



DEPARTMENT OF SPECIAL SERVICES

SPECIAL EDUCATION  
POLICY MANUAL

Revised  
March 2010



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## 8 VAC 20-81-10. Definitions

Albemarle County Schools ensure the implementation of the Individuals with Disabilities Education Improvement Act and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia by implementing all definitions included in 8 VAC 20-81-110 pages 6 – 25 of the Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

## 8 VAC 20-80-30. Responsibilities of the Local School Division

- A. Albemarle County Public Schools ensures that all children with disabilities, aged two to 21, inclusive, residing in that Albemarle County Public Schools have a right to a free appropriate public education, including:
1. Children with disabilities who are migrant;
  2. Children with disabilities who are homeless; **in accordance with the provisions of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.);**
    - a. Central Office will provide on-line information and follow-up training, as requested, regarding the requirements of the McKinney-Vento Homeless Act to school personnel.
  3. Children with disabilities who are in need of special education and related services, **even though the child has not failed or been retained in a course or grade, and is** advancing from grade to grade;
  4. Children with disabilities who are served in a **public nonprofit** 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 in the Albemarle County jurisdiction, with the exception of those provisions identified in **8 VAC 20-81-110I;**
  7. Children with disabilities who are residents of Albemarle County Public Schools and who are on house arrest, as ordered by a court of competent jurisdiction; although services shall be provided at a mutually agreed upon location;
  8. **Children with disabilities who are in foster care and residents of Virginia;**
  9. **Children with disabilities who are placed for noneducational reasons;**
  10. **Children with disabilities regardless of citizenship or immigration status.**
- B. **Every child with a disability is deemed to reside Albemarle County when (22.1-3 of the Code of Virginia)**
1. **The child is living with a biological parent whose parental rights have not been terminated.**
  2. **The child is living with an adoptive parent.**
  3. **The child is living with an individual:**
    - a. **Other than the custodial parent but who is defined as a parent in the Code of Virginia, not solely for school purposes; and**
    - b. **Pursuant to a special power of attorney executed under 10 USC 1044b by the custodial parent while such custodial parent is deployed outside of the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces.**
  4. **The parent(s) of the child is deceased and the child is living with a person in loco parentis who resides within the school division.**
  5. **The parents of the child are unable to care for him and he is living, not solely for school purposes with another person who resides in the school division and is either:**
    - a. **A court-appointed guardian, or has legal custody; or**

- b. Acting in loco parentis pursuant to placement of the child by a person or entity authorized to do so under §63.2-900 of the Code of Virginia.
  6. The child is living in the school division not solely for school purposes, as an emancipated minor pursuant to the provisions of the §16.1-334 of the Code of Virginia.
  7. 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.
  8. Children is in foster care and a resident of Virginia, but not residents of Albemarle County Public Schools, under the following conditions (§22.1-215 of the Code of Virginia):
    - a. The child has been placed in foster care or other custodial care within the geographical boundaries of Albemarle County Public Schools, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children; or
    - 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 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia that is located within the geographical boundaries of Albemarle County Public Schools.
  9. The child is in foster care and a resident of Virginia, and a resident of the Albemarle County School Division, under provisions of subdivision 8 of this subsection.
- C. If a child with a disability is living with the parent in the residence of Albemarle County Public Schools, Albemarle County Schools is responsible for ensuring that the child receives a free and appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents' request to enroll the child. (34 CFR 300.101)
  - a. Requirements for children with disabilities who are placed for noneducational reasons:
    1. Albemarle County Public Schools, as part of the Comprehensive Services Act team that places the child in a 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.
    2. If a child in foster care is placed in a local school division of nonresidence and the IEP team of the local school division of residence where the child is placed determines that the child needs to be placed in a private day or residential special education facility for educational reasons, the responsibility for a free appropriate public education transfers to Albemarle County Public Schools when the Virginia placing agency is located and is a participant in the community policy and management team of Albemarle County because it has the responsibility for the child under the Comprehensive Services Act (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia).
    3. If placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under the funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides.
    4. If placed 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 here the parent(s) resides.
    5. If the child is aged 18 or older and placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under the 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.
    6. If the child is aged 18 or older and placed in a group home by a community services board and 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 lives.

7. If the child is aged 18 or older, who has not 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, and for whom the court has not appointed a guardian to make decisions, the adult student's residence is the fixed home to which the adult child will return following the child's return from the facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.
  8. If the child is aged 18 or older, 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.
  9. If placed in a sponsored residential home, licensed in accordance with 12VAC35-105, the child is a resident of the division where the parents reside.
- 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 Albemarle County;
  - c. If there is a dispute between the parent or legal guardian of a child with a disability and Albemarle County Public Schools regarding residency, the local school division where the child is last enrolled remains responsible for providing the child with a free and appropriate public education until resolution of the dispute.

#### **8 VAC 20-81-40. Special education staffing requirements.**

- A. School Age Programs. The following specifies the staffing patterns for special education services for school age (five to 21, inclusive) children, in addition to the Standards of Quality (§ 22.1.253.13:2 of the Code of Virginia) and Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131-240).
  1. Staffing shall be in accordance with the requirements of 8VAC20-81-340 in the following settings.
    - a. Students with disabilities shall be instructed with students without disabilities in general education settings and classrooms, as appropriate, and in accordance with the Individualized Education Program (IEP). The service level, Level I or II, is based on the amount of time the student receives special education.
    - b. 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 children with the same disability or with children with different disabilities.
  2. Personnel assignment.
    - a. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).
    - b. Special education teachers who are the teachers of record shall be highly qualified.
    - c. 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.
    - d. Special education services include those services provided directly to the student and those provided indirectly.

3. Caseload standards.

- a. The maximum instructional caseloads for special education teachers and speech-language pathologists, for which public schools receive state funds in accordance with the Virginia Appropriation Act are listed in 8VAC20-81-340. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.
- b. 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.
  - i. A building average is computed by dividing the total weights (found in 8VAC20-81-340) 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 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.
  - ii. The building average shall not exceed 20 points if services are provided to students receiving Level I services and to children receiving Level II services. The building average shall not exceed 24 points if services are provided only to children receiving Level I services.
  - iii. 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.
- c. 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.
- d. 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 shall be made in proportion to the percentage of school time on such assignment.
  - i. This provision does not apply when special education and related services are provided in a general education class, based on the goals of the IEP of at least one child in that classroom, and children without disabilities incidentally benefit from such services.
  - ii. When special education personnel provide services in a general education classroom based on the IEP goals of at least one child in that classroom, the special education caseloads do not include children with disabilities who incidentally benefit from such services.

4. Special Education Staffing Requirement. Albemarle County Public Schools ensure that special education and related service personnel, including paraprofessionals, have the content knowledge and skills to serve children with disabilities. § 300.156(a) and are “appropriately and adequately prepared and trained.” [See IDEA '04 §§ 1412(a)(14) and 1413(a)(3).] This includes:

- a. Albemarle County Schools ensures that those personnel have the content knowledge and skills to serve children with disabilities;
- b. Ensuring that each person employed as a special education teacher for K-12 instruction is highly qualified; and
- c. Taking “measurable steps” to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to student with disabilities.

C. Programs for early childhood special education.

1. Children of preschool aged (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 5.5-hour day shall be provided if determined appropriate by the IEP team.
2. Staffing requirements.
  - a. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.
  - b. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22)
  - c. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See 8VAC20-81-340 for 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.

D. Staffing for education programs in regional and local jails. Special education personnel with any special education endorsement, except early childhood special education may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.

E. Alternative special education staffing plan. Albemarle County Public Schools may offer for consideration and approval, an alternative staffing plan in accordance with Virginia Department of Education procedures. The Virginia Department of Education may grant approval for alternative staffing levels upon request from Albemarle County Schools if Albemarle County Schools sought to implement innovative programs that are not consistent with these staffing levels.

F. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services for children that are deaf or hard of hearing are as follows:
  - a. Personnel providing educational interpreting services for children using sign language shall
    - i. Have a valid Virginia Quality Assurance Screening (VQAS) Level III, or
    - ii. Have a passing score on the Educational Interpreter Performance Assessment (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 VQAD Level III.
    - iii. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening written assessment of the Code of Ethics.
2. Personnel who provide interpreting services for children who use sign language or cued speech or cued language and who do not hold the required qualifications may be employed in accordance with all of the following criteria:
  - a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard-of-Hearing; or
  - b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.
3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:

- a. Personnel providing educational interpreting services for children using sign language shall hold:
    - i. A valid Virginia Quality Assurance Screening (VQAS) Level III; or
    - ii. A passing score on the Educational Interpreter Performance Assessment (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.
    - iii. Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.
    - iv. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.
  - b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
    - i. Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.
    - ii. Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.
    - iii. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.
4. For a child who is not 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 determined appropriate by the local educational agency.

#### **8 VAC 20-81-50. Child find.**

Albemarle County Public Schools ensures that policies and procedures are in effect which 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.

Albemarle County Public Schools will address disproportional and overidentification through a revised child study process called the School Based Intervention Team that focuses on student needs and pre-referral intervention strategies while at the same time increases teacher interdependence and continuous professional development. In addition, special education procedures and corresponding structures / forms emphasize the established criteria and federal and state procedures for eligibility determination. Central Office will monitor the yearly statistics that are used to determine disproportionate representation of minorities in special education as well as the overidentification of all children in special education. Report results of concern will be communicated to principals and school staff, with follow up in-service delivered by Central Office.

##### **A. Child Find.**

1. Albemarle County Public Schools shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who:
  - a. Are highly mobile, such as migrant and homeless children;

- b. **Are wards of the State;**
  - b. Attend private schools, including children who are home-instructed or home-tutored;
  - c. Are suspected of being children with disabilities under this chapter and in need of special education, even though they are advancing from grade to grade; and
  - d. Are under age 18 who are suspected of having a disability who need special education and related services and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days.
- 2. Albemarle County Public Schools will coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council.
- 3. **Each local school division shall locate, identify and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools.**
  - a. **The child find process shall be designed to ensure:**
    - i. **The equitable participation of parentally placed private school children, and**
    - ii. **An accurate count of those children.**
  - b. **The local school division shall undertake activities similar to the activities undertaken for its public school children.**
  - c. **The cost of carrying out the child find requirements, including individual evaluation, may not be considered in determining if a local educational agency has met its obligation under 34 CFR 300.133.**
  - d. **The child find process shall be completed in a time period comparable to that for students attending public school in the local educational agency.**
  - e. **Albemarle County Public Schools includes parentally placed private school children in child find activities, including those who reside in a state other than Virginia, or country other than the United States in which private, including religious, elementary and secondary schools, are located within Albemarle County's jurisdiction.**
    - i. **If the location of the administration of the private school in which the child attends is different from the school division in which the private school is located, the school division in which the private school is located and which the child attends is responsible for the child find activities.**
  - f. **The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, and representatives of parents of parentally placed private school children with disabilities, on how to implement the child find and evaluation activities.**

**B. Public awareness.**

- 1. Albemarle County Public Schools shall, at least annually, conduct 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.
- 2. Albemarle County procedures for informing the community shall show evidence of the use of a variety of materials and media and shall include:

- a. Contacts with community groups, public and private agencies and organizations. Contacts **shall include but it not limited** to brochures developed by Albemarle County Schools, public service announcements, radio announcements and newspaper and or magazine advertisements. Informational materials **may be** distributed to area pediatricians. In addition, the regional parent resource center and guidance office personnel at each of the public schools also serves as an outreach for child find activity; and
- b. Information is provided, upon request, in various native languages and modes of communication.
3. Albemarle County Public Schools shall show evidence of involvement of parents and community members in the required child find and community awareness campaign.

C. Screening.

1. The screening process for all children enrolled in Albemarle County Public Schools, including transfers from out of state, is as follows:
  - a. **The sight and hearing of pupils in grades K, 3, 7, and 10 be screened within 60 administrative working days of the opening of school. Whenever a pupil is found to have any defect of vision or hearing or a disease of the eyes or ears, the principal shall notify the parent or guardian in writing, of such defect or disease. This screening of pupils will be monitored through the administrative review process.**
  - b. **Albemarle County Schools shall implement a scoliosis program that shall consist of the provision of parent educational information on scoliosis for students in grades 5 through 10 or the implementation of a program of regular screening for scoliosis for students in grades 5 through 10. Albemarle County Schools shall not impose a fee for any scoliosis program implemented.**
    - i. **Albemarle County Schools is not required to screen students in grades 5 through 10 who have been admitted for the first time to a public school and who have been tested for scoliosis as part of the comprehensive physical examination required by § 22.1-270 of the Code of Virginia or those students whose parents have indicated their preference that their children not participate in scoliosis screening.**
    - ii. **Albemarle County Schools will adhere to the federal Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99) and the Protection of Pupil Rights Act (20 USC § 1232h; 34 CFR Part 98) in the development and implementation of a regular scoliosis screening program.**
  - c. **All children (through grade three), within 60 business days of initial enrollment in a public school, shall be screened in speech, voice, and language to determine if a referral for an evaluation for special education and related services is indicated.**
  - d. **Children who fail any of the above screenings may be rescreened if the original results are not considered valid.**
  - e. **The local educational agency may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia. (§ 22.1-270 of the Code of Virginia)**
  - f. **Children shall be referred to the special education administrator or designee if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.**
2. Albemarle County Public Schools shall provide for **all** applicable procedural safeguards.
  - a. **Providing a written notice to parents of the scheduled screening and, if the child fails the screening, a written report of the results of the screening;**
  - b. **Confidentiality; and maintenance of the student's scholastic record are met following the requirements as outlined in the Virginia Regulations Governing Special Education and Federal Family Education Rights and Privacy Act.**

3. 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 shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR 300.302)

D. Referrals for special education evaluation

1. Children may be referred through a screening process, or by school staff, the parent(s), or other individuals.
  - a. The referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.
  - b. If the referral is made to the special education administrator or designee, the administrator shall within three business days:
    - i. Initiate the evaluation eligibility process in accordance with 8VAC20-81-60, 8VAC20-81-70, and 8VAC20-81-80;
    - ii. Require that the school-based intervention team review and respond to the request; or
    - iii. Deny the request. If the request is denied, prior written notice in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures. (34 CFR 300.507)
2. A school based intervention team shall be established in each school to review records and other performance evidence of the children referred through a screening process, or by school staff, the parent or parents, or other individuals.
  - a. All referrals for a special education evaluation to the school based intervention team shall be made to the principal or designee. The committee shall include:
    - i. The referring source, as appropriate (except if inclusion of referring source would breach the confidentiality of the child);
    - ii. The principal or designee;
    - iii. At least one teacher; and
    - iv. Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.
    - v. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.
  - b. The school based intervention team shall meet within 10 business days following receipt of the referral for a special education evaluation.
    - i. The purpose of the meeting is to address the referral for a special education evaluation and review the referral and make recommendations to meet the child's behavioral and educational need in order for the child to receive a free and appropriate education.
    - ii. The School Based Intervention Team may choose to identify and recommend strategies to address the child's learning, behavior, communication, or development, if appropriate. This does not preclude the school based intervention team from making a referral for evaluation for special education and related services prior to implementing strategies.
    - iii. The school based intervention team shall refer the child to the special education administrator or designee within three business days following the determination by the committee that the child should be referred for an evaluation for special education and related services.

- iv. If the team decides not to refer for an evaluation for special education and related services, prior written notice in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing. (34 CFR 300.507)
  3. The preceding process does not preclude the school based intervention team from reviewing screening data for all or groups of children, identifying those students in need of timely intervention and developing appropriate research-based interventions for individual or groups of students without a meeting.
    - a. Prior to implementing an intervention plan parents will be provided a copy of the written plan that includes:
      - i. Identified target behavior or academic challenge;
      - ii. Goal of the intervention plan;
      - iii. Description intervention;
      - iv. Frequency of interventions;
      - v. Progress monitoring method;
      - vi. Timeline for the plan (i.e. begin and end date); and
      - vii. Contact information for the person responsible at the school for oversight of the implementation of the intervention plan.
      - viii. Explanation of the Response to Intervention framework in writing.
      - ix. Albemarle County School will ensure that appropriate parental consent is secured for appropriate procedures (i.e. diagnostic assessments).
  4. In reviewing the child's performance, The School Based Intervention Team may use a process based on the child's response to scientific, research-based interventions or other alternative research-based procedures. (34 CFR 300.307)
    - a. The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.
    - b. If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services. (34 CFR 300.309)
  5. Actions by the School Based Intervention Team shall be documented in writing and shall include information upon which a decision was based.

#### **8 VAC 20-81-60. Referrals for initial evaluation for special education and related services.**

- A. All children, aged two to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.
  1. Referrals may be made by any source, including the School Based Intervention Team, school staff, a parent(s), the Virginia Department of Education, any other state agency, or other individuals.
  2. If the referral is from a school based intervention team, it shall be made within three business days following the determination by the committee that the child should be referred for evaluation for special education and related services.

