the assessment process

Record Keeping
Requirement

(e.g., student absences, transfer to another school, suspensions, illnesses, etc.). If the student transfers to another NNPS school during the assessment process, the case manager shall notify the administrator of the receiving school to continue the process.

- D. Ensure that the assessment packet is completed and available for review by all school-based personnel contributing assessment components and by the parent at least 2 business days before the scheduled EC/IEP meeting.
 - 1. Forward any information related to assessment and any completed assessment components which have not been typed and/or distributed from the central office (e.g., some academic evaluations, vision/hearing assessments, and evaluation reports from private practitioners or outside agencies), to the Supervisor of Referrals and Assessments for filing and review by central office special education personnel. Outside agency reports may be used for eligibility purposes after review for timeliness and thoroughness by the Child Study Committee. Relevant Newport News Public Schools Evaluation providers should be included in this review.

2. Notify the following persons of the name(s) of students, the date(s) and time(s) of the scheduled Eligibility Committee meeting(s) so that they may plan to attend the meeting if appropriate:

- a. The child's parents;
- b. Supervisor of Referrals and Assessments;

Record Keeping
Requirement

See sample notice

- c. Special Education contact person;
- d. Student's teacher(s);
- e. School-based personnel who have conducted assessments;
- f. Special Education assessment team
- g. Other school division personnel who have provided component reports;
and
- h. Nonschool division personnel who have provided assessment components or services, when appropriate and will not violate confidentiality.
- i. When confidentiality is an issue, an authorization to exchange information signed by the parent is required.

Sample letter #3

E. Document attempts to provide parent/guardian's written notice of the EC/IEP meeting, in the following sequence:

- 1. Mail Notification of Eligibility/IEP Meeting (sample letter #3) to the parent(s).

Parent Contact Record

2. If no response is received, telephone the parent(s) and document the call on the parent contact record.
3. If no response, mail a copy of the original notices by certified mail, requesting a return receipt. If the school receives a parent request for postponing the EC/IEP

Record Keeping
Requirement

before the scheduled meeting, the request should be documented in writing and the meeting rescheduled. Copies of the documentation should be maintained in the student's educational record and also sent to the Supervisor of Referrals and Assessments.

Notify the parents in writing of the mutually agreed upon date, time, location of the meeting, who will be in attendance, and of their right to bring others with them in sufficient time to provide them an opportunity to attend.

- F. Report to the Supervisor of Referrals and Assessments any unresolved concerns about delays in meeting the established timelines for assessment, eligibility determination, IEP development, and special education placement.

Figure 1

Newport News Public Schools
Special Education
Flow Chart for Services
Decentralized System

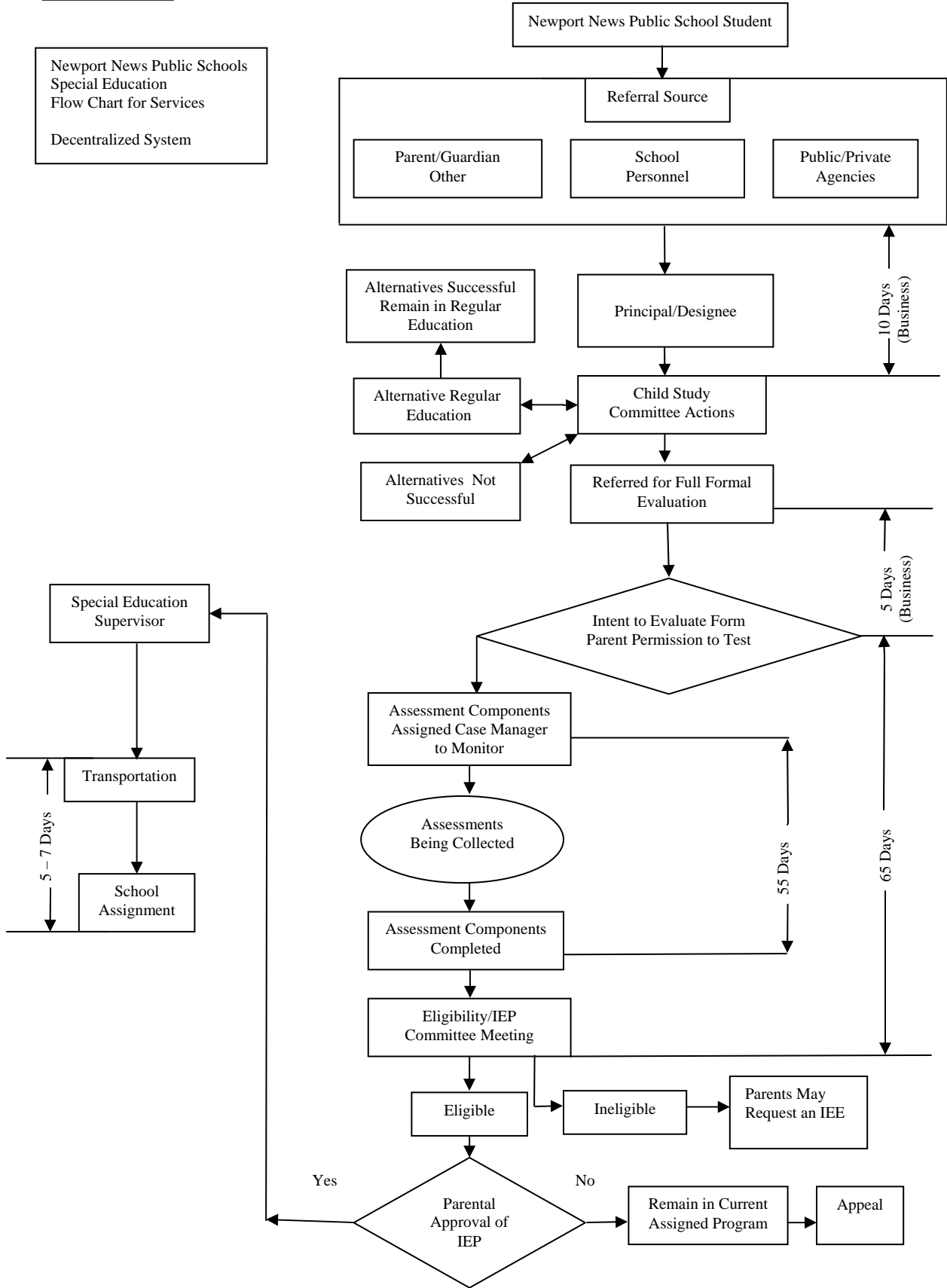


Figure 2

Newport News Public Schools
Special Education School-Based Management Timelines

Building principals have primary responsibility for adhering to timelines, implementing operational guidelines, and monitoring IEPs and special education programs within their buildings.

The Director of Special Education and Assessment Services is responsible for coordinating division-wide special education operational guidelines and programs and is accountable to the Virginia Department of Education in regulatory and compliance matters.

SUMMARY OF TIMELINES FOR THE SPECIAL EDUCATION PROCESS

60 days

GENERAL SCREENING

Within 60 administrative working days of initial enrollment in a public school all students shall be screened in the following areas:

- speech, voice, language arts (through grade three)
- fine- and gross-motor function (through grade three)
- vision and hearing

10 days

ACTION BY A CHILD STUDY COMMITTEE

A meeting of the Child Study Committee (CSC) must be held, and Child Study Committee Action Plan (SE 2) be completed within 10 administrative working days from the date of receipt of a Request for Educational Assistance (SE 1).

5 days

Within 5 administrative days after the Child Study Committee’s decision to request a formal assessment (1) the Supervisor of Referrals and Assessments must be notified, (2) parental permission to conduct the formal assessment must be obtained, and (3) an Intent to Evaluate must be completed

65 days

EVALUATIONS AND ELIGIBILITY DETERMINATION

Eligibility for special education and related services must be determined within 65 business days of the receipt of signed parental consent for formal assessment by the Child Study Committee or within 65 business days of the date a parent requests an Assessment for Special Education Services. Business days are defined as Monday through Friday, 12 months of the year, exclusive of federal and state holidays.

30 calendar days

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Initial IEP must be developed within 30 calendar days of determination of eligibility.

Every 3 years

TRIENNIAL ELIGIBILITY REVIEW

Triennial evaluations must be completed no later than the third anniversary of the date the student was last found eligible for special education and related services.

Unless stated otherwise, DAYS means business days and are defined as Monday through Friday, 12 months of the year, exclusive of federal and state holidays.

Eligibility

I. Timelines for Eligibility Decisions

- A. Within 65 business days of the receipt of the referral by the special education administrator;
 - 1. However, if the initial Request for Evaluation for Special Education and Related Services is made prior to the Child Study Committee, and the committee agrees with the request, the 65 days begin on the date of the request.
- B. No later than the third anniversary of the date the child was last found eligible for special education and related services; or
- C. Within 65 business days after the parent or parents are notified of the decision not to reevaluate (records review only).
- D. Exceptions to the 65 day timeline include:
 - 1. When a student enrolls in the Newport News Public Schools after the timeframe has started and prior to eligibility by the previous school division. This exception does not apply if Newport News is making sufficient progress to ensure a prompt compliance of the evaluation and the parent and school division personnel agree to a specific timeframe when the evaluation will be completed;
 - 2. When the parent fails or refuses to produce the student for the evaluation.

II. School-Based Eligibility/IEP Committees

- A. School division membership may include:
 - 1. Principal or designee qualified to supervise or provide special education services;
 - 2. Special education contact person (initial and review);

3. School division personnel who have provided the assessment components, have observed the child or who represent the disciplines providing the assessment components:
 - a. School social worker;
 - b. School psychologist;
 - c. School nurse when the nurse's presence is required to present or interpret educationally relevant aspects of the medical component; i.e., physical examination, occupational or physical therapy report, neurological examination, and other special medical reports;
 - d. The student's general and special education teachers or a teacher qualified to teach a child of that age, if the student does not have a general education teacher; or
 - e. Other school division specialists who have either provided assessment components, specialists with knowledge in the area of the suspected disability, or who have responsibility for providing services (audiologist, guidance counselor, reading resource teacher, speech/language pathologist, occupational therapist, physical therapist, etc.) when they must present or interpret information from their respective disciplines that will assist in identifying the student's special education or related service needs.

B. Non-school division personnel

1. Non-school division personnel who have provided assessment components, who made the referral, or who are responsible for providing services may participate in

Eligibility Committee meetings. Others, at the determination of the parent, may attend.

- 2. Parents; noncustodial parents, if known; surrogate parents; and agency representatives having legal custody of the student shall be informed of the day/date and time of eligibility meetings and afforded an opportunity to attend and participate in the Eligibility Committee meeting decision.

C. Responsibilities

Record Keeping Requirement

- 1. Chairperson: (contact person from the special education department for new referrals and review referrals; the building principal/designee for triennials)
 - a. Chairs the Eligibility Committee meeting;
 - b. Conducts the meeting in a manner that encourages presentation of educationally relevant information by persons who have collected assessment data
 - c. Facilitates deliberations which result in general agreement or consensus that the student does or does not meet the criteria for special education services;

Report of Eligibility Committee

- d. Assures the completion of all components of the Eligibility Committee Report and the distribution of copies of the report to the school, to the special education department, and parents or guardians.

- (1) The Eligibility Committee Report shall be a written summary of minutes which consists of essential deliberations supporting the findings as to the educational needs of the child and the eligibility of each child for a special education program and a statement that the summary reflects the conclusions of each committee member.
 - (2) The minutes shall be signed by each Eligibility Committee member present.
 - (3) Separate statements will be collected from any members who do not agree with the committee consensus;
- e. Completes the Notice of Intent, proposing or denying, and/or changing the student's eligibility;
 - f. Forwards all Eligibility Committee minutes and other relevant data to the IEP Committee;
 - g. Forwards all EC/IEP deliberations and Intent notice form to the Referrals and Assessments Department for recording and processing by the appropriate program supervisor when applicable; and
 - h. Forwards copy of Eligibility Committee minutes to referring source, when appropriate.
2. Case Manager: (the principal or designee)
 - a. Schedules individual cases within the assigned period allocated for eligibility meetings in the school;

- b. Notifies school-based and central office Eligibility Committee members of the individual cases to be staffed and the date and time of the meeting;
- c. Provides reasonable proper written notice, including procedural safeguards, to parents prior to the meeting to provide an opportunity for them to attend;
- d. Provides reasonable notice to other non-school division personnel, as appropriate (as indicated in B1 above), of the date and time of the meeting;
- e. Secures the confidentiality of eligibility proceedings and all records related to the identification, evaluation, and placement of students suspected or determined to be disabled. The EC records will be maintained in the student's scholastic record, Part II; and
- f. Reviews the committee findings with the parent in the event the parent does not attend the eligibility meeting.

3. Members:

- a. Provide written assessment components to the school two business days prior to the eligibility meeting;
- b. Review all assessment reports prior to attending the eligibility meeting;
- c. Present assessment data which is relevant and specific to the student's current level of functioning and educational needs;
- d. Summarize and interpret assessment findings in their respective disciplines;
- e. Integrate assessment data presented by all members;
- f. Formulate recommendations for appropriate educational planning, based on assessment documentation:

- (1) Determine the disabling condition, if any, and eligibility for special education services. (Refer to criteria handbook and/or disability definitions in the glossary.);
 - (2) Describe the student's current level of functioning and identify the educational needs and behavioral characteristics;
 - (3) Include other recommendations as appropriate; and
- g. Submit a separate statement when the committee's consensus does not reflect his or her own conclusions.

III. Eligibility Committee Decisions

- A. The Eligibility Committee may defer the determination of eligibility for special education services when:
1. Further diagnostic assessment data is needed for a nonbiased decision AND
 2. The need for additional information is clearly documented and a reasonable deadline for completion of additional components will not jeopardize compliance with the original 65 business day timeline.
- B. The decisions of the Eligibility Committee provide the basis for IEP development and placement.

IV. Operational guidelines for determining eligibility

- A. 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 Eligibility Committee shall:

1. Consider information from a variety of sources, such as aptitude and achievement tests, parent input, teacher reports, physical condition, social or cultural background, adaptive behavior, etc.; and
 2. Ensure that information from all these sources is documented and carefully considered.
- B. The group shall follow procedural safeguards in determining eligibility and in ensuring the confidentiality of records.
- C. A child may not be determined to be eligible under this section of the *Operational Guidelines For Managing The Special Education Process* if the determinant factor is lack of instruction in reading (including phonetic awareness, phonics, vocabulary development, reading fluency, oral reading skills, and comprehension strategies) or math or limited English proficiency and the child does not otherwise meet the eligibility criteria.
- D. The group making the decision, including the parent, regarding the child's eligibility shall work toward consensus. The principal/designee shall obtain parental consent for the initial eligibility determination. Thereafter, parental consent shall be secured for any change in identification.
- E. The group shall have 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. This summary shall be signed by each group member present. The written summary shall be maintained in the child's scholastic record, Part II.
- F. The principal/designee shall provide a copy of the documentation of the determination of eligibility to the parent or parents, at no cost, along with a Notice of Intent.

- G. The summary statement of the group's essential deliberations shall be forwarded to the IEP team upon determination of eligibility. The summary statement may include other recommendations.
1. Each group member shall certify in writing whether the report reflects his conclusions. If the group does not reach full consensus and the report does not reflect a particular member's conclusion, then the group member must submit a separate statement presenting that member's conclusions.
 2. No changes shall be made to a child's eligibility for special education and related services without written parental consent.
- V. **Criteria for determining the existence of a specific learning disability.** The group may determine that a child has a specific learning disability if:
- A. The child does not achieve commensurate with the child's age or to meet Virginia approved grade level standards in one or more of the areas listed in subdivision C of this subsection if provided with learning experiences appropriate for the child's age,
 - B. 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.
 - C. The team finds that a child does not achieve adequately for the child's age or to meet Virginia approved grade level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Virginia approved grade level standards:
 1. Oral expression;
 2. Listening comprehension;

3. Written expression;
 4. Reading fluency skills;
 5. Basic reading skills;
 6. Reading comprehension;
 7. Mathematical calculations; or
 8. Mathematical problem solving.
- D. The group may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:
1. A visual, hearing, or motor impairment;
 2. Intellectual disability;
 3. Emotional disability
 4. Environmental, cultural, or economic disadvantage; or
 5. Limited English proficiency.
- E. If determining whether a child suspected of having a specific learning disability is a child with a disability, the group shall include:
1. The child's regular teacher;
 - a. If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child at that age; or
 - b. For a child less than school age, an individual qualified to teach a child of that age; and
 2. The child's special education teacher, if the student receives special education services.

