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AN OPEN LETTER
TO
MEMBERS OF THE VIRGINIA BOARD OF EDUCATION,
ACTING SUPERINTENDENT,
AND
THE OFFICE OF SPECIAL EDUCATION AND STUDENT SERVICES

COMMENTS TO THE PROPOSED SPECIAL EDUCATION REGULATIONS

Dear Mr. Schroder, Dr. DeMary, and Members of the Virginia Board of Education:

During your analysis of the proposed special education regulations, I ask that you review the Findings and Purposes of the Individuals with Disabilities Education Act of 1997 as stated in 20 U.S.C. § 1400:

> **(c) FINDINGS**.
> (1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. **Improving educational results** for children with disabilities **is an essential element of our national policy** of ensuring **equality of opportunity**, **full participation** ,**independent living**, and **economic self-sufficiency** for individuals with disabilities.
>
> (5) Over 20 years of research and experience has demonstrated that **the education of children with disabilities can be made more effective** by
>
> (A) having **high expectations** for such children and ensuring their **access in the general curriculum** to the maximum extent possible;
>
> (B) **strengthening the role of parents** and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school **and at home;**[1]

[1] 20 U.S.C. § 1400(c)

In revising Virginia's special education regulations and operating procedures, please remember that the Individuals with Disabilities Education Act was enacted to ensure that all children with disabilities received a free appropriate public education. The law was not enacted to protect state departments of education or local school districts.

> **(d) PURPOSES**.--The purposes of this title are--
>
> (1)
>
> (A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services **designed to meet their unique needs** and **prepare them for employment and independent living**;
>
> (B) to **ensure that the rights of children with disabilities and parents of such children are protected**;[2]

With the Standards of Learning and higher standards for teachers, Virginia has embraced accountability and improved educational results in public education. I support accountability and your standards of learning.

When Congress amended the IDEA, they urged states to embrace high academic standards and clear performance goals for children with disabilities:

> In enacting the IDEA Amendments of 1997, the Congress found that research, demonstration, and practice over the past 20 years . . . have demonstrated that **an effective educational system now and in the future must maintain high academic standards and clear performance goals for children with disabilities**, **consistent with the standards and expectations for all students in the educational system**, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals.[3]

I offer these recommendations based on my experiences as an attorney whose practice is limited to representing children with disabilities and their parents in disputes with local and state education agencies. My wife and I co-authored ***Wrightslaw: Special Education Law*** (the best-selling book about special education law) and built **Wrightslaw**, the #1 website about special education law and advocacy.

In my proposed revisions (below), I include the regulation number, followed by the exact language from the proposed regulation as **VDOE Proposal**, followed by **Wright Proposal** which includes my recommendations. My deletions are characterized ~~with a strikethrough;~~ and my ***additions are in bold*.** In my **Rationale,** I offer the reasoning behind my proposed change in the regulation.

[2] 20 U.S.C. § 1400(d)
[3] Section 651(a)(6)(A) of the Act.

ANALYSIS OF CERTAIN PROPOSED REGULATIONS WITH ALTERNATIVE PROPOSAL

20-80-10 Definitions - Due Process Hearing

VDOE Proposal: "Due process hearing" means an impartial procedure used to resolve disagreements over issues related to provision of a free appropriate public education that arise between a parent or parents and a local school division.

Wright Proposal: "Due process hearing" means an impartial procedure used to resolve disagreements over issues related to provision of a free appropriate public education that arise between a parent or parents and a local school division ***and / or the Virginia Department of Education.***

Rationale: Since a dispute about a free appropriate public education can arise with a local educational agency and / or the state department of education, a parent must be able to initiate a special education due process hearing against the local educational agency and / or the state educational agency. Neither the United States Code nor Fourth Circuit caselaw exempts the Virginia Department of Education from a special education due process hearing. IDEA-97 and Fourth Circuit caselaw clearly establish that the State can be a defendant in special education litigation brought by a parent.