3. The referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made in oral or written form.
  4. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected of having a disability, from a source other than the school-based team, the special education administrator or designee shall:
    - a. Initiate the initial evaluation procedures under subsection B of this section;
    - b. Refer the child to the school-based team to review and respond to the request under 8VAC20-81-50 D 3 b (2); or
    - c. Deny the request, and provide prior written notice in accordance with 8VAC20-81-170.
- C. Albemarle County Public Schools does not violate the requirements to locate, identify and evaluate children of being children with disabilities if Albemarle County Public Schools chooses not to pursue an evaluation or reevaluation (i.e. pursue due process) to which the parent has refused or failed to consent.
- D. Procedures for referral for evaluation.
1. Upon receipt of the referral, the special education administrator, or designee, shall:
    - a. Record the date, reason for referral, and names of the person or agency making the referral;
    - b. Implement procedures for maintaining the confidentiality of all data; and
    - c. Provide written notice and procedural safeguards to inform the parent or parents in the parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:
      - i. The referral for evaluation and its purpose; and
      - ii. Parental rights with respect to evaluation and other procedural safeguards.
    - d. Inform the parent(s) of the procedures for the determination of needed evaluation data and request any evaluation information the parent(s) may have on the child;
    - e. Secure informed consent from the parent(s) for the evaluation;
    - f. Ensure that all evaluations consist of procedures that:
      - i. Gather relevant functional, developmental and academic information about the child to determine if the child is a child with a disability; and
      - ii. Are sufficiently comprehensive to identify all of the child's special education and related services needs, and educational needs; and
    - g. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the school-based committee for review and action. The time frame shall not apply to the local school division if: (34 CFR 300.301 (d) and (e))
      - i. The parent(s) of the child repeatedly fails or refuses to produce the child for the evaluation; or
      - ii. If the child enrolls in a school served by Albemarle County Public Schools after the required 65 business days has begun and prior to a determination by the child's previous local school division as to whether the child is a child with a disability. This exception only applies if the Albemarle County Public Schools is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and the local school division where the child is enrolled in school agrees to a specific time when the evaluation will be completed.

- ### E. Parental consent requirements

1. Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.
2. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.
3. The local school division shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.

4. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the local school division is not required to obtain parental consent to determine whether the child is a child with a disability if:
  - a. Despite reasonable efforts to do so, the local school division cannot discover the whereabouts of the parent of the child;
  - b. The rights of the parents of the child have been terminated in accordance with Virginia law; or
  - c. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. The local school division shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.
5. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the local school division may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. The local school division does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.
6. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the local school division may not use mediation or due process to pursue the initial evaluation.

#### **8 VAC 20-81-70. Evaluation and Re-Evaluation**

- A. Albemarle County Public Schools shall ensure that all children, aged two to 21, inclusive, who reside within its jurisdiction, who may have disabilities, and who may need special education and related services, are evaluated, including children who:
  1. Are highly mobile, such as migrant and homeless children;
  2. Attend private schools, including children who are home instructed or home tutored;
  3. Are suspected of being children with disabilities and are in need of special education, even though they are advancing from grade to grade; and
  4. Are under age 18, suspected of having a disability and in need of special education, and who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction.
- B. Albemarle County Public Schools shall conduct a full, individual, and initial evaluation in accordance with subsections D and E of this section before the initial provision of special education and related services to a child with a disability.
- C. Albemarle County Public Schools shall establish procedures for the initial evaluation and reevaluation of referred children which include the following:
  1. Provides written prior notice (in the parent's or parents' native language or mode of communication unless it is clearly not feasible to do so) in accordance with [8 VAC 20-81-170 C Page 85](#);
  2. Provides notice of procedural safeguards in accordance with [8 VAC 20-81-170 D Page 89](#);
  3. Provides an opportunity for independent educational evaluation in accordance with [8 VAC 20-81-170 B Page 87](#);
  4. Secures informed parental consent per [8 VAC 20-81-10 Page 9](#);
  5. Provides for the assignment of surrogate parent when necessary in accordance with [8 VAC 20-81-220 Page 117](#);
  6. Provides an opportunity for an impartial due process hearing; [8 VAC 20-81-210 Page 102](#).

7. Ensures confidentiality; See 8 VAC 20-81-170 G11 Page 94.
8. Provides opportunity for examination of records See 8 VAC 20-81-170 G1 Page 92; and
10. Assessments are selected and administered so as not to be discriminatory on a racial or cultural basis. 8 VAC 20-81-70C Page 45.
11. Secures consent for eligibility 8 VAC 20-81-60.

D. Determination of needed evaluation data.

1. Review of existing evaluation data. As part of an initial evaluation, if appropriate, a group that is comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate, shall:
  - a. Review existing evaluation data on the child, including:
    - i. Evaluations and information provided by the parent or parents of the child;
    - ii. Current classroom-based, local or state assessments and classroom-based observations;
    - iii. Observations by teachers and related services providers; and
  - b. On the basis of that review and input from the child's parent or parents, identify what additional data, if any, are needed to determine:
    - i. Whether the child is, or continues to be a child with a disability;
    - ii. The present educational needs of the child;
    - iii. The child's present levels of academic achievement and related developmental needs;
    - iv. Whether the child needs or continues to need special education and related services; and
    - v. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.
2. Conduct of review. The group completing the review may conduct its review without a meeting. Albemarle County Public Schools shall provide notice to ensure that the parent or parents have the opportunity to participate in the review. If there is a meeting, Albemarle County Public Schools shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate. The notice shall meet the requirements of 8 VAC 20-81-110 E.2.a. Page 64.
3. Need for additional data. Albemarle County Public Schools shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.
4. This process shall be considered the evaluation if no additional data is needed.

E. Albemarle County Public Schools shall ensure that the following requirements are met through the training of all staff charged with the responsibility of testing and evaluation of children suspected or eligible for special education and related services. Supervisory staff will monitor personnel to ensure nondiscrimination in the selection and administration, reporting and use of test results. Supervisory staff will monitor the evaluation process to ensure all required components selected for use in assessing a student under 8 VAC 20-81-70 meet the standards outlined below:

1. Tests and other evaluation materials used to assess a child under this chapter:
  - a. Are selected and administered so as not to be discriminatory on a racial or cultural basis; and
  - b. Each assessment and other evaluation material must be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.
  - c. Are used for the purposes for which the assessments or measures are valid and reliable; and

- d. Administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.
2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
3. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent or parents, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.
4. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.
5. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) must be included in the evaluation report.
6. Any non-standardized assessment administered by qualified personnel, may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.
7. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
9. Assessments are selected and administered so as to best ensure that if an assessment is administered to a child with impaired sensory, motor, or communication skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).
10. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
11. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
12. No single measure or assessment may be the sole criterion for determining whether or not a student is eligible for special education and related services, or for determining an appropriate educational program for a child with a disability.
13. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.
14. For a child initially suspected of having a specific learning disability, the evaluation must include:
  - a. an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
  - b. Documentation from the School Based Intervention Team clearly indicate that:
    - i. The School Based Intervention Team reviewed the student's records, achievement scores and other performance evidence.

- ii. Information in the student's records, achievement scores and/or group standardized data indicated academic or behavior problems that interfered with the student's performance.
  - iii. A review of the student's records indicated a concern.
  - iv. The student's current grades indicated below average performance for grade and instructional level.
  - v. Teacher concerns were consistent with problem(s) identified in the student's records and/or reports.
  - vi. Intervention strategies were identified and implemented that matched the student's instructional/behavioral problems.
  - vii. The intervention strategies were implemented, monitored, modified (as appropriate), and attempted over a specific period of time (i.e. 4-6 weeks).
  - viii. Accommodations/modifications were made in the general curriculum to facilitate the student's participation.
  - ix. The student's academic/behavioral problem, as documented, was consistent and resulted in a lack of progress and responsiveness to instruction **and intervention provided in addition to (Tier I) instruction in the general education core content** that supported the decision for special education evaluation.
15. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, socio-cultural, psychological, or developmental assessments.
- a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.
  - b. A complete audiological assessment, including tests which will assess inner and middle ear functioning, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.
16. The evaluation report(s) shall be available to the parents no later than two (2) business days before the meeting to determine eligibility.
- a. A written copy of the evaluation report shall be provided to the parent or parents prior to or at the meeting where the eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting. The report shall be available to the parent or parents no later than two business days before the meeting to determine eligibility.
  - b. **The school is not required to mail or deliver to the parent(s) the evaluation. Albemarle County Schools will inform the parent or parents that the evaluation reports are available in writing and a source to contact in order for the parent to obtain a copy of the evaluation reports two business days before the meeting to determine eligibility.**

F. Reevaluation.

- 1. A reevaluation shall be conducted:
  - a. **If Albemarle County Schools determines that the child's educational or related services needs, including improved academic achievement and functional performance, warrants a reevaluation;**
  - b. **If the child's parent(s) or teacher request a reevaluation; or**
  - c. At least once every three (3) years, unless the parent and Albemarle County Schools agree that a reevaluation is unnecessary.

- i. The IEP Team will document its decision and secure parental consent.
  - ii. If the parent agrees to waive a 3-year re-evaluation and later decides to request an evaluation, they can do so.
2. Albemarle County Schools shall not conduct a reevaluation more than once a year unless the parent(s) and Albemarle County Schools agree otherwise. If Albemarle County Public Schools does not agree with the parent's request for a reevaluation, Albemarle County Schools will provide the parent with prior written notice in accordance with 8 VAC 20-81-170.
3. Albemarle County Schools will conduct reevaluations in accordance with the requirements of 8 VAC 20-81-70.

G. Parental consent for reevaluation.

1. **Informed** parental consent is required before **conducting any reevaluation of a child with a disability**.
  - a. If Albemarle County Public Schools can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent or parents have failed to respond, Albemarle County Public Schools shall proceed as if consent has been given by the parent or parents. Reasonable measures **shall** include providing notice to the parent or parents in writing.
  - b. If the parent or parents refuse consent for an evaluation or reevaluation, Albemarle County Public Schools may continue to pursue those evaluations by using due process or mediation procedures. **Albemarle County Public Schools does not violate its obligation under this section if it declines to pursue the reevaluation.**
3. Parental consent is not required before:
  - a. Review of existing data as part of an evaluation or reevaluation; or
  - b. A teacher's or related service provider's observations or ongoing classroom evaluations; or
  - c. **Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of all children.**
4. **If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at their own expense, does not provide consent for a reevaluation, or the parent(s) fails to respond to a request to provide consent, Albemarle County Public Schools will not use mediation or due process procedures to pursue the reevaluation. In this instance, Albemarle County Public Schools is not required to consider the child as eligible for equitable services under the provisions of 8 VAC 81-150 for parentally placed students.**

H. Timelines for reevaluations.

1. The reevaluation process, including eligibility determination, shall be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.
  2. If a reevaluation is conducted for purposes other than the child's triennial, the reevaluation process, including eligibility determination, shall be completed in 65 business days of the receipt of the referral by the special education administrator or designee for the evaluation.
  3. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days.
- I. Albemarle County Schools is not required to evaluate a child with a disability who graduates with a standard diploma or advanced studies diploma. Since graduation is a change in placement, Albemarle County Public Schools provides the parent and student (if appropriate) with prior written notice.
- J. The Director of Special Education or designee maintains a record of the date of referral for evaluation, projected dates for re-evaluations and the date(s) parents of guardian(s) are notified of the decision not to re-

evaluate is made. Albemarle County Public Schools' procedures ensure that the decision regarding eligibility for special education and related services is made:

1. Within 65 business days after the referral for evaluation is received for an initial evaluation;
2. No later than the third anniversary of the date the child was last found eligible for special education and related services; or
3. Within 65 business days after the parent or parents are notified of the decision not to reevaluate.

## **8 VAC 20-81-80. Eligibility**

A. Upon completing the administration of tests and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent of the child determine whether the child is, or continues to be a child with a disability and the educational needs of the child. **If a determination is made that a child has a disability and requires special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110.**

1. **The determination of whether a child is a child with a disability is made by the child's parent(s) and a group that is collectively qualified to:**
  - a. **Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development;**
  - b. **Interpret assessment and intervention data, and apply critical analysis to those data; and**
  - c. **Develop appropriate educational and transitional recommendations based on the assessment data.**
2. **The eligibility group composition.**
  - a. **The group may be an IEP team, as defined in 8VAC20-81-110, as long as the above requirements and notice requirements of 8VAC20-81-170 are met.**
  - b. **The group shall include, but not be limited to:**
    - i. **Local educational agency personnel representing the disciplines providing assessments;**
    - ii. **The special education administrator or designee;**
    - iii. **The parent(s);**
    - iv. **A special education teacher;**
    - v. **The child's general education teacher or if the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; or for a child of less than school age, an individual qualified to teach a child of the child's age; and**
    - vi. **At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.**

B. **Procedures for determining eligibility and educational need.**

1. **In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall:**
  - a. **Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and**
  - b. **Ensure that information from all these sources is documented and carefully considered.**
2. **The group shall provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.**
3. **Observation.**
  - a. **The local educational agency shall ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.**

- b. The eligibility group, in determining whether a child is a child with a disability shall:
    - i. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
    - ii. Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.
  - c. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.
4. A child shall not be determined to be eligible under this chapter if the child does not otherwise meet the eligibility criteria, or the determinant factor is:
- a. Lack of appropriate instruction in reading, including the essential components of reading instruction:
    - i. Phonemic awareness,
    - ii. Phonics,
    - iii. Vocabulary development,
    - iv. Reading fluency, including oral reading skills, and
    - v. Reading comprehension strategies;
  - b. Lack of appropriate instruction in math; or
  - c. Limited English proficiency.
5. The local educational agency shall provide the parent with a copy of the documentation of the determination of eligibility at no cost. This documentation shall include a statement of:
- a. Whether the child has a specific disability.
  - b. The basis for making the determination including an assurance that the determination has been made in accordance with the provisions of this section regarding determining eligibility and educational need.
  - c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.
  - d. The educationally relevant medical findings, if any.
  - e. The instructional strategies used and the student-centered data collected if the child has participated in a response to scientific, research-based intervention process. This document shall also include:
    - i. The local educational agency's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected;
    - ii. The strategies that were used to increase the child's rate of learning; and
    - iii. The parent's right to request an evaluation.
  - f. For identification of a child with a specific learning disability, whether consistent with the requirements of subdivisions T 2 a and T 2 b of this section, the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and
    - i. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or
    - ii. The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards or intellectual development.
  - g. For identification of a child with a specific learning disability, the group's determination is consistent with the requirements of subdivision T 2 c of this section.
6. The eligibility group shall consider, as part of the evaluation, data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with § 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel. There shall be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress

during instruction was provided to the child's parents.

7. The eligibility group shall work toward consensus. If the group does not reach consensus and the decision does not reflect a particular member's conclusion, then the group member shall submit a written statement presenting that member's conclusions.
  8. The local educational agency shall obtain written parental consent for the initial eligibility determination. Thereafter, written parental consent shall be secured for any change in categorical identification in the child's disability.
  9. The eligibility 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. The written summary shall include any written statement from a member whose conclusion differs from the other members' determination. The summary statement may include other recommendations. The written summary shall be maintained in the child's scholastic record.
  10. The written summary shall be forwarded to the IEP team, including the parent, upon determination of eligibility. The summary statement may include other recommendations.
  11. With reevaluations, if the eligibility group determines that there is not a change to the child's eligibility for special education and related services, and educational needs; the IEP team is not required to convene, unless the parent requests that the IEP team meets.
- C. Nothing in this chapter requires that children be identified by their disability on IEPs, local educational agency communications to parents regarding eligibility determinations, or other similar communications to parents. For such communications, local educational agencies shall identify that each child has a disability under this chapter and by reason of that disability needs special education and related services, and is regarded as a child with a disability.
- D. Eligibility for related services. A child with a disability shall be found eligible for special education in order to receive related services. Once a child is found eligible for special education, decisions about the need for related services shall be made by the IEP team. An evaluation may be conducted as determined by the IEP team. (34 CFR 300.34 and 34 CFR 300.306(c)(2))
- E. Two-year-old children previously served by Part C. A child, aged two, previously participating in early intervention services assisted under Part C of the Act, shall meet the requirements of this chapter to be determined eligible under Part B of the Act. For a child served by Part C after age two, and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin for the child. (34 CFR 300.124)
- F. For all children suspected of having a disability, local educational agencies shall:
1. Use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and
  2. Have documented evidence that, by reason of the disability, the child needs special education and related services. (34 CFR 300.307(b))
- G. The Virginia Department of Education permits each local educational agency to use a process for determining whether a child has a disability based on the child's response to scientific, research-based intervention and permits each local educational agency to use other alternative research-based intervention and procedures. (34 CFR 300.307)
- H. Eligibility as a child with autism. The group may determine that a child has autism if:

1. There is an adverse effect on the child's educational performance due to documented characteristics of autism, as outlined in this section; and
2. The child has any of the Pervasive Developmental Disorders, also referenced as autism spectrum disorder, such as Autistic Disorder, Asperger's Disorder, Rhett's Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism as indicated in diagnostic references.
  - a. Children with Asperger's Disorder demonstrate the following characteristics:
    - i. Impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction; failure to develop peer relationships appropriate to developmental level; a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest); or lack of social or emotional reciprocity are noted; and
    - ii. Restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects.
  - b. Children with autistic disorder, in addition to the characteristics listed in subdivisions 2 a
    - i. and 2 a
    - ii. of this subsection, also demonstrate impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.
  - c. Children with Pervasive Developmental Disorder - Not Otherwise Specified or Atypical Autism may display any of the characteristics listed in subdivisions 2 a
    - i. 2 a
    - ii. and 2 b of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.
- I. Eligibility as a child with deaf-blindness. The group may determine that a child has deaf blindness if the definition of "deaf-blindness" as outlined in 8VAC20-81-10 is met.
- J. Eligibility as a child with deafness. The group may determine that a child has deafness if:
  1. The definition of "deafness" is met in accordance with 8VAC20-81-10;
  2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of a deafness, as outlined in subdivision 3 of this subsection; and
  3. The child has a bilateral hearing loss (sensorineural, or mixed conductive and sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony (auditory neuropathy), and/or cortical deafness.
- K. Eligibility as a child with developmental delay. (34 CFR 300.111(b))
  1. The group may determine that a child has a developmental delay if the local educational agency permits the use of developmental delay as a disability category when determining whether a preschool child, aged two by September 30 to six, inclusive, is eligible under this chapter, and:
    - a. The definition of "developmental delay" is met in accordance with 8VAC20-81-10; or
    - b. The child has a physical or mental condition that has a high probability of resulting in a developmental delay.