3. At least one person qualified to conduct diagnostic examinations of children, such as school psychologist, speech/language pathologist, teacher of specific learning disabilities, or teacher of remedial reading. This is not intended to be an exhaustive list of qualified personnel in Newport News Public Schools.

Summary of Deliberations
for LD Student

- F. For a child suspected of having a specific learning disability, the documentation of the group's determination of eligibility must also include a statement of:
1. Whether the child has a specific learning disability;
 2. The basis for making the determination;
 3. The relevant behavior noted during the observation of the child;
 4. The relationship of the behavior to the child's academic functioning;
 5. The educationally relevant medical findings, if any;
 6. The instructional strategies used and the student-centered data collected if the child has participated in a response to a scientific, researched based intervention process; and
 7. The determination of the group concerning the effects of any environmental, cultural, or economic disadvantage.

VI. Eligibility for related services

- A. A child with a disability must be found eligible for special education in order to receive related services.
- B. Related services are those supportive services that are required to assist a child with a disability to benefit from special education.

- C. Once a child is found eligible for special education, and the need for a related service is documented, related services are added to the IEP by the IEP team.
- D. If additional information is needed to determine the need for related services, an evaluation may be initiated in compliance with all evaluation procedures.

VII. Eligibility of two-year-old Preschool children

- A. A child, aged two, previously participating in early intervention services under Part C (see Glossary) of the Individuals with Disabilities Education Act shall meet the requirements of this eligibility section to be determined eligible under Part B (see Glossary) of the Individuals with Disabilities Education Act.
- B. For a child served by Part C, after age 2 and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

VIII. Eligibility as a child with a Developmental Delay

- A. The eligibility committees in Newport News Public Schools include developmental delay as one of the disability categories when determining whether a preschool child, aged two by September 30, to six, inclusive, is eligible.
- B. The child has a physical or mental condition that has a high probability of resulting in a developmental delay.
- C. Other disability categories may be used for any child with a disability aged two to six, inclusive.

IX. Eligibility as a child with an Emotional Disability

There is an adverse effect on the student’s emotional performance due to one or more documented characteristics of emotional disability. (See Criteria Manual)

X. Eligibility as a child with a Hearing Impairment.

- A. There is an adverse effect on the student’s educational performance due to one or more documented characteristics of a hearing impairment. (See Criteria Manual)
- B. Characteristics of students with a hearing impairment include unilateral hearing loss, bilateral hearing loss, a fluctuating or permanent hearing loss, and/or auditory dys-synchrony. The hearing loss results in qualitative impairments in communication/educational performance.
- C. The term “hard of hearing” may be used in this capacity.

XI Eligibility as a child with an Intellectual Disability

- A. There is an adverse effect on the student’s educational performance due to one or more documented characteristics of an intellectual disability; and the child has

1. Significantly impaired intellectual functioning which is two or more standard deviations below the mean on individually administered standardized measures of intellectual functioning, concurrent with;
2. Significantly impaired adaptive behavior as determined by a composite score on an individual standardized instrument of adaptive behavior that measures two standard deviations or more below the mean, and;
3. A developmental history that indicates significant impairment in intellectual functioning and a current demonstration of significant impairment is present.

XII Eligibility as a child with an Orthopedic Impairment

There is an adverse effect on the student's educational performance due to the presence of one or more characteristics of an orthopedic impairment.

XIII Eligibility as child with an Other Health Impairment

There is an adverse effect on the child's educational performance due to one or more characteristics of other health impairment.

XIV Eligibility as a child with a Speech or Language Impairment

- A. A student may be identified as a student with a speech or language impairment if;
1. There is an adverse effect on the student's educational performance due to one or more documented characteristics of a speech or language impairment.
 2. The student has a significant discrepancy from typical communication skills in one or more of the areas including fluency, impaired articulation, expressive or receptive language impairment, or voice impairment; and

3. Information from instruments that are culturally and linguistically appropriate including standardized and criterion referenced measures are used in conjunction with information from classroom observations to determine the severity of the communication impairment.
- B. Children are not to be identified as having a speech or language impairment the area of concern is primarily the result of sociocultural dialect, delays/differences associated with acquisition of language, or within the purview of established norms for articulation and language development.
 - C. Speech Language services may be special education or a related service

XV Eligibility as a child with Traumatic Brain Injury

The student may be identified as a student with a traumatic injury if there is documentation of an acquired injury to the brain that results in an adverse effect on the student's educational performance.

XVI Eligibility as a child with a Visual Impairment

- A. A student may be identified as a student with a visual impairment if it results in an adverse effect on educational performance due to one of more of the characteristics of visual impairment; and the student:
 1. Demonstrates the characteristics of blindness or visual impairment
 2. Has any of the condition including, but not limited to oculomotor apraxia, cortical visual impairment, and/or progressive loss of vision, which may in the future have an adverse effect on educational performance, or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.
- B. A child with blindness demonstrates the following:

1. Visual acuity in the better eye with best possible correction of 20/200 or less at distance or near; or
 2. Visual field restriction in the better eye of remaining visual field of 20 degrees or less.
- C. A child with a visual impairment demonstrates the following:
1. Visual acuity better than 20/200 but worse than 20/70 at distance or near; or
 2. Visual field restriction in the better eye of remaining visual field of 70 degrees or less, but better than 20 degrees.

XVI Children found eligible for special education

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- A. Children need not be identified by their disability, as long as each child has a disability under this section and needs special education and related services, as appropriate.
- B. Children with disabilities may be identified as having more than one disability, if necessary, to provide free and appropriate public education.

XVI Children found not eligible for special education

I

- A. A child found not eligible for special education shall be referred back to the Child Study Committee to develop appropriate educational strategies.
- B. Parental consent to release information shall be secured for children placed by their parents in private schools that are NOT located within Newport News.

XIX. IEP Timelines

If the determination is made that a child has a disability and needs special education with or without related services, an IEP must be developed within 30 calendar days.

XX. Central Eligibility/IEP Committee

A. The Central Eligibility/IEP meetings are coordinated by the Supervisor of Referrals and Assessments.

1. The composition shall be the same as school-based committees.
2. The Central Eligibility/IEP Committee reviews special eligibility cases and reaches consensus on eligibility/IEP decisions in the following cases:
 - a. Private or Parochial students
 - (1) Students attending private or parochial schools in Newport News and referred for formal assessment shall have their assessment components reviewed by the Central Eligibility/IEP Committee. The child's parents, private school administrator, and the student's teacher(s) shall be given appropriate and reasonable notice and be provided an opportunity to participate.
 - (2) Upon determination of eligibility the committee will develop an IEP consistent with the needs of the student.
 - (3) The parent may accept the IEP or refuse permission to implement the placement.

- (4) If the IEP calls for services other than speech and the parent authorizes implementation of the IEP, the student will be placed in his/her zone school or the nearest school to the zone school in which the identified program is located.
- b. Out of Division Placements
- (1) For school-aged children and youth not enrolled in a Newport News Public School, the Central Eligibility/IEP Committee shall review assessment components and develop an IEP consistent with the needs of the student.
 - (2) For students identified as requiring an out of division placement by a school based eligibility committee the development of the IEP shall be referred to the Central IEP Committee.
 - (3) The Central IEP Committee, including the student's parents, school administrator, teacher(s), private school administrator when appropriate and a special education administrator will develop and IEP consistent with the needs of the student.
 - (4) If the IEP calls for a private day placement the IEP committee may make a recommendation as to the location of the program.
 - (5) The actual day program placement will be made administratively by the Coordinator of Special Placements with the approval of the Director of Special Education & Assessments after considering, in the following order:

- (a) Proximity of the program to the student's home through zones established by the Transportation Department;
 - (b) The program's ability to serve the needs of the student as outlined in the IEP (positive behavior management program, time out room, on site therapist, etc.);
 - (c) Space availability;
 - (d) Student/family history/concerns with the program; and
 - (e) Continuity of programming (in the case of re-evaluations/"rezoning").
- (6) For students requiring a residential placement, the Coordinator of Special Placements will follow appropriate C.S.A. procedures to locate a residential setting appropriate to the needs of the student.

Individualized Education Program

The Curriculum & Instruction Department-Special Education Programs of Newport News Public Schools has the responsibility for ensuring that an IEP is developed and implemented for each child with a disability in its jurisdiction. This includes those students placed in private special education schools by the division itself or if the placement is a noneducational placement by a Comprehensive Services Act team that includes the school division. In CSA cases, Newport News Public Schools' responsibility is limited to special education and related services.

When does an IEP need to be in effect? At the beginning of each school year, the Division shall have an IEP in effect for each child with a disability within Newport News, with the exception of children placed in private school by parents when a free appropriate public education is not at issue.

The Division is responsible for ensuring that an IEP is in effect before special education and related services are provided to an eligible child; and is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services, and is implemented as soon as possible following the IEP meeting.

The Division is responsible for ensuring that the child's IEP is accessible to each general education teacher, special education teacher, related service provider, and other service providers who are responsible for its implementation. The special education teacher/case manager must make certain that other teachers and providers are informed of their specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

The special education teacher/case manager is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability. The building

administrator/case manager ensures that, within 65 business days following the receipt of parental consent for an initial evaluation, the evaluation of the child will be completed. If determined eligible, the special education supervisor/coordinator/building administrator will ensure that special education and related services are provided to the child in accordance with an IEP. An IEP meeting must be conducted within 30 calendar days of the date of a determination that the child needs special education and related services. The special education teacher/case manager shall ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, and to address:

1. Any progress or lack thereof toward the annual goals and in the general curriculum;
2. Any lack of expected progress toward the annual goals and in the general curriculum;
3. The results of any evaluation conducted under this chapter;
4. To mutually exchange information with the parents about the child;
5. The child's academic, developmental and functional needs; and
6. Other matters.

The special education teacher/service provider must provide special education and related services to a child with a disability in accordance with the child's IEP and must make a good faith effort to assist the child to achieve the goals, including benchmarks or objectives listed in the IEP. Nothing in this section

limits a parent's right to ask for revisions of the child's IEP or to invoke due process as described in these operational guidelines if the parent feels that the required efforts are not being met. All IEPs developed, reviewed, or revised must meet the requirements of this section.

The Newport News Public Schools ensures that the Re-evaluation/IEP Team for each child with a disability includes:

1. The parent of the child;
2. Not less than one general education teacher of the child (if the child is or may be participating in the general education environment);
3. Not less than one special education teacher of the child or, if appropriate, at least one special education provider of the child. For a child whose only disability is speech/language impairment, the special education provider shall be the speech/language pathologist;
4. A representative of the Division who is:
 - a. Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
 - b. Knowledgeable about the general curriculum; and
 - c. Knowledgeable about the availability of resources of the local educational agency. The Division may designate another member of the IEP Team to serve simultaneously as the agency representative if that individual meets the above criteria;
5. An individual who can interpret the instructional implications of evaluation results.

This individual may be a member of the team serving in another capacity, other than the parent or the child;

6. At the discretion of the parent or Newport News Public School personnel, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the party (parent or division representative) who invited the individual to be a member of the IEP Team;
7. If appropriate, the child;
8. For children who are in the custody of a local social services or other child welfare agency, the child's caseworker pursuant to the following conditions:
 - a. The caseworker may not assume the role of the parent at the meeting; and
 - b. If the caseworker is unable to attend the meeting as scheduled, the meeting may be held without the caseworker; and
9. Each IEP team will include all required individuals – including the parent unless:
 - a. The parent and the balance of the IEP team agree in writing that a member's attendance is not necessary because the member's area of the curriculum or related service is not being modified or discussed during the IEP meeting; or
 - b. The parent and the balance of the IEP team agree in writing to excuse a member from the IEP meeting in whole or in part, because even though the member's area of the curriculum or related service is being modified or discussed during the IEP meeting, the member has submitted written input regarding the development of the student's IEP prior to the meeting.

10. Part C Transition Participants

- a. In the case of a child who was previously under Part C, the school division will, at the parent(s)(s') request invite the Part C service coordinator or other representatives of the Part C system to the initial IEP meeting to assist with the smooth transition of services.

10. Secondary Transition Service Participants.

IEP/Transition
Notice Letter

- a. The teacher/case manager must invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:

- (1) The student's transition services needs;
- (2) The needed transition services for the student;
- (3) Both.

Documentation of
Student's Input

- b. If the student does not attend the IEP meeting, the special education teacher/case manager must take other steps to ensure that the student's preferences and interests are considered.

Documentation of
Agency Input

- c. In implementing the transition requirements for a student with a disability, beginning at age 16 or younger if determined appropriate by the IEP Team, the special education teacher/case manager also must invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the special education teacher/case manager must take other steps to obtain the participation of the other agency in the planning of any transition services.

Parent Notification and Participation

In the Newport News Public Schools, parents are encouraged to participate fully in all special education processes. Steps must be taken to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate. The special education teacher/case manager must:

IEP Notice Letter

- 1. Notify the parent in writing of the meeting early enough to ensure that they will have an opportunity to attend; and
- 2. Schedule the meeting at a mutually agreed on time and place.
- 3. The special education teacher/case manager shall give notice to the parent. It must be in writing, but may be given initially by telephone or in person with proper documentation. The notice must indicate the purpose, date, time, and location of the meeting, and the title of individuals who will be in attendance; and shall inform the parent of the provisions relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child.

IEP/Transition
Notice Letter

Additional notice requirements shall be provided if transition services are under consideration.

1. For a student with a disability beginning at age 14 or younger, if appropriate, the notice must also:
 - a. Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and
 - b. Indicate the student is invited to attend.
2. For a student with a disability beginning at age 16 or younger, if appropriate, the notice must:
 - a. Indicate that a purpose of the meeting will be the consideration of needed transition services for the student;
 - b. Indicate that the student is invited; and
 - c. Identify any other agency/agencies that will be invited to send a representative.
3. If neither parent can attend, the teacher/case manager must use other methods to ensure parent participation, including videoconference or individual or conference telephone calls, or audio conference, if the parent and the School Division agree and there is no cost to the parent. A draft of the IEP will be provided to parents in advance when practicable.
4. A meeting may be conducted without a parent in attendance if the teacher/case manager is unable to convince the parent that they should attend. In this case, the teacher/case manager must have a detailed record of all the attempts to arrange a mutually agreed on time and place.

5. The teacher/case manager should take whatever action is necessary to ensure that the parents understand the proceedings at the IEP meeting, including arranging with the appropriate Supervisor of Programs for Developmentally Delayed, Speech/Language, and Hearing Impaired for an interpreter for parents with deafness or whose native language is other than English.
6. The Division permits the use of audio recording devices at IEP meetings. The parent should inform the special education teacher/case manager before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent does not inform the special education teacher/case manager, the parent shall provide Newport News Public Schools with a copy of the audio recording. The parent shall provide his/her own audio equipment and materials for audio recording. If the special education teacher/case manager audio records the meetings or receives a copy of an audio recording from the parent, the audio recording becomes part of the child's educational record.
7. The Division may prohibit, limit, or otherwise regulate the use of video recording devices at IEP meetings. If the Division video records the meetings, the video recording becomes part of the child's educational record. If Newport News Public Schools has or, in the future, develops a policy that prohibits or limits the use of video recording devices at IEP meetings:
 - a. That policy must provide for exceptions if they are necessary to ensure that the parents understand the IEP or the IEP process or to implement other guaranteed parental rights; and
 - b. The Division must ensure that the policy is uniformly applied.

Agenda

8. At the IEP meeting, the IEP Team will provide the parent of a child with a disability with a written description of the factors that will be considered during the IEP meeting. The description shall be written in language understandable by the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so.
9. The special education teacher/case manager will give the parents a copy of the child's IEP at no cost to the parent at the meeting or within 10 days following the meeting.
10. The special education/case manager will also provide the parents a copy of the Procedural Safeguards at all annual review meetings.