To be eligible for federal financial assistance, the Virginia Department of Education must demonstrate that it has policies and procedures in effect to ensure that all children with disabilities have available a free appropriate public education (20 U.S.C. § 1412(a)(1)). The Virginia Department of Education is responsible for supervising local educational agencies (LEAs). Under some circumstances, the Virginia Department of Education may provide "free appropriate public education" or "direct services:"

> **20 U.S.C. § 1412 - State Eligibility**
>
> **(22)(b) State Education Agency as Provider of Free Appropriate Public Education or Direct Services** -- If the State education agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency -
>
> > (1) shall comply with any additional requirements of section 1413(a), as if such agency were a local educational agency

The Individuals with Disabilities Education Act defines a "due process hearing" as follows:

> **(f) Impartial Due Process Hearing**.
>
> **(1) In general**.--Whenever a complaint has been received under subsection (b)(6)[4] or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which

[4] (b)(6) an opportunity to present **complaints** with respect **to any matter** relating to the **identification, evaluation, or educational placement** of the child, or the provision of a free appropriate public education to such child;

> shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.[5]

Because due process hearings are the main vehicle to resolve disputes, the statute does not limit due process hearings to local educational agencies.

At present, I am counsel in two cases where the sole defendant is the Virginia Department and Virginia Board of Education. In one case, the state has asserted that a specific federal regulation was established without legal authority and has refused to honor the regulation, despite the fact that the state incorporated this regulation as their "proposed regulation." The parents requested a due process hearing against the Virginia Department of Education. The Hearing Officer held that the state was responsible and liable to the parents, independent of any claim the parents have against the LEA.[6]

In the second case, the parents filed a complaint against an LEA with the Virginia Department of Education. The Virginia Department of Education found that the LEA had violated the IDEA, failed to provide the child with a free appropriate education, and ordered the LEA to take specific corrective actions. The school district refused to take corrective actions. The State Department of Education acquiesced in their misconduct, and failed to enforce their own corrective actions.

The Code of Federal Regulations at 34 C.F.R. § 300.660 states that:

> **State Complaint Procedures**
>
> **Adoption of State complaint procedures**.
> (b) Remedies for denial of appropriate services. In resolving a complaint in which it has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B must address:
>
> > (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child;
> > (2) Appropriate future provision of services for all children with disabilities.

In the second case, the parent did not receive any "corrective action" until after they filed for a special education due process hearing against their LEA and the State Department of Education. The LEA settled and provided the corrective action. The case has continued against the State Department of Education and is pending at the Review Decision level.

If a parent cannot utilize the due process procedure to complain about misconduct by the state, then the sole remedy will be to file "mandamus" lawsuits in federal court against the state. Since the federal regulations and caselaw do not exempt the state as a party in due process litigation, federal courts may still require a due process action against the state as a condition of exhaustion of administrative remedies.

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[5] 20 U.S.C. § 1415(f)
[6] See February 7, 2000 decision by Hearing Officer Davis in *White v. Virginia Department of Education.*

20-80-30(4). Functions of the Virginia Department of Education

VDOE Proposal: Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities.

Wright Proposal: Develop procedures for implementing ***and enforcing*** state and federal laws and regulations pertaining to the education of children with disabilities.

Rationale: State Departments of Education has a legal obligation to ensure compliance with the requirements of the IDEA at the state and local levels. The Virginia Department of Education is responsible for **implementing and enforcing** the state and federal laws and regulations.

Historically, the Department has not accepted responsibility for enforcing the IDEA and accompanying federal regulations. In the last Monitoring Report, the U. S. Department of Education found that Virginia was "Noncompliant" in General Supervision including "State Monitoring of LEAs." The Department's position in recent litigation has been that the Virginia Constitution gives to local school boards of education the sole authority and responsibility for operating the public schools.[7]

It is imperative that the Virginia Department of Education and Board of Education have clear regulations that place responsibility for **implementing and enforcing** the IDEA on the Virginia Department of Education and the Virginia Board of Education.

20-80-52(B)(1)(b)(3) Referral for Evaluation

VDOE Proposal: **None:** The preceding section (B)(1)(b)(2) states that the special education administrator, or designee shall:

(2) Advise the parent or parents of their rights in the parent's or parents' native language.

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[7] Portion of trial transcript follows: "The Virginia Constitution vests primary authority for education in local school boards and Virginia regulations implementing the IDEA provide for final administrative review by an independent hearing officer selected by the Virginia Supreme Court, but not -- they do not provide a mechanism that usurps the authority or the responsibility of the local school division. Any decision by the State Review Officer must be implemented by Henrico County School Board.

