1. 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;
b. The parent or parents are not required to incur out-of-pocket expenses, such as payment of a deductible or copay amount incurred in filing a claim for services; and

c. The Newport News Public Schools may not use a child’s benefits under a public insurance program if that use would (i) decrease available lifetime coverage or any other insured benefit; (ii) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (iii) increase premiums or lead to the discontinuation of insurance; or (iv) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

2. Obtain parental consent to release educational records to the public insurance program for billing purposes in accordance with the provisions of the Management of the Student’s Scholastic Record in the Public Schools of Virginia.

B. Newport News Public Schools using private insurance to pay for services required under this section shall:

1. Obtain parental consent each time it proposes to access the parent’s private insurance proceeds.

2. Obtain parental consent and inform the parent that their refusal to permit the Division to access their private insurance does not relieve the Newport News Public Schools of its responsibility to ensure that all required services are provided at no cost to the parent or parents each time it proposes to access the parent’s or parents’ private insurance.
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.