

Side by Side Comparison of Select Provisions of the Special Education Regulations

Topic	VDOE Current Reg	2006 Fed Reg <i>(Bold type = IDEA 2004 changes to existing law)</i>	VDOE Proposed Reg
Parental Consent for Termination of Services	VA-specific right. Special education services will be terminated "if team determines that the child is no longer a child with a disability who need special education and related services <i>and if parental consent is secured</i> " [Italics added]	None	Eliminated existing right of parent consent "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 8 VAC 20-81-170 C., <i>but parental consent is not required.</i> " [Italics added]
Parental Consent for Services for Transfer Students	VA-specific right. <i>For in-state transfers:</i> "The LEA shall adopt and implement the exiting IEP of the former LEA with consent of the parent or parents or develop a new IEP for the child. The new LEA may provide interim services agreed to by both the parent or parents and the LEA. If the parent or parents and the LEA are unable to agree on interim services, the LEA must implement the existing IEP until a new IEP is developed or implemented."	<i>For in-state transfers:</i> "If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either— (1) Adopts the child's IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements..."	Eliminated existing right of parent consent. <i>For in-state or out-of-state transfers:</i> "The new LEA shall provide a free appropriate public education to the child, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous LEA, until the new LEA (a) adopts the child's IEP from the previous LEA; or (b) conducts an evaluation, if determined necessary by the LEA, and develops and implements a new IEP that meets the requirements of this chapter."

<p>Child Study Committees (CSCs)</p>	<p>VA-specific procedures and protections:</p> <p>--CSCs must include a parent when meeting to determine if an evaluation will be completed</p> <p>-- CSCs "meet within 10 business days following receipt of the referral"</p> <p>-- Referrals for evaluation from a CSC are "made within 5 business days following the determination" to refer for evaluation</p> <p>-- The CSC cannot "delay the evaluation of a child who is suspected of having a disability"</p> <p>-- CSCs can "attempt classroom interventions during the evaluation process, but such interventions cannot delay the evaluation"</p>	<p>None</p> <p>Requirement for referral procedures left up to states: "All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated"</p>	<p>Eliminated existing requirements for CSCs:</p> <p>Each LEA "shall have procedures, including timelines, to document the screening of children enrolled in the division"</p>
<p>FBAs - Definition</p>	<p>An FBA is defined as "a process to determine the underlying cause or functions of a child's behavior that impede learning of the child with a disability or the learning of the child's peers."</p>	<p>None</p>	<p>"Functional behavioral assessment' means a process to determine the underlying cause or functions of a child's behavior that impede the learning of the child with a disability or the learning of the child's peers. A functional behavioral assessment may be a review of existing data. "</p> <p>"Required parental consent. Informed parental consent is required before:</p> <p>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;"</p>

<p>FBA - Discipline Procedures</p>	<p>"The LEA shall ensure that the following procedures are implemented either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement under subdivision 1 of this subsection, including placements in interim alternative educational settings:</p> <p>(1) The IEP team shall convene to develop a behavioral assessment plan if the LEA did not conduct a functional behavioral assessment and implement a behavioral plan for the student before the behavior resulted in the removal described in subdivision 1 of this subsection.</p> <p>(2) The functional behavioral assessment may be a review of existing data that can be completed at the IEP meeting. Parental consent is not necessary to review existing data.</p> <p>(3) The IEP team shall reconvene as soon as practicable after developing the assessment plan and completing the assessments required by the plan. The IEP team shall develop and implement appropriate behavioral interventions to address the behavior.</p> <p>(4) If the student had a behavioral intervention plan before engaging in the behavior, the IEP team shall convene to review the plan and its implementation and modify the plan and its implementation, as necessary, to address the behavior."</p>	<p>"A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must— 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."</p>	<p>"A child with a disability who is long-term removed [more than 10 consecutive school days] receives services during the disciplinary removal so as to enable the student to:... (3) 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. "</p>
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<p>Transition</p>	<p>"Beginning at age 14 (or younger, if determined by the IEP team), and updated annually"</p>	<p>"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, thereafter"</p>	<p>"Prior to the child entering secondary school but beginning 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."</p>
<p>Timeline for Evaluations</p>	<p>65 business days from the <i>date of referral</i>. No exceptions allowed to the timeline. Applies to both initial evaluations and reevaluations. [Italics added]</p>	<p>"Determine whether a child is a child with a disability within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe"</p>	<p>"Within 65 business days after the parent has provided written consent to the evaluation process." Exceptions allowed when the parent refuses to produce child; if child enrolls in another LEA during the 65 days; and if the parent and the LEA agree in writing (no limit on how long the extension will be.)</p> <p><i>(The 65 business day timeline does not apply to reevaluations, which must be done prior to the third anniversary of the date eligibility was determined.)</i></p>
<p>Developmental Delay - Definition</p>	<p>The LEA may include developmental delay as one of the disability categories when determining whether a preschool child, aged two to five, inclusive, or a school-aged child, aged five to eight, inclusive, is eligible for special education services</p>	<p>"A State that adopts a definition of developmental delay under §300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five). A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction."</p>	<p>"The LEA may include developmental delay as one of the disability categories when determining whether a preschool child, aged two by September 30 to five, inclusive, is eligible under this chapter."</p> <p><i>(This is the FCPS definition of DD.)</i></p>