Development, review, and revision of the IEP

1. In developing each child's IEP, the IEP Team shall consider:
 - a. The strengths of the child and the concerns of the parents for enhancing the education of their child;
 - b. The results of the initial or most recent evaluation/formal/informal educational assessment of the child; and
 - c. As appropriate, the results of the child's performance on any general state or division-wide assessment programs.
2. The IEP Team also shall:
 - a. In the case of a child whose behavior impedes the child's learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions and supports to address that behavior;
 - b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

- c. In the case of a child with blindness or visual impairment, provide for instruction in Braille and the use of Braille unless the IEP Team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;
- d. Consider the communication needs of the child;
- e. In the case of a child with deafness or hearing impairment, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- f. Consider and document the need for short term objectives or benchmarks for the student to receive FAPE regardless of whether the student is participating in the Virginia Alternate Assessment Program.
- g. Consider whether the child may require assistive technology devices and services, and, if appropriate, make a referral to the Assistive Resource Center, using the proper form.

ATRC Referral Form

3. If, in considering the special factors, the IEP Team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP Team must include a statement to that effect in the child's IEP.
4. The general education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of:
 - a. Appropriate positive behavioral interventions, supports and strategies for the child; and
 - b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.
5. Nothing in this section shall be construed to require the IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.
6. The IEP Team must consider all factors identified under a free appropriate public education in the IEP section of these operational guidelines and work toward consensus. The teacher/case manager shall provide the parent with prior written notice (Notice of Intent) of the IEP Team's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education.

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Content of the individualized education program

An IEP must provide a statement of the child's present levels of academic achievement and developmental and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

- a. The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.
 - b. The present level of performance should directly relate to the other components of the IEP.
2. An IEP must include a statement of measurable annual academic, developmental and functional goals, including benchmarks or short-term objectives, related to:
 - a. Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general education curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and
 - b. Meeting each of the child's other educational needs that result from the child's disability.
3. An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

- a. To advance appropriately toward attaining the annual goals;
 - b. To be involved and progress in the general education curriculum and to participate in extra-curricular and other nonacademic activities; and
 - c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.
4. An IEP must include an explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education class and in the activities described in this section.

IEP Testing Accommodations Page

5. The IEP must address state and division-wide assessments to include:
- a. A statement of any individual appropriate accommodations or modifications, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of academic achievement and functional performance that are needed in order for the child to participate in the assessment;
 - b. A statement why the child will not participate in the regular state and division-wide assessments of student achievement (or part of an assessment) explaining:
 - (1) Why that assessment is not appropriate for the child;
 - (2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment;
 - (3) Why the particular alternate assessment is appropriate; and

- (4) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters; and
 - c. A statement that the child will participate in either the state assessment for all children that is part of the state assessment program or the state's alternate assessment.
- 6. The IEP must include the projected dates (month, day, and year) for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements.
- 7. The IEP must include:
 - a. How the child's progress toward the annual goals will be measured; and
 - b. How the child's parent will be regularly informed (through such means as periodic report cards), at least as often as the parent is informed of the progress of their children without disabilities, concerning:
 - (1) Their child's progress toward the annual goals; and
 - (2) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.
 - c. Initial Transition Services
 - (1) In the case of a preschool-aged child with a disability age two (on or before September 30) through age 5 (on or before September 30) whose parent(s) elect to receive services under Part B of the Individuals with Disability Education Act the school division will develop an IEP.

- (2) The IEP team will consider an IFSP that contains the IFSP content described under Part C;
- (3) A statement regarding natural environments, and
- (4) A component that promotes school readiness and incorporates pre-literacy, language and numeric skills

8. Secondary Transition Services

- a. A statement of the needed transition services for the student, beginning at age 14 (or younger, if determined appropriate by the IEP Team). If appropriate, the statement must include interagency responsibilities or any needed linkages and must be updated annually.
- b. Appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment and where appropriate, independent living skills, and the transition services (including courses of study) needed to assist the student in reaching these goals.
- c. Transition services shall be based on the individual student's needs, taking into account the student's preferences and interests, and include:
 - a. Instruction;
 - b. Related services;
 - c. Community experiences;
 - d. The development of employment and other post-school adult living objectives; and
 - e. If appropriate, acquisition of daily living skills and functional vocational evaluation.

9. The IEP must include, beginning at least one year before a student reaches the age of 18 years, a statement that the student has been informed of the rights, if any, that will transfer upon reaching the age of 18 years.

10. If the parent does not attend the IEP meeting,

- a. The special education teacher must contact the parent to:
 - (1) Supply the parent with Notice of Intent proposing any changes brought about by the IEP and/or denial of changes sought by the parents;
 - (2) Discuss the content of the IEP with the parents;
 - (3) Obtain the parents' permission to implement the IEP. This can be accomplished by:
 - (a) Calling the parent to schedule a conference;
 - (b) Sending a written request for a conference to the parent; or
 - (c) If the parent does not attend the scheduled conference, a home visit may be needed. Often, the school guidance counselor, school social worker, peer partner or special education specialist/lead will accompany the teacher to the home.
- b. If a home visit is inappropriate or unsuccessful, a copy of the IEP, along with the signature page, may be mailed to the parent along with the Notice of Intent proposing a change in the IEP and a copy of the Procedural Safeguards booklet if this is an annual review IEP.
 - (1) Call the parent to explain that a copy of the IEP is being mailed. Write explicit directions as to where to sign and ask the parent to return the entire IEP with signature page to you.

- (2) Mail a complete copy of the IEP to the parent along with the original signature page (keep a copy of the signature page in the student file). Use registered mail. Enclose a stamped self-addressed envelope for returning the IEP to you.
 - (3) Mail a complete signed copy to the parent after the process has been completed.
11. An IEP may be amended after the annual review IEP without calling a new meeting if the parents and the School Division agree (i.e., by phone or by mail).
 - a. The amendment or modification must be in writing.
 - b. The student's teacher must confirm the parent's agreement that the amendment did not necessitate an IEP meeting and document that decision on the IEP amendment form. The parent must then be provided with a revised copy of the IEP with the amendments incorporated.
 - c. If any member of the IEP team contemplates significant changes, an IEP meeting with the full team must be held.
 - d. The amendment should not change the annual review IEP date.
 - e. The Notice of Intent is still required with such amendments, prior to implementing the change.
 - f. The School Division participants involved in making such changes must be representative(s) who can commit School Division resources.
 - g. All team members must sign off on changes made through this addendum procedure.

Newport News Public Schools' Responsibilities For Transition Services

1. A summary of academic achievement and functional performance, including recommendation on how to assist the student in meeting post-secondary goals, will be provided to each student graduating or exceeding the age of eligibility.
2. If a participating agency, other than the division, fails to provide the transition services described in the IEP of a student with a disability, the special education teacher/case manager shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
3. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Additional Requirements For Eligible Students With Disabilities In State, Regional, Or Local Adult Or Juvenile Correctional Facilities

1. A representative from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP Team.
2. All requirements in this section apply to students with disabilities in state, regional or local adult or juvenile correctional facilities, with the exception that the IEP Team of a student with disabilities, who is convicted as an adult under state law, may modify the student's IEP or placement, if the state has demonstrated to the IEP Team a bona fide security or compelling penological interest that cannot be otherwise accommodated

- a. All requirements regarding IEP development, review, and revision in this section shall apply.
- b. If such modifications are made by the IEP Team, the requirements related to least restrictive environment in this section of the operational guidelines manual do not apply.
- c. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply. Assessment requirements to graduate (SOL) with a modified standard, standard, or advanced studies diploma shall apply.
- d. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for release.

Transfer Students – Previous Enrollment in Special Education

Record Keeping
Requirements

I. Operational guidelines for enrollment in special education

If a student, enrolled in a special education program, transfers into Newport News from another school division or from out of state, the students' parent should be directed to the Special Education department to seek enrollment.

A. When a student transfers from another school division in Virginia:

1. A Special Education supervisor or coordinator will place the student, with consultation and consent of the parent in a special education program consistent and comparable with the current IEP assuring that the student has available special education and related services; or
2. The appropriate supervisor will take all reasonable steps to promptly obtain the child's records;
 - a. If the records are not forthcoming from the previous school division the supervisor should contact the Virginia Department of Education for assistance in resolving the matter.
 - b. If Newport News Public Schools is unable to obtain the IEP from the previous school division or from the parent, NNPS is not required to provide special education and related services to the student. The student may be placed in a general education program and an evaluation may be conducted if it is determined that one is necessary.
3. The IEP Committee in the school in which the child is placed will be convened within 30 calendar days and will rewrite and implement the IEP with the consent of the parent; OR

- a. If the IEP Committee believes consideration should be given for a significant change in placement, it shall refer the student for evaluation using appropriate referral procedures and develop an interim IEP, with the parent’s consent, if necessary.
- b. If the parent or parents and the IEP Committee are unable to agree on interim services, the Division or the parent may initiate the dispute resolution options of mediation or due process to resolve the dispute.
- c. During the resolution of a dispute, the school division will provide the student with a free and appropriate education in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous school division.

IEP Addendum

- (1) An IEP Committee will review the existing evaluations and/or request new evaluations or the evaluations as appropriate for the eligibility review.
- (2) During the evaluation period the student will receive services in accordance with the existing IEP excluding those sections that are not in accordance with this section. The parent must be informed of these actions using the Letter of Intent procedures.

4. In the case of a child placed in a private residential school, absent parental consent or absent an appropriate program within the school division, the student will remain in the private residential school until the Eligibility Committee and IEP Committee have made a decision following the referral procedures.
- B. When a child with a disability transfers to Newport News Public Schools from another state:
1. A Special Education supervisor or coordinator will place the student, with consultation and consent of the parent, in a special education program providing comparable services consistent with the current IEP until a new IEP is developed and agreed upon by both parties.
 2. The appropriate supervisor will take all reasonable steps to promptly obtain the child's records.
- C. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to Newport News, the school division's Coordinator of Special Placements must review the current placement and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act team shall be responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in the new locality from the former Comprehensive Services Act team.

Reevaluation of Special Education Students

Record Keeping
Requirement

I. Reevaluation

A. A reevaluation shall be conducted:

1. If conditions warrant a reevaluation, including improved academic performance and functional performance;
2. If the child's parent(s) or teacher requests a reevaluation;
3. At least once every three years (triennial reevaluation), but not more than once per year unless the School Division and the parents agree otherwise. If the parents and the school division cannot agree on the need to re-evaluate, the parents will be provided with a Notice of Intent.

II. Conduct a review

- A. As part of a reevaluation, the special education teacher/case manager shall ensure that an IEP team and other qualified professionals, as appropriate, along with the evaluation providers or their documentation if they cannot be present, conduct the review.
- B. This team reviews the reason for the reevaluation request, if applicable, and existing evaluation data on the child, including:
1. Evaluations and information provided by the parent of the child;
 2. Current classroom-based assessments and observations;
 3. Observations by teachers and related services providers; and
 4. Student's response to research-based interventions.

- C. Identify, on the basis of the above review, and with input from the child's parent, what additional data, if any, are needed to determine:
1. Whether the child continues to have a particular disability or has any additional disabilities;
 2. The present levels of academic performance and related developmental needs of the child;
 3. Whether the child continues to need special education and related services; and
 4. Whether any 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 curriculum.

III. Additional data

- A. The IEP Committee shall request tests and other evaluation materials necessary to determine continued eligibility, present level of performance, educational need, and any IEP/related services modifications.
- B. All evaluations will be completed in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally.
- C. The parents shall be informed of any proposed evaluation using the Notice of Intent Form.

IV. Requirements if no additional data are needed

- A. If the determination is that no additional data are needed to determine whether the child continues to be a child with a disability, the IEP Team shall notify the child's parent of that determination and the reasons for it, and the right of the parent or parents to request an evaluation about the student's educational needs and to determine whether the child continues to be a child with a disability, using the IEP Addendum Form.
- B. The IEP Team is not required to request an evaluation to gather additional information to determine whether the child continues to have a particular disability, unless requested to do so by the child's parent.
- C. This process shall be considered the evaluation, if no additional data are needed.

V. Notice and parental consent when additional information is needed

- A. Secure parental consent on form SE-5.
- B. Provide Notice of Intent proposing an evaluation.
- C. If for a triennial reevaluation, the IEP Team can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond, the IEP Team shall proceed as if consent has been given by the parent. Reasonable measures include providing notice to the parent in writing, by telephone, or in person with proper documentation.
- D. Parental consent and Notice of Intent are not required before:
 - 1. Review of existing data as part of an evaluation or reevaluation; or
 - 2. A teacher's or related service provider's observations or ongoing classroom observations.

3. 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.
- E. If a parent of a student 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 re-evaluation, or if the parent fails to respond to a request to provide consent, the school division is not permitted to use mediation or due process to pursue the re-evaluation. In cases such as these the division is not required to consider the student as eligible for equitable services for parentally placed students.

VI. Transfer students

- A. When a student transfers between school divisions, in the same academic year, the Supervisor of Referrals and Assessments will coordinate the administration of assessments between school divisions.

VII. Timelines

- A. Evaluations, when required, shall be completed within 65 business days of the receipt of the referral by the special education administrator.
- B. If the reevaluation is the evaluation required every three years, the evaluation shall be initiated no less than 65 business days prior to the third anniversary of the date eligibility was last determined. The evaluation shall be completed in 65 business days.

- C. The parent and the IEP committee may agree in writing to extend the 65 day timeline to obtain additional information that cannot be obtained within the 65 business day timeframe.

VIII Re-evaluation of Graduating Students

- A. Students graduating with standard or advanced studies diplomas do not require a re-evaluation. Rather, graduation is a change in placement requiring that the parent be provided with a Notice of Intent.

Least Restrictive Environment (LRE)

To the maximum extent appropriate, children with disabilities, aged 2-21 inclusive, in the Newport News Public Schools, including those in public or private institutions or other care facilities, are educated with children who do not have a disability.

In this school division, special class placement, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for nondisabled children, the Division ensures that each child with a disability participates with children without disabilities in those services and activities, to the maximum extent appropriate to the needs of the child with a disability.

For children in public or private institutions, this school division will, when necessary, make arrangements with public and private institutions, or other care facilities, to ensure that requirements for least restrictive environment are met.

Newport News Public Schools provides a continuum of alternative placements which are available to meet the needs of children with disabilities, aged 2-21 inclusive, requiring special education and related services. These services may be viewed on the Special Education Justification Form which provides documentation of LRE determination at time of IEP development by a properly composed IEP Team.

The time that a child receives special education services is calculated on the basis of special education services described in the Individualized Education Program, rather than the location of services. Available educational environments for all program categories include:

The full range of Level I services means the provision of special education and related services to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). Level II services means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals).

Terminating Services

I. Terminating or postponing the formal assessment process

- A. The assessment process may be terminated when:
1. The student moves from the school division before the assessment is completed (**Note:** The school division is responsible for maintaining timelines for the assessment/eligibility/IEP until the student officially withdraws);
 2. The parent aborts the assessment process by providing a written statement revoking permission to complete the assessment or
 3. There is evidence that overriding circumstances, such as severe medical problems, prevent valid assessment of the student's performance. If the assessment must be postponed for medical reasons, the principal/designee should obtain a statement from the parent or the attending physician to document the delay of timelines. The statement should define the expected duration of the postponement or the need to terminate the process.

Record Keeping
Requirement

II. Termination of special education and related services

- A. Each child with a disability must be evaluated in accordance with 8 VAC 20-81-70 before determining that the child is no longer a child with a disability. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.
- B. The IEP team, or properly composed Eligibility Committee, shall terminate the child's eligibility for special education and related services.

1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services and if parental consent is secured and Notice of Intent provided.
 2. A related service may be terminated during an IEP meeting without determining that the student is no longer a student with a disability. The IEP team making the determination shall include school division personnel representing the related services disciplines in person, by telephone, or by other similar electronic means. Written parental consent shall be secured prior to the termination of related services and Notice of Intent provided.
 3. If the parent or parents revoke consent for the child to continue to receive special education and related services, the procedures in 8 VAC 20-81-80 must be followed to terminate the child's eligibility or use other measures as necessary to ensure that parental revocation of consent will not result in the withdrawal of a necessary free appropriate public education for the child.
- C. Termination of one or more special education services for a child is a function of the IEP Committee. Termination of related services occurs when the IEP Committee determines that the service(s) are no longer required in order for the child to benefit from special education.
1. When the referring source (teacher, parents, service provider, etc.) believes that a related service may no longer be required, he/she will direct the teacher to: convene an IEP meeting to discuss requesting an evaluation to

consider terminating the related service along with a statement of educational progress completed by the teacher(s).