2. Eligibility as a child with a disability for children ages two through six shall not be limited to developmental delay if eligibility can be determined under another disability category.
  3. A local educational agency is not required to adopt and use developmental delay as a disability category for any children within its jurisdiction. If the local educational agency permits the use of developmental delay as a disability category, it shall comply with the eligibility criteria outlined in this section.
- L. Eligibility as a child with an emotional disability. The group may determine that a child has an emotional disability if:
1. The definition of "emotional disability" is met in accordance with 8VAC20-81-10; and
  2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an emotional disability.
- M. Eligibility as a child with a hearing impairment.
1. The group may determine that a child has a hearing impairment if:
    - a. The definition of "hearing impairment" is met in accordance with 8VAC20-81-10; and
    - b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of a hearing impairment, as outlined in subdivision 2 of this subsection.
  2. Characteristics of children with a hearing impairment include unilateral hearing loss (conductive, sensorineural, or mixed), bilateral hearing loss (conductive, sensorineural, or mixed), a fluctuating or permanent hearing loss, and/or auditory dys-synchrony (auditory neuropathy). The hearing loss results in qualitative impairments in communication/educational performance.
  3. The term "hard of hearing" may be used in this capacity.
- N. Eligibility as a child with an intellectual disability. The group may determine that a child has an intellectual disability if:
1. The definition of "intellectual disability" is met in accordance with 8VAC20-81-10;
  2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an intellectual disability, as outlined in subdivision 3 of this subsection; and
  3. The child has:
    - a. Significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the assessment, on an individually administered, standardized measure of intellectual functioning;
    - b. Concurrently, 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
    - c. Developmental history that indicates significant impairment in intellectual functioning and a current demonstration of significant impairment is present.
- O. Eligibility as a child with multiple disabilities. The group may determine that a child has multiple disabilities if the definition of "multiple disabilities" is met in accordance with 8VAC20- 81-10.
- P. Eligibility as a child with an orthopedic impairment. The group may determine that a child has an orthopedic impairment if:

1. The definition of "orthopedic impairment" is met in accordance with 8VAC20-81-10; and
2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of an orthopedic impairment.

Q. Eligibility as a child with other health impairment. The group may determine that a child has an other health impairment if:

1. The definition of "other health impairment" is met in accordance with 8VAC20-81-10; and
2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of the other health impairment.

R. Eligibility of a child with a specific learning disability. (34 CFR 300.307 and 34 CFR 300.309)

1. The group may determine that a child has a specific learning disability if:
  - a. The definition of "specific learning disability" is met in accordance with 8VAC20-81-10; and
  - b. The criteria for determining the existence of a specific learning disability are met.
2. The criteria for determining the existence of a specific learning disability are met if:
  - a. The 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:
    - i. Oral expression;
    - ii. Listening comprehension;
    - iii. Written expression;
    - iv. Basic reading skills;
    - v. Reading fluency skills;
    - vi. Reading comprehension;
    - vii. Mathematical calculations; or
    - viii. Mathematical problem solving.
  - b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision 2 a of this subsection when using a process based on the child's response to scientific, research-based intervention; or 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, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 8VAC20-81-70.
  - c. The group determines that its findings under subdivisions 2 a and b of this subsection are not primarily the result of:
    - i. A visual, hearing, or motor impairment;
    - ii. Intellectual disability;
    - iii. Emotional disability;
    - iv. Environmental, cultural, or economic disadvantage; or
    - v. Limited English proficiency.
3. Prior to determining that a student is eligible for special education and related services as a student with a specific learning disability, to ensure that the underachievement of a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the eligibility group considers, as part of the evaluation:
  - a. Data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - b. Data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of a student's **rate of learning or skill acquisition** during instruction

and intervention, which was provided to the parents.

4. The Virginia Department of Education does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. (34 CFR 300.307(a))

S. Eligibility as a child with speech or language impairment.

1. The group may determine that a child has a speech or language impairment if:
  - a. The definition of "speech or language impairment" is met in accordance with 8VAC20-81-10;
  - b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of speech or language impairment;
  - c. The child has a significant discrepancy from typical communication skills in one or more of the following areas: fluency, impaired articulation, expressive or receptive language impairment, or voice impairment; and
  - d. Information from instruments that are culturally and linguistically appropriate, including standardized and criterion-referenced measures, shall be used in conjunction with information from classroom observations to determine the severity of the communication impairment.
2. Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of sociocultural dialect, delays/differences associated with acquisition of English as a second language, or within the purview of established norms for articulation and language development.

3. Speech language pathology services may be special education or a related service.

T. Eligibility as a child with a traumatic brain injury. The group may determine that a child has a traumatic brain injury if:

1. The definition of "traumatic brain injury" is met in accordance with 8VAC20-81-10; and
2. There is an adverse effect on the child's educational performance due to one or more documented characteristics of traumatic brain injury.

U. Eligibility as a child with a visual impairment.

1. The group may determine that a child has a visual impairment if:
  - a. The definition of "visual impairment" is met in accordance with 8VAC20-81-10;
  - b. There is an adverse effect on the child's educational performance due to one or more documented characteristics of visual impairment; and
  - c. The child:
    - i. Demonstrates the characteristics of blindness or visual impairment, as outlined in subdivisions 2 and 3 of this subsection; or
    - ii. Has any of the conditions including, but not limited to oculomotor apraxia, cortical visual impairment, and/or a 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.
2. A child with blindness demonstrates the following:
  - a. Visual acuity in the better eye with best possible correction of 20/200 or less at distance or near; or
  - b. Visual field restriction in the better eye of remaining visual field of 20 degrees or less.
3. A child with a visual impairment demonstrates the following:
  - a. Visual acuity better than 20/200 but worse than 20/70 at distance and/or near; or

- b. Visual field restriction in the better eye of remaining visual field of 70 degrees or less but better than 20 degrees.

V. Children found not eligible for special education.

1. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers or any appropriate committee. Parental consent to release information shall be secured for children who are placed by their parents in private schools that are not located in the local educational agency of the parent's residence. (34 CFR 300.622)
2. If the school division decides that a child is not eligible for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s) including the parent(s) right to appeal the decision through the due process hearing procedures. (34 CFR 300.503; 34 CFR 300.507)

**8 VAC 20-81-90. Termination of special education and related services.**

- A. Termination of a child's eligibility for special education and related services shall be determined by an eligibility group.
  1. Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.
  2. The local educational agency shall evaluate a child with a disability in accordance with 8VAC20-81-70 before determining that the child is no longer a child with a disability under this chapter.
  3. 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. (34 CFR 300.305(e))
- B. The IEP team shall terminate the child's eligibility for a related service without determining that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team shall make this determination based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.
- C. Written parental consent shall be required prior to any partial or complete termination of services.
- D. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81- 170 C.
- E. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the eligibility procedures in 8VAC20-81-80 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. (34 CFR 300.9 and 34 CFR 300.305(e))
- F. Summary of academic achievement and functional performance. (34 CFR 300.305(e)(3))
  1. For a child whose eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22, the local educational agency shall provide the child with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.
  2. If a child exits school without graduating with a standard or advanced studies high school diploma or reaching the age of 22, including if the child receives a general educational development (GED) credential or an alternative diploma option, the local educational agency may provide the child with a

summary of academic achievement and functional performance when the child exits school. However, if the child resumes receipt of educational services prior to exceeding the age of eligibility, the local educational agency shall provide the child with an updated summary when the child exits, or when the child's eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.

## **8 VAC 20-81-100. Free appropriate public education.**

### **A. Age of eligibility.**

1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, residing within the jurisdiction of Albemarle County Public Schools. This includes children with disabilities who are in need of special education and related services even though the child has not failed or been retained in a course or grade, and is advancing grade to grade. § 300.101(c) or who have been suspended or expelled from school. The Virginia Department of Education has a goal of providing full educational opportunity to all children with disabilities aged birth through 21, inclusive. Albemarle County Public Schools shall establish a goal of providing a full educational opportunity for all children with disabilities from birth to 21, inclusive, residing within its jurisdiction, by 2010.
  - a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.
  - b. 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.
2. Exceptions. The obligation to make a free appropriate public education to all children with disabilities does not apply to:
  - a. Children with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to **age-eligible** students who have graduated but have not been awarded a standard or advanced studies high school diploma, **or to those who have been awarded a general educational development (GED) credential**. The standard or advanced high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards (i.e. certificate of completion, Modified Standard Diploma or GED). Students who have been awarded a certificate of completion, Modified Standard Diploma, GED or IEP diploma and who are age-eligible are still entitled to FAPE.
  - b. 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. 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 under this chapter.
  - c. A child with a disability is not entitled to FAPE who is eligible to receive special education and related services in accordance with Section 619 of Part B of IDEA Part B, but who receive early intervention services under Part C of IDEA.

**B. A free appropriate public education shall be available to children with disabilities who reside within a school division but do not hold a valid U.S. citizenship or a student visa.**

**C. Program options.** Albemarle County Public Schools shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children

without disabilities in the area served by Albemarle County Public Schools, including art, music, industrial arts, consumer and homemaking education, and vocational education.

D. Residential placement. If 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, must be at no cost to the parents of the child.

E. Assistive technology.

1. Albemarle County Public Schools shall ensure that the following are functioning properly, including completing routine checks:
  - a. Hearing aids worn in school by children with hearing impairments, including deafness;
  - b. The external components of surgically implanted devices.
  - c. Albemarle County Public Schools is not responsible for the postsurgical maintenance, programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).
2. Albemarle County Public Schools shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in this chapter, are made available to a child with a disability if required as part of the child's:
  - b. Special education;
  - c. Related services; or
  - d. Supplementary aids and services.
3. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.
4. Albemarle County public schools is not required to provide personal devices, including eyeglasses or hearing aids that the child requires, regardless of whether the child is attending school, unless the IEP team determines that the device is necessary for the child to receive FAPE.

F. Transportation.

1. Each child with a disability, aged two to 21, inclusive, placed in an education program, including private special education day or residential placements, by Albemarle County Public Schools shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the same transportation unless a child's IEP requires specialized transportation.
2. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications must be provided in the least restrictive environment. 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.
3. Albemarle County Public Schools shall ensure that a child with a disability is provided a commute to and from an education program that is comparable in length to the commute provided to children without disabilities, unless the child's IEP team determines that a longer or shorter commute is necessary to ensure the child receives a free appropriate public education.
4. If Albemarle County Public Schools enters an agreement with another local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent or parents.

5. If a child with a disability is placed in the Virginia school for the Deaf and the Blind at Staunton, the Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, Albemarle County Public Schools shall be responsible for the provision of transportation services to and from school.

G. Nonacademic and extracurricular services and activities.

1. Albemarle County Public Schools shall take steps to provide eligible children with disabilities the provision of supplementary aids and services, as determined appropriate and necessary by a child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford the child an equal opportunity to participate in those services and activities.
2. 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 Albemarle County Public Schools, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by Albemarle County Public Schools and assistance in making outside employment available.

H. Physical education.

1. General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving a free appropriate public education, **unless the local educational agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade.**
2. Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:
  - a. The child is enrolled full time in a separate facility; or
  - b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.
3. Special physical education. If specially designed physical education is prescribed in a child's IEP, Albemarle County Public Schools, if responsible for the education of that child, shall provide the services directly or make arrangements for those services to be provided through other public or private programs.
4. Education in separate facilities. Albemarle County Public Schools responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with this subsection.

I. Extended school year services.

1. Albemarle County Public Schools shall ensure that extended school year services are available as necessary to provide a free appropriate public education, consistent with subdivision 2 of this subsection.
2. Extended school year services **shall** be provided only if a child's IEP team determines on an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child, **because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if extended school year services are not provided.**
3. In implementing the requirements of this section, Albemarle County Public Schools may not:
  - a. Limit extended school year services to particular categories of disability; or
  - b. Unilaterally limit the type, amount, or duration of those services.
  - c. **Limit the provision of extended school year services to only the summer.**

J. Children with disabilities in public charter schools.

1. Children with disabilities who attend charter schools in Albemarle County must be served by Albemarle County Public Schools in the same manner as children with disabilities in its other schools, **including the provision of supplementary and related services on site at the charter school to the same extent to which Albemarle County Public Schools provides such services on the site to its other public schools.**
2. Albemarle County Public Schools ensures that all requirements of this chapter are met.

K. Length of school day. School-aged students with disabilities shall be provided a school day comparable in length to the day provided to school-aged students without disabilities unless the child's IEP specifies otherwise. **For pre-school aged children with disabilities, the IEP team determines the length of the school day.**

L. **Disability Harassment. Albemarle County Public Schools shall have in effect policies that prohibit harassment to children with disabilities. (28 CFR 35.149 and 34 CFR 104.4)**

M. Albemarle County Schools will ensure that all reasonable steps are taken to provide instructional materials in accessible formats to children with disabilities who need those instructional materials **in a timely manner.**

N. Albemarle County Public Schools ensures that 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.

**8 VAC 20-81-110. Individualized education program.**

A. Responsibility. Albemarle County Public Schools ensures that an IEP is developed and implemented for each child with a disability served by Albemarle County Public Schools, including a child placed in a private special education school by:

1. Albemarle County Public Schools; or
2. A non-educational placement by a Comprehensive Services Act team that includes Albemarle County Public Schools. Albemarle County Public School's responsibility is limited to special education and related services.

B. Accountability.

1. At the beginning of each school year, Albemarle County Public Schools shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue.
2. Albemarle County Public Schools ensure that an IEP:
  - a. Is in effect before special education and related services are provided to an eligible child; and
  - b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;
  - c. **Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and**
  - d. **Is implemented as soon as possible following parental consent to the IEP.**

3. Albemarle County Public Schools ensure that:
  - a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and
  - b. Teachers and providers are informed of:
    - i. Their specific responsibilities related to implementing the child's IEP; and
    - ii. The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
4. Albemarle County Public Schools is responsible for initiating and conducting meetings to develop, review and revise the IEP of a child with a disability.
5. Albemarle County Public Schools 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, to address:
  - a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
  - b. The results of any reevaluation conducted under this chapter;
  - c. Information about the child provided to or by the parent or parents;
  - d. The child's anticipated needs; or
  - e. Other matters.
7. If a student with a disability transfers to Albemarle County Public Schools, Albemarle Schools must take reasonable steps to promptly obtain all of the child's educational records, including the IEP, from the previous LEA; and the sending LEA must take reasonable steps to promptly respond to such requests for records.
8. Albemarle County Public Schools shall provide special education and related services to a child with a disability in accordance with the child's IEP.
9. Albemarle County Public Schools shall encourage the consolidation of reevaluation and IEP Team meetings for the child.
10. Albemarle County Public Schools, is not to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives. However, the Virginia Department of Education and local educational agencies are not prohibited from establishing their own accountability systems regarding teacher, school, or agency performance.
11. Nothing in this section limits a parent's or parents' right to ask for revisions of the child's IEP if the parent or parents feel that the efforts required by this chapter are not being met.
12. In making changes to the child's IEP after the annual IEP team meeting for the school year, the parent(s) and the local educational agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))
  - a. If changes are made to the child's IEP, the local educational agency shall ensure that the child's IEP team is informed of those changes.
  - b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.
  - c. This meeting is not a substitute for the required annual IEP meeting.