That is the constitutional scheme in Virginia. It is not the constitutional scheme in many other states which have a unified educational system. But in Virginia, by the constitution, Article 8 of the constitution, the authority for running the local public schools and providing a free education is the responsibility of the local school divisions.

Excuse me. Finally, I submit that if the Hearing Officer is. inclined to interpret the new federal regulation [34 C.F.R. § 300.514(c)] retroactively or to interpret the new federal regulation to impose authority upon the State in the circumstances of this case, that in order to, to preserve the argument in the record, I submit that the new federal regulation exceeds the statutory authority granted to the United States Department of Education under the IDEA. [Oral argument by Assistant Attorney General on January 17, 2000 before Hearing Officer Davis in *White v. Virginia Department and Board of Education,* transcript pages 49-51]"

Wright Proposal: New section (3) provision listed as 20-80-52(B)(1)(b)(3)

> ***(B)(1)(b)(3) The above notification to the parent or parents [(B)(1)(b)(2)] shall include a copy of the special education Parent Handbook prepared by the Virginia Department of Education.***

Rationale: Parents of children with disabilities should receive the Virginia Department of Education's Parent Handbook. Many school districts had boxes of undistributed handbooks but refused to distribute them to parents. In many cases, the sole initial notice parents receive is in fine print on the back of the parental "consent to evaluate" form which the parent must sign and return to the school district. In other cases, when parents receive a copy of the notification statement that they are allowed to keep, the statement appears to discuss permission to test and evaluate only. This form is not seen by the parent as relating to all parental rights and responsibilities in special education issues.

20-80-54(F)(5)(a) Timelines

VDOE Proposal: Evaluations shall be completed within 65 business days of the provision of notice specified in subdivision 4 of this subsection.

Wright Proposal: Evaluations shall be completed within ~~65 business~~ ***40 calendar*** days of the provision of notice specified in subdivision 4 of this subsection. ***A copy of the evaluation and report will be provided immediately to the parent or parents of the child.***

Rationale: To develop a special education program that benefits the child, evaluations of the child need to be done expeditiously. Evaluators in the private sector evaluate children and complete evaluation reports within two or three weeks. Why do we expect less of public school evaluators?

Sixty-five business days is equal to or greater than ninety calendar days. Moreover, the school district is not required to complete the child's IEP for another 30 days. At a minimum, this means that four months or more may pass before the child is evaluated, found eligible, and begins to receive the needed services.

If a child is referred at the beginning of the school year in September, evaluations and eligibility will not be completed until mid-December at the earliest. An IEP may not be developed or implemented until mid-January, at the earliest. Half of the academic year is over. Children with disabilities cannot afford to lose a half an academic year.

Children with disabilities who receive special education services are usually far behind their peers. These children have no time to waste.

Many school districts do not provide the report to the parent until an eligibility meeting or IEP meeting has already begun. The staff expect the parent to make decisions based upon reports that

they have not had the opportunity to review in advance of the meeting. This process immediately creates distrust and an atmosphere of suspicion, at the beginning of the relationship. Parents need the reports at least five days prior to any meeting, thus the 40 calendar day timeline vis a vis the 45 day eligibility meeting timeline discussed below.

20-80-56(A) Eligibility

VDOE Proposal: The local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services is made within 65 business days after: . . .

Wright Proposal: The local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services is made within ~~65 business~~ ***45 calendar*** days after: . . .

Rationale: (Same as above) The proposed regulation is not in the interests of the child. Delays providing appropriate educational services damage children with disabilities. These children have no time to waste.

Children can and should be evaluated for special education services quickly. Sixty-five business days is equal to or greater than ninety calendar days. These delays are unnecessary and harmful. Furthermore, the school district is not required to develop the child's IEP for another month. Four months or more pass between evaluation and initiation of services. For a child referred at the beginning of the school year (i.e. September 5, 2000), a decision about eligibility would not be required until December 11, 2000 at the earliest. This child's IEP may not be implemented until mid- January. This child will lose half a year.

20-80-62(D)(6) Individualized Educational Program - (Audio and video recording)

VDOE Proposal: The local educational agency has the option to require, prohibit, limit or otherwise regulate the use of audio or video recording devices at IEP meetings. If the local educational agency has a policy that prohibits or limits the use of recording device at IEP meetings . . .