- a. The committee will consider the need for additional assessment.
 - (1) If no assessments are needed, the committee will determine if the services are needed.

Notice of Intent Form

- (2) If assessments are needed, the Notice of Intent must be given and parental consent obtained on the addendum form and the procedural safeguards provided.
- 2. The teacher/case manager will then request, using the SE-3 Referral for Formal Assessment form, the component report(s) directly related to the service(s) to be terminated (i.e., OT report, PT report, counseling summary, speech evaluation, etc.
- 3. The SE-3 will be sent to the Supervisor of Referrals and Assessments along with:
 - a. The original IEP Addendum with parent signature authorizing the assessment;

Record Keeping Requirement

- b. The original notification letter scheduling the IEP Addendum meeting; and
 - c. The original Notice of Intent proposing the evaluation.

Record Keeping
Requirement

4. Upon completion of the related service component(s), the IEP Committee will reconvene to review the component(s) and the current IEP to determine if the service continues to be required for the student to benefit from the special education program.
5. If the IEP Committee finds the service is no longer required for the student to benefit from the special education program, it will develop an addendum revising the IEP to reflect the termination of the related service. If the related service is to terminate, the parent must receive the Notice of Intent and agree to the change by signing the addendum.
6. The original signed addendum must be sent to the appropriate program supervisor/coordinator for review and filing.

III. Termination of Services Through Graduation

- A. For a student with a disability whose eligibility terminates due to graduation with a standard or advanced studies diploma, or by virtue of reaching the age of 22, a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's post secondary goals will be provided to them.

- B. If a student who exits school without graduating with a standard or advanced diploma or by reaching the age of 22, including students who receive a GED or an alternative diploma, receives a summary of academic performance and then re-enters school and resumes educational services, the student will receive an updated summary when the student exits or when the eligibility for services terminates due to graduation with a standard or advanced diploma, or upon reaching the age of 22.

Transfer of Rights to Students Who Reach the Age of Majority

I. All rights accorded to the parent under the Individuals with Disabilities Education Act transfer to children upon the age of majority (age 18), including those students who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution.

II. Notification

A. The IEP Committee shall notify the parent and the student of the following:

1. That educational rights under the Individuals with Disabilities Education Act will transfer from the parent to the student upon the student reaching the age of majority. This notification must be given at least one year prior to the student's eighteenth birthday; and
2. That procedures exist for appointing the parent or, if the parent is not available, another appropriate individual to represent the educational interests of the student throughout the student's eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in subsection *III* of this section.

B. The IEP Committee shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student and the parent(s) have been informed of the rights that will transfer to the student on reaching the age of 18.

C. The special education teacher/case manager shall provide any further notices required under the Individuals with Disabilities Education Act addressed to the adult student.

1. A copy of any notice should also be sent to the parent.
 2. When required, the procedural safeguards document must be included with the notice given to the adult student.
- D. The special education teacher/case manager may continue to invite the parent, as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.
- E. The adult student may invite the student's parent to participate in meetings where decisions are being made regarding the student's educational program.
- III. A student who has reached the age of 18 years shall be presumed to be a competent adult, and all rights under the Individuals with Disabilities Education Act shall transfer to the adult student, unless one of the following actions has been taken:**
- A. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;
 - B. The adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other decisions related to the student's educational program. Newport News Public Schools shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;

- C. The adult student is certified, according to the following operational guidelines, as unable to provide informed consent. Any adult student who is found eligible for special education according to operational guidelines described in this manual and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all special education matters and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and guidelines:
1. Two professionals (one from list one and one from list two, as set out below in a. and b.) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:
 - a. List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.
 - b. List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for the adult student.

2. The individuals who provide the certification noted in this section may not be employees of Newport News Public Schools currently serving the adult student or be related by blood or marriage to the adult student.
3. Incapable of providing informed consent, as used in this section, means that the individual is unable to:
 - a. Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;
 - b. Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or
 - c. Communicate such understanding in any meaningful way.
4. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.
5. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.
6. The adult student's ability to provide informed consent must be recertified any time that the previous certifications are challenged. Challenges can be made by

the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of Newport News Public Schools. Challenges must be provided in writing to the Director of Special Education and Assessment Services who then must notify the adult student and current appointed representative.

- a. Upon receipt of a written challenge to the certification by the adult student, Newport News Public Schools may not rely on an educational representative, appointed pursuant to the guidelines described below (Section *IV*) for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;
 - b. Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, Newport News Public Schools may not rely on an educational representative, appointed pursuant to subsection *IV* of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. Newport News Public Schools shall not rely upon the designated educational representative until the representative is affirmed by the court; or
- D. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training and treatment of the mentally

retarded in accordance with § 37.2-806 of the Code of Virginia. The state-operated program serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf during the student's stay at the state-operated program.

IV. If Newport News Public Schools receives written notification of the action in subdivision III C of this section or if the state-operated program receives the judicial certification in subdivision III D of this section, the Director of Special Education and Assessment Services shall designate the parent of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative).

- A. If the parent or adult spouse is not available and competent to give informed consent, the Director of Special Education and Assessment Services or designee shall designate a competent individual from among the following:
 - 1. An adult brother or sister;
 - 2. An adult aunt or uncle; or
 - 3. A grandparent.
- B. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the approved special education administrator.

Discipline of Students with Disabilities

I. Short-Term Suspensions

A. A short-term suspension is one in which the student is removed from class up to 10 cumulative school days in a school year.

1. This does not constitute a change in placement and, consequently, the student is subject to normal discipline guidelines whether or not there is a causal connection between the student's disability and the misconduct.

a. Exclusions for one or more days must be considered as short-term suspensions.

b. A suspension of bus privileges resulting in a student's absence from school would be considered a short-term suspension. If the parent elects to provide alternative transportation during the suspension of bus privileges, it would not be considered a short-term suspension.

B. Operational guidelines to follow in administering short-term suspensions

1. When a student's aggregate short-term suspensions total more than 10 days, the series of suspensions may be considered a change in placement.

2. If the series of suspensions is considered a change in placement, the student may still be suspended following the operational guidelines described in Subsection II below.

3. Factors the IEP Committee should consider in determining whether aggregate suspensions of more than 10 days are a change in placement include:

a. Length of each suspension;

- b. Proximity of each suspension; and
 - c. Total amount of time suspended.
4. When the IEP Committee determines that a series of suspensions do not constitute a change of placement, it is not required to proceed with manifestation determination.
5. The IEP Committee may consider any unique circumstances on a case-by-case basis when deciding to consider a suspension, such as the inappropriateness of the IEP and/or the placement.

II. Long-Term Suspension and Expulsions

- A. A long-term suspension or expulsion is one in which the student is removed from class or school for more than 10 consecutive school days.
1. When a disciplinary action involving long-term suspension or expulsion of a student with disabilities is being considered, a determination must be made as to whether or not a direct or substantial relationship (manifestation determination) exists between the student's disability and the misconduct. This determination must be made by the parent, the school division, and a properly constituted Manifestation Determination Committee (IEP Committee) after review of all the relevant information and before the student may be removed from the school setting.

Record Keeping
Requirement

2. Composition of the Manifestation Determination Committee—same as IEP Committee:

- a. Principal or designee;
- b. The student's special education teacher;
- c. The student's regular education teacher(s);
- d. School psychologist;
- e. School social worker;
- f. Special education representative or designee;
- g. Parent, guardian, surrogate parent;
- h. Student, if appropriate; and
- i. Other individuals at the discretion of the parents or the school division.

Record Keeping
Requirement

3. The committee must determine whether there is a direct or substantial relationship between the disability and the conduct before the student may be removed from the school setting.
4. The committee's decision should be based upon the student's records, evaluations, and all relevant information provided by the school and the parents.

IEP/Manifestation
Committee Report

5. Written minutes indicating the committee consensus decision, the rationale for the decision and the consensus of the members must be kept on the IEP/Causality Committee Report.

IEP Notice Letter

C. Parent Participation

1. Parents (and other committee members) must be given notice of the time, date, and purpose of the manifestation (IEP) committee meeting and must be invited to attend at a mutually agreed upon date and time. If notice is given orally, it must be documented in writing to the parent.

Record Keeping
Requirement

2. The parents may be accompanied during the proceedings by others, such as an attorney, physician, etc.
3. The parents should be advised of all procedural safeguards, including the right to contest the committee's decision through a due process hearing.

D. Manifestation Committee Decisions

1. Manifestation determinations are required if the Division is contemplating a removal that constitutes a change in placement, including removal to an interim alternative educational setting, for a student with a disability who has violated any rule or code of conduct of the Division that applies to all students. The case manager will notify the parent or parents of that decision no later than the date on which the decision to take the action is made.
2. The IEP Team, including the parent(s) and other qualified personnel, shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made. The other qualified personnel may include

individuals who are knowledgeable about how a student's disability can impact behavior, or who understand the impact and consequences of behavior, or who are knowledgeable about the student and the student's disability. The IEP Team and manifestation committee, including the other qualified personnel, shall review the relationship between the student's disability and the behavior subject to the disciplinary action.

- a. The manifestation committee may determine the behavior was not a manifestation of the student's disability only if it first considers, in terms of the behavior subject to the disciplinary action, all relevant information, including:
 1. Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;
 2. Observations of the student; and
 3. The student's IEP and placement.
- b. The manifestation committee shall then determine that:
 - (1) There is no direct and substantial relationship between the behavior and the disability; and
 - (2) The behavior was not a direct result of a failure to implement the IEP.
3. If the Manifestation Committee determines that the standards were not met, the behavior must be considered a manifestation of the student's disability. If the behavior is a manifestation of the student's disability:

- a. The student can be removed from his/her educational placement only through the IEP process or through placement in an interim alternative educational setting; and
 - b. The IEP Team must develop or modify strategies, including positive behavioral interventions and supports to address the behavior.
 - c. If appropriate, the eligibility committee may form to make its determination immediately after the IEP meeting (manifestation committee) that found the causal relationship if the IEP committee determines that no additional information is required and proper notice is given to the parents.
 - d. The review by the manifestation committee to determine manifestation may be conducted at the same IEP meeting to develop or review the student's behavioral intervention plan, as long as the Division notified the parent or parents of the purposes of the meeting.
 - e. If the IEP Team and other qualified personnel determine deficiencies in the student's IEP or placement, the IEP Committee must take immediate steps to remedy those deficiencies.
4. If the IEP Team determines that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary guidelines applicable to a student without a disability may be applied to the student with a disability in the same manner in which they would be applied to a student without a disability.

- a. If the Division initiates disciplinary procedures, providing due process rights that are applicable to all students, the Division must ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
- b. The IEP Team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

III. Dangerous student with a disability

A. Alternative Educational Settings

1. During the process of manifestation determination, the student who is dangerous to him or herself or to others in the school may receive a more restrictive environment (interim alternative educational setting) through revision of the IEP with signed approval from the parent. During the process of manifestation determination when the parent disagrees with the more restrictive placement, the school division may not unilaterally change the placement of a student with dangerous behavior. Options available to the school are:
 - a. The use of normal disciplinary measures for the student who exhibits dangerous behaviors to include, for example, timeouts or suspensions for up to 10 days; and/or
 - b. The school division may request an expedited due process hearing.

B. Authority of School Personnel

School personnel may remove a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 school days, if:

1. The student carries a weapon to or possesses a weapon at school, on school premises, or a school function under the jurisdiction of Newport News Public Schools or the Virginia Department of Education; or
2. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or a school function under the jurisdiction of Newport News Public Schools or the Virginia Department of Education. For purposes of this part, the following definitions apply:
 - a. Controlled substance has meaning given the term as defined in 8VAC20-81-10.
 - b. Illegal drug means a controlled substance as defined in 8VAC 20-81-10.
 - c. Weapon has the meaning given the term "dangerous weapon" in 8VAC 20-81-10
3. The student inflicts serious bodily injury upon another person at school, on school premises, or a school event.
 - a. Serious bodily injury has meaning as defined in 8VAC20-81-10.

4. The interim alternative educational setting must be determined by an IEP team. The interim alternative educational setting must be selected so as to enable the student to:
 - a. Continue to progress in the general curriculum, although in another setting;
 - b. Continue to receive those services and modifications including those described in the student's current IEP that will enable the student to meet the IEP goals; and
 - c. Include services and modifications that address the behavior and are designed to prevent the behavior from recurring.

5. The following operational guidelines must be implemented either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement under subdivisions 1, 2, or 3 of this subsection, including placements in interim alternative educational settings:
 - a. The IEP Team shall convene to develop a functional behavioral assessment plan if it did not conduct a functional behavioral assessment and implement a behavioral improvement plan for the student before the behavior that resulted in the removal.
 - b. The functional behavioral assessment may be a review of existing data that can be completed at the IEP meeting or new testing data or evaluation. Parental consent is not necessary to review existing data.

- c. If the IEP team determines that the functional behavioral assessment involves obtaining new testing data, then the parent is entitled to an independent educational evaluation at public expense if the parent disagrees with the evaluation or a component of the evaluation completed by the school division.
 - d. The IEP Team shall reconvene as soon as practicable after developing the assessment plan and completing any assessments required by the plan. The IEP Team shall develop a behavioral improvement plan and implement appropriate behavioral interventions, goals and services, to address the student's behavioral needs.
 - e. If the student had a behavioral intervention plan before engaging in the behavior, the IEP Team shall convene to review the plan and its implementation and modify the plan and its implementation, as necessary, to address the behavior.
6. If the student who has a behavioral intervention plan and has been removed from his/her current educational placement for more than 10 school days in a school year is subjected to a further removal that does not constitute a change in placement, the IEP Team shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed in the student's behavioral intervention plan, the IEP Team shall meet and modify the plan and its implementation as necessary.

D. Services during periods of disciplinary removal

1. The local educational agency is not required to provide services during the first 10 school days in a school year that a student with a disability is removed from his/her current educational setting if services are not provided to a student without a disability who has been similarly removed.
2. For a subsequent removal that is less than 10 school days in a school year, but exceeds 10 cumulative school days of removal, and which does not constitute a change in placement, the Division shall provide services to the extent determined necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of the student's IEP.
3. The operational guidelines for determining services for periods of removals are as follows:
 - a. For removals for more than 10 school days in a school year which do not constitute a change in placement, school personnel, in consultation with the student's special education teacher, make the service determinations.
 - b. For removals that constitute a change in placement, the IEP Team determines what services are needed.

E. Authority of the hearing officer

1. Newport News Public Schools may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a student with a disability for not more than 45 school days if the local educational agency believes that the student's

behavior is substantially likely to result in injury to self or others. This procedure may be repeated as necessary.

2. The hearing officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days if the Division has demonstrated by substantial evidence (beyond a preponderance of the evidence) that maintaining the current placement of the student is substantially likely to result in injury to the student or others. The hearing officer must:
 - a. Consider the appropriateness of the student's current placement;
 - b. Consider whether the Division has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
 - c. Determine that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements.
3. The Division may ask the hearing officer for an extension of 45 school days for the interim alternative educational setting of a student with a disability when school personnel believe that the student's return to the regular placement would be dangerous to the student or others.
4. The hearing officer may return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this section or that the behavior was a manifestation of the student's disability.

IV. Parent appeal

- A. If the student's parent or parents disagree with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent or parents may request an expedited due process hearing.
- B. In accordance with the Virginia Department of Education's due process hearing procedures, an expedited hearing shall be scheduled in response to the parent's or parents' request. In reviewing the decision with respect to the manifestation determination, the hearing officer shall determine whether the local educational agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of II. D. of this section (p. 4). In reviewing the decision to place a student in an interim alternative educational setting, the hearing officer shall apply the standards of E. 2. of this section (p. 12).

V. Placement during appeals

- A. If the parent or parents request a hearing to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period, not to exceed 45 school days, unless the parent or parents and Newport News Public Schools agree otherwise.

- B. If the student is placed in an interim alternative educational setting and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of the due process proceedings, the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting).
- C. If school personnel maintain that it is dangerous for the student to be in the current placement (the student's placement prior to the interim alternative educational setting) during the pendency of the due process proceedings, the Division may request an expedited due process hearing.
- D. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards of III. E. 2. of this section (p. 12).
- E. A hearing ordered by the hearing officer under the operational guidelines for an expedited due process hearing must be held within 20 school days from the request for the hearing. The determination must be made within 10 school days following the hearing. If the Division believes that it is dangerous for the student to return to the current placement, the local educational agency may request the hearing officer to extend the placement for longer than 45 school days.