C. IEP team.

1. General. Albemarle County Public Schools ensure that the IEP team for each child with a disability includes:
  - a. The parent or parents of the child;
  - b. **Not less than** one regular education teacher of the child (if the child is or may be participating in the regular education environment);
  - c. **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.
  - d. A representative of Albemarle County Public Schools who is:
    - i. Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
    - ii. Knowledgeable about the general curriculum; and
    - iii. Knowledgeable about the availability of resources of Albemarle County Public Schools.

**NOTE:** Albemarle County Public Schools may designate another member of the IEP team to serve simultaneously as the agency representative if that individual meets the above criteria.

- e. 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.
  - f. At the discretion of the parent, parents, or Albemarle County Public Schools, 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, parents, or Albemarle County Public Schools) who invited the individual to be a member of the IEP team.
  - g. **Whenever** appropriate, the child.
  - h. 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:
    - i. The caseworker may not assume the role of the parent at the meeting; and
    - ii. If the caseworker is unable to attend the meeting as scheduled, the meeting may be held without the caseworker.
2. Albemarle County Public Schools determines the school personnel to fill the roles of the required IEP team members in subdivisions 1b through 1e of this subsection.
3. **Secondary** transition service participants.
  - a. Albemarle County Public Schools shall 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:
    - i. The student's postsecondary goals;
    - ii. The needed transition services for the student; or
    - iii. Both.
  - b. If the student does not attend the IEP meeting, Albemarle County Public Schools will take other steps to ensure that the student's preferences and interests are considered.
  - c. **To the extent appropriate and with the consent of the parent(s) or a child who has reached the age of majority, the local educational agency shall invite a representative of any participating 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 local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. If a child was previously served under Part C, for an initial IEP team meeting, and at the request of the parent, the Part C service coordinator or other representatives is invited to the IEP meeting to assist with the smooth transition of services.

D. IEP team attendance.

1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of this section is not required to attend an IEP team meeting, in whole or in part, if the parent and the local educational agency agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:
  - a. The parent and an Albemarle County Public School consents in writing to the excusal; and
  - b. The member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

E. Parent participation.

1. Albemarle County Public Schools will take steps 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, including:
  - a. Notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to attend; and
  - b. Scheduling the meeting at a mutually agreed on time and place.
2. Notice.
  - a. General notice. The notice given the parent or parents:
    - i. May be in writing, or given by telephone or in person with proper documentation;
    - ii. Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and
    - iii. Shall inform the parent or parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child as noted in subdivision C 1 f of this section.
  - d. Additional notice requirements are provided if transition services are under consideration.
    - i. For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system under subdivision C 4 of this section.
    - ii. For secondary transition, the notice shall also:
      - a. Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;
      - b. Indicate that the local educational agency will invite the student; and
      - c. Identify any other agency that will be invited to send a representative.
3. If neither parent can attend an IEP meeting, Albemarle County Public Schools must use other methods to ensure parent participation, including individual or conference calls and audio conference. If

Albemarle County Public Schools uses an alternative means of meeting participation that results in additional costs, Albemarle County Public Schools is responsible for those costs.

4. A meeting may be conducted without a parent or parents in attendance if Albemarle County Public Schools is unable to convince the parent or parents that they should attend. In this case, Albemarle County Public Schools must have a record of the attempts to arrange a mutually agreed on time and place, 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; or
  - c. Detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.
5. Albemarle County Public Schools shall take whatever action is necessary to ensure that the parent or parents understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
6. At the IEP meeting, the IEP team shall provide the parent(s) of a child with a disability with a written description of the factors in subdivisions F 1 and F 2 of this section 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 parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.
7. Albemarle County Public Schools shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days.

F. 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;
  - b. The concerns of the parent or parents for enhancing the education of their child;
  - b. The results of the initial or most recent evaluation of the child; and
  - c. The academic, developmental and functional needs of the child.
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 the use of positive behavioral interventions, strategies, and supports to address the 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 who is blind or visually impaired, 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. Consider the child's needs for benchmarks or short-term objectives.
  - f. In the case of a child who is deaf or hard of hearing, 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

g. Consider whether the child requires assistive technology devices and services.

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 regular education teacher of a child with a disability, as a member of the IEP team, shall participate to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of:
  - a. Appropriate positive behavioral interventions and supports and other 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 or that additional information is included in the child's IEP beyond what is required in this chapter.
7. The IEP team shall consider all factors identified under a free appropriate public education in 8 VAC 20-81-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, Albemarle County Public Schools will provide the parent or parents with prior written notice of Albemarle County Public School's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8 VAC 20-81-170.
8. To the extent possible, Albemarle County Public Schools will encourage the consolidation of meetings convened on the child's behalf.

G. Content of the individualized education program. The IEP for each child with a disability will include:

1. A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and 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. A statement of measurable annual goals, including academic and functional goals, designed to:
  - a. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; or for preschool children, as appropriate to participate in appropriate activities; and
  - b. Meet each of the child's other educational needs that result from the child's disability;
3. If determined appropriate by the IEP team, as outlined in subdivision F 2 of this section, a description of benchmarks or short-term objectives. For children with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall include a description of benchmarks or short-term objectives. The IEP team shall document its consideration of the inclusion in the child's IEP of benchmarks or short-term objectives.
4. 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 to the child, or on behalf of the child,

- and a statement of the program modifications or supports for school personnel that will be provided to enable the child,
- a. To advance appropriately toward attaining the annual goals;
  - b. To be involved and progress in the general curriculum and to participate in extracurricular 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.
5. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section.
6. The following information concerning state and division-wide assessments shall be included:
- a. A statement of any individual appropriate accommodations or modifications, that are necessary to measure the child's academic achievement and functional performance, in accordance with the guidelines approved by the Virginia Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;
  - b. If the IEP team determines that the child must take an alternate assessment instead of a particular state assessment of student achievement (or part of an assessment), a statement of:
    - i. Why the child cannot participate in the regular assessment;
    - ii. Why the particular assessment selected is appropriate for the child, including that the child meets the criteria for the alternate assessment; and
    - iii. 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.
  - c. A statement that the child shall participate in either the state assessment for all children that is part of the state assessment program or the state's alternate assessment;
  - d. A statement of any individual appropriate accommodations or modifications approved for use in the administration of division-wide assessments of student achievement that are needed in order for the child to participate in the assessment;
  - e. If the IEP team determines that the child will not participate in a particular division-wide assessment of student achievement (or part of an assessment), a statement of:
    - i. Why the child cannot participate in the regular assessment;
    - ii. Why the particular alternate assessment selected is appropriate for the child; and
    - iii. How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.
7. 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.
8. A statement of:
- a. How the child's progress toward the annual goals will be measured;
  - b. When periodic reports on the progress the child is making toward meeting the annual goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, at least as often as the parent or parents are informed of the progress of their children without disabilities.
9. Initial transition services (34 CFR 300.101(b) and 34 CFR 300.323(b))

- a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent(s) elect to receive services under Part B of the Act, the local educational agency shall develop an IEP.
- b. The IEP team shall consider an IFSP that contains the IFSP content described under Part C of the Act (§ 1431 et seq.) including:
  - i. A statement regarding natural environments, and
  - ii. A component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.
- c. These components of the child's IFSP may be incorporated into the child's IEP.

10. Secondary transition services. (34 CFR 300.43 and 34 CFR 300.320(b))

- a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include age-appropriate:
  - i. Measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
  - ii. Transition services, including courses of study, needed to assist the child in reaching those goals. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.
- b. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements of subdivision 10 a of this subsection, the IEP shall also include a statement, if appropriate, of interagency responsibilities or any linkages.
- c. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.

11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority.

H. Agency responsibilities for transition services.

1. If a participating agency, other than Albemarle County Public Schools, fails to provide the transition services described in the IEP of a student with a disability, Albemarle County Public Schools will reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
2. 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.

I. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities.

1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.
2. All requirements regarding IEP development, review and revision in this section apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment requirements to graduate with a modified standard, standard or advanced studies diploma. The requirements related to least restrictive environment in 8VAC20-810130 do not apply.

3. The following additional exceptions to subdivision 2 of this subsection apply only to students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:
  - a. The IEP team 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.
  - b. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply.
  - c. 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 early release.

#### **8 VAC 20-81-120. Children who Transfer.**

- A. Children with disabilities who transfer between local educational agencies in Virginia or transfer from a local educational agency outside of Virginia to a local educational agency in Virginia within the same school year are subject to the following provisions.
  1. The new local educational agency shall take reasonable steps to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous local educational agency in which the child was enrolled. The previous local educational agency shall take reasonable steps to promptly respond to the request from the new local educational agency.
    - a. If the previous local educational agency is not forthcoming in providing the records for the child, the new local educational agency should contact the Virginia Department of Education for assistance in resolving the matter.
    - b. If the new local educational agency is unable to obtain the IEP from the previous local educational agency or from the parent, the new local educational agency is not required to provide special education and related services to the child. The new local educational agency shall place the student in a general educational program and conduct an evaluation if the new local educational agency determines that an evaluation is necessary.
  2. The new local educational agency shall provide a free appropriate public education to the child, including ensuring that the child has available special education and related services, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:
    - a. Adopts and implements the child's IEP from the previous local educational agency with the parent's consent; or
    - b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP with the parent's consent that meets the requirements in this chapter.
  3. The new local educational agency may develop and implement an interim IEP with the parent's consent while obtaining and reviewing whatever information is needed to develop a new IEP.
  4. If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, the parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.
- B. The new local educational agency shall provide the parent(s) with proper notice regarding actions taken to provide the child with a free appropriate public education.

- C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.
  - 1. During the evaluation period, the child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.
  - 2. The local educational agency shall inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter.
- D. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to a new local educational agency, the new local educational agency shall review the current placements 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 is 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 local educational agency from the former Comprehensive Services Act team. (The CSA Implementation Manual)

## **8 VAC 20-81-130. Least restrictive environment and placements.**

### **A. General least restrictive environment requirements.**

- 1. Albemarle County Public Schools shall ensure:
  - a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities; and
  - b. That special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if 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.
- 2. 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 children without disabilities, Albemarle County Public Schools shall ensure 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. Each child with a disability has the supplementary aids and services, as determined appropriate and necessary by a child's IEP team, for the child to participate in nonacademic settings.
- 3. For children placed by Albemarle County Public Schools in public or private institutions **or other care facilities**, Albemarle County Public Schools will, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met.

### **B. Continuum of alternative placements.**

- 1. Albemarle County Public Schools will ensure that a continuum of alternative placements is available to meet the needs of children with disabilities **aged two to 21, inclusive**, for special education and related services.
- 2. The continuum must:
  - a. Include the alternative placements listed in the term "special education" **8VAC20-81-10. including** instruction in regular classes; special classes; special schools; home instruction; and instruction in hospitals and institutions; and
  - b. Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular class placement. The continuum includes integrated

service delivery, which occurs when some or all goals, including benchmarks and objectives if required, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions must be based on the individual needs of each child.
4. Albemarle County Public Schools will document all alternatives considered and the rationale for choosing the selected placement.
5. Children with disabilities must be served in a program with age-appropriate peers unless it can be shown that for a particular child with a disability, the alternative placement is appropriate as documented by the IEP.

C. Placements.

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, Albemarle County Public Schools shall ensure that:
  - a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter.
  - b. The child's placement is:
    - i. Determined at least annually;
    - ii. Based on the child's IEP; and
    - iii. As close as possible to the child's home.
  - c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.
  - d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.
  - e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
2. Home-based instruction shall be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.
3. Homebound instruction shall be made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team must revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

**8 VAC 20-81-140. Placement of children at the Virginia School for the Deaf and the Blind.**

- A. Placements will be made by Albemarle County Public Schools, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton. The Virginia schools shall determine if the student meets the admission criteria of the Virginia schools.
- B. When an eligible child is placed in the Virginia schools, Albemarle County Public Schools will be responsible for ensuring compliance with the requirements of this chapter.
- C. A contractual agreement will be established between the Virginia schools and Albemarle County Public Schools for each child enrolled in the Virginia schools.
  1. This agreement shall include, but not be 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.
2. The Virginia schools and Albemarle County Public Schools will review the contractual agreement at least annually and revise it as necessary.
3. For students who are residential students, the respective Virginia school is responsible for transportation. For students who are day students, Albemarle County Public Schools is responsible for transportation to and from the school.

### **8 VAC 20-81-150. Private school placement.**

#### **A. Private school placement by Albemarle County Public Schools or Comprehensive Services Act team.**

1. When a child with a disability is placed by Albemarle County Public Schools or is placed for non-educational reasons by a Comprehensive Services Act team that includes Albemarle County Public Schools in a private school or facility that is licensed or has a certificate to operate, Albemarle County Public Schools shall be responsible for ensuring compliance with the requirements of this chapter, including participation in state and division-wide assessments. Albemarle County Public Schools shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in a **private school or facility**.
2. Before Albemarle County Public Schools places a child with a disability in a private school or facility that is licensed or has a certificate to operate, Albemarle County Public Schools will initiate and conduct a meeting in accordance with 8 VAC 20-80-62 to develop an IEP for the child. Albemarle County Public Schools will ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, Albemarle County Public Schools will use other methods to ensure participation by a private school or facility, including individual or conference telephone calls.
3. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, Albemarle County Public Schools will ensure that a representative of the private special education school or facility attends the meeting. If the representative cannot attend, Albemarle County Public Schools will use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
4. After a 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 at the discretion of Albemarle County Public Schools.
5. If the private school or facility initiates and conducts these meetings, Albemarle County Public Schools will ensure that the parent or parents and Albemarle County Public Schools representative:
  - a. Are involved in any decision affecting the child's IEP;
  - b. Agree to any proposed changes in the program before those changes are implemented; and
  - c. Are involved in any meetings that are held regarding reevaluation.
6. If the private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with Albemarle County Public Schools.

7. When a child with a disability is placed by Albemarle County 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 chapter will be extended to the child.
  8. If the parent or parents request a due process hearing to challenge the child's removal from a placement that was made for non-educational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent or parents and Albemarle County Public Schools prior to placement by the Comprehensive Services Act team.
  9. 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.
- B. Placement of children by parents if a free appropriate public education is at issue.
1. This section does not require Albemarle County 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 Albemarle County 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.
  2. Disagreements between a parent or parents and Albemarle County Public Schools regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of 8 VAC 20-81-210.
  3. If the parent or parents of a child with a disability, who previously received special education and related services under the authority of Albemarle County Public Schools, enroll the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by Albemarle County Public Schools, a court or a **special education** hearing officer may require Albemarle County Public Schools to reimburse the parent or parents for the cost of that enrollment if the court or **the special education** hearing officer finds that Albemarle County 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 **special education** 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 Albemarle County Public Schools.
  4. **The cost of reimbursement described in this section may be reduced or denied:**
    - a. **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 Albemarle County 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 Albemarle County Public Schools of the information described above;**
    - b. **If, prior to the parent's or parents' removal of the child from the public school, Albemarle County Public Schools informed the parent or parents, through proper notice 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**
    - c. **Upon a judicial finding of unreasonableness with respect to actions taken by the parent or parents.**
  5. **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 Albemarle County Public Schools if:**

- d. The parent is illiterate or cannot write in English;
  - e. Compliance with this section would likely result in physical or serious emotional harm to the child;
  - f. The school prevented the parent or parents from providing the notice; or
  - g. The parent or parents had not received notice of the notice requirement in this section.
- C. Parentally placed private school children with disabilities. The provisions of this section apply to children with disabilities who are enrolled by their parent(s) in private schools.
1. The following definitions are applicable for purposes of this subsection.
    - a. The term "private school" includes:
      - ii. Private, denominational, or parochial schools in accordance with § 22.1-254 of the Code of Virginia that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;
      - iii. Preschool facilities that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;
      - iv. Students who are home-tutored in accordance with § 22.1-254 of the Code of Virginia; or
      - v. Students who receive home instruction in accordance with § 22.1-254.1 of the Code of Virginia.
    - b. The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. (34 CFR 300.13)
    - c. The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12. (34 CFR 300.36)
  2. Child find.
    - a. Each school division shall locate, identify, and evaluate all children with disabilities who are parentally placed in private schools located in the school division. The activities undertaken to carry out this responsibility for these children shall be comparable to activities undertaken for children with disabilities in public schools.
    - b. Each local school division shall consult with appropriate representatives of the private schools and representatives of parents of parentally placed private school children with disabilities on how to carry out the child find activities in order to conduct thorough and complete child find activities, including:
      - ii. How parentally placed private school children suspected of having a disability can participate equitably; and
      - iii. How parents, teachers, and private school officials will be informed of the process.
    - c. The child find process shall be designed to ensure:
      - ii. The equitable participation of parentally placed private school children; and
      - iii. An accurate count of these children.
  3. Services plan. Each local school division shall ensure 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.
  4. Expenditures. (34 CFR 300.133)