Wright Proposal: ***Neither a parent nor a*** ~~The~~ local educational agency ~~has the option to require,~~ ***may*** prohibit, limit or otherwise regulate the use of audio or video recording devices at IEP meetings. ***Any such recording is a part of a child's educational record and the parent and local education agency are entitled to a copy of this recording.*** ~~If the local educational agency has a policy that prohibits or limits the use of recording device at IEP meetings: . . .(and strike through subsections a and b.~~ ***Parents and school district staff can record IEP meetings without restrictions. If one party records a meeting, the other party is entitled to a copy of the recording.***

Rationale: The amended IDEA strengthens the role of parents of children with disabilities.[8] The VDOE proposed regulation that would allow "prohibiting, limiting or otherwise regulating the use of audio or video recording devices at IEP meetings" would weaken the role of parents with disabilities.

Appendix A to the federal regulations clarifies the role of parents as "equal participants, along with school personnel, in developing, reviewing and revising the IEP for their child."

> **5. What is the role of the parents, including surrogate parents, in decisions regarding the educational program of their children?**
>
> The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents
>
> (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child;
>
> (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and
>
> (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

An IEP meeting often includes five to ten (or more) public school staff and one parent who is usually overwhelmed. Tape recorded meetings allows parents to listen and reflect on what was accomplished and agreed upon during the meeting and be able to share it with their spouse. During IEP meetings, many important issues are discussed, debated, resolved, or not resolved. Because of time pressures, some of these issues may not be recorded in the child's IEP and may subsequently be forgotten. A recording of the meeting protects against important issues being overlooked, forgotten or not resolved.

A recording provides equal protection to the parent and school, should disagreements about the IEP arise later.

20-80-62(E)(1)(b) Individualized Educational Program - Development, review and revision of the IEP.

VDOE Proposal: 1. In developing each child's IEP, the IEP team shall document consideration of:

b. The results of the initial or most recent evaluation of the child; . . .

Wright Proposal:

b. The results of the initial ~~or~~ ***and the*** most recent evaluation of the child; . . .

[8] 20 U.S.C. § 1400 (c)(5)(B)

Rationale: The disjunctive word, "or" will be used to justify inclusion of old evaluations rather than the most recent evaluation. The child's IEP is required to include "a statement of the child's **present levels of educational performance**. . ."

This requirement about "Present levels of educational performance " means that information from the most recent evaluation must be included in the child's IEP.

IEPs often include outdated evaluation results, and fail to include findings from more recent evaluations. If a recent evaluation of "present levels of educational performance" shows that the child has not make progress or has regressed in the areas of weakness that were being addressed in the special education program, it is not unusual that these recent test results are omitted from the IEP. IEPs must include data from the most recent evaluation in the "statement of the child's present levels of educational performance."

Appendix A clarifies the purposes of IEP goals, objectives and benchmarks:

> **Measurable annual goals, including Benchmarks or Short-Term Objectives**
> Measurable annual goals, including benchmarks or short-term objectives, are critical to the strategic planning process used to develop and implement the IEP for each child with a disability.
>
> The purpose of both is to enable a child's teacher(s), parents, and others involved in developing and implementing the child's IEP, to gauge, at intermediate times during the year, how well the child is progressing toward achievement of the annual goal.[9]

To accomplish the purpose of measurable goals, objectives and benchmarks which is to evaluate the child's progress or lack of progress over time, one uses data from the child's earlier or initial evaluation to compare to the most recent evaluation. Without data about the child's levels of educational performance, it is impossible to measure what the child has accomplished, and whether the child's program needs to be more intense or less intense.

20-80-66(B)(3) Private school placement - Reimbursement for private school placement.

VDOE Proposal: If the parent or parents of a child with a disability . . . enroll the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the local school division, a court or a hearing officer may require the agency to reimburse the parent or parents of the cost of that enrollment if the court or hearing officer finds that the local school division 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 . . .

Wright Proposal: If the parent or parents of a child with a disability . . . enroll the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the local school division, ***and the local school division is unwilling to reimburse the parent or parents for such placement,*** a court or a hearing officer may require the agency to reimburse the

[9] 34 C.F.R. Part 300, Appendix A

parent or parents of the cost of that enrollment if the court or hearing officer finds that the local school division 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 . . .

