

A REVIEW OF THE DRAFT SPECIAL EDUCATION REGULATIONS

	Current	Draft	Impact
Parental Consent	<p>Parents must consent to <i>any</i> change in their child’s IEP.</p> <p style="text-align: right;"><i>20-80-70(E)(1)(d)</i></p>	<p>Parental consent is not required before any partial or complete termination of special education services.</p> <p style="text-align: right;"><i>20-81-170(E)(2)(f)</i></p>	<ul style="list-style-type: none"> • Less cooperation between schools and parents. • Likely increase in due process hearings filed by parents who feel marginalized. • Less parental participation in IEPs may diminish the accuracy of the changes to the IEP, and is likely to result in reductions in the overall success of students with disabilities. <p>JUSTCHILDREN’S POSITION: Maintain current provisions.</p>
Short-term Goals	<p>All IEPs must include benchmarks or short-term objectives for the annual goals.</p> <p style="text-align: right;"><i>20-80-62</i></p>	<p>Short-term benchmark goals are only required for students participating in the Virginia Alternate Assessment Program. <i>20-81-110</i></p>	<ul style="list-style-type: none"> • Parental participation in their children’s education will be hampered because parents will not have benchmarks to show how their children are progressing towards annual IEP goals. <p>JUSTCHILDREN’S POSITION: Maintain current provisions.</p>
Definition of “Parent”	<p>Foster parents can only be parents for special education purposes when (1) biological parents’ rights have been terminated, <u>and</u> (2) the foster parents have a long, ongoing relationship with the child, <u>and</u> (3) when the child is in permanent foster care.</p> <p style="text-align: right;"><i>20-80-10</i></p>	<p>The federal law has changed the definition of ‘Parent’ to simplify the instances in which a foster parent can be a parent for special education purposes, but the draft does not use this definition (see 34 C.F.R. § 300.30). Under the federal law, a foster parent may act as parent whenever the biological parent is not fulfilling this role.</p> <p style="text-align: right;"><i>20-81-10</i></p>	<ul style="list-style-type: none"> • Failing to adopt the federal definition of when a foster parent can be a parent <ul style="list-style-type: none"> ○ maintains the confusing, complicated definition of when foster parents can be parents, which is detrimental to foster children, ○ makes it more difficult to ensure the rights of students in foster care who also have disabilities will be protected by their foster parents if their biological or adoptive parents are not going to meetings at school about their children’s education and the like, and ○ rejects a change in the federal law that also ensures biological or adoptive parents will still be the parent for special education purposes when they want and are able to do so. <p>JUSTCHILDREN’S POSITION: Adopt federal definition of parent.</p>
SEAC Members	<p>The composition of the Local Special Education Advisory Committee (SEAC) must include no specific number of parents of children with disabilities and individuals with disabilities. Local school division personnel may only serve as consultants. <i>20-80-90(E)</i></p>	<p>Although it requires that parents of children with disabilities or individuals with disabilities must compose a majority of the committee, school division personnel may become voting members of the committee.</p>	<ul style="list-style-type: none"> • Permitting local school division personnel to become voting members of the local SEACs compromises their independence and therefore their usefulness. <p>JUSTCHILDREN’S POSITION: Maintain current provisions.</p>
Eligibility Criteria	<p>To be qualified for special education, a child only needs to meet the definition of disability (34 C.F.R. §300.8).</p> <p style="text-align: right;"><i>20-80-10</i></p>	<p>To qualify for special education under a number of disability categories, a child must both meet the criteria in the definition of the disability <u>and</u> a child must also meet a separate, longer list of criteria set forth in the draft regulations.</p> <p style="text-align: right;"><i>20-81-80(K-S)</i></p>	<ul style="list-style-type: none"> • Children may be excluded from special education services who might otherwise be eligible under Federal law. If so, these Virginia regulations would be illegal because they would fall below the federal minimum requirements for eligibility determinations. <p>For example, the draft regulations require that autistic children meet six specific characteristics regarding their communication and social interaction skills. The federal definition is not so narrowly constructed, so if the draft regulations are adopted, it will be possible for a child to be denied eligibility, though he/she meets the federal minimum requirements.</p> • Though the goal of this provision was likely to increase uniformity among schools in making eligibility decisions, simply adding more eligibility criteria will not achieve that goal. <p>JUSTCHILDREN’S POSITION: Maintain Current Provisions</p>