- a. To meet the requirement of the Act, each local school division shall spend the following on providing special education and related services to private school children with disabilities:
    - ii. For children, aged three to 21, inclusive, an amount that is the same proportion of the local school division's total subgrant under § 1411 of the Act as the number of private school children with disabilities, aged three to 21, who are enrolled by their parents in private schools located in the school division served by the school division, is to the total children with disabilities in its jurisdiction, aged three to 21; and
    - iii. For children, aged three to five, inclusive, an amount that is the same proportion of the local school division total subgrant under § 1419 of the Act as the number of privately placed school children with disabilities, aged three to five, who are enrolled by their parents in a private school located in the school division served by the school division, is to the total number of children with disabilities in its jurisdiction, aged three to five.
    - iv. If a local school division has not expended for equitable services all of the funds by the end of the fiscal year for which Congress appropriated the funds, the local school division shall obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.
    - v. Local educational agencies may supplement, but not supplant, the proportionate share amount of federal funds required to be expended in accordance with this subdivision.
  - b. In calculating the proportionate amount of federal funds to be provided for parentally placed private school children with disabilities, the local school division, after timely and meaningful consultation with representatives of private schools under this section, shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local school division.
  - c. After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted on a date between October 1 and December 1 of each year as determined by the Superintendent of Public Instruction or designee. The child count shall be used to determine the amount that the local school division shall spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.
  - d. Expenditures for child find activities, including evaluation and eligibility, described in 8VAC20-81-50 through 8VAC20-81-80, may not be considered in determining whether the local school division has met the expenditure requirements of the Act.
  - e. Local school divisions are not prohibited from providing services to parentally placed private school children with disabilities in excess of those required by this section.
5. Consultation.
- a. The local school division shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children. This includes:
    - ii. How the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
    - iii. How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities;

- iv. The types of services, including direct services and alternate service delivery mechanisms;
    - v. How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and
    - vi. How and when those decisions will be made, including how parents, teachers and private school officials will be informed of the process.
  - b. If the local 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 local school division shall provide to the private school officials a written explanation of the reasons why the local school division chose not to provide services directly or through a contract.
  - c. Following consultation, the local school division shall obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the local school division shall forward the documentation of the consultation to the Virginia Department of Education.
  - d. A private school official has the right to submit a complaint to the Virginia Department of Education that the local school division:
    - ii. Did not engage in consultation that was meaningful and timely; or
    - iii. Did not give due consideration to the views of the private school official.
  - e. The private school official shall provide to the Virginia Department of Education the basis of the noncompliance by the local school division and the appropriate documentation.
    - ii. If the private school official is dissatisfied with the decision of the Virginia Department of Education, the official may submit a complaint to the Secretary of Education, United States Department of Education by providing the information related to the noncompliance.
    - iii. The Virginia Department of Education shall forward the appropriate documentation to the U.S. Secretary of Education.
6. Equitable services determined. (34 CFR 300.137)
- a. No parentally placed 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.
  - b. Decisions about the services that will be provided to the parentally placed private school children with disabilities are made in accordance with the consultation process under subdivision 5 of this subsection and a services plan.
  - c. The local school division shall make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.
  - d. The local school division shall:
    - ii. Initiate and conduct meetings to develop, review, and revise a services plan for the child; and
    - iii. Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
7. Services provided.
- a. The services provided to parentally placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable

- services to these children do not have to meet the requirements for\ highly qualified special education teachers.
- b. Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
  - c. No parentally placed 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.
  - d. Services provided in accordance with a services plan.
    - ii. Each parentally placed private school child with a disability who has been designated to receive services under this subsection shall have a services plan that describes the specific special education and related services that the local school division will provide to the child in light of the services that the local school division has determined it will make available to private school children with disabilities.
    - iii. The services plan, to the extent appropriate, shall meet the requirements for the content of the IEP with respect to the services provided, and be developed, reviewed, and revised consistent with the requirements of this chapter for IEPs.
  - e. The services shall be provided:
    - ii. By employees of a local school division; or
    - iii. Through contract by the local school division with an individual, association, agency, organization, or other entity.
  - f. Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.
8. 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.
9. Transportation.
- a. If necessary for the child to benefit from or participate in the services provided under this part, a parentally placed private school child with a disability shall be provided transportation:
    - ii. From the child's school or the child's home to a site other than the private school; and
    - iii. From the service site to the private school or to the child's home depending on the timing of the services.
  - b. Local school divisions are not required to provide transportation from the child's home to the private school.
  - c. The cost of the transportation described in this subsection may be included in calculating whether the local school division has met the requirement of this section.
10. Procedural safeguards, due process, and complaints.
- a. 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 a local school division has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.
  - b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that a local school division has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for parentally placed private school children with disabilities.

- c. State complaints. Complaints that the Virginia Department of Education or local school division has failed to meet the requirements of this section may be filed under the procedures in 8VAC20-81-200.
  - d. The dispute resolution options described in subdivisions 10 b and 10 c of this subsection apply to the local educational agency in which the private school is located. (34 CFR 300.140(b)(2))
- 11. Separate classes prohibited. A local school division may not use funds available under the Act 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. (34 CFR 300.143)
- 12. Requirement that funds not benefit a private school. A local school division may not use funds provided under the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local school division shall use funds provided under the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school.
- 13. Use of public school personnel. A local school division may use funds available under the Act to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for parentally placed private school children with disabilities and if those services are not normally provided by the private school.
- 14. Use of private school personnel. A local school division may use funds available under the Act to pay for the services of an employee of a private school to provide services to a parentally placed private school child, if the employee performs the services outside of the employee's regular hours of duty and the employee performs the services under public supervision and control.
- 15. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities. (34 CFR 300.144)
  - a. A local school division shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the local school division acquires with funds under the Act for the benefit of parentally placed private school children with disabilities.
  - b. The local school division may place equipment and supplies in a private school for the period of time needed for the program.
  - c. The local school division shall ensure 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.
  - d. The local school division shall remove equipment and supplies from a private school if
    - ii. the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or
    - iii. 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.
  - e. No funds under the Act may be used for repairs, minor remodeling, or construction of private school facilities.
- 16. Reporting requirements. Each local school division shall maintain in its records, and provide to the Virginia Department of Education, the following information related to parentally placed private school children:
  - a. The number of children evaluated;
  - b. The number of children determined to be children with disabilities; and
  - c. The number of children served.

## **8 VAC 20-81-160. Discipline.**

### **A. General.**

1. A student with a disability shall be entitled to the same due process rights that all students are entitled to under the Code of Virginia and Albemarle County Public Schools' disciplinary policies and procedures.
2. In the event that the child's behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:
  - a. Developing goals and services specific to the child's behavioral needs; or
  - b. Conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child's behavioral needs.
3. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.
  - a. In reviewing the disciplinary incident, school personnel may review the child's IEP and any behavioral intervention plan, or consult with the child's teacher(s) to provide further guidance in considering any unique circumstances related to the incident.
  - b. School personnel may convene an IEP team for this purpose.

### **B. Short-term removals.**

1. A short-term removal is for a period of time of up to 10 consecutive school days or 10 cumulative school days in a school year.
  - a. School personnel may short-term remove a child with a disability from the child's current educational setting to an appropriate interim alternative educational setting, another setting, or suspension, to the extent those alternatives are applied to a child without disabilities.
  - b. Additional short-term removals may apply to a child with a disability in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the short-term removals constitute a pattern, the requirements of subsection C of this section apply.
    - i. The local educational agency determines when isolated, short-term removals for unrelated instances of misconduct are considered a pattern.
    - ii. These removals only constitute a change in placement if the local educational agency determines there is a pattern.
2. Services during short-term removals.
  - a. The local educational agency is not required to provide services during the first 10 school days in a school year that a child with a disability is short-term removed if services are not provided to a child without a disability who has been similarly removed.
  - b. For additional short-term removals, which do not constitute a pattern, the local educational agency shall provide services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals of the student's IEP. School personnel, in consultation with the student's special education teacher, make the service determinations.
  - c. For additional short-term removals that do not constitute a pattern, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and division wide assessment programs.

C. Long-term removals.

1. A long-term removal is for more than 10 consecutive school days; or
2. The child has received a series of short-term removals that constitutes a pattern:
  - a. Because the removals cumulate to more than 10 school days in a school year;
  - b. Because the child's behavior is substantially similar to the child's behavior in previous incidents that results in a series of removals; and
  - c. Because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
3. The local educational agency determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. This determination is subject to review through due process and judicial proceedings.
4. On the date on which the decision is made to long-term remove the student because of a violation of a code of student conduct, the local educational agency shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards.
5. Special circumstances.
  - a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if:
    - i. The child carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or
    - ii. The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or
    - iii. The child inflicts serious bodily injury upon another person at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.
  - b. For purposes of this part, "weapon," "controlled substance," and "serious bodily injury" have the meaning given the terms under 8VAC20-81-10.
6. Services during long-term removals.
  - a. A child with a disability who is long-term removed receives services during the disciplinary removal so as to enable the student to:
    - i. Continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting;
    - ii. Continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and
    - iii. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
  - b. For long-term removals, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and division wide assessment programs.

- c. The IEP team determines the services needed for the child with a disability who has been long-term removed. (34 CFR 300.530(d)(5) and 34 CFR 300.531)

E. Manifestation determination.

1. Manifestation determination is required if the local educational agency is contemplating a removal that constitutes a change in placement for a child with a disability who has violated a code of student conduct of the local educational agency that applies to all students.
2. The local educational agency, the parent(s), and relevant members of the child's IEP team, as determined by the parent and the local educational agency, constitute the IEP team that 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.
3. The IEP team shall review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent(s).
4. The IEP team then shall determine the conduct to be a manifestation of the child's disability:
  - a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - b. If the conduct in question was the direct result of the local educational agency's failure to implement the child's IEP.
5. If the IEP team determines that the local educational agency failed to implement the child's IEP, the local educational agency shall take immediate steps to remedy those deficiencies.
6. If the IEP team determines that the child's behavior was a manifestation of the child's disability:
  - a. The IEP team shall return the child to the placement from which the child was removed unless the parent and the local educational agency agree to a change in placement as part of the modification of the behavioral intervention plan. The exception to this provision is when the child has been removed for not more than 45 school days to an interim alternative educational setting for matters described in subdivision C 5 a of this section. In that case, school personnel may keep the student in the interim alternative educational setting until the expiration of the 45-day period.
    - i. Conduct a functional behavioral assessment, unless the local educational agency had conducted this assessment before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan for the child.
      - a) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.
      - b) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B if the parent disagrees with the evaluation or a component of the evaluation obtained by the local educational agency; or
    - ii. If a behavioral intervention plan already has been developed, review this plan, and modify it, as necessary, to address the behavior.
7. If the IEP team determines that the child's behavior was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that services shall be provided in accordance with subdivision C 6 a of this section.

E. Appeal.

1. If the child's parent(s) disagrees 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(s) may request an expedited due process hearing.

2. A local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request an expedited due process hearing.
3. The local educational agency is responsible for arranging the expedited due process in accordance with the Virginia Department of Education's hearing procedures at 8VAC20-81- 210.
  - a. The hearing shall occur within 20 school days of the date the request for the hearing is filed.
  - b. The special education hearing officer shall make a determination within 10 school days after the hearing.
  - c. Unless the parent(s) and the local educational agency agree in writing to waive the resolution meeting, or agree to use the mediation process,
    - i. A resolution meeting shall occur within 7 calendar days of receiving the request for a hearing.
    - ii. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing.
  - d. The decisions on expedited due process hearings are appealable consistent with 8VAC20-81-210.

F. Authority of the special education hearing officer.

1. A local educational agency 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 child with a disability for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the local educational agency believes that the child's behavior is substantially likely to result in injury to self or others.
2. The special education hearing officer under 8VAC20-81-210 may:
  - a. Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of subsections C and D of this section, or that the child's behavior was a manifestation of the child's disability; or
  - b. Order a change in the placement to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or others.
3. A local educational agency may ask the special education hearing officer for an extension of 45 school days for the interim alternative educational setting of a child with a disability when school personnel believe that the child's return to the regular placement would result in injury to the student or others.

G. Placement during appeals.

1. The child shall remain in the interim alternative educational setting pending the decision of the special education hearing officer, or
2. Until the expiration of the time for the disciplinary period set forth in this section, whichever comes first, unless the parent and the local educational agency agree otherwise.

H. Protection for children not yet eligible for special education and related services.

1. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct of the local educational agency may assert any of the protections provided in this chapter if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
2. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- a. The parent(s) of the child expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;
  - b. The parent(s) of the child requested an evaluation of the child to be determined eligible for special education and related services; or
  - c. A teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the local educational agency or to other supervisory personnel of the local educational agency.
3. A local educational agency would not be deemed to have knowledge that a child is a child with a disability if:
  - a. The parent of the child has not allowed a previous evaluation of the child or has refused services; or
  - b. The child has been evaluated in accordance with 8VAC20-81-70 and 8VAC20-81-80 and determined ineligible for special education and related services.
4. If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.
5. If a request is made for an evaluation of a child during the time period in which the child is\ subjected to disciplinary measures under this section, the evaluation shall be conducted in an expedited manner.
  - a. Until the evaluation is completed, the child remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.
  - b. If the child is determined to be a child with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the parent(s), the local educational agency shall provide special education and related services as required for a child with a disability who is disciplined.
- I. Referral to and action by law enforcement and judicial authorities. (34 CFR 300.535)
  3. Nothing in this chapter prohibits a local educational agency from reporting a crime by a child 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 child with a disability to the extent such action applies to a student without a disability.
  4. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the child 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 (8VAC20-150).
- J. Information on disciplinary actions. (34 CFR 300.229)
  3. The Virginia Department of Education requires that local educational agencies include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child.
  4. Local educational agencies are responsible for transmitting 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 student records of nondisabled students.
  5. The statement may include:
    - a. A description of any behavior engaged in by the child who required disciplinary action;
    - b. A description of the disciplinary action; and

- c. Any other information that is relevant to the safety of the child and other individuals involved with the child.
- 4. If the child transfers from one school to another, the transmission of any of the child's records shall include the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

## **8 VAC 20-81-170. Procedural safeguards.**

### **A. Opportunity to examine records; parent participation.**

1. Procedural safeguards. Albemarle County Public Schools shall establish, maintain, and implement procedural safeguards as follows:
  - a. The parent or parents of a child with a disability shall be afforded an opportunity to:
    - i. 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
    - ii. 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.
  - b. Parent participation in meetings.
    - i. Albemarle County Public Schools will 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 1 a (ii) 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 who will be in attendance; (ii) inform the parent or parents that at their discretion or at the discretion of Albemarle County 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; (iv) **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 service coordinator or other representatives of Part C to assist with the smooth transition of services.**
    - ii. A meeting does not include informal or unscheduled conversations involving Albemarle County Public School personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that Albemarle County Public School personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.
  - c. Parent involvement in placement decisions. Albemarle County Public Schools ensure that the parent or parents of each child with a disability are members of:
    - i. The IEP team that makes decisions on the educational placement of their child; or any Comprehensive Services Act team that makes decisions on the educational placement of their child, **providing notice in accordance with 8VAC20-81-110E.**
    - ii. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, Albemarle County Public Schools shall use other methods

to ensure their participation, including individual or conference telephone calls, or video conferencing;

- iii. A placement decision may be made by the IEP or Comprehensive Services Act Team without the involvement of the parent or parents, if Albemarle County Schools is unable to obtain the parent's participation in the decision. In this case, Albemarle County Schools shall have a record of its attempts to ensure the parent's or parents' involvement.
- iv. Albemarle County Schools shall **take whatever action is necessary** to ensure that the parent or parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter of a parent or parents with deafness, or whose native language is other than English.
- v. **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.**

B. Independent educational evaluation.

1. General.

- a. The parent or parents of a child with a disability shall have the right to obtain an independent educational evaluation of the child.
- b. Albemarle County Public Schools 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.

2. Parental right to evaluation at public expense.

- a. The parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation component obtained by the local educational agency.
- b. If the parent(s) requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either;
  - i. Initiate a due process hearing to show that its evaluation is appropriate; or
  - ii. Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent(s) does not meet the local educational agency's criteria.
- c. If the local educational agency initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent(s) still has the right to an independent educational evaluation, but not at public expense.
- d. If the parent(s) requests an independent educational evaluation, the local educational agency may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the parent(s) may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.
- e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation component with which the parent disagrees.
- f. 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, shall be the same as the criteria that the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation:
    - a. Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding the provision of a free appropriate public education to the child; and
    - b. May be presented by any party as evidence at a hearing under 8VAC20-81-210.
  4. Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation for an evaluation component, as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense.
- C. Prior notice by Albemarle County Public Schools; content of notice.
1. **Prior** written notice must be given to the parent or parents of a child with a disability within a reasonable time before Albemarle County Public Schools:
    - a. 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
    - b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of free appropriate public education for the child.
  2. The notice shall include:
    - a. A description of the action proposed or refused by Albemarle County Public Schools;
    - b. An explanation of why Albemarle County Public Schools' proposes or refuses to take the action;
    - c. A description of any other options Albemarle County Public Schools considered and the reasons for the rejection of those options;
    - d. A description of each evaluation procedure, **assessment**, record, or report Albemarle County Public Schools used as a basis for the proposed or refused action;
    - e. A description of any other factors that are relevant to Albemarle County Public Schools' proposal or refusal;
    - f. A statement that the parent or parents of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
    - g. Sources for the parent or parents to contact in order to obtain assistance in understanding the provisions of this section.
  3. 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; and If the native language or other mode of communication of the parent or parents is not a written language, Albemarle County Public Schools shall take steps to ensure that:
    - a. The notice is translated orally or by other means to the parent or parents in their native language or other mode of communication;
    - b. The parent or parents understand the content of the notice; and
    - c. There is written evidence that the requirements of subdivisions a and b of this subdivision have been met.