Rationale: School districts should be able to reimburse parents, without resorting to litigation. Previously, parents have made unilateral private placements and, after presenting their information and rationale for the placement, have been reimbursed for the placement by their school districts. The VDOE proposed regulation can be interpreted to mandate that school districts may not reimburse a parent, even if it concedes that an appropriate program is not available within the school district and the private placement is appropriate. School districts may assume that they must initiate litigation before they can reimburse parents for a unilateral placement. School districts should not be required to litigate against parents when school districts concur with the actions of the parents. This proposed change clarifies that school districts can reimburse parents voluntarily.

20-80-76(G)(2) Due Process Hearing - Responsibilities of the Virginia Department of Education.

VDOE Proposal: The Virginia Department of Education shall:

2. Ensure that the local educational agency is informed of its responsibilities in carrying out the requirement of state and federal statutes and regulations:

Wright Proposal: The Virginia Department of Education shall:

2. Ensure that the local educational agency ~~is informed of its responsibilities in carrying~~ ***complies with*** the requirement of state and federal statutes and regulations:

Rationale: LEAs should comply with the law. "Ensuring that the LEA is informed of its responsibilities" is a meaningless statement. At issue is whether or not the LEA carries out its responsibilities and, if not, whether the state looks the other way or requires the LEA to meet the requirements of the law.

20-80-76(G)(7) Due Process Hearing - Responsibilities of the Virginia Department of Education.

VDOE Proposal: The Virginia Department of Education shall:

7. Provide findings and decisions to the state advisory committee and to the public after deleting any personally identifiable information.

Wright Proposal: The Virginia Department of Education shall:

7. Provide findings and decisions to the state advisory committee, ~~and~~ to the public, ***and post said findings and decisions on the Virginia Department of Education website,*** after deleting any personally identifiable information.

Rationale: Due process decisions should be available on the Internet. Many states have been posting their due process / review decisions on their websites for years. Although Virginia claims to be a leader in computer technology and the Internet, Virginia has not been a leader in this area.

The process of posting decisions is simple. It would take secretarial support staff less than fifteen minutes to scan and post a due process decision to the Virginia Department of Education website. The redacted decision would be scanned into the computer, and printed as an Adobe "PDF file." The "PDF" file would then be sent by "FTP" (file transfer protocol) to the Department's site.

For example, last month's special education due process Hearing Officer's decision against your Department and Board of Education in *White v Virginia Department of Education* was posted to this attorney's website in less than fifteen minutes, using the process outlined above. This attorney's letter to the Acting Superintendent and Chairman of the Board of Education requesting a due process hearing against the Virginia Department of Education was also converted to a PDF file and posted to the website (with the consent of the clients) within minutes.

In less than five minutes, this letter was converted from a Word document to a PDF file and sent by FTP to the author's website. These documents are located at:

Due Process Letter:	http://www.wrightslaw.com/virginia/WhiteDPltr.pdf
Due Process Decision:	http://www.wrightslaw.com/law/caselaw/VASEA_white.pdf
This letter:	http://www.wrightslaw.com/virginia/ltrregs.pdf

20-80-76(K) Due Process Hearing - Authority of the hearing officer.

VDOE Proposal: The hearing officer has the authority to:

5. Excuse witnesses after they testify to limit the number of expert witnesses present at the same time or sequester witnesses during the hearing.

6. Refer the matter in dispute to a conference . . . and shall be exercised only when the hearing officer determines that the best interest of the child will be served.

Wright Proposal: The hearing officer has the authority to:

5. Excuse witnesses after they testify**.** ~~to limit the number of expert witnesses present at the same time or sequester witnesses during the hearing.~~ ***At the request of either party, all witnesses, including expert witnesses, shall be sequestered. The parents and a party representative shall not be sequestered.***

6. ***With the consent of the parties,*** refer ~~Refer~~ the matter in dispute to a conference . . . and shall be exercised only when the hearing officer determines that the best interest of the child will be served.

Rationale: The standard of practice in Virginia special education due process hearings is that all witnesses, with the exception of the parents and a representative of the LEA, are sequestered and leave after they testify. Experts do not sit in on testimony by experts on behalf of the other party. Allowing this practice would increase the cost of hearings for both parties and would not benefit the child.

Referral to a conference should only be used if both parties agree.

20-80-76(N)(5) Due Process Hearing - Finality of hearing officer's decision.