VI. Protection for students not yet eligible for special education and related services

- A. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates any rule or code of conduct of the Division, may assert any of the protections provided in this section if the Division had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
- B. The Division shall be deemed to have knowledge that a student is a student with a disability if:
 - 1. The parent or parents of the student have expressed concern in writing (or orally if the parent or parents do not know how to write or have a disability that prevents a written statement) to school personnel that the student is in need of special education and related services;
 - 2. The parent or parents of the student have requested an evaluation of the student to be determined eligible for special education and related services; or
 - 3. A teacher of the student or school personnel have expressed concern about the behavior or performance of the student to the Director of Special Education and Assessment Services or the Supervisor of Referrals and Assessments of Newport News Public Schools or to other personnel in accordance with the Division's child find or special education referral system.
- C. Newport News Public Schools would not be deemed to have knowledge that a student is a student with a disability if:

1. The Division conducted an evaluation in accordance with 8VAC 20-81-70 and 8VAC 20- 81-80 and determined that the student was ineligible for special education and related services; or
 2. The parent has not allowed a previous evaluation of the student; or
 3. The parent has refused special education and related services.
- D. If the Division does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures applied to a student without a disability who engages in comparable behaviors.
- E. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
1. Until the evaluation is completed, the student remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.
 2. If the student is ultimately determined to be a student with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the parent or parents, the Division shall provide special education and related services as required for a student with a disability who is disciplined.

VII. Referral to and action by law enforcement and judicial authorities

- A. Nothing in this section prohibits the Division from reporting a crime by a student with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability to the extent such action applies to a student without a disability.
- B. In reporting the crime, the Division must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia.

VIII. Information on Disciplinary Actions

- A. The Virginia Department of Education requires that school divisions include in the records of a student with a disability a statement of any current or previous disciplinary action that has been taken against the student.
- B. Newport News Public Schools will transmit the statement to the Virginia Department of Education upon request to the same extent that the disciplinary information is included in and transmitted with, the records of non-disabled students.
- C. The statement may include:
 - 1. A description of any behavior engaged in by the student who required disciplinary action;
 - 2. A description of the disciplinary action; and

3. Any other information that is relevant to the safety of the student and other individuals involved with the student.

Surrogate Parent

I. In Newport News Public Schools, the surrogate parent appointed in accordance with this section, represents the child in all matters relating to:

- A. The identification, evaluation, or educational placement of the child; or
- B. The provision of a free appropriate public education to the child.

II. Appointment of surrogate parents

A. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:

- 1. The natural parent or parents or guardians are allowing relatives or private individuals to act as a parent;
- 2. The child is in the custody of the local department of social services or a licensed child-placing agency, and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction in accordance with § 16.1-283, § 16.1-277.01, or § 16.1-277.02 of the Code of Virginia. The permanent foster parent appointed by the court or other individual appointed by the judge for that child may serve as the parent of the child for the purposes of any special education proceedings; or
- 3. The child is in the custody of a local department of social services or a licensed child-placing agency, and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction in accordance with § 63.1-206.1 of the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.

- B. A surrogate parent will be appointed for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: 34 CFR § 300.519(a).
1. No parent can be identified;
 2. The Division, after reasonable efforts, including contacts with community agencies, cannot discover the whereabouts of a parent; or
 3. The child is an unaccompanied homeless youth, not in the physical custody of a parent or guardian, as defined by the McKinney-Vento Homeless Assistance Act.
 4. The child is a ward of the state and either subdivision A.1 or A. 2 above is also met.
- C. A surrogate parent shall be appointed as the educational representative for a child who reaches the age of majority if the school division has received written notification that the child is not competent to provide informed consent in accordance with 8 VAC 20-81-180 C 3 or C4 and no family member is available to serve as the child's educational representative.
- D. The Division will follow these guidelines for determining whether a child needs a surrogate parent; and
- E. For assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the Division's Superintendent or designee upon recommendation from the Director of Special Education and Assessment Services or designee.
- 34 CFR § 300.515 (b) and (h).
1. A surrogate parent will be appointed within 30 days after determination that the child needs a surrogate parent.

2. The appointment having been effected, the administrator shall notify in writing:
 - a. The child with a disability, aged two to 21, inclusive, as appropriate to the disability;
 - b. The surrogate parent-appointee;
 - c. The person charged with responsibility for the child; and
 - d. The custodial state agency charged with responsibility for the child.
3. The surrogate parent shall serve during, or for the duration of, the school year for which the surrogate parent is appointed.
 - a. When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of the child's IEP.
 - b. If the child requires the services of a surrogate parent during the summer months, the appointment will be extended as needed, consistent with timelines required by law.
4. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the appropriate special education administrator.

F. The Division operational guidelines include the following conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. The guidelines 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:

1. 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.
2. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of those services;
3. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
4. The parent or parents, whose whereabouts were previously unknown, are now known and available; or
5. The appointed surrogate parent is no longer eligible according to subsection IV of this section.

III. Identification and recruitment of surrogate parents

A. The Special Education Department has developed and maintains a list of individuals who are qualified to serve as surrogate parents. It may be necessary, at times, to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.

B. Individuals who are not on the list may be eligible to serve as surrogate parents, subject to the Division'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 determination of surrogate eligibility. Other factors which warrant attention are as follows:

1. Consideration of the appointment of a relative to serve as surrogate parent;
2. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;
3. Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child; and
4. The appropriateness of the child's participation in the selection of the surrogate parent.

IV. Qualifications of surrogate parents

A. A person appointed as a surrogate:

1. Has no interest that conflicts with the interest of the child;
2. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed a Division-approved training session prior to representing the child.
3. Is not an employee of the Virginia Department of Education, or any other agency which is involved in the education or care of the child;
4. Is of the age of majority.

- B. If the student 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 parent 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 otherwise meet the qualifications of a surrogate and may serve only until a surrogate parent meeting all of the qualifications outlined in this section can be assigned.
- C. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

V. Rights of surrogate parents

The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents of children with disabilities for whom they are responsible, including children placed in private schools.

Placement of Children at the Virginia School for the Deaf and the Blind at Staunton

- I. Placements shall be made by the Division, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton which determines if the student meets the admission criteria of the Virginia school.**
- II. When an eligible child is placed in the Virginia school, the Division shall be responsible for ensuring compliance with the requirements of state regulations.**
- III. A contractual agreement has been established between the Virginia schools and the Division for each child enrolled in the Virginia school.**
 - A. This agreement includes, but is limited to:
 - a. The educational services provided by each party;
 - b. The responsibility for development of IEPs;
 - c. The responsibility for completing evaluations and determining continuing eligibility for special education and related services; and
 - d. The responsibility for providing procedural safeguards and a free appropriate public education.
 - B. The Virginia school and the Director of Special Education and Assessment Services shall review the contractual agreement at least annually and revise it as necessary.
 - C. For students who are residential students, the Virginia school is responsible for transportation. For students who are day students, the placing Division is responsible for transportation to and from the school.

I. Opportunity to examine records; parent participation

A. Procedural safeguards

Newport News Public Schools maintains and implements procedural safeguards as follows: 34 CFR §300.322 (e), 34 CFR § 300.500 (a); § 300.501 (a), (b), (c), 8VAC 20-150

1. The parent or parents of a child with a disability shall be afforded an opportunity to:
 - a. Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child as set forth in the Management of the Student's Scholastic Record in the Public Schools of Virginia.
 - b. Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.
2. Parent participation in meetings
 - a. Newport News Public Schools' teachers/case managers provide notice to ensure that the parent or parents of a child with a disability have the opportunity to participate in meetings described in subdivision *A 1 b* of this subsection, including notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to participate. The notice must: (i) indicate the purpose, date, time, and location of the meeting and the position of who will be in attendance; (ii) inform the

parent or parents that at their discretion or at the discretion of the Newport News Public Schools, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child; and (iii) inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual.

- b. Inform the parent(s), in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C coordinator or other representatives of Part C to assist with the smooth transition of services.
- c. A meeting does not include informal or unscheduled conversations involving Newport News Public Schools personnel and conversations on issues such as teaching methodology, lesson plans, coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that Newport News Public Schools personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

3. Parent involvement in placement decisions

In the Newport News Public Schools, the parent or parents of each child with a disability are members of:

- a. The IEP team that makes decisions on the educational placement of their child; or

- b. Any Comprehensive Service Act team that makes decisions on the educational placement of their child.
4. In implementing the requirements of this subsection Newport News Public Schools will provide appropriate notice in accordance with 8VAC20-81-110E.
5. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the division will use other methods to insure their participation, including individual or conference telephone calls, or video conferencing when available.
6. A meeting may be conducted without a parent in attendance if the teacher/case manager is unable to convince the parent that they should attend. In this case, the teacher/case manager must have a record of the attempts to arrange a mutually agreed on time and place as:
 - a. Detailed records of telephone calls made or attempted and the results of those calls;
 - b. Copies of correspondence sent to the parent and any responses received;
or
 - c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
7. The school division will take whatever action is necessary to ensure that the parent(s) understand and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent(s) with deafness, or whose native language is other than English.

8. The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45-day removals under 8VAC20-81-160 D 6 a. (34 CFR 300.530 (f)(2) and (g).

II. Independent Educational Evaluation

A. General

1. The parent or parents of a child with a disability shall have the right to obtain an independent educational evaluation of the child.
2. The Supervisor of Referrals and Assessments will provide to the parent or parents of a child with a disability, upon request, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

B. Parental right to evaluation at public expense.

1. The parent or parents have the right to an independent educational evaluation at public expense if the parent or parents disagree with an evaluation obtained by the Newport News Public Schools.
2. If the parent or parents request an independent educational evaluation at public expense, the Newport News Public Schools must, without unnecessary delay, either:
 - a. Initiate a due process hearing to show that its evaluation is appropriate; or
 - b. Ensure that an independent educational evaluation is provided at public expense, unless the Newport News Public Schools demonstrates in a hearing that the evaluation obtained by the parent or parents does not meet Newport News Public Schools criteria.

3. If the Newport News Public Schools initiates a hearing and the final decision is that the Division's evaluation is appropriate, the parent or parents still have the right to an independent educational evaluation, but not at public expense.
4. If the parent or parents request an independent educational evaluation, the Division may ask the reasons for the parent's or the parents' objection to the public evaluation. However, the explanation by the parent or parents may not be required, and the Division may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.
5. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the Newport News Public Schools uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's or parents' right to an independent educational evaluation. Except for the criteria, the Newport News Public Schools may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
6. A parent is entitled to only one independent educational evaluation at public expense each time the Newport News Public School Division conducts an evaluation component with which the parent disagrees.

C. Parent-initiated evaluations

The results of an independent educational evaluation, whether or not at public expense:

1. Must be considered by the Newport News Public Schools, if it meets the Division criteria, in any decision regarding a free appropriate public education for the child; and
 2. May be presented as evidence at a hearing as described later in this manual.
- D. If a special education hearing officer requests an independent educational evaluation for an evaluation component, as a part of the hearing on a due process complaint, the copy of the evaluation will be at public expense.
- E. Written notice (Notice of Intent) must be given to the parent or parents of a child with a disability within a reasonable time before the Division:
1. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or
 2. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.
- E. If the notice relates to an action proposed by an appropriate committee of the Newport News Public Schools that also requires parental consent, the notice may be given at the time parental consent is requested.
- F. The notice shall include:
1. A description of the action proposed or refused;
 2. An explanation of the proposal or refusal to take the action;
 3. A description of any other options considered and the reasons for the rejection of those options;

4. A description of each evaluation procedure, test, record, or report used as a basis for the proposed or refused action;
 5. A description of any other factors that are relevant to the proposal or refusal;
 6. A statement that the parent or parents of a child with a disability have protection under the procedural safeguards as outlined in this manual and, if the notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
 7. Sources for the parent or parents to contact in order to obtain assistance in understanding the provisions of this section.
- G. The notice shall be (i) written in language understandable to the general public and (ii) provided in the native language of the parent or parents or other mode of communication used by the parent or parents, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent or parents is not a written language, the Division will take steps to ensure that:
1. The notice is translated orally or by other means to the parent or parents in their native language or other mode of communication;
 2. The parent or parents understand the content of the notice; and
 3. There is written evidence that the requirements of subdivisions 1 and 2 of this subdivision have been met.

III. Procedural safeguards notice

- A. A printed copy of the procedural safeguards shall be provided to the parent or parents of a child with a disability once a year, at the annual IEP, and additionally when:
1. The student is initially referred;

2. The parent requests an additional copy;
 3. Receipt of the first state complaint during a school year;
 4. A receipt of the first request for a due process hearing during a school year;
and
 5. On the date on which the decision is made to make a disciplinary removal that constitutes a change of placement because of a violation of a code of student conduct.
- B. The procedural safeguards notice contains a full explanation of all of the procedural safeguards:
1. Independent educational evaluation;
 2. Prior written notice;
 3. Parental consent;
 4. Access to educational records;
 5. Opportunity to present and resolve complaints through due process hearings;
 6. The child's placement during pendency of due process proceedings;
 7. Guidelines for students who are subject to placement in an interim alternative educational setting;
 8. Requirements for unilateral placement by parents of children in private schools at public expense;
 9. Availability of mediation;
 10. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
 11. Civil actions, including the time period in which to file such actions;
 12. Attorneys' fees;

13. The opportunity to present and resolve complaints through the state complaint procedures, including a description of how to file a complaint, the time period in which to make a complaint under those procedures, the opportunity for the Division to resolve the complaint, and the availability of mediation; the difference between due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.
- C. The notice required under this subsection must meet the prior notice requirements regarding understandable language in subsection *II* of this section.
- D. Procedural safeguards may be found on the Newport News School Division Internet website.

IV. Parental consent

A. General

Informed parental consent must be obtained before:

1. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting;
2. Any change in identification of a child with a disability;
3. Initial provision of special education and related services to a child with a disability and any revision to the child's IEP services;
4. Any partial or complete termination of special education and related services, except for graduation with a standard or advanced studies diploma; and
5. Accessing a parent's or parents' private insurance proceeds in accordance with this section.

6. The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120.
 7. Inviting to an IEP meeting a representative from a participating agency that is likely to be responsible for providing or paying for secondary transition services.
- B. Consent for initial evaluation may not be construed as consent for initial placement.
- C. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
- D. Parental consent is not required before:
1. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment;
 2. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent or parents of all children;
 3. Administration of a test or other evaluation that is used to measure progress on the child's goals and benchmarks or objectives and is included in the IEP;
 4. A teacher's or related service provider's observations or ongoing classroom evaluations.
 5. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.
 6. Conducting an initial evaluation on a child who is a ward of the state and who is not residing with his parent(s) if:

- a. Despite reasonable efforts, division personnel cannot discover the whereabouts of the parent(s);
 - b. The parents rights have been terminated or;
 - c. The rights of the parent(s) to make educational decisions have been subrogated by a judge and an individual appointed by the judge has consented to the initial evaluation.
- E. If the parent or parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the Newport News Public Schools may, but is not required to use mediation or due process hearing procedures to pursue the evaluation.
- F. Failure to respond to request for reevaluation
- 1. Informed parental consent need not be obtained for a triennial reevaluation if the teacher/case manager can demonstrate that all reasonable measures to obtain the consent have been taken, and the child's parent or parents have failed to respond.
 - 2. To meet the reasonable measures requirement, the manager must have a record of all attempts to secure the consent, such as:
 - a. Detailed records of telephone calls made or attempted and the results of those calls;
 - b. Copies of correspondence sent to the parent or parents and any responses received; and
 - c. Detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.

- G. Committees of the Newport News Public Schools may not use a parent's or parents' refusal to consent to one service or activity to deny the parent, parents, or child any other service, benefit, or activity of the Newport News Public Schools, except as provided by this chapter.
- H. The School Division may not pursue due process to seek to provide services if parents have failed to provide consent for initial services.
 - 1. If parents refuse to consent for services, the School Division will not be considered to have failed to provide FAPE to the child and will not be required to convene IEP meetings.
- I. If the parent(s) of a parentally placed private school student refuses consent for an initial evaluation or a re-evaluation, the school division:
 - 1. May not use mediation or due process hearing procedures to obtain parental consent or a ruling that an evaluation of the child may be completed; and
 - 2. Is not required to consider the student as eligible for equitable provision of services in accordance with 8VAC20-81-150.