D. Procedural safeguards notice.

1. A copy of the procedural safeguards document is available to the parents of a child with a disability **only** one time per school year, **except that a copy shall be given to the parent(s)** upon:
  - a. Initial referral **for or parent request for evaluation**;
  - b. If the parent requests an additional copy;
  - c. Receipt of the first state complaint during a school year;
  - d. Receipt of the first request for a due process hearing during a school year;
  - e. On the date on which the decision is made to make disciplinary removal that constitutes a change in placement because of a violation of a code of student conduct;.
2. Albemarle County Public Schools will place a copy of the procedural safeguards document on its website. **Albemarle County does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. Albemarle County School shall offer the parent(s) a printed copy of the procedural safeguards notice in accordance with subdivision 1 of this subsection.**
3. The procedural safeguards notice shall include a full explanation of the following procedural safeguards, written in the native language of the parents (unless not feasible to do so):
  - a. Independent educational evaluation;
  - b. Prior written notice;
  - c. Parental consent;
  - d. Access to educational records;
  - e. Opportunity to present and resolve complaints;
  - f. The availability of mediation.
  - g. The child's placement during pendency of due process proceedings;
  - h. Procedures for students who are subject to placement in an interim alternative educational setting;
  - i. Requirements for unilateral placement by parents of children in private schools at public expense;
  - j. Due process hearings including requirements for disclosure of evaluation results and recommendations;
  - k. Civil actions, including the time period in which to file such actions;
  - l. Attorneys' fees; and
  - m. The opportunity to present and resolve complaints through the state complaint procedures, including:
    - i. The time period in which to make a complaint;
    - ii. The opportunity for the local education agency to resolve the complaint; and
    - iii. The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.
4. The notice required under this subsection must meet the prior notice requirements regarding understandable language in subdivision C 3 of this section.

E. Parental consent.

1. General. Required parental consent. Informed parental consent is required before:
  - a. 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;

- b. **An initial eligibility determination** or any change in **categorical** identification;
    - c. Initial provision of special education and related services to a child with a disability and
    - d. Any revision to the child's IEP services;
    - e. Any partial or complete termination of special education and related services, except for graduation with a standard or advanced studies diploma;
    - f. 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;
    - g. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F of this section; and (34 CFR 300.154)
    - h. Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services.
    - i. If a child, who is a resident of this locality, is enrolled, or is going to enroll in a private school that is not located in this locality, parental consent is obtained before any personally identifiable information about the child is released between Albemarle County public Schools and Albemarle County Public Schools where the private school is located.
  2. Parental consent not required. Parental consent is not required before:
    - a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment;
    - b. 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(s) of all children;
    - c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation;
    - d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals;
    - e. A teacher's or related service provider's observations or ongoing classroom evaluations;
    - f. Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his parent(s) if:
      - i. Despite reasonable efforts, the local educational agency cannot discover the whereabouts of the parent(s);
      - ii. The parent's rights have been terminated; or
      - iii. The rights of the parent(s) to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has consented to the initial evaluation.
3. **Revoking consent. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8VAC20-81-10.**
4. **Refusing consent.**
  - a. **If the parent(s) refuses consent for initial evaluation or a reevaluation, the local-educational agency may, but is not required to, use mediation or due process hearing-procedures to pursue the evaluation. The local educational agency does not violate its-obligations under this chapter if it declines to pursue the evaluation.**
  - b. **If the parent(s) refuses to consent to the initial provision of special education and related-services;**

- i. The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;
    - ii. The local educational agency's failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and
    - iii. The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which the local educational agency requests consent. However, the local educational agency may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.
  - c. If the parent(s) of a parentally placed private school child refuses consent for an initial evaluation or a reevaluation, the local educational agency:
    - i. May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and
    - ii. Is not required to consider the child as eligible for equitable provision of services in accordance with 8VAC20-81-150.
  - d. A local educational agency may not use a parent's refusal to consent to one service or activity to deny the parent(s) or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter. (34 CFR 300.300(d)(3))
- 5. Withholding consent.
  - a. If the parent(s) fails to respond to a request to consent for an initial evaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))
  - b. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent(s) has failed to respond. (34 CFR 300.300(c)(2))
  - c. If the parent(s) fails to respond to a request to provide consent for the initial provision of special education and related services, the local educational agency follows the provisions of subdivision 4 b of this subsection. (34 CFR 300.300(b)(3) and (4))
- 6. Consent for initial evaluation may not be construed as consent for initial provision of special education and related services. (34 CFR 300.300(a)(1)(ii))
- 7. The local educational agency shall make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. (34 CFR 300.300(a)(1)(iii) and (b)(2))
- 8. To meet the reasonable measures requirement of this section, the local educational agency shall have a record of its attempts to secure the consent, such as: (34 CFR 300.322(d) and 34 CFR 300.300(a), (b), (c) and (d)(5))
  - a. Detailed records of telephone calls made or attempted and the results of those calls;
  - b. Copies of correspondence (written, electronic, or facsimile) sent to the parent(s) and any responses received; and
  - c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- F. Parental rights regarding use of public or private insurance. Each local educational agency using Medicaid or other public benefits or insurance programs to pay for services required under this chapter, as permitted

under the public insurance program, and each local educational agency using private insurance to pay for services required under this chapter, shall provide notice to the parent(s) and obtain informed parental consent in accordance with 8VAC20-81-300. (34 CFR 300.154)

G. Confidentiality of information.

1. Access rights. (34 CFR 300.613)

- a. The local educational agency shall permit the parent(s) to inspect and review any education records relating to their children that are collected, maintained, or used by the local educational agency under this chapter. The local educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.
  - b. The right to inspect and review education records under this section includes:
    - i. The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;
    - ii. The right to request that the local educational agency 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
    - iii. The right to have a representative of the parent inspect and review the records.
  - c. A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has 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.
2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency, obtaining access to education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records.
3. Record on more than one child. If any education record includes information on more than one child, the parent(s) 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.
4. List of types and locations of information. Each local educational agency shall provide a parent(s) on request a list of the types and locations of education records collected, maintained, or used by the local educational agency.
5. Fees.
- a. Each local educational agency may charge a fee for copies of records that are made for a parent(s) under this chapter if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.
  - b. A local educational agency may not charge a fee to search for or to retrieve information under this section.
  - c. A local educational agency may not charge a fee for copying a child's IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E 7.
6. Amendment of records at parent's request.
- a. A parent(s) who believes 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 the local educational agency that maintains the information to amend the information.

- b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
    - c. If the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the parent(s) of the refusal and advise the parent(s) of the right to a hearing under subdivision 7 of this subsection.
7. Opportunity for a hearing. The local educational agency shall provide on 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.
8. Results of hearing. (34 CFR 300.620)
  - a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.
  - b. If, as a result of the hearing, the local educational agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall 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 agency.
  - c. Any explanation placed in the records of the child under this section shall:
    - i. Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and
    - ii. If the records of the child or the contested portion is disclosed by the local educational agency to any party, the explanation shall also be disclosed to the party.
9. Hearing procedures. A hearing held under subdivision 7 of this subsection shall be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act. (20 USC § 1232g; 34 CFR 300.621)
  - a. The local educational agency may:
    - i. Develop local procedures for such a hearing process; or
    - ii. Obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 H.
10. Consent. (34 CFR 300.32; 34 CFR 300.622)
  - a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized under the Family Education Rights and Privacy Act. (20 USC § 1232g).
  - b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:
    - i. Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services.
    - ii. If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the parent(s) resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located, and officials in the local educational agency where the parent(s) resides.
11. Safeguards.
  - a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

- b. Each local educational agency shall ensure that electronic communications via emails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record.
  - c. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
  - d. All persons collecting, maintaining, or using personally identifiable information shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.
  - e. Each local educational agency shall maintain 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.
- 12. Destruction of information.
  - a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.
  - b. This information shall 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 shall be maintained without time limitation.
  - c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.
- H. Electronic mail. If the local educational agency makes the option available, parent(s) of a child with a disability may elect to receive prior written notice, the procedural safeguards notice, and the notice of a request for due process, by electronic mail. (34 CFR 300.505)
- I. Electronic signature. 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 is 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. (Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 of the Code of Virginia)
- J. Audio and video recording.
  - 1. The local educational agency shall permit the use of audio recording devices at meetings convened to determine a child's eligibility under 8VAC20-81-80; to develop, review, or revise the child's IEP under 8VAC20-81-110 F; and to review discipline matters under 8VAC20-81- 160 D. The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent(s) does not inform the local educational agency, the parent(s) shall provide the local educational agency with a copy of the audio recording. The parent(s) shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes a part of the child's educational record.
  - 2. The local educational agency may have policies that prohibit, limit, or otherwise regulate the use of:
    - a. Video recording devices at meetings convened pursuant to this chapter; or
    - b. Audio or video recording devices at meetings other than those meetings identified in subdivision 1 of this subsection.
  - 3. These policies shall:
    - a. Stipulate that the recordings become part of the child's educational record;
    - b. Ensure that the policy is uniformly applied; and
    - c. If the policy prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter.

**8 VAC 20-81-180. Transfer of rights to students who reach the age of majority.**

- A. All rights accorded to the parent or parents under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) 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.
- B. Notification.
  1. Albemarle County Public Schools shall notify the parent or parents and the student of the following:
    - a. That educational rights under the Individuals with Disabilities Education Act will transfer from the parent or parents to the student upon the student reaching the age of majority. Such notification will be given at least one year prior to the student's eighteenth birthday; and
    - b. That procedures exist for appointing the parent or parents or, if the parent or parents are 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 C of this section.
  2. Albemarle County Public Schools shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student and parent(s) have been informed of the rights that will transfer to the student on reaching the age of 18.
  3. Albemarle County Public Schools shall provide any further notices required under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to both the student and the parent or parents.
  4. Albemarle County Public Schools may continue to invite the parent or parents, 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.
  5. The adult student may invite the student's parent or parents to participate in meetings where decisions are being made regarding the student's educational program.
- C. A student who has reached the age of 18 years shall be presumed to be a competent adult, and thus all rights under the Individuals with Disabilities Education Act shall transfer to the adult student, unless one of the following actions has been taken:
  1. 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;
  2. 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 procedures related to the student's educational program. Albemarle County 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;
  3. The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education pursuant to this chapter 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 matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures:
    - a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) 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:

- i. 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.
    - ii. 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.
  - b. The individuals who provide the certification in subdivision 3 of this subsection may not be employees of Albemarle County Public Schools currently serving the adult student or be related by blood or marriage to the adult student.
  - c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:
    - i. Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;
    - ii. 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
    - iii. Communicate such understanding in any meaningful way.
  - d. 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.
  - e. 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.
  - f. The adult student's ability to provide informed consent shall be re-certified at 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 local educational agencies. Challenges shall be provided in writing to Albemarle County Public Schools' administrator of special education who shall then notify the adult student and current appointed representative.
    - i. Upon receipt of a written challenge to the certification by the adult student, Albemarle County Public Schools may not rely on an educational representative, appointed pursuant to subsection D of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;
    - ii. Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, Albemarle County Public Schools may not rely on an educational representative, appointed pursuant to subsection D 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. Albemarle County Public Schools shall not rely upon the designated educational representative until the representative is affirmed by the court; or
4. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training, treatment and habilitation of persons with mental retardation 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.

- D. If Albemarle County Public Schools receives written notification of the action in subdivision C 3 of this section or if the state-operated program receives the judicial certification in subdivision C 4 of this section, Albemarle County Public Schools shall designate the parent or parents 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).
1. If the parent or parents or adult spouse is not available and competent to give informed consent, the administrator of special education or designee shall designate a competent individual from among the following:
    - a. An adult brother or sister;
    - b. An adult aunt or uncle; or
    - c. A grandparent.
  2. 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 Albemarle County Public Schools.

#### **8 VAC 20-81-200. Mediation.**

- A. Albemarle County Public Schools 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 Part B of the Act, including the identification, evaluation, or educational placement and services 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 request for a due process hearing. Mediation is available to resolve these issues at any time a joint request is made to the Virginia Department of Education from a school representative and a parent. (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.506(a)).**
- B. Albemarle County Public Schools shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is:
1. Voluntary on the part of both Albemarle County Public Schools and parent;
  2. Not used to deny or delay a parent's or parents' right to a due process hearing or to deny any other rights afforded under the act; and
  3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and **who** is knowledgeable in laws and regulations relating to the provision of special education and related services.
- C. Albemarle County Public Schools **or the Virginia Department of Education may establish procedures to offer parents and schools who choose not to use the mediation process an opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training and information center or community parent resource center in Virginia established under § 1471 or 1472 of the Act; or an appropriate alternative dispute resolution entity. The purpose of the meeting would be to explain the benefits of and encourage the parent(s) to use the mediation process. (34 CFR 300.506(b)(2))**
- D. In accordance with the Virginia Department of Education's procedures:
1. The Virginia Department of Education shall 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; **and trained in effective mediation techniques;**
  2. The mediator shall be chosen on a rotation basis; and
  3. The Virginia Department of Education shall bear the cost of the mediation process, including costs in subsection C of this section.

E. The mediation process shall:

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;
2. Conclude with a **written legally binding agreement, if an agreement is reached by the parties to the dispute, that:**
  - a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
  - b. Is signed by both the parent and a representative of the Albemarle County Public Schools who has the authority to bind the local educational agency; and
  - c. Is enforceable in any state or federal court of competent jurisdiction. mediation agreement if an agreement is reached by the parties to the dispute; and
3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings **of any state or federal court**. Parties to the mediation process may be required to sign a **consent form** containing a confidentiality pledge prior to the commencement of the mediation process.

F. An individual who serves as a mediator:

1. May not be an employee of any Albemarle County Public School or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process;
2. **Shall** not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the Virginia Department of Education; and
3. Is not an employee of Albemarle County Public Schools or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

**8 VAC 20-81-200. Complaint resolution procedures.**

- A. 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.
- B. A complaint may be filed by any individual, organization, or an individual from another state and **shall**
  1. Be in writing;
  2. Include the signature and contact information for the complainant;
  3. Contain a statement that Albemarle County Public Schools has violated the Individuals with Disabilities Education Act or these special education regulations
  4. Include the facts upon which the complaint is based;
  5. If alleging violations regarding a specific child, **include**
    - a. The name and address of the **residence of the** child;
    - b. The name of the school the child is attending; and
    - c. In the case of a homeless child or youth (**within the meaning of § 725(2) of the McKinney-Vento Homeless Act (42 USC 11434a(2))**), available contact information for the child, and the name of the **school the child is attending;**
    - d. **A description of the nature of the problem of the child, including facts relating to the problem; and**

- e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
  6. Address an action that occurred not more than one year prior to the date the complainant is received;
  7. Contain all relevant documents; and
  8. Be provided simultaneously to Albemarle County Public Schools, who would be serving the child.
- C. Within seven days of a receipt of a complaint, the Virginia Department of Education determines if the complaint is sufficient according to subsection B of this section. If it is determined that the complaint is insufficient, the Virginia Department of Education notifies the complainant and Albemarle County Public Schools in writing. The complainant is given directions for resubmission of the complaint to the Virginia Department of Education.
- D. Upon receipt of a **valid** complaint, the Virginia Department of Education shall initiate an investigation to determine whether Albemarle County Public Schools is in compliance with applicable law and regulations in accordance with the following procedures:
1. Within seven business days of the receipt of a **valid** complaint, the Virginia Department of Education shall send written notification in writing to each complainant and Albemarle County Public Schools against which the violation has been alleged, acknowledging receipt of a complaint,
    - a. The notification sent to Albemarle County Public Schools shall include:
      - i. A copy of the complaint;
      - ii. An offer of technical assistance in resolving the complaint;
      - iii. A statement that Albemarle County Public Schools has the opportunity to propose, at the local educational agency's discretion, a resolution of the complaint;
      - iv. Notification of the opportunity for the parties to engage voluntarily in mediation;
      - v. A request that Albemarle County Public Schools submit within 10 business days of receipt of the letter of notification either:
        - a) Written documentation that the complaint has been resolved; or
        - b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by Albemarle County Public Schools to the parent(s) of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, the local educational agency shall also simultaneously send the response and submitted documentation to that individual if a release signed by the parent(s) has been provided.
    - b. The notification sent to the complainant and Albemarle County Public Schools shall provide the complainant and the local educational agency 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 completion of the investigation within 60 calendar days.
    - c. If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of information.