VDOE Proposal: If the hearing officer's decision is not implemented as required by this chapter, a complaint may be filed with the Virginia Department of Education for an investigation through the state's complaint system.

Wright Proposal: If the hearing officer's decision is not implemented as required by this chapter, ~~a complaint may be filed with the Virginia Department of Education for an investigation through the state's complaint system.~~ ***the Virginia Department of Education will implement the hearing officer's decision immediately.***

Rationale: After receiving a favorable decision, a parent should not have to file a complaint against the local education agency with the Virginia Department of Education, as was done by the Whites in *White v. Virginia Department of Education and Virginia Board of Education*. The state is responsible for ensuring that the law is enforced. The IDEA clearly states that the decision must be implemented by the local school division if "the hearing officer has agreed with the child's parent or parents that a change in placement is appropriate."[10]

If a local school district refuses to implement the decision, the state must assume this responsibility, instead of requiring the parent to file another complaint against the local education agency and the State Department and Board of Education.

[10] See 34 C.F.R. § 300.514(c) and Virginia Proposed Regulation 20-80-76(E) This is federal law and universal case law throughout the country, that the decision must be implemented, even if the school district appeals.

As is clear in *White v. Virginia Department of Education and Virginia Board of Education*, the Virginia Complaint process is a farce. The local school district and the Virginia Department of Education used delaying tactics to avoid providing the services that were ordered by the Review Officer and again, most recently by Hearing Officer Davis.

20-80-78(C)(4)(b)(2) Complaint procedures.

VDOE Proposal: (b)(2) An extension of the 60 calendar days limit may occur if exceptional circumstances exist with respect to a particular complaint.

Wright Proposal: (b)(2) An extension of the 60 calendar days limit may occur ***only*** if ***the complainant agrees that*** exceptional circumstances exist with respect to a particular complaint ***and consents to the extension of time.***

Rationale: Parents have a reasonable expectation that the state agency charged with monitoring and enforcement will do its job. Complaints should be resolved promptly. Almost all "circumstances" have been "exceptional" and complaints are rarely resolved within sixty days. In the last Monitoring Report, the U. S. Department of Education found Virginia "Noncompliant" in resolving complaints within 60 days.

20-80-78(C)(4)(d) Complaint procedures.

VDOE Proposal: 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.

Wright Proposal:

> ~~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.~~
>
> ***After deleting any personally identifiable information, findings of noncompliance and corresponding recommendations shall be posted on the Virginia Department of Education website, provided to all members of the Virginia Board of Education, all members of the Virginia Special Education Advisory Board, all members of the local education agency Board of Education, all members of the local education agency governing Board of Supervisors or City Council, and all members of the local education agency special education advisory board. A personally identifiable report shall be issued to the parties to the complaint, and directly to the Superintendent of Public Instruction for further action.***

Rationale: Parents, taxpayers and governing boards have a right to know about these complaints. When complaints are buried, they are forgotten and history repeats itself. Individual

school board members are often unaware that their school district was found out of compliance by the Virginia Department of Education. School Boards cannot fix problems when the state fails to advise them of problems.

END OF RESPONSE TO PROPOSED REGULATIONS

The National Council of Disability issued a recent report and found that state departments and state boards of education had failed miserably in ensuring that IDEA-97 was enforced. They recommended that enforcement authority be transferred to the U. S. Department of Justice for enforcement action against the states. If the past pattern and practices in Virginia continue in the future and Virginia continues to be deficient, then the Commonwealth has no one to blame but themselves when the U. S. Department of Justice intervenes in Virginia's operation of programs for children with disabilities. (See attached portion of NCD report.)

Many proposals offered on behalf of the Virginia School Board Association seem designed to help local education agencies avoid their duties and responsibilities under IDEA-97. These recommendations are not designed to assist local boards in their supervision of the local education agency nor do they "emphasize special education and related services designed to meet (the child's) . . . unique needs and prepare them for employment and independent living."

Because the recommendations you received from the Virginian Coalition for Children with Disabilities do serve the purpose of protecting the rights of children and parents, I strongly support these recommendations.

If you have any questions or would like additional information, I would be honored to provide whatever may be necessary.

Thank you for your review of this letter and the multitudes of other similar comments I expect that you will receive.

Sincerely,

Peter W. D. Wright

This letter was mailed to the following members
of the
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and
Virginia Department of Education individuals:

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