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Accountability	No local educational agency, teacher, or other person must be held accountable if a child does not achieve the growth projected in the benchmarks or annual goals. <i>20-80-62(B)(9)</i>	Unchanged. <i>20-81-110(B)(7)</i>	<ul style="list-style-type: none"> Schools are not accountable even if a child fails for a number of years in a row to meet individualized education plan (“IEP”) goals or benchmarks, and the schools have done nothing to try to address the lack of progress. Schools should be relieved of responsibility only when it has been determined that they have provided each child with a free appropriate public education, or “FAPE.” <p>JUSTCHILDREN’S POSITION: Delete provision or add “unless the local educational agency has failed to provide the child with a free appropriate public education.”</p>
Progress Reports	Progress reports for children with disabilities must be provided at least as often as reports for children without disabilities. <i>20-80-62(F)(7)(b)</i>	Removes requirement. <i>20-81-110(G)(8)</i>	<ul style="list-style-type: none"> There is no justification for treating students with disabilities differently than students without disabilities by potentially providing progress reports to students with disabilities less frequently than they are provided to students without disabilities. Parent involvement and school-family partnership would be significantly decreased, thereby reducing long-term success of students with disabilities. <p>JUSTCHILDREN’S POSITION: Maintain Current Provisions</p>
“Developmental Delay” Ages	The disability category “developmental delay” includes children ages two through eight. <i>20-80-10</i>	The disability category “developmental delay” only includes children ages two through five. <i>20-81-10</i>	<ul style="list-style-type: none"> Children above the age of five will have to be classified under a specific disability to receive services. This will lead to inaccurate labeling and potentially inappropriate services because of the difficulty in identifying disabilities in children at this young age. <p>JUSTCHILDREN’S POSITION: Maintain Current Provisions</p>
Referrals and Evaluations	When a child is referred for special education evaluations, the referral is generally evaluated by a child study committee. <i>20-80-10 50</i>	Child study committees are no longer required. School divisions decide how to handle referrals. <i>20-81-50(E)</i>	<ul style="list-style-type: none"> There will not be a uniform system across school divisions for addressing referrals for evaluations, which would likely confuse parents and others who might move between school divisions. This change would be particularly detrimental to low-income families who tend to move between school divisions at a higher rate than other families. <p>JUSTCHILDREN’S POSITION: Maintain Current Provisions</p>
Supervision of Hearing Officers	Hearing officers are supervised by the Supreme Court. <i>20-80-76</i>	Hearing officers are supervised by the Virginia Department of Education. <i>20-81-210</i>	<ul style="list-style-type: none"> Hearing officers supervised by the Virginia Department of Education could create unavoidable conflicts and/or the appearance of conflicts. <p>JUSTCHILDREN’S POSITION: Maintain Current Provisions</p>
Due Process Rights and Obligations	No previous limitation.	If a parent files for a due process hearing, a school can raise any issue even if it was not raised in the parent’s complaint. If the school files, a parent cannot raise issues that were not raised in the hearing request. Additionally, a resolution session must occur if the parent files, but not if the school files. <i>20-81-210(D), (J)</i>	<ul style="list-style-type: none"> Schools are afforded rights or relieved of obligations at due process hearings but parents are not afforded the same rights and/or are not relieved of the same obligations. <p>JUSTCHILDREN’S POSITION: Ensure Parents and Schools Have the Same Rights and Obligations</p>
Plan after Long-term Suspension	Any suspension of a child with a disability for 10+ days requires the IEP team to do a functional behavioral assessment (“FBA”) or develop a behavior intervention plan (“BIP”). <i>20-80-68</i>	Unless the behavior for which the child is being suspended is a manifestation of the child’s disability, the school does not have to do a FBA or develop a BIP. <i>20-81-160(C)(6)(a)(3)</i>	<ul style="list-style-type: none"> Children with disabilities will receive less help with their behavioral problems than previously afforded. Schools are likely to be ill-prepared for a child’s return to school after long-term suspension if they do not have to address the child’s behavioral problems through an FBA and/or BIP. <p>JUSTCHILDREN’S POSITION: Maintain Current Provisions</p>