V. Parental rights regarding use of public or private insurance

- A. Newport News Public Schools using Medicaid or other public insurance to pay for services required under this section, as permitted under the public insurance program, shall:
 - 1. Provide notice to the parent or parents that:
 - a. The parent or parents are not required to sign up for public insurance in order for their child to receive a free appropriate public education;

3. Obtain parental consent to release educational information to the private insurance company for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia.

VI. Confidentiality of information

A. Access rights

1. The Newport News Public Schools permits a parent or parents to inspect and review any education records relating to their children that are collected, maintained, or used by the Division under this section. Newport News Public School personnel shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing, and in no case more than 45 days after the request has been made.
2. The right to inspect and review education records under this section includes:
 - a. The right to a response from the Newport News Public Schools to reasonable requests for explanations and interpretations of the records;
 - b. The right to request that the Newport News Public Schools provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - c. The right to have a representative of the parent inspect and review the records.

3. Division personnel may presume that a parent has authority to inspect and review records relating to his children unless they have been provided a copy of a judicial order or decree, or other legally binding documentation, that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation and divorce.

B. Record of access

A record of parties, except parents and authorized employees of the Newport News Public Schools, obtaining access to education records collected, maintained, or used under Part B of the Individuals with Disabilities Education Act including the name of the party, the date of access, and the purpose of access will be kept in the student's scholastic file.

C. Record on more than one child

If any education record includes information on more than one child, the parent or parents of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested.

D. List of types and locations of information

Newport News Public Schools shall provide on request to a parent or parents a list of the types and locations of education records collected, maintained, or used by the Division.

E. Fees

1. A fee may be charged for copies of records that are made for a parent or parents under this chapter if the fee does not effectively prevent the parent or parents from exercising their right to inspect and review those records.

2. A fee may not be charged to search for or to retrieve information under this section.
3. A fee may not be charged for copying a student's IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E 7.

F. Amendment of records at parent's request

1. A parent or parents who believe that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request in writing of the College and Career Development Specialist that the record be amended.
2. The Newport News Public Schools Record Review Committee shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
3. If the Newport News Public Schools Record Review Committee decides to refuse to amend the information in accordance with the request, it shall inform the parent or parents of the refusal and advise the parent or parents of the right to a hearing.

G. Opportunity for a hearing

The Newport News Public Schools Records Review Committee provides, upon written request, an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

H. Results of hearing

1. If, as a result of the hearing, it is decided that the information is inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it will amend the information accordingly and so inform the parent in writing.
2. If, as a result of the hearing, the decision is that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it will inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the committee.
3. Any explanation placed in the records of the child under this section must:
 - a. Be maintained as part of the records of the child as long as the record or contested portion is maintained by the Newport News Public Schools; and
 - b. If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

I. Hearing procedures

A hearing held under subdivision *G* of this subsection must be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act.

J. Consent

1. Parental consent must be obtained before personally identifiable information is disclosed to anyone other than Newport News Public Schools personnel unless the information is contained in the educational records, and the disclosure is authorized under the Family Rights and Privacy Act
 - a. Parental consent is not required before personally identifiable information is disclosed to anyone other than officials of the Division collecting, maintaining, or using the information under this chapter, except;
 - b. Parental consent or the consent of the student who has reached the age of majority must be obtained before personally identifiable information is released to any officials providing or paying for transition services.
 - c. If a student is enrolled, or is going to enroll in a private school that is not located in the Newport News, parental consent shall be obtained before any personally identifiable information about the student is released between division officials and the officials in the division where the private school is located.
2. The Division, subject to the Family Education Rights and Privacy Act (20 USC § 1232g), will not release information from education records to any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under the Individuals with Disabilities Education Act without parental consent unless authorized to do so under the Family Education Rights and Privacy Act.

3. In the event that a parent refuses to provide consent under this section, Newport News Public Schools shall use established policies and due process procedures.

K. Safeguards

1. Newport News Public Schools personnel shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
2. One official at Newport News Public Schools shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
3. All persons collecting, maintaining, or using personally identifiable information must receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of information.
4. Newport News Public Schools maintains for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.
5. Newport News Public Schools ensures that electronic communications via e-mails or facsimiles regarding any matter associated with the student, including matters relating to the IEP, meetings, disciplinary actions, or service delivery, be part of the student's educational record.

L. Destruction of information

1. The Central Records Department will inform parents when personally identifiable information collected, maintained, or used under this section is no longer needed to provide educational services to the child. This will be done in accordance with FERPA requirements and the Records Retention and Disposition Schedule of the Library of Virginia.
2. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.
3. The Newport News Public Schools shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

M. Electronic Mail

1. Newport News Public Schools reserves the right to, at some time in the future make available to parent(s) of a child with a disability the option of electing to receive the Notice of Intent, the Procedural Safeguards notice and the Notice of Request for a Due Process Hearing by electronic mail.

N. Electronic Signature

1. If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature may be an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

- I. **Newport News Public School Division shall ensure that the parent or parents of a child with a disability are informed of the option of mediation to resolve disputes involving any matter arising under the Individuals with Disabilities Education Improvement Act including the Division’s proposal to initiate or change the identification, evaluation, or educational placement of the child, the provision of a free appropriate public education to the child, and matters arising prior to the filing of a state complaint or due process hearing. Mediation is available at any time a joint request is made to the VDOE from the Executive Director of Special Education and a parent.**

- II. **The Division uses the Virginia Department of Education’s mediation process to resolve such disputes. The operational guidelines ensure that the process is:**
 - A. Voluntary on the part of both the Division and parents;
 - B. Not used to deny or delay a parent’s or parents’ right to a due process hearing or to deny any other rights under Virginia regulations or these operational guidelines; and
 - C. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and is knowledgeable in laws and regulations relating to the provision of special education and related services.

- III. **In accordance with the Virginia Department of Education’s Regulations:**
 - A. The Virginia Department of Education will maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;
 - B. The mediators shall be chosen on a rotation basis; and
 - C. The Virginia Department of Education shall bear the cost of the mediation process.

IV. The mediation process shall:

- A. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;
- B. Conclude with a written mediation agreement signed by all parties if an agreement is reached by the parties to the dispute; and
- C. Guarantee that discussions that occur during the mediation process are confidential and are not to be used as evidence in any subsequent due process hearings or court actions. Parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.
- D. Be enforceable in any state court of competent jurisdiction or in federal district court.

V. An individual who serves as a mediator:

- A. May not be an employee of any school division or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process;
- B. Must not have a personal or professional conflict of interest; and
- C. Is not an employee of the Newport News Public Schools Division or the Virginia Department of Education solely because the person is paid by the Division to serve as a mediator.

VI. Requests for mediation shall be directed to the Director of Special Education and Assessment Services.

VII. Option to consider mediation

A. Newport News encourages mediation, but does not require parents to meet to consider mediation to resolve disputes related to the Newport News Public Schools and special education issues. Those issues include proposals to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or, at a minimum, whenever a due process hearing is requested.

1. The purpose of a meeting to consider mediation would be to explain the benefits of and encourage the parents to use the process.
2. Newport News Public Schools may not deny or delay a parent's or parents' right to a due process hearing if the parent or parents choose not to participate in such a meeting.

Complaint Procedures

- I. **The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities.** The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system.
- II. **A complaint may be filed by any individual, organization, or an individual from another state, must be copied to the school division at the same time it is filed with the State Department of Education, and must:**
 - A. Be in writing;
 - B. Be signed by the complainant;
 - C. Contain a statement that the Division has violated the Individuals with Disabilities Education Act or the Virginia Department of Education Special Education Regulations and include the facts upon which the complaint is based;
 - D. Address an action that occurred not more than one year prior to the date the complaint is received, unless the Virginia Department of Education determines that a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the Virginia Department of Education; and
 - E. Contain all relevant documents.
- III. **Upon receipt of a complaint, the Virginia Department of Education shall initiate an investigation to determine whether the Division is in compliance with applicable law and regulations in accordance with the following operational guidelines:**

A. Within seven business days of the receipt of the complaint, the Virginia Department of Education shall send written notification to each complainant and the school division against which the violation has been alleged, acknowledging receipt of a complaint, and shall send copies to other appropriate Virginia Department of Education personnel.

1. The notification sent to the Division shall include:

- a. A copy of the complaint;
- b. An offer of technical assistance in resolving the complaint;
- c. A request that the Division submit within 10 business days of receipt of the letter of notification written documentation that the complaint has been resolved; and
- d. If the complaint was not resolved, a request that the Division submit within 10 business days of receipt of the letter of notification a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the Division to the complainant if the complaint was filed by the parent or parents of the child, the student, or their attorney. If the complaint was filed by another individual, the Division shall simultaneously send the response and submitted documentation to that individual if a release signed by the parent or parents or student who has reached the age of majority has been provided.

2. The notification sent to the complainant and the Division shall provide the complainant and the Division with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.
- B. If a reply from the Division is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to the Division advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.
- C. The Virginia Department of Education shall review the complaint and reply filed by the Division to determine if further investigation or corrective action needs to be taken.
1. If no further investigation or action is necessary, the Virginia Department of Education shall notify both parties in writing, stating the grounds for such finding.
 2. If further investigation is necessary, the Virginia Department of Education shall conduct an investigation of the complaint which shall include a complete review of all relevant documentation and may include an independent on-site investigation, if necessary.

3. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:
 - a. Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
 - b. Resolve any issue in the complaint that is not part of the due process hearing involving the same parties.
 4. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.
- D. During the course of the investigation, the Virginia Department of Education shall:
1. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.
 2. Make a determination of compliance or noncompliance on each issue based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the basis for such findings.
 - a. A time limit of 60 calendar days shall be allowed after the written complaint is received to carry out the investigation and to resolve the complaint.
 - b. An extension of 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties

- to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances and the extended time limit.
- c. The 60-day timeline for the Department of Education to issue findings in a complaint may be extended if the complainant and the division agree to mediate or use other alternate means of dispute resolution.
3. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:
 - a. Technical assistance activities;
 - b. Negotiations, and
 - c. Corrective actions to achieve compliance.
 4. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.
 5. Notify the parties in writing of any needed corrective actions and the specific steps that must be taken by the Division to bring it into compliance, within prescribed timelines.
- E. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education must address:
1. The remediation of the denial of those services, including, as appropriate, compensatory services, the awarding of monetary reimbursement, or other corrective action appropriate to the needs of the child; and
 2. Appropriate future provision of services for all children with disabilities.

- IV. **When the Division develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.**
- V. **If the Division does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for the Virginia Department of Education review and referral to the Virginia Board of Education, if deemed necessary.**
- VI. **If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that the Division has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the superintendent shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to the Division until there is no longer any failure to comply with the applicable law of regulation.**
- VII. **Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with regulations established by the Virginia Board of Education.**

- VIII. The Virginia Department of Education’s complaint procedures shall be widely disseminated to parents and other interested individuals, at parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.**

Operational Guidelines for Due Process Hearings

I. The Virginia Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and local school divisions with respect to any matter relating to the items identified in II of this section. The Virginia Department of Education uses the impartial hearing officer system administered by the Supreme Court of Virginia. The Virginia Department of Education provides the Supreme Court of Virginia, on an annual basis, with the names of those special education hearing officers who are recertified to serve in this capacity.

II. Basis for due process hearing request

- A. Either a parent or the Division may request a due process hearing when a disagreement arises regarding any of the following:
1. Identification of a child with a disability, including ineligibility, any change in categorical placement and any partial or complete termination of special education and related services;
 2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
 3. Educational placement and services of the child; and
 4. Provision of a free appropriate public education to the child.
- B. The Division may initiate a due process hearing to resolve a disagreement when the parents withhold consent for an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability, except for initial placement.

- C. In circumstances involving disciplinary actions, the parents of the student with a disability may request an expedited due process hearing if the parents disagree with:
 - 1. A determination that the child's behavior was not a manifestation of the child's disability; or
 - 2. Any decision regarding placement under the disciplinary operational guidelines.
- D. The Division may request an expedited hearing if the school division maintains that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative setting) during the pendency of the due process proceedings.

III. Procedure for requesting a due process hearing

- A. A request for a hearing, which specifies the issues that allegedly occurred not more than two years before the parent(s) or the division knew or should have known about the alleged action that forms the basis of the request for due process and the relief sought, shall be made in writing to the Virginia Department of Education with a copy of that request delivered contemporaneously by the requesting party to the other party. If the school division initiates the due process hearing through the Superintendent, it will advise the parents and the Virginia Department of Education in writing of this action. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the Division by telephone or by facsimile and forward a copy of the request to the Division within one day of the Virginia Department of Education's receipt, including those cases where mediation is requested. The request for a hearing shall be kept confidential by the Division and the Virginia Department of Education.

- B. The notice of request must include the following information:
1. The name of the child;
 2. The address of the residence of the child; or in the case of a homeless child or youth, available contact information;
 3. The name of the school the child is attending;
 4. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and
 5. A proposed resolution of the problem to the extent known and available to the parents at the time of the notice.
- C. The due process notice will be deemed sufficient unless the party receiving the notice notifies the special education hearing officer and the other party in writing that the receiving party has not met the requirement of subdivision B in this section.
1. Within five calendar days of receipt of notification challenging the sufficiency of the due process notice, the special education hearing officer will determine on the face of the notice whether the notification meets the requirements in subdivision B of this section.
 2. The special education hearing officer has the discretionary authority to permit either party to raise issues that were not raised in the notice by the party requesting the due process hearing in light of particular facts and circumstances of the case.

- D. The Division shall upon receipt of a request for a due process hearing, inform the parents of the availability of mediation described in 8 VAC 20-81-190 and of any free or low-cost legal and other relevant services available in the area. The Division must also provide the parents with a procedural safeguards notice.
- E. If the School Division is the requesting party, it must provide the parent with prior written notice (Notice of Intent) about the issues in the due process request within 10 days of the request for due process.
- F. The Division shall contact the Supreme Court of Virginia for the appointment of the hearing officer within five business days of the request for a hearing. The Division's Director of Special Education and Assessment Services or designee will contact the Supreme Court of Virginia to secure the name of a hearing officer, contact the hearing officer to confirm availability, and upon acceptance, appoint the hearing officer in writing, with a copy to the Virginia Department of Education and to the parent. In the case of an expedited hearing, the Division must appoint the hearing officer within the three business days of the request for a hearing.

IV. Response to the Notice requesting a due process hearing

- A. Within 10 calendar days of receiving the notice requesting a due process hearing, the non-requesting party must send the requesting party a response that specifically addresses the issues raised in the notice. The School Division is not required to provide such a response if it already provided the parent with written prior notice.

1. If the Division has not sent WPN to the parent regarding the issues raised by the parent, the Division must, within 10 calendar days of receiving the notice requesting a due process hearing, send the parent WPN that shall include:
 - a. An explanation of why the Division proposed or refused to take the action raised in the notice;
 - b. A description of other options that the Division team considered and the reasons why those options were rejected;
 - c. A description of each evaluation procedure, assessment, record, or report the Division used as the basis for the proposed or refused action; and
 - d. A description of the factors that are relevant to the Division's proposal or refusal.
2. Providing the parent with such WPN shall not be construed to preclude the Division from asserting that the parent's due process notice was insufficient where appropriate.

V. Assignment of hearing officer

- A. A hearing officer is appointed to a case from a list maintained by the Supreme Court of Virginia.
- B. Upon a request by the Division, the Supreme Court identifies a hearing officer from its list and provides the name to the Division. If the first person selected is unavailable or disqualified, the Division shall immediately request another name to ensure that a timely appointment is made.

- C. Upon request, the Virginia Department of Education shall share information on qualifications of the hearing officer with the parents and the Division, and either party has five business days to object to the appointment by presenting a request to the hearing officer.
- D. A hearing shall not be conducted by a person who:
 - 1. Has a personal or professional interest which would conflict with that person's objectivity in the hearing;
 - 2. Is an employee of the Virginia Department of Education or the Division that is involved in the education and care of the student. A person otherwise qualified to conduct a hearing is not an employee of either agency solely because he is paid by the agency to serve as a hearing officer.
 - 3. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.
- E. If a hearing officer recuses himself or is otherwise disqualified, the Division shall ensure that another hearing officer is promptly appointed.