2. If a reply from Albemarle County Public Schools 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 Albemarle County Public Schools 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.
3. The Virginia Department of Education shall review the complaint and reply filed by Albemarle County Public Schools to determine if further investigation or corrective action needs to be taken.
  - a. 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:
    - i. Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
    - ii. Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.
  - b. 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.
  - c. The Virginia Department of Education shall resolve a complaint alleging that the local educational agency has failed to implement a due process hearing decision.
4. During the course of the investigation, the Virginia Department of Education shall:
  - a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.
  - b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.
  - c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.
    - i. The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.
    - ii. An extension of the 60-calendar-day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.
    - iii. Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.
  - d. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:
    - i. Technical assistance activities;
    - ii. Negotiations; and
    - iii. Corrective actions to achieve compliance.
  - e. 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.

- f. Notify the parties in writing of any needed corrective actions and the specific steps that **shall** be taken by Albemarle County Public Schools to bring it into compliance **with applicable timelines**.
5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education must address:
  - a. **The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and**
  - b. Appropriate future provision of services for all children with disabilities.
- E. When Albemarle County Public Schools develops a plan of action to correct the violations, such plans 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.
- E. If Albemarle County Public Schools 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 an agency review and referral to the Virginia Board of Education, if deemed necessary.
- F. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that Albemarle County Public Schools 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 Albemarle County Public Schools until there is no longer any failure to comply with the applicable law or regulation.
- G. 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 procedures established by the Virginia **Department** of Education.
- H. **If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, under the provisions of 8VAC20-81-290, it is determined that the local educational agency has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent of Public Instruction 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 that local educational agency until there is no longer any failure to comply with the applicable law or regulation. (§ 22.1-214 E of the Code of Virginia)**
- I. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

#### **8 VAC 20-81-210. Due process hearing.**

- A. **The Virginia Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and local educational agencies with respect to any matter relating to the: (§ 22.1-214 of the Code of Virginia; 34 CFR 300.121 and 34 CFR 300.507 through 34 CFR 300.518)**
  1. **Identification of a child with a disability, including initial eligibility, any change in categorical identification, 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 Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia.
- C. The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.
- D. The Virginia Department of Education establishes procedures for:
  1. Providing special education hearing officers specialized training on the federal and state special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.
  2. Establishing the number of special education hearing officers who shall be certified to hear special education due process cases.
    - a. The Virginia Department of Education shall review annually its current list of special education hearing officers and determine the recertification status of each hearing officer.
    - b. Notwithstanding anything to the contrary in this subdivision, individuals on the special education hearing officers list on the effective date of this regulation shall be subject to the Virginia Department of Education's review of recertification status based on past and current performance.
    - c. The ineligibility of a special education hearing officer continuing to serve in this capacity shall be based on the factors listed in subdivision 3 c of this subsection.
  3. Evaluation, continued eligibility, and disqualification requirements of special education hearing officers:
    - a. The Virginia Department of Education shall establish procedures for evaluating special education hearing officers.
    - b. The first review of the recertification status of each special education hearing officer will be conducted within a reasonable time following the effective date of these regulations.
    - c. In considering whether a special education hearing officer will be certified or recertified, the Virginia Department of Education shall determine the number of hearing officers needed to hear special education due process cases, and consider matters related to the special education hearing officer's adherence to the factors in subdivision H 5 of this section, as well as factors involving the special education hearing officer's:
      - i. Issuing an untimely decision, or failing to render decision within regulatory time frames;
      - ii. Unprofessional demeanor;
      - iii. Inability to conduct an orderly hearing;
      - iv. Inability to conduct a hearing in conformity with the federal and state laws and regulations regarding special education;
      - v. Improper ex parte contacts;
      - vi. Violations of due process requirements;
      - vii. Mental or physical incapacity;
      - viii. Unjustified refusal to accept assignments;
      - ix. Failure to complete training requirements as outlined by the Virginia Department of Education;

- x. Professional disciplinary action; or
    - xi. Issuing a decision that contains:
      - a) Inaccurate appeal rights of the parents; or
      - b) No controlling case or statutory authority to support the findings.
    - d. When a special education hearing officer has been denied certification or recertification based on the factors in subdivision 3 c of this section, the Virginia Department of Education shall notify the special education hearing officer and the Office of the Executive Secretary of the Supreme Court of Virginia that the hearing officer is no longer certified to serve as a special education hearing officer. Upon notification of denial of certification or recertification, the hearing officer may, within 10 calendar days of the postmark of the letter of notification, request of the Superintendent of Public Instruction, or his designee, reconsideration of the decision. Such request shall be in writing and shall contain any additional information desired for consideration. The Superintendent of Public Instruction, or his designee, shall render a decision within 10 calendar days of receipt of the request for reconsideration. The Virginia Department of Education shall notify the hearing officer and the Office of the Executive Secretary of the Supreme Court of Virginia of its decision.
  - 4. Reviewing and analyzing the decisions of special education hearing officers, and the requirement for special education hearing officers to reissue decisions, relative to correct use of citations, readability, and other errors such as incorrect names or conflicting data, but not errors of law that are reserved for appellate review.
- E. Filing the request for a due process hearing. If any of the following provisions are challenged by one of the parties in a due process hearing, the special education hearing officer determines the outcome of the case going forward.
- 1. The request for due process shall allege a violation that happened not more than two years before the parent(s) or the local educational agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because: (34 CFR 300.507 (a) and 34 CFR 300.511(e) and (f))
    - a. The local educational agency specifically misrepresented that it had resolved the issues identified in the request; or
    - b. The local educational agency withheld information that it was required to provide under the IDEA.
  - 2. Albemarle County Public Schools may initiate a due process hearing to resolve a disagreement when the parent(s) withholds or refuses consent for an evaluation or 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. However, Albemarle County Public Schools may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child. (34 CFR 300.300(a)(3)(i) and 34 CFR 300.300(b)(3))
  - 3. In circumstances involving disciplinary actions, the parent(s) of a student with a disability may request an expedited due process hearing if the parent(s) disagrees with: (34 CFR 300.532)
    - a. The manifestation determination regarding whether the child's behavior was a manifestation of the child's disability; or
    - b. Any decision regarding placement under the disciplinary procedures.
  - 4. In circumstances involving disciplinary actions, Albemarle County Public Schools may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (34 CFR 300.532)
- F. Procedure for requesting a due process hearing. (34 CFR 300.504(a)(2), 34 CFR 300.507, 34 CFR 300.508 and 34 CFR 300.511)

1. A request for a hearing shall be made in writing to the Virginia Department of Education. A copy of that request shall be delivered contemporaneously by the requesting party to the other party.
  - a. If Albemarle County Public Schools initiates the due process hearing, Albemarle County Public Schools shall advise the parent(s) and the Virginia Department of Education in writing of this action.
  - b. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify Albemarle County Public Schools by telephone or by facsimile and forward a copy of the request to Albemarle County Public Schools as soon as reasonably possible, including those cases where mediation is requested.
  - c. The request for a hearing shall be kept confidential by Albemarle County Public Schools and the Virginia Department of Education.
2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:
  - a. The name of the child;
  - b. The address of the residence of the child (or available contact information in the case of a homeless child);
  - c. The name of the school the child is attending;
  - d. 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
  - e. A proposed resolution of the problem to the extent known and available to the parent(s) at the time of the notice.
3. The due process notice shall 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 believes the notice has not met the requirements listed in subdivision 2 of this subsection.
4. The party receiving the notice may challenge the sufficiency of the due process notice by providing a notification of the challenge to the special education hearing officer within 15 calendar days of receipt the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department of Education.
5. Within five calendar days of receipt of the notification challenging the sufficiency of the due process notice, the special education hearing officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2 of this subsection.
6. The special education hearing officer has the discretionary authority to permit either party to raise issues at the hearing 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.
7. Albemarle County Public Schools shall upon receipt of a request for a due process hearing, inform the parent(s) of the availability of mediation described in 8VAC20-81-190 and of any free or low-cost legal and other relevant services available in the area. Albemarle County Public Schools also shall provide the parent(s) with a copy of the procedural safeguards notice upon receipt of the parent's(s') first request for a due process hearing in a school year.

G. Amendment of due process notice. (34 CFR 300.508(d)(3))

1. A party may amend its due process notice only if:
  - a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or

- b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.
  2. The applicable timeline for a due process hearing under this part shall begin again at the time the party files an amended notice, including the timeline for resolution sessions.

H. Assignment of the special education hearing officer. (34 CFR 300.511)

1. Within five business days of receipt of the request for a nonexpedited hearing and three business days of receipt of the request for an expedited hearing:
  - a. Albemarle County Public Schools shall contact the Supreme Court of Virginia for the appointment of the special education hearing officer.
  - b. Albemarle County Public Schools contacts the special education hearing officer to confirm availability, and upon acceptance, notifies the special education hearing officer in writing, with a copy to the parent(s) and the Virginia Department of Education of the appointment.
2. Upon request, the Virginia Department of Education shall share information on the qualifications of the special education hearing officer with the parent(s) and Albemarle County Public Schools.
3. Either party has five business days after notice of the appointment is received or the basis for the objection becomes known to the party to object to the appointment by presenting a request for consideration of the objection to the special education hearing officer.
  - a. If the special education hearing officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an affidavit with the Executive Secretary of the Supreme Court of Virginia. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.
  - b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the Supreme Court of Virginia issues a decision on the request in accordance with its procedures.
  - c. If a special education hearing officer recuses himself or is otherwise disqualified, the Supreme Court of Virginia shall ensure that another special education hearing officer is promptly appointed.
4. A hearing shall not be conducted by a person who:
  - a. Has a personal or professional interest that would conflict with that person's objectivity in the hearing;
  - b. Is an employee of the Virginia Department of Education or the local educational agency that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a special education hearing officer; or
  - c. 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.
5. A special education hearing officer shall:
  - a. Possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;
  - b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
  - c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

- I. Duration of the special education hearing officer's authority.
  1. The special education hearing officer's authority begins with acceptance of the case assignment.
  2. The special education hearing officer has authority over a due process proceeding until:
    - a. Issuance of the special education hearing officer's decision; or
    - b. The Supreme Court of Virginia revokes such authority by removing or disqualifying the special education hearing officer.
- J. Child's status during administrative or judicial proceedings. (34 CFR 300.518; 34 CFR 300.533)
  1. Except as provided in 8VAC20-81-160, during the pendency of any administrative or judicial proceeding, the child shall remain in the current educational placement unless the parent(s) of the child and Albemarle County Public Schools;
  2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent(s), shall be placed in the public school until the completion of all the proceedings;
  3. If the decision of a special education hearing officer agrees with the child's parent(s) that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent(s) for the purposes of subdivision 1 of this section;
  4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8VAC20-81-160;
  5. 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 8VAC20-81-150; or
  6. If the proceeding involves an application for initial services under Part B of the Act from Part C and the 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 special education and related services, the school division shall provide those special education and related services that are not in dispute between the agency and the school division.
- K. Rights of parties in the hearing. (§ 22.1-214 C of the Code of Virginia; 34 CFR 300.512)
  1. Any party to a hearing has the right to:
    - a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
    - b. Present evidence and confront, cross-examine, and request that the special education hearing officer compel the attendance of witnesses;
    - c. Move that the special education hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
    - d. Obtain a written or, at the option of the parent(s), electronic, verbatim record of the hearing; and
    - e. Obtain written or, at the option of the parent(s), electronic findings of fact and decisions.
  2. Additional disclosure of information shall be given as follows:
    - a. 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

- b. A special education hearing officer may bar any party that fails to comply with subdivision 2 a of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
  - 3. Parental rights at hearings.
    - a. A parent(s) involved in a hearing shall be given the right to:
      - i. Have the child who is the subject of the hearing present; and
      - ii. Open the hearing to the public.
    - b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), even though the applicable appeal period has expired.
- L. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall: (34 CFR 300.513(d), 34 CFR 300.509 and 34 CFR 300.511)
  - 1. Maintain and monitor the due process hearing system and establish procedures for its operation;
  - 2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;
  - 3. Develop and disseminate a model form to be used by the parent(s) to give notice in accordance with the contents of the notice listed in subdivision F 2 of this section;
  - 4. Maintain and ensure that each local educational agency maintains a list of persons who serve as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;
  - 5. 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;
  - 6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated; and
  - 7. Ensure 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 identification.
- M. Responsibilities of the parent. In a due process hearing, the parent(s) shall: (34 CFR 300.512)
  - 1. Decide whether the hearing will be open to the public;
  - 2. Make timely and necessary responses to the special education hearing officer personally or through counsel or other authorized representatives;
  - 3. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
  - 4. Provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;
  - 5. Provide documents and exhibits necessary for the hearing within required timelines; and
  - 6. Comply with timelines, orders, and requests of the special education hearing officer.
- N. Responsibilities of the local educational agency. The local educational agency shall: (34 CFR 300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511)
  - 1. Maintain a list of the persons serving as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;
  - 2. Upon request, provide the parent(s) a form for use to provide notice that they are requesting a due process hearing;

3. Provide the parent(s) a copy of their procedural safeguards upon receipt of the parent's(s') first request for a due process hearing in a school year;
  4. Inform the parent(s) at the time the request is made of the availability of mediation;
  5. Inform the parent(s) of any free or low-cost legal and other relevant services if the parent(s) requests it, or anytime the parent(s) or the local educational agency initiates a hearing;
  6. Assist the special education hearing officer, upon request, in securing the location, transcription, and recording equipment for the hearing;
  7. Make timely and necessary responses to the special education hearing officer;
  8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;
  9. Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;
  10. Provide documents and exhibits necessary for the hearing within required timelines;
  11. Comply with timelines, orders, and requests of the special education hearing officer;
  12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;
  13. Forward all necessary communications to the Virginia Department of Education and parties as required;
  14. Notify the Virginia Department of Education when a special education hearing officer's decision has been appealed to court by either the parent(s) or the local educational agency;
  15. Forward the record of the due process proceeding to the appropriate court for any case that is appealed;
  16. Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s), within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.
    - a. If the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.
    - b. 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 local educational agency.
    - c. The implementation plan:
      - i. Must be based upon the decision of the hearing officer;
      - ii. Shall include the revised IEP if the decision affects the child's educational program; and
      - iii. Shall contain the name and position of a case manager in the local educational agency charged with implementing the decision; and
  17. 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 special education hearing officer's decision.
- O. Responsibilities of the special education hearing officer. The special education hearing officer shall: (34 CFR 300.511 through 34 CFR 300.513; and 34 CFR 300.532)

1. Within five business days of agreeing to serve as the special education 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.
2. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The special education hearing officer shall send copies of correspondence to the parties or their attorneys.
3. Conduct a prehearing conference via a telephone conference call or in person unless the special education 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 special education hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference.
4. Upon request by one of the parties to schedule a prehearing conference, determine the scope of the conference and conduct the conference via telephone call or in person. If the special education hearing officer deems such conference unnecessary, the special education hearing officer shall document in writing to the parties, with copy to the Virginia Department of Education, the reason(s) for not holding the conference.
5. At the prehearing stage:
  - a. Discuss with the parties the possibility of pursuing mediation and review the options that may be available to settle the case;
  - b. Determine when an IDEA due process notice also indicates a Section 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; and
  - c. Document in writing to the parties, with copy to the Virginia Department of Education, prehearing determinations including a description of the right to appeal the case directly to either a state or federal court.
6. 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.
7. Ascertain from the parent(s) whether the hearing will be open to the public.
8. Ensure that the parties have the right to a written or, at the option of the parent(s), an electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision.
9. 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 business days prior to the hearing.
10. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8VAC20-81-220 when the parent(s) or guardian is not available or cannot be located.
11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing.
12. Not require the parties or their representatives to submit briefs as a condition of rendering a decision. The special education hearing officer may permit parties to submit briefs, upon the parties' request.
13. 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.
14. Report findings of fact and decisions in writing to the parties and their attorneys and the Virginia Department of Education. If the hearing is an expedited hearing, the special education 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.

15. Include in the written findings:

- a. Findings of fact relevant to the issues that are determinative of the case;
- b. Legal principles upon which the decision is based, including references to controlling case law, statutes, and regulations;
- c. An explanation of the basis for the decision for each issue that is determinative of the case; and
- d. If the special education hearing officer made findings that required relief to be granted, then an explanation of the relief granted may be included in the decision.

16. Subject to the procedural determinations described in subdivision 17 of this subsection, the decision made by a special education hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

17. In matters alleging a procedural violation, a special education hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

- a. Impeded the child's right to a free appropriate public education;
- b. Significantly impeded the parent's(s') opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or
- c. Caused a deprivation of educational benefits. Nothing in this subdivision shall be construed to preclude a special education hearing officer from ordering a local educational agency to comply with procedural requirements under 34 CFR 300.500 through 34 CFR 300.536.

18. Maintain a well-documented record and return the official record to the local educational agency upon conclusion of the case.