<p>Autism - Definition</p>	<p>'Autism' means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in this chapter. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied." [Italics added]</p>	<p>"Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied...." [Italics added]</p>	<p>"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied. [Italics added]</p>
<p>Autism - Eligibility Criteria</p>	<p>None</p>	<p>None</p>	<p>NEW SECTION: (<i>Uses eligibility criteria that nearly mirrors FCPS</i>)</p> <p>"Eligibility as a child with autism. 1. Any of the Pervasive Developmental Disorders, such as Autistic Disorder, Asperger's Disorder, Rhetts Disorder, Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified, including Atypical Autism as indicated in diagnostic references, such as the</p>

		<p><i>Diagnostic and Statistical Manual of Mental Disorders (DSM)</i>, may be included under the eligibility category of autism. Students with autism demonstrate 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 (i.e., hand or finger flapping or twisting, or complex whole-body movements), persistent preoccupation with parts of objects.</p> <p>2. A minimum of six characteristics from the following communication and social interaction areas shall be present to be considered for eligibility.</p> <p>a. One or more 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.</p>
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Eligibility Term – Emotional Disturbance	"Emotional disturbance"	"Emotional disturbance"	"Emotional disturbance"
Eligibility Term – Mental Retardation	"Mental retardation"	"Mental retardation"	"Mental retardation"
Discipline Procedures – progressing in the general education curriculum	<p>"For a subsequent removal that is less than 10 school days in a school year, but exceeds 10 cumulative school days of removal, and which does not constitute a change in placement under subdivision 1 of this subsection, the LEA shall provide services to the extent determined necessary to enable the</p>	<p>"After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the</p>	<p>"Services during short-term removals. a. The LEA 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.</p>

	student to <i>appropriately progress in the general curriculum</i> and appropriately advance toward achieving the goals of the student's IEP." [Italics added]	child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to <i>continue to participate in the general education curriculum</i> , although in another setting, and to progress toward meeting the goals set out in the child's IEP" [Italics added]	b. For additional short-term removals, which do not constitute a pattern, the LEA shall provide services to the extent determined necessary to enable the student to <i>continue to participate in the general education curriculum</i> and to progress toward meeting the goals of the student's IEP." [Italics added]
Due Process Hearing System	Impartial hearing officers appointed by the VA Supreme Court.	Impartial hearing officer; must not be an employee of SEA or LEA involved in educating or caring for child.	Hearing system entirely controlled by VDOE; hearing officers trained and appointed by VDOE.
Implementation Plans	LEA shall develop an implementation plan within 45 calendar days of rendering a decision or the withdrawal of a hearing request.	No enforcement mechanisms other than the right to bring a civil action in any court of competent jurisdiction	Eliminated
LEA participation on local advisory committees (LACs)	LEA "personnel serve only as consultants to the committee." They are prohibited from acting as voting members.	VA-specific regulation There is no federal requirement for LACs.	LEA staff permitted to sit on LACs and act as voting members
Gender and ethnic representation on local advisory committees	None	VA-specific regulation There is no federal requirement for LACs.	"The committee shall include representation of gender and ethnic population of the local school division."
Manifestation Determination Review (MDR)	The behavior will be found not to have been caused by the student's disability if (a) In relationship to the behavior subject to the disciplinary action, the student's IEP and placement were appropriate, and the special education services,	(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.	The behavior will be found to have been caused by the student's disability if (1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (2) If the conduct in question was

	<p>supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement; (b) The student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to disciplinary action; and (c) The student's disability did not impair the student's ability to control the behavior subject to the disciplinary action.</p>		<p>the direct result of the local educational agency's failure to implement the child's IEP.</p>
<p>Response to Intervention</p>	<p>"The group may determine that a child has a specific learning disability if: 1. The child does not achieve commensurate with the child's age and ability levels in one or more of the areas listed in subdivision 2 of this subsection if provided with learning experiences appropriate for the child's age and ability levels; and 2. The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas.."</p>	<p>"(1) The child does not achieve adequately for the child's age or to meet State-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 State-approved grade-level standards: (2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-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..."</p>	<p>"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 K.1.a. of this section 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 8 VAC 20-81-70. "Scientifically-based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and includes research that:</p>

			<ol style="list-style-type: none">1. employs systematic, empirical methods that draw on observation or experiment,2. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn,3. relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;4. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;5. ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and6. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review."
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<p>Short Term Objectives</p>	<p>"The IEP for each child with a disability shall include...2. A statement of measurable annual goals, including benchmarks or short-term objectives, related to: a. Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and b. Meeting each of the child's other educational needs that result from the child's disability."</p>	<p>"For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;</p>	<p>"For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives. a. The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally."</p>
<p>IEP Progress Reports</p>	<p>An IEP must include: "A statement of a. How the child's progress toward the annual goals will be measured; b. How the child's parent or parents will be regularly informed (through such means as periodic report cards), at least as often as the parent or parents are informed of the progress of their children without disabilities, concerning: (1) Their child's progress toward the annual goals; and (2) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year."</p>	<p>An IEP must include: "A description of— (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;</p>	<p>An IEP must include: "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 goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards."</p>