VI. Challenging the sufficiency of the notice

- A. A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the content information required for Notice.

- B. If the party receiving the due process notice considers it insufficient, the party notifies the hearing officer in writing, with a copy to the Department of Education and the other party, within 15 calendar days of receiving the notice that the notice does not meet the content requirements.
 - 1. **The 45 day timeline is suspended at this point.**
- C. Within 5 calendar days of receiving the notification regarding the insufficiency of the notice, the hearing officer determines whether the notice meets the content requirements. The hearing officer notifies the parties in writing of his/her determination.
- D. If the hearing officer determines that the notice is sufficient, the 45 day timeline recommences, including the timelines for the Resolution Session. The Resolution Session process is described below.
- E. If the hearing officer determines that the notice is insufficient:
 - 1. The party amends the Notice if the other party consents and has the opportunity to resolve issues through the Resolution Session process, or
 - 2. The hearing officer permits the party to amend the Notice (not later than 5 calendar days before the hearing occurs).
 - 3. **The 45 day timeline recommences at the time the party files the amended notice, including the timeline for the resolution session process.**

VII. Resolution Session

- A. Within 7 calendar days of receiving the parents' Notice of a request for a due process hearing, the Division shall convene a meeting of the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the Notice.
- The parents and the Division may agree in writing to waive the Resolution Session, or agree to use the mediation process. If this happens, the 45 day timeline continues to be in place.**
 - If both parties agree to the Resolution Session, the 45 day timeline is suspended and if agreement is reached both parties must agree that the matter has been resolved to each party's satisfaction within 15 calendar days of receipt of the due process notice. Recall that if the Sufficiency of the Notice is challenged, the 45 day timeline is suspended.**
 - The parent and the school division will determine the relevant members of the IEP team to attend the meeting, but the meeting must include a representative of the school division who has decision making authority on behalf of the division.**
 - The team shall not include an attorney of the Division unless an attorney accompanies the parent.
 - During the Resolution Session, the parents of the child discuss their issues in the notice, and the facts that form the basis of the due process request, and Division is provided the opportunity to resolve the issues.

6. If resolution is reached, the Division and the parent shall develop a legally binding agreement that is:
 - a. Signed by both the parent and a representative of the Division who has the authority to bind the Division; and
 - b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.
7. Either party has 3 business days to void the agreement, at which time the 45 day timeline recommences;
8. If the Division has not resolved the due process complaint to the satisfaction of the parents within 30 days of receipt of the notice, the hearing may occur and all of the applicable timelines for a due process hearing will commence.
9. The parties may enter into a confidentiality agreement as a part of the resolution agreement, though there is nothing that requires them to keep the discussion confidential or to make a confidentiality agreement a condition of a parent(s)' participation in the resolution meeting.
10. If the Division is unable to obtain participation of the parent(s) in the resolution session after reasonable efforts have been made and documented, the Division may, at the conclusion of the 30 day calendar period, request that the hearing officer dismiss the parent(s)' due process request.

VIII. Child's status during administrative or judicial proceedings

- A. Except as provided in disciplinary proceedings, during the pendency of any administrative or judicial proceeding, the child must remain in the current educational placement unless the parents of the child and the Division agree otherwise; or
- B. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings; or
- C. If the decision of a hearing officer, following the hearing, agrees with the child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the Division and the parents for the purposes of maintaining the child's placement during the pendency of any administrative or judicial appeal proceeding; or
- D. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the Division shall be in accordance with state regulations; or
- E. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with state regulations, 8VAC 20-81-150.

- F. If the proceeding involves an application for initial services under Part B of the Individuals with Disabilities Education Act from Part C and child is no longer eligible for Part C services because the child has turned three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of services the division will provide those services that are not in dispute between the parties.

IX. Rights of parties in the hearing

- A. Any party to a hearing has the right to:
1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 2. Present evidence and confront, cross examine, and request that the hearing officer compel the attendance of witnesses;
 3. Move that the hearing officer prohibit the introduction of any evidence at the hearing or the raising of additional issues that have not been disclosed to that party at least five business days before the hearing, or in the case of an expedited hearing, two business days before the hearing;
 4. Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and
 5. Obtain written or, at the option of the parents, electronic findings of fact and decisions.
- B. Additional disclosure of information shall be given as follows:

1. At least five business days prior to a hearing each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and
2. A hearing officer may bar any party from raising issues at the due process hearing that were not raised in the due process complaint notice, or that fails to comply with the disclosure requirements from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

C. Parental rights at hearings

1. A parent involved in a hearing must be given the right to:
 - a. Have the child who is the subject of the hearing present; and
 - b. Open the hearing to the public.
2. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents.

X. Responsibilities of the Virginia Department of Education

The Virginia Department of Education shall:

- A. Maintain and monitor the due process hearing system and establish operational guidelines for its operation;
- B. Ensure that the Division discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;

- C. Develop and disseminate a model form to be used by the parents to give notice of the following when filing a request for due process hearing: the name of the child; the address of the residence of the child; the name of the school the child is attending; a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and a proposed resolution of the problem to the extent known and available to the parent or parents at the time of the notice;
- D. Ensure that the hearing is conducted by individuals who are impartial and who are not employees of the Virginia Department of Education or the Division providing education or care of the child, or by anyone with a personal or professional interest that would conflict with his objectivity in the case;
- E. Maintain and ensure that the Division maintains a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each officer;
- F. Notify the Supreme Court of the receipt of either the hearing officer's written decision or other conclusion of the case; and
- G. Provide findings and decisions of all due process hearings to the state special education advisory committee and to the public after deleting any personally identifiable information.
- H. Review implementation plans filed by the school division pursuant to hearing officer decisions in hearings that have been fully adjudicated; and

- I. Ensure that non-compliance findings identified through due process or court action are corrected as soon as possible, but in no case later than one year from identification.

XI. Responsibilities of the parent. In a due process hearing, the parents shall:

- A. Decide whether the hearing will be open to the public;
- B. Make timely and necessary responses to the hearing officer personally or through counsel or other authorized representatives;
- C. Assist in clarifying the issues for the hearing and participate in the prehearing conference scheduled by the hearing officer;
- D. Provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
- E. Provide documents and exhibits necessary for the hearing within required timelines; and
- F. Comply with timelines, orders, and requests of the hearing officer.

XII. Responsibilities of the Division. The Division shall:

- A. Maintain a list of the persons serving as hearing officers. This list shall include a statement of the qualifications of each officer;
- B. Provide the parents a form for use to provide notice that they are requesting a due process hearing upon request, and a copy of their procedural safeguards;
- C. Maintain the confidentiality of the completed notice form and its contents;
- D. Ensure that the parent's or parents' right to a hearing is not delayed or denied for failure to complete the notice;

- E. Ensure that a hearing officer is appointed within five business days of a request for a nonexpedited hearing and three business days of a request for an expedited hearing;
- F. Inform the parents at the time the request is made of the availability of mediation;
- G. Inform the parents of any free or low-cost legal and other relevant services if the parents request it, or anytime the parent, parents, or the Division initiates a hearing;
- H. Assist the hearing officer, upon request, in securing the location and recording equipment for the hearing;
- I. Make timely and necessary responses to the hearing officer;
- J. Assist in clarifying the issues for the hearing and participate in the prehearing conference scheduled by the hearing officer;
- K. Upon request, provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
- L. Provide documents and exhibits necessary for the hearing within required timelines;
- M. Comply with timelines, order, and requests of the hearing officer;
- N. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and the implementation plan, including mediation communications, except as prohibited by laws or regulations;
- O. Forward all necessary communications to the Virginia Department of Education and parties as required;

- P. Develop and submit to the Department of Education an implementation plan, with a copy to the parent(s) within 45 calendar days of the rendering of a decision that has been fully adjudicated.
1. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer and the parent(s) that a change in placement is appropriate, then the decision and submission of an implementation plan is held in abeyance until the appeal proceedings are completed.
 2. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the division.
 3. The implementation plan must be based on the decision of the hearing officer, include the revised IEP if the decision affects the student's educational program and must contain the name and position of the division's case manager charged with implementing the decision.
- Q. Notify the Virginia Department of Education when the Division is considering an appeal of the hearing officer's decision or when a hearing officer's decision has been appealed to court by either the parents or the Division; and
- R. Forward the record of the due process proceeding to the appropriate court for any case that is appealed.

- S. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the hearing officer's decision.

XIII. Responsibilities of the hearing officer. The hearing officer shall:

- A. Affirm, by accepting appointment, that he has complied with all training requirements, and understands federal law and state standards, interpretation of the courts, and agrees to complete the hearing within the regulatory timelines: 45 school days from the date the Division received or initiated a Notice, if assigned to a nonexpedited due process hearing and 30 school days if assigned to an expedited hearing;
- B. Ensure impartiality, and decline the appointment if the hearing officer is an employee of the Virginia Department of Education or of the Division that is involved in the education or care of the child;
- C. Ensure that the rights of all parties are protected and that the laws and regulations regarding the educational placement or services of the child are followed in the conduct of the hearing and in rendering the decision;
- D. Within five business days of agreeing to serve as the hearing officer, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing. If the hearing is an expedited hearing, the hearing officer shall complete these responsibilities within two business days of appointment;

- E. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The hearing officer shall send copies of correspondence to the parties and their attorneys;
- F. Upon request by one of the parties conduct a prehearing conference via a telephone conference call or in person unless the hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference;
- G. At the prehearing stage, inform the parties of their rights regarding mediation, of their opportunity to settle the case, and at the end of the hearing and upon receiving the decision, of their right to appeal the case directly to either a state or federal court at their discretion;
- H. Determine, when a due process notice also indicates a 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the section 504 dispute.
- I. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines;
- J. Ascertain from the parents whether the hearing will be open to the public;
- K. Determine if alternate means of participation such as video conference or conference call will be used;

- L. Ensure that the parties have the right to a written or, at the option of the parents, an electronic verbatim record of the proceedings and that the record is forwarded to the Division for the file after making a decision;
- M. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five school days prior to the hearing.
- N. Ensure that the Division has appointed a surrogate parent in accordance with state regulations when the parent, parents, or guardian is not available or cannot be located;
- O. Ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing;
- P. Not require the parties or their representatives to submit extensive briefs as a condition of rendering a decision, but may permit it upon request;
- Q. Make no presumptions in the case and base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law and regulations;
- R. Report findings of fact and decisions in writing to both parties, their attorneys, and the Virginia Department of Education. If the hearing is an expedited hearing, the hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held;
- S. Include in the written findings of a nonexpedited due process hearing, a determination of whether the:
 - 1. Requirements of notice to the parents were satisfied;

2. Child has a disability;
 3. Child needs special education and related services; and
 4. The Division is providing a free appropriate public education;
 - a. Procedural inadequacies can result in a finding that FAPE was not provided only if the inadequacies:
 - (1). Impeded the child's right to FAPE;
 - (2). Significantly impeded the parent's opportunity to participate in the decision making regarding FAPE; or
 - (3). Caused a deprivation of educational benefits.
- T. Maintain an organized and well-documented record and return the official record to the Division upon conclusion of the case;
- U. Determine in a hearing regarding a manifestation determination whether the Division has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the following requirements:
1. The IEP Team first considered, in terms of the behavior subject to disciplinary action, all relevant information, including:
 - a. Evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;
 - b. Observations of the child; and
 - c. The child's IEP and placement.
 2. The IEP Team then determined that:
 - a. The behavior was not caused by or had a direct and substantial relationship to the disability; and

- b. The behavior was not the direct result of the Division's failure to implement the IEP.
3. If the IEP Team determined that any of these standards were not met, the behavior must be considered a manifestation of the child's disability.

XIV. Authority of the hearing officer. The hearing officer has the authority to:

- A. Exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five school days prior to the hearing unless the hearing is an expedited hearing, in which case the information must be received and witnesses identified at least two school days prior to the hearing;
- B. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five school days prior to the hearing (or two business days if an expedited hearing) without the consent of the other party;
- C. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence;
 1. The hearing officer, or a party, may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.
 2. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not quash or modify the subpoena after objection;

3. The hearing officer will rule on any party's motion to quash or modify a subpoena. The hearing officer will issue the ruling in writing to all parties with a copy to the Department of Education.
- D. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the hearing officer's rules and with relevant laws and regulations;
- E. Excuse witnesses after they testify to limit the number of expert witnesses present at the same time or sequester witnesses during the hearing;
- F. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the hearing officer determines that the best interests of the child will be served;
- G. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment;

- H. At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and should be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The hearing officer may grant such requests for cause, but not for attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties, their attorneys, and to the Virginia Department of Education;
- I. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the hearing officer's orders;
- J. Set guidelines regarding media coverage if the hearing is open to the public;
- K. Enter a disposition as to every issue presented for decision and identify and determine the prevailing party on each issue that is decided;
- L. Order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing is an expedited hearing, and after:
 - 1. Determining whether the Division has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
 - 2. Considering whether the child's current placement is appropriate;

3. Considering whether the Division has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 4. Determining whether the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher meets the following requirements:
 - a. Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
 - b. Includes services and modifications designed to address the behavior so that it does not recur.
- M. In an expedited hearing, determine whether it is dangerous for a child to remain in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of due process proceedings. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the following standards:
1. Determine whether the Division has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
 2. Consider whether the child's current placement is appropriate;

3. Consider whether the Division has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
4. Determine whether the interim alternative educational setting was determined by the IEP Team and meets the following requirements:
 - a. Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP;
 - b. Includes services and modifications designed to address the behavior so that it does not recur; and
 - c. Is for no longer than 45 school days and is repeated if proper operational guidelines are followed. The operational guidelines in M1 through 4 of this subsection may be repeated as necessary.

XV. Timelines for nonexpedited due process hearings

The hearing officer shall:

- A. Render a final written decision, following standard legal practices, within 45 school days after the request for the hearing is received by the Division;
- B. Grant an extension only when it serves the best interests of the child; and
- C. Document in writing within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.

XVI. Timelines for expedited due process hearings

The hearing officer shall:

- A. Render a final written decision within 10 school days following the hearing without exceptions or extensions; and
- B. Document in writing within two business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

XVII. Costs of due process hearing and attorney's fees

- A. The costs of an independent educational evaluation ordered by the hearing officer, hearing officer, court reporters, and transcripts are shared equally by the Division and the Virginia Department of Education. Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party.
- B. The Division is responsible for its own attorneys' fees.
- C. The parents are responsible for their attorneys' fees. If the parents are the prevailing party, they have the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.
- D. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.
- E. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Individuals with Disabilities Education Act and state regulations (8 VAC 20-81-310).

XVIII. Right of Appeal

- A. A decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed by a party to federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) without regard to the amount in controversy.
- B. On appeal, the court shall receive the record of the administrative proceedings, shall hear additional evidence at the request of a party, shall base its decision on a preponderance of evidence, and shall grant the relief that the court determines to be appropriate.
- C. If the hearing officer's decision is appealed in court, implementation of the hearing officer's order is held in abeyance, except in those cases where the hearing officer has agreed with the child's parents that a change in placement is appropriate in accordance with subsection *V* of this section. In those cases, the hearing officer's order must be implemented while the case is being appealed.
- D. In every case within 45 business days of the final decision of the hearing officer, an implementation plan must be filed by the Division, with copies to the parties, the Virginia Department of Education, and the hearing officer unless the school division has appealed or is considering an appeal of the decision and the decision is not an agreement by the hearing officer with the parents of the child that a change in placement is appropriate as noted in subdivision *C* of this subsection.

- E. If the Division does not file an implementation plan, the Division must notify the Virginia Department of Education within 45 days of the issuance of the decision of the hearing officer that the Division is considering appealing the hearing officer's decision or either the Division or the parents have appealed the hearing officer's decision.
- F. If the hearing officer's decision is not implemented as required by state regulations and these guidelines, a complaint may be filed with the Virginia Department of Education for an investigation through the state's complaint system.

XIX. Special authority of the Virginia Department of Education

- A. The Virginia Department of Education may take action to ensure that the hearing officer:
 - 1. Complies with all training requirements;
 - 2. Conducts the hearing in a manner that protects the rights of all parties;
 - 3. Issues written findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law;
 - 4. Provides reports and the decision in writing to both parties and to the Virginia Department of Education;
 - 5. Does not require the submission of burdensome legal research of case law or legal briefs from parties before rendering a decision; and
 - 6. Complies with timelines as specified in this section.