19. Determine in a hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements in 8VAC20-81-160.

P. Authority of the special education hearing officer. The special education hearing officer has the authority to: (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.515, 34 CFR 300.512 and 34 CFR 300.532)

1. Exclude any documentary evidence that was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing;
2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior to the hearing without the consent of the other party;
3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence:
  - a. The special education hearing officer shall rule on any party's motion to quash or modify a subpoena. The special education hearing officer shall issue the ruling in writing to all parties with copy to the Virginia Department of Education.
  - b. The special education 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.
  - c. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the special education hearing officer does not quash or modify the subpoena after objection;

4. Administer an oath to witnesses testifying at a hearing and require all witnesses to testify under oath or affirmation when testifying at a hearing;
5. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the special education hearing officer's rules and with relevant laws and regulations;
6. Excuse witnesses after they testify to limit the number of witnesses present at the same time or sequester witnesses during the hearing;
7. 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 special education hearing officer determines that the best interests of the child will be served;
8. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with 8VAC20-81-170;
9.
  - a. 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 shall 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 special education hearing officer may grant such requests for cause, but not for personal attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties and to the Virginia Department of Education.
  - b. In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension;
10. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the special education hearing officer's orders;
11. Set guidelines regarding media coverage if the hearing is open to the public;
12. Enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided; and
13. Hold an expedited hearing when a parent of a child with a disability disagrees with any decision regarding a change in placement for a child who violates a code of student conduct, or a manifestation determination, or a local educational agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.
  - a. The hearing shall occur within 20 school days of the date the due process notice is received. The special education hearing officer shall make a determination within 10 school days after the hearing.
  - b. Unless the parents and local educational agency agree in writing to waive the resolution meeting or agree to use the mediation process:
    - i. A resolution meeting shall occur within seven days of receiving notice of the due process notice; and
    - ii. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process notice. c. Once a determination is made, the special education hearing officer may:
    - iii. Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of special education

disciplinary procedures or that the child's behavior was a manifestation of the child's disability;  
or

- iv. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Q. Timelines for nonexpedited due process hearings. (34 CFR 300.510 and 34 CFR 300.515)

1. Resolution meeting.

- a. Within 15 days of receiving notice of the parent's(s') due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process notice that:
  - i. Includes a representative of the local educational agency who has decision making authority on behalf of the local educational agency; and
  - ii. May not include an attorney of the local educational agency unless the parent is accompanied by an attorney.
- b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process request.
- c. The meeting described in subdivisions 1 a and 1 b of this subsection need not be held if:
  - i. The parent and the local educational agency agree in writing to waive the meeting; or
  - ii. The parent and the local educational agency agree to use the mediation process described in this chapter.
- d. The parent and the local educational agency determine the relevant members of the IEP Team to attend the meeting.
- e. The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents' participation in the resolution meeting.

2. Resolution period.

- a. If the local educational agency has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.
- b. Except as provided in subdivision 3 of this subsection, the timeline for issuing a final decision begins at the expiration of this 30-calendar-day period.
- c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2 a and 2 b of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.
- d. If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the provision in 8VAC20-81-110 E 4), the local educational agency may at the conclusion of the 30-calendar-day period, request that a special education hearing officer dismiss the parent's due process request.

- e. If the local educational agency fails to hold the resolution meeting specified in subdivision 1 a of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a special education hearing officer to begin the due process hearing timeline.
  3. Adjustments to 30-calendar-day resolution period. The 45-calendar-day timeline for the due process starts the day after one of the following events:
    - a. Both parties agree in writing to waive the resolution meeting;
    - b. After either the mediation or resolution meeting starts but before the end of the 30-calendar-day period, the parties agree in writing that no agreement is possible; or
    - c. If both parties agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.
  4. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subdivisions 1 a and 1 b of this subsection, the parties shall execute a legally binding agreement that is:
    - a. Signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and
    - b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.
  5. Agreement review period. If the parties execute an agreement pursuant to subdivision 4 of this subsection, a party may void the agreement within three business days of the agreement's execution.
  6. The special education hearing officer shall ensure that, not later than 45 calendar days after the expiration of the 30-calendar-day period under subdivision 2 or the adjusted time periods described in subdivision 3 of this subsection:
    - a. A final decision is reached in the hearing; and
    - b. A copy of the decision is mailed to each of the parties.
  7. The special education hearing officer shall 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.
  8. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parent(s) and child involved.
  9. The local educational agency is not required to schedule a resolution session if the local educational agency requests the due process hearing. The 45-day timeline for the special education hearing officer to issue the decision after the local educational agency's request for a due process hearing is received by the parent(s) and the Virginia Department of Education. However, if the parties elect to use mediation, the 30-day resolution process is still applicable.
- R. Timelines for expedited due process hearings. (34 CFR 300.532(c))
  1. The expedited due process hearing shall occur within 20 school days of the date the due process request is received. The special education hearing officer shall make a determination within 10 school days after the hearing.
  2. Unless the parents and local educational agency agree in writing to waive the resolution meeting or agree to use the mediation process described in 8VAC20-81-190:
    - a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint.
    - b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

- c. The resolution period is part of, and not separate from, the expedited due process hearing timeline.
3. Document in writing within five business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.
- S. Costs of due process hearing and attorneys' fees. (34 CFR 300.517)
  1. The costs of an independent educational evaluation ordered by the special education hearing officer, special education hearing officer, court reporters, and transcripts are shared equally by the local educational agency and the Virginia Department of Education.
  2. The local educational agency is responsible for its own attorneys' fees.
  3. The parent(s) are responsible for their attorneys' fees. If the parent(s) is the prevailing party, the parent(s) has 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.
  4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent(s) of a child with a disability who is the prevailing party.
  5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Act and its implementing regulations and 8VAC20-81-310.
- T. Right of appeal. (34 CFR 300.516)
  1. A decision by the special education hearing officer in any hearing, including an expedited hearing, is final and binding unless the decision is appealed by a party in a state circuit court or 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 Act without regard to the amount in controversy.
  2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.
  3. If the special education hearing officer's decision is appealed in court, implementation of the special education hearing officer's order is held in abeyance except in those cases where the special education hearing officer has agreed with the child's parent(s) that a change in placement is appropriate in accordance with subsection J of this section. In those cases, the special education hearing officer's order shall be implemented while the case is being appealed.
  4. If the special education hearing officer's decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200.
- U. Nothing in this chapter prohibits or limits rights under other federal laws or regulations. (34 CFR 300.516)

#### **8 VAC 20-81-220. Surrogate parent procedures.**

- A. Role of surrogate parent. The surrogate parent appointed in accordance with this section represents the child in all matters relating to the identification, evaluation, or educational placement of the child; or the provision of a free appropriate public education to the child. (34 CFR 300.519(g))
- B. Appointment of surrogate parents.
  1. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:
    - a. The parent(s) or guardians are allowing relatives or private individuals to act as a parent;

- b. 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 foster parent for that child may serve as the parent of the child for the purposes of any special education proceedings; or
    - c. 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 § 63.2-908 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.
  2. Unless one of the exceptions outlined in subdivision 1 of this subsection applies, the local educational agency shall appoint a surrogate parent 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))
    - a. No parent, as defined in 8VAC20-81-10, can be identified;
    - b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent;
    - c. The child is a ward of the state and either subdivision 1 a or 1 b of this subsection is also met; or
    - d. The child is an unaccompanied homeless youth as defined in § 725(6) of the McKinney-Vento Homeless Assistance Act (42 USC § 11434 a(6)) and § 22.1-3 of the Code of Virginia and either subdivision 1 a or 1 b of this subsection is met.
  3. The local educational agency shall appoint a surrogate parent as the educational representative for a child who reaches the age of majority if the local educational agency has received written notification that the child is not competent to provide informed consent in accordance with 8VAC20-81-180 C 3 or C 4 and no family member is available to serve as the child's educational representative.
  4. If the child is a ward of the state, the judge overseeing the child's case may appoint a surrogate parent as the educational representative of the child. The appointed surrogate shall meet the requirements of subdivision E 1 c of this section. (34 CFR 300.519(c))
- C. Procedures for surrogate parents.
  1. The local educational agency shall establish procedures in accordance with the requirements of this chapter, for determining whether a child needs a surrogate parent. (34 CFR 300.519(b))
  2. The local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the local educational agency superintendent or designee within 30 calendar days of the determination that a surrogate parent is necessary. (34 CFR 300.519(b) and (h))
    - a. The appointment having been effected, the local educational agency shall notify in writing:
      - i. The child with a disability, aged two to 21, inclusive, as appropriate to the disability;
      - ii. The surrogate parent-appointee; and
      - iii. The person charged with responsibility for the child.
    - b. The surrogate parent serves for the duration of the school year for which the surrogate parent is appointed unless a shorter time period is appropriate given the content of the child's IEP.
    - c. If the child requires the services of a surrogate parent during the summer months, the local educational agency shall extend the appointment as needed, consistent with timelines required by law.

- d. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the local educational agency.
  3. Each local educational agency shall establish procedures that include conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:
    - a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8VAC20-81-180;
    - b. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of services;
    - c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
    - d. The parent(s), whose whereabouts were previously unknown, are now known and available; or e. The appointed surrogate parent is no longer eligible according to subsection E of this section.
- D. Identification and recruitment of surrogate parents.
  1. The local educational agency shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for the local educational agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.
  2. Individuals who are not on the local educational agency list may be eligible to serve as surrogate parents, subject to the local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local educational agency's determination of surrogate eligibility. Other factors that warrant the local educational agency's attention include:
    - a. Consideration of the appointment of a relative to serve as surrogate parent;
    - b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately; and
    - c. The appropriateness of the child's participation in the selection of the surrogate parent.
- E. Qualifications of surrogate parents. (34 CFR 300.519(d), (e), and (f))
  1. Albemarle County Public Schools shall ensure that a person appointed as a surrogate:
    - a. Has no personal or professional interest that conflicts with the interest of the child;
    - b. Has knowledge and skills that ensure adequate representation of the child;
    - c. Is not an employee of the Virginia Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child; and
    - d. Is of the age of majority.
  2. 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.
  3. If the child is an unaccompanied homeless youth, appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program may be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate shall 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.

- F. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter. (34 CFR 300.519(g)).

#### **8VAC20-81-230 Local educational agency administration and governance**

- A. Albemarle County Public Schools shall ensure that the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.
- B. Plans, applications, and reports. (§ 22.1-215 of the Code of Virginia; 34 CFR 300.200 and 34 CFR 300.212)
1. Albemarle County Public Schools shall prepare annually and submit to the Virginia Department of Education an application for funding under Part B of the Act in accordance with the requirements outlined by the Virginia Department of Education. The annual plan shall include:
    - a. Assurances that the local educational agency has in effect policies and procedures for the provision of special education and related services in compliance with the requirements of the Act, the policies and procedures established by the Virginia Board of Education, and any other relevant federal and state laws and regulations;
    - b. A report indicating the extent to which the annual plan for the preceding period has been implemented;
    - c. Budgets outlining the use of the federal funds; and
    - d. Any revisions to the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail, if applicable, in accordance with subdivision G 2 of this section.
  2. Prior to submission to the Virginia Department of Education, the annual plan shall be reviewed by the local school division's local advisory committee, and approved by the local school board.
  3. Albemarle County Public Schools shall ensure that the annual plan, and all required special education policies and procedures, including the revisions to those policies and procedures, which are necessary for ensuring a free appropriate public education to a child, are available for public inspection.
- C. Provision of or payment for special education and related services. (34 CFR 300.154(b))
1. If any public noneducational agency is otherwise obligated under federal or state law, regulation, or policy to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to children with disabilities, the public noneducational agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement. A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context.
  2. If any public noneducational agency fails to provide or pay for the special education and related services described in subdivision 1 of this subsection, the local educational agency shall provide or pay for the services to the child in a timely manner. The local educational agency may then claim reimbursement for the services from the public noneducational agency that failed to provide or pay for the services and that agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subdivision 21 of 8VAC20-81-20.
- D. Local advisory committee. A local advisory committee for special education, appointed by each local school board, shall advise the school board through the division superintendent.
1. Membership.

- a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities.
    - b. The committee shall include one teacher.
    - c. Additional local school division personnel shall serve only as consultants to the committee.
  2. The functions of the local advisory committee shall be as follows:
    - a. Advise the local school division of needs in the education of children with disabilities;
    - b. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;
    - c. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;
    - d. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;
    - e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and f. Participate in the review of the local school division's annual plan, as outlined in subdivision B 2 of this section.
  3. Public notice shall 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.
  4. Committee meetings shall be held at least four times in a school year and shall be open to the public.
- E. Regional special education programs. (§ 22.1-218 of the Code of Virginia; Jointly Owned and Operated Schools and Jointly Operated Programs (8VAC20-280))
1. Albemarle County, as part of the Piedmont Regional Education Program, designed to provide regional programs to serve children with disabilities residing within the Albemarle County jurisdiction, shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.
  2. Albemarle County Public Schools, which has elected to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, participates in a joint board that has been established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.
  3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program. The director shall be responsible for the administration of programs and services that are approved by the joint board.
- F. Transition from infant and toddler programs to early childhood special education programs. (34 CFR 300.124)
1. Children who are participating in early intervention programs under Part C of the Act and who will participate in preschool programs under Part B shall be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.
  2. The local school division shall participate in transition planning conferences when notified by the designated local Part C early intervention agency (not less than 90 days and not more than nine months before the child is eligible for preschool services), in accordance with § 1437(a)(9) of the Act, and its federal implementing regulations.:

3. A child with a disability whose second birthday falls on or before September 30 may begin attending Part B preschool programs at the start of the school year if:
  - a. The child meets the Part B eligibility criteria; and
  - b. An IEP has been developed and signed by the parent(s).
- G. Programs for children with disabilities in regional or local jails. (34 CFR 300.101 and 34 CFR 300.102)
  1. Albemarle County Public Schools does serve a regional in its jurisdiction, and shall be responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 calendar days.
  2. Albemarle County Public Schools, with the regional in its jurisdiction shall establish and maintain an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special education and related services in the jail. A copy of any revisions to this agreement shall be submitted with the annual plan specified in subsection B of this section.
- H. Albemarle County Public Schools shall cooperate with the U.S. Department of Education's efforts under § 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children. (34 CFR 300.213)
- I. Early Intervening Services. Each local educational agency shall implement early intervening services in accordance with the provisions of 8VAC20-81-260 H. of the Regulations Governing Special Education Programs for Children with Disabilities in Virginia.
- J. Access to instructional materials.
  1. Albemarle County Public Schools shall ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. (34 CFR 300.172(b) and (c))
  2. To meet the requirements of subdivision 1 of this subsection for blind persons or other persons with print disabilities, the local educational agency may coordinate with the National Instructional Materials Access Center (NIMAC). (34 CFR 300.172(a) and (c))
    - a. Albemarle County Public Schools shall provide an assurance to the Virginia Department of Education that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. This assurance shall be provided as part of the Annual Plan requirements outlined in subsection B of this section.
    - b. Albemarle County Public Schools shall inform the Virginia Department of Education on an annual basis whether or not it chooses to coordinate with the NIMAC.
    - c. If the local educational agency coordinates with the NIMAC, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for the purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to do the following:
      - i. Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
      - ii. Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
    - d. The requirements of subdivision J 2 c of this section shall apply to print instructional materials published after July 19, 2006.

3. Nothing in this subsection relieves Albemarle County Public Schools of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (34 CFR 300.172(b))
4. Definitions applicable to this subsection.
  - a. The term "timely manner" has the same meaning as the defined in 8VAC20-81-10.
  - b. The term, "blind or other person with print disabilities" means children with disabilities who qualify to receive books and other publications produced in specialized formats. A child with a disability qualifies under this provision if the child meets one of the following criteria: (2 USC § 135a; 36 CFR 701.6(b)(1) and 34 CFR 300.172(a) and (e))
    - i. Blind person whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees;
    - ii. Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;
    - iii. Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or
    - iv. Person certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.
  - c. The term "competent authority" is defined as follows: (2 USC § 135a; 36 CFR 701.6(b)(2))
    - i. In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).
    - ii. In the case of a reading disability from organic dysfunction: doctors of medicine who may consult with colleagues in associated disciplines.
  - d. The term "print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by the Virginia Department of Education or the local educational agency for use by students in the classroom. (20 USC § 1474(e)(3)(C))
  - e. The term "specialized formats" has the meaning given the term in 17 USC § 121(d)(3), and means Braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities, and with respect to print instructional materials, include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities. (20 USC § 1474(e)(3)(D); 34 CFR 300.172(e)):

### Full Education Opportunity Goal

Albemarle County Public Schools is committed to providing full educational opportunities for children in our community from birth through age 21. In cooperation with the community services board, through the Blue Ridge Infant and Toddler Interagency Council, an interagency network of services develops programs to serve children with disabilities from birth through age two. The Albemarle County early childhood special education program serves children with disabilities ages two through five. The continuum of special education services is available for children two through 21 at our local schools. Career education, prevocational education, and vocational education are provided.