

Details about the results of the Special Education Regulation process

JustChildren worked with the Coalition for Students with Disabilities, the Virginia Education Association and hundreds of families and other groups to support high expectations and parent involvement. The list of most critical issues (below) was developed by JustChildren, but most of the items were a focus for many.

1. Maintain Protections for Parent Involvement and School-Family Partnership:

a. We supported current requirements for parental consent to any change in their children's IEPs.

The draft Virginia regulations cut the requirement that parents consent before their children's IEP services were partially or completely terminated. Grassroots support successfully restored current Virginia regulations that require parental consent to *any* change in their children's IEPs before the change can happen.

b. We supported current requirements for Local Special Education Advisory Committees

(SEACs). The draft regulations allowed school system employees to be voting members of SEACs (currently, they only serve as consultants), a change that would have compromised SEACs' abilities to provide an objective advisory role. We succeeded in limiting the number of school system employees who can be voting members. The new regulations require that one teacher may serve as a voting member, but do not allow other school system employees to serve.

c. We supported maintaining the requirement that IEP progress reports be provided to students with disabilities at least as often as they are provided to other students. The draft regulations proposed to cut this requirement. We successfully lobbied for the final regulations to maintain current requirements that specify that IEP progress reports should be provided to parents at the same intervals as to non-disabled peers.

d. We support including short-term objectives in all IEPs. The draft regulations only required short-term objectives if the student was being assessed with an alternate assessment aligned to alternate achievement standards, which is all that is required by federal law. We lobbied to include short-term objectives in all IEPs in order to help both families and providers understand children's progress and challenges and to help ensure long-term success. However, the final regulations do not require short-term objectives for all students; they only require that IEP teams document their consideration of including short-term objectives for all students with disabilities.

e. We support changing the definition of who can serve as a parent for a child in foster care. The Board was very concerned about services for foster children, but the Attorney General's Office had concluded that a provision of Virginia law prevents them from allowing foster parents to act as parents without a court order. JustChildren worked with Delegate David Toscano and other members of the General Assembly and the law now supports the involvement of foster parents.

2. Help Students with Disabilities Succeed:

a. We supported keeping the current age of eligibility for the Developmental Delay classification.

The original proposal would have limited the Developmental Delay category to ages 2 through 5, but the Board of Education extended the category one additional year. Previously students up to age nine could be found eligible in the category of developmental delay. Background: many children under the age of 9 years old have disabilities that cannot be determined accurately because of their young age. Allowing them to be found eligible under the more general category of ‘developmental delay’ avoids inaccurate labeling and potentially inappropriate or unnecessary services. Although we lobbied to retain current requirements, the final regulations limit the age to 2 through 6 for the Developmental Delay classification.

b. We supported current requirements that schools conduct functional behavioral assessments (FBAs) and/or develop behavior intervention plans (BIPs) for any student who has been suspended for more than ten days in a row or total in a school year.

The draft regulations omitted Virginia’s current requirement that an IEP team must do a FBA and/or a BIP for a child who has been suspended for more than 10 days in a row or, in some circumstances, total in the school year *when the behavior is found not to be a manifestation of the child’s disability*. We believe FBAs and BIPs are necessary to address behaviors that prevent children from accessing educational services and help prevent future problems. We lobbied unsuccessfully to make these protections mandatory in the final regulations. FBAs and BIPs continue to be required when the behavior is found to be a manifestation of the child’s disability and during periods of long-term removal “as appropriate.” LEA’s are also still required to address behavior in the child’s IEP if it impedes the child’s learning.

c. We opposed the overly restrictive requirements to determine eligibility. The draft regulations included a very restrictive set of eligibility criteria for many disabilities. If children did not meet all of the requirements, they could be found ineligible and not receive the help they need. We lobbied to have these requirements removed from the draft. Although we failed to have them completely removed, we succeeded in obtaining revisions to the criteria that addressed some of our concerns about particular requirements.

d. We opposed the elimination of Child Study Committees and the lack of clarity about Response to Intervention (RTI) and special education evaluations. The draft regulations eliminated Child Study procedures that provide a uniform system for addressing referrals for evaluations for special education and that should be continued. In addition, they lacked strong enough language about RTI, because they only stated that RTI cannot “needlessly delay” evaluations; the federal requirement is stronger. Although we lobbied unsuccessfully for the final regulations to retain Child Study Committees, the final regulations do include a framework for Child Find procedures AND make it clear that evaluation timelines begin from the date the special education administrator receives the referral; not from the date of parental consent.

3. Support Fairness:

a. We opposed rights provided to schools that are not also provided to parents at due process hearings, and we opposed shifting oversight of hearing officers to VDOE. Under the draft regulations, when parents filed a due process hearing request, schools would have been allowed to raise issues at the hearing even if the issue had not been raised in the hearing request. When schools filed against parents, the parents would not have had the same right. We successfully lobbied to extend this same right to parents. In addition, the draft regulations proposed that hearing officers should be overseen

by the Department of Education, thereby potentially creating conflicts of interest. We successfully lobbied to have hearing officers continue to be overseen by the Virginia Supreme Court.

b. We opposed the provision preventing schools from being held accountable for a student's failure to meet IEP goals or benchmarks. The draft regulations proposed a provision, which is not based on federal regulations, that schools have no accountability even if a child repeatedly fails to meet IEP goals. We successfully lobbied to eliminate this provision.

4. We supported these items that were included in the final draft of the regulations:

a. Proposed requirement maintaining transition planning and transition services beginning at the age of 14. This provision will enhance student success by enabling schools, students and families to work together to implement options for employment and continued education. Final regulations maintain the start of transition planning for 14 year old students.

b. Continuation of local Special Education Advisory Committees (SEACs). Recommendations to address unmet needs and improve services are central to the role of SEACs. School officials benefit from this avenue of family involvement, and current regulations require school districts to have SEACs.

c. Continuation of allowing referrals for special education evaluations to come from anyone concerned about whether a student might need special education services. Limiting the people who can make referrals can cause students to "fall through the cracks." Virginia's regulations continue to allow referrals to come from anyone who is concerned, continuing a helpful safeguard for student success.