- B. If the hearing officer does not meet the administrative responsibilities for management of the hearing proceedings in a case, the Virginia Department of Education may take action in the best interest of the child to remove the hearing officer from the case.

- C. The Virginia Department of Education may impose training and assessment requirements for new and continuing hearing officers as part of the specialized training requirements set by the Supreme Court of Virginia and as otherwise determined by the Virginia Department of Education to be necessary. The Virginia Department of Education may develop training and assessment methodology, including academic or alternative means for completing training requirements. The training requirements may include, but not be limited to, the following topics:
 - 1. Knowledge of disabilities and their implications in the education setting;
 - 2. Special education law generally, both federal and state;
 - 3. Other relevant statutory law;
 - 4. Knowledge of special education services and placements, including interim alternative educational placement;
 - 5. Knowledge of special education standards, procedures, and regulations impacting the delivery of educational services to students;
 - 6. Skill development and understanding of characteristics unique to disabilities.

- D. The Virginia Department of Education may establish the number of hearing officers who will be trained and certified to hear special education due process cases.

- E. Any hearing officer who has been suspended or removed pursuant to Rule 4 of the Hearing Officer System Rules of Administration or has withdrawn from the Virginia Supreme Court's hearing officer list shall submit a written petition to the Virginia Department of Education requesting approval to be recertified to hear special education cases.
- F. If a special education complaint asserting errors by a hearing officer is received, the Virginia Department of Education may require the hearing officer to respond to the complaint. If the Virginia Department of Education determines that the complainant's allegations are valid, the Virginia Department of Education may disallow any claim for compensation by the hearing officer for responding to the complaint.
- G. Any hearing officer who exceeds the timelines as prescribed in this section for reasons unrelated to the best interest of the child and not properly documented prior to the mandated timelines shall be required by the Virginia Department of Education to attend specialized training on these requirements before being assigned to another case.

XX. Management and monitoring of the due process hearing system

- A. The Virginia Department of Education shall conduct an analysis of special education hearing officers' decisions and the hearing system procedures that incorporates input from the parties to the hearing. Summary information developed from the analysis will be provided to the Virginia Supreme Court, upon request, and may be utilized by the Supreme Court in its evaluation of hearing officers as required in the Hearing Officer System Rules of Administration. Upon request, the Virginia Department of Education shall provide to the Supreme Court information regarding the hearing officer's participation in training, management of the hearing process, actual administration of any hearings, and a review of any decisions rendered.
- B. Review and analysis of special education hearing officers' decisions
 - 1. Within 30 calendar days of receipt of the special education hearing officer's decision, the Virginia Department of Education shall review the decision relative to:
 - a. Apparent bias to either party;
 - b. Correct use of citations;
 - c. Readability; and
 - d. Other errors, such as incorrect names or conflicting data, but not errors of law which are reserved for appellate review.
 - 2. Procedures
 - a. In conducting its internal review, the Virginia Department of Education may be assisted by external resources.

- b. The Virginia Department of Education may inform the hearing officer in writing of any concerns and may require the hearing officer to issue an error correction or a statement of clarification.

XXI. Nothing in this section prohibits or limits rights under other federal laws or regulations.

Private School Placements

- I. **Private School Placement by Newport News Public Schools** or Comprehensive Services Act team
- A. When a child with a disability is placed by Newport News Public Schools or is placed for noneducational reasons by a Comprehensive Services Act team that includes Newport News Public Schools in a private school or facility that is licensed or has a certificate to operate, Newport News Public Schools shall be responsible for ensuring compliance with the requirements of this section, including participation in state- and division-wide assessments. Newport News Public Schools shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the private school or facility.
 - B. Before Newport News Public Schools places a child with a disability in a private school or facility that is licensed or has a certificate to operate, the Newport News Public Schools will initiate and conduct a meeting in accordance with 8 VAC 20-81-110 to develop an IEP for the child. Newport News Public Schools will ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, Newport News Public Schools will use other methods to ensure participation by a private school or facility, including individual or conference telephone calls.
 - C. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, Newport News Public Schools will ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, Newport News Public Schools will use other methods to ensure participation by a private school or facility, including individual or conference telephone calls.
 - D. After the child with a disability enters a private school or facility that is licensed or has a certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility or at the discretion of Newport News Public Schools.
 - E. If the private school or facility initiates and conducts these meetings, Newport News Public Schools will ensure that the parent or parents and Newport News Public Schools representative:
 - 1. Are involved in any decision affecting the child's IEP;
 - 2. Agree to any proposed changes in the program before those changes are implemented; and
 - 3. Are involved in any meetings that are held regarding reevaluation.
 - F. For a Newport News student placed in a private school or facility, implementation of the child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with Newport News Public Schools.

- G. When a child with a disability is placed by Newport News Public Schools or a Comprehensive Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this section will be extended to the child.
- H. If the parent or parents request a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent or parents and Newport News Public Schools prior to placement by the Comprehensive Services Act team.
- I. When a child with a disability is placed in a private school or facility that is out of state, the placement will be processed through the Interstate Compact on the Placement of Children, in accordance with the Code of Virginia.

II. Placement of Children by Parents if a Free Appropriate Public Education is at Issue

- A. This section does not require Newport News Public Schools to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if Newport News Public Schools made a free appropriate public education available to the child and the parent or parents elected to place the child in a private school or facility.
- B. Disagreements between a parent or parents and Newport News Public Schools regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to due process procedures of 8 VAC 20-81-210.
- C. If the parent or parents of a child with a disability, who previously received special education and related services under the authority of Newport News Public Schools, enroll the child in a private preschool, elementary, middle, or secondary school without the consent of, or referral by the Newport News Public Schools, a court or a hearing officer may require Newport News Public Schools to reimburse the parent or parents for the cost of that enrollment if the court or hearing officer finds that Newport News Public Schools had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by Newport News Public Schools.
- D. The cost of reimbursement described in this section may be reduced or denied:
 - 1. If (i) at the most recent IEP meeting that the parent or parents attended prior to removal of the child from the public school, the parent or parents did not inform the IEP team that they were rejecting the placement proposed by Newport News Public Schools to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense or

- (ii) at least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent or parents did not give written notice to Newport News Public Schools of the information described above;
2. If, prior to the parent's or parents' removal of the child from the public school, Newport News Public Schools informed the parent or parents, through appropriate notice requirements of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent or parents did not make the child available for the evaluation; or
 3. Upon a judicial finding of unreasonableness with respect to actions taken by the parent or parents.
- E. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's or parents' failure to provide the notice to Newport News Public Schools if:
1. The parent is illiterate or cannot write in English;
 2. Compliance with this section would likely result in physical or serious emotional harm to the child;
 3. The school prevented the parent or parents from providing the notice; or
 4. The parent or parents had not received notice of the notice requirement in this section.

III. **Child Find for Private School, Home-Instructed, and Home-Tutored Children with Disabilities**

- A. Newport News Public Schools will locate, identify, and evaluate all private school children with disabilities, including children in religious schools, who attend school in the jurisdiction of Newport News Public Schools. The provisions of this subsection shall apply to children who are home-instructed and home-tutored in accordance with the Code of Virginia. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.
- B. Newport News Public Schools will consult with appropriate representatives of private school children with disabilities on how to carry out the child find activities.

- IV. **Placement of Children by Parents When a Free Appropriate Public Education is Not at Issue.** To the extent consistent with their number and location in the state, provision must be made for the participation of private school children with disabilities in the program carried out under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) by providing them with special education and related services in accordance with a services plan developed and implemented under this subsection.

- A. The provisions of this subsection shall apply to children who are home-instructed or home-tutored in accordance with the Code of Virginia.
- B. Newport News Public Schools ensures that a services plan is developed and implemented for each parentally placed private school child with a disability who has been designated to receive special education and related services under this part.
- C. Newport News Public Schools will maintain for its records, and submit to the Virginia Department of Education, the number of parentally placed private school students evaluated, the number of students determined eligible for special education and related services and the number of students actually served.
- D. Expenditures
 - 1. To meet the requirement of the Individuals With Disabilities Education Act (20 USC § 1400 et seq.), Newport News Public Schools will spend the following on providing special education and related services to private school children with disabilities:
 - a. For children, aged three to 21, inclusive, an amount that is the same proportion of Newport News Public Schools' total subgrant under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) as the number of private school children with disabilities, aged three to 21, inclusive, residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction, aged three to 21, inclusive; and
 - b. For children, aged three to five, inclusive, an amount that is the same proportion of Newport News Public Schools' total subgrant under the act as the number of private school children with disabilities, aged three to five, inclusive, residing in its jurisdiction, is to the total number of children with disabilities in its jurisdiction, aged three to five, inclusive.
 - 2. To ensure a thorough and complete child find process, Newport News Public Schools will conduct timely and meaningful consultation with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities and ensure that the count is conducted between October 1 and December 1 and provides for equitable participation by each of these students. The child count must be used to determine the amount that Newport News Public Schools must spend on providing special education and related services to private school children with disabilities in the subsequent fiscal year. Any funds not expended on special education and related services, including direct services in any given year, will be expended during a carry-over period of one additional year. The division will consult with private school representatives and representatives of parentally placed private school children on how and when decisions will be made regarding the apportioned funds.

3. Expenditures for child find activities, including evaluation and eligibility, described in 8 VAC 20-81-50 through 8 VAC 20-81-80, may not be considered in determining whether Newport News Public Schools has met the expenditure requirements of the Individuals With Disabilities Education Act (20 USC § 1400 et seq.). Federal funds are only used to supplement and not supplant the proportionate amount of federal funds expended in accordance with this subsection.
4. Newport News Public Schools are not prohibited from providing services to private school children with disabilities in excess of those required by this section.

D. Services determined

1. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities must be made in accordance with subdivisions *D 2* and *3* of this subsection.
2. Consultation with representatives of private school children with disabilities
 - a. Newport News Public Schools will consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide (i) which children will receive services; (ii) what services will be provided; (iii) how and where the services will be provided; and (iv) how the services provided will be evaluated.
 - b. Newport News Public Schools will give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.
 - c. The consultation required by this section will occur before Newport News Public Schools make any decision that affects the opportunities of private school children with disabilities to participate in services.
 - (1) The consultation process will include the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
 - (2) The determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities, including the determination of how the amount was calculated;

- (3) The consultation process among the school division, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
 - (4) How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and,
 - d. Newport News Public Schools shall make the final decisions with respect to the services to be provided to eligible private school children.
 - e. If the school division disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the school division shall provide to the private school officials a written explanation of the reasons why the school division chose not to provide services directly or through a contract.
- 3. Once timely and meaningful consultation has occurred, the Division will obtain a written affirmation of the process, which has been signed by the participating private school representatives. If the representatives do not provide affirmation within a reasonable period of time, the Division will forward documentation of the consultation to the Virginia Department of Education.
- 4. Private school representatives may file a state complaint with the Virginia Department of Education if the Division does not engage in meaningful consultation or if the Division fails to give due consideration to the views of the private school representatives. If the private school representative is dissatisfied with the outcome of the state complaint process, the complaint may be submitted to the Secretary of Education at the United States Department of Education for review.
- 5. Services plan for each child served under this section. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from Newport News Public Schools, Newport News Public Schools will:
 - a. Initiate and conduct meetings to develop, review, and revise a services plan for the child; and
 - b. Ensure that a representative of the religious or other private school attends each

meeting. If the representative cannot attend, Newport News Public Schools shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

E. Services provided

1. The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, may be public school employees or contracted personnel, except that private elementary and secondary school teachers who are providing equitable services to those children do not have to meet the requirements for highly qualified special education teachers.
2. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
3. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.
4. Services provided in accordance with a services plan
 - a. Each private school child with a disability who has been designated to receive services under this subsection must have a services plan that describes the specific special education and related services that Newport News Public Schools will provide to the child in light of the services that Newport News Public Schools has determined it will make available to private school children with disabilities.
 - b. The services plan must, to the extent appropriate, meet the requirements for the content of the IEP (8 VAC 20-80-62 F) with respect to the services provided, and be developed, reviewed, and revised consistent with 8 VAC 20-80-62 B 1, B 2, B 3, B 4, C, D, and E.

F. Location of services. Services provided to a private school child with a disability may be provided on-site at the child's private school, including a religious school, to the extent consistent with law.

G. Transportation

1. If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation:
 - a. From the child's school or the child's home to a site other than the private school; and
 - b. From the service site to the private school or to the child's home depending on the timing of the services.

2. Newport News Public Schools is not required to provide transportation from the child's home to the private school.
 3. The cost of the transportation described in this subsection may be included in calculating whether Newport News Public Schools has met the requirement of this section.
- H. Procedural safeguards, due process and complaints
1. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that Newport News Public Schools has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.
 2. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that Newport News Public Schools has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for private school children with disabilities (subsection *III* of this section).
 3. State complaints. Complaints that the Virginia Department of Education or Newport News Public Schools has failed to meet the requirements of this section may be filed under the procedures in 8 VAC 20-81-200
- I. Separate classes prohibited. Newport News Public Schools will not use funds available under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools.
- J. Requirement that funds not benefit a private school. Newport News Public Schools may not use funds provided under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) to finance the existing level of instruction in a private school or to otherwise benefit the private school. Newport News Public Schools will use funds provided under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) to meet the special education and related services needs of students enrolled in private schools, but not for the needs of a private school or the general needs of the students enrolled in the private school.
- K. Use of public school personnel. Newport News Public Schools may use funds available under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for private school children with disabilities and if those services are not normally provided by the private school.

- L. Use of private school personnel. Newport News Public Schools may use funds available under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) to pay for the services of an employee of a private school to provide services to a child enrolled in private school by the child's parent or parents, if the employee performs the services under public supervision and control.

- M. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities
 - 1. Newport News Public Schools must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the Newport News Public Schools acquires with funds under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) for the benefit of private school children with disabilities.
 - 2. Newport News Public Schools may place equipment and supplies in a private school for the period of time needed for the program.
 - 3. Newport News Public Schools ensures that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.
 - 4. Newport News Public Schools will remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.
 - 5. No funds under the Individuals With Disabilities Education Act (20 USC § 1400 et seq.) may be used for repairs, minor remodeling, or construction of private school facilities.

ADMINISTRATION AND GOVERNANCE

I. Plans applications and reports

A. The school division will annually prepare and submit to the Virginia Department of Education an application for funding

Under Part B of the Individuals with Disabilities Education Act

The annual plan will include:

1. Assurances that the division has in effect policies and procedures for the provision of special education and related services in compliance with the IDEA and the procedures established by the Virginia Board of Education and any other relevant federal and state laws and regulations;
2. A report indicating the extent to which the annual plan for the preceding period has been implemented;
3. Budgets outlining the use of the federal funds; and
4. Any revisions to the division's interagency agreement regarding the provision of special education and related services in the local/regional jail.

B. Prior to submission to the Virginia Department of Education, the plan will be reviewed by the Special Education Advisory Committee and approved by the School Board.

C. The annual plan and all required special education operational guidelines, including the revisions to those guidelines will be available for public inspection prior to approval by the school board.

II. Special Education Advisory Committee

A. Membership

1. The majority of the committee shall be parents of children with disabilities or individuals with disabilities.
2. The committee will include one teacher.
3. Additional school division personnel shall serve only as consultant, ex-officio members of the committee.

B. Functions of the Special Education Advisory

1. The committee will advise the division of needs in the education of children with disabilities

2. Participate in the development of priorities and strategies for meeting the identified needs of students with disabilities
 3. Submit periodic reports and recommendations regarding the education of students with disabilities to the division superintendent for transmission to the school board
 4. Assist the school division in interpreting plans to the community for meeting the special needs of students with disabilities for educational services
 5. Review the operational guidelines for the provision of special education and related services prior to submission to the school board
 6. Participate in the review of the annual plan
- C. Public notice will be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.
- D. Committee meetings will be held at least 4 times per school year and will be open to the public.

III. Transition Planning

- A. Newport News School Division personnel will participate in planning conferences when notified by designated Part C early intervention agencies; not less than 90 days and not more than nine months before the child is eligible for preschool services.