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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to

provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **Jane M. Roush**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

April 2009 through February 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
INDEX 2 Volume 25		
		April 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
INDEX 3 Volume 25		
		July 2009
25:21	June 3, 2009	June 22, 2009
25:22	June 17, 2009	July 6, 2009
25:23	July 1, 2009	July 20, 2009
25:24	July 15, 2009	August 3, 2009
25:25	July 29, 2009	August 17, 2009
25:26	August 12, 2009	August 31, 2009
FINAL INDEX Volume 25		
		October 2009
26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 (Tuesday)	December 7, 2009
INDEX 1 Volume 26		
		January 2010
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 (Tuesday)	January 4, 2010
26:10	December 29, 2009 (Tuesday)	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010

*Filing deadlines are Wednesdays unless otherwise specified.

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 24, dated August 4, 2008). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 17-10-10 through 1 VAC 17-10-90	Repealed	25:8 VA.R. 1484	1/21/09
1 VAC 17-11-10 through 1 VAC 17-11-110	Added	25:8 VA.R. 1484-1487	1/21/09
1 VAC 30-10-10 through 1 VAC 30-10-70	Repealed	25:8 VA.R. 1487	1/21/09
1 VAC 30-11-10 through 1 VAC 30-11-110	Erratum	25:9 VA.R. 1827	--
1 VAC 30-11-10 through 1 VAC 30-11-110	Added	25:8 VA.R. 1488-1490	1/21/09
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	25:7 VA.R. 1409-1413	1/1/09
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	25:7 VA.R. 1413-1417	1/1/09
1 VAC 50-10-60 through 1 VAC 50-10-150	Repealed	25:2 VA.R. 119	10/29/08
1 VAC 50-11-10 through 1 VAC 50-11-110	Added	25:2 VA.R. 119-122	10/29/08
1 VAC 55-10-10 through 1 VAC 55-10-50	Repealed	25:2 VA.R. 122	10/29/08
1 VAC 55-11-10 through 1 VAC 55-11-110	Added	25:2 VA.R. 122-125	10/29/08
1 VAC 75-10-10 through 1 VAC 75-10-40	Repealed	24:25 VA.R. 3523	9/17/08
1 VAC 75-11-10 through 1 VAC 75-11-110	Added	24:25 VA.R. 3523-3526	9/17/08
Title 2. Agriculture			
2 VAC 5-10-10 through 2 VAC 5-10-70	Repealed	25:3 VA.R. 342	11/12/08
2 VAC 5-11-10 through 2 VAC 5-11-110	Added	25:3 VA.R. 343-345	11/12/08
2 VAC 5-60-10	Amended	25:11 VA.R. 1889	3/4/09
2 VAC 5-190-30	Amended	25:11 VA.R. 1890	3/4/09
2 VAC 5-205-20	Amended	25:11 VA.R. 1890	3/4/09
2 VAC 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
2 VAC 5-210-20	Amended	25:11 VA.R. 1891	3/4/09
2 VAC 5-230-30	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-230-50	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-230-60	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-300-50	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 5-320-10	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-320-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-325-10	Amended	25:11 VA.R. 1893	3/4/09
2 VAC 5-325-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-10	Amended	25:11 VA.R. 1893	3/4/09
2 VAC 5-330-30	Amended	25:2 VA.R. 126	10/15/08
2 VAC 5-330-30	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Amended	25:15 VA.R. 2710	3/9/09
2 VAC 5-335-10 through 2 VAC 5-335-130	Added	25:2 VA.R. 126-129	10/15/08
2 VAC 5-340-140	Amended	25:11 VA.R. 1894	3/4/09
2 VAC 5-340-140	Erratum	25:13 VA.R. 2565	--
2 VAC 5-340-170	Amended	25:11 VA.R. 1895	3/4/09
2 VAC 5-340-170	Erratum	25:13 VA.R. 2565	--
2 VAC 5-340-180	Amended	25:11 VA.R. 1896	3/4/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-350-10 through 2 VAC 5-350-60	Amended	25:11 VA.R. 1896-1898	3/4/09
2 VAC 5-350-20	Erratum	25:13 VA.R. 2565	--
2 VAC 5-350-80	Amended	25:11 VA.R. 1898	3/4/09
2 VAC 5-360-10	Amended	25:11 VA.R. 1899	3/4/09
2 VAC 5-360-50	Amended	25:11 VA.R. 1900	3/4/09
2 VAC 5-370-10	Amended	25:11 VA.R. 1901	3/4/09
2 VAC 5-370-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-380-10	Amended	25:11 VA.R. 1901	3/4/09
2 VAC 5-380-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-380-60	Amended	25:11 VA.R. 1901	3/4/09
2 VAC 5-390-20	Amended	25:11 VA.R. 1902	3/4/09
2 VAC 5-390-20	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-30	Amended	25:11 VA.R. 1902	3/4/09
2 VAC 5-390-40	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-60	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-70	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-80	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-80	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-100	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-110	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-120	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-160	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-170	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-180	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-400-10	Amended	25:11 VA.R. 1907	3/4/09
2 VAC 5-400-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-400-30	Amended	25:11 VA.R. 1907	3/4/09
2 VAC 5-400-90	Amended	25:11 VA.R. 1908	3/4/09
2 VAC 5-440-20	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-440-20	Erratum	25:13 VA.R. 2566	--
2 VAC 5-440-110	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-450-20	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-490-10	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-490-31	Amended	25:11 VA.R. 1915	3/4/09
2 VAC 5-501-30	Amended	25:11 VA.R. 1917	3/4/09
2 VAC 5-501-60	Amended	25:11 VA.R. 1919	3/4/09
2 VAC 5-501-70	Amended	25:11 VA.R. 1922	3/4/09
2 VAC 5-570-70	Amended	25:11 VA.R. 1923	3/4/09
2 VAC 5-620-20	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 5-620-100	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 15-11-10 through 2 VAC 15-11-120	Repealed	25:4 VA.R. 576	11/26/08
2 VAC 15-12-10 through 2 VAC 15-12-110	Added	25:4 VA.R. 577-579	11/26/08
2 VAC 15-20-90	Amended	25:10 VA.R. 1847	2/18/09
2 VAC 15-20-110	Amended	25:10 VA.R. 1848	2/18/09
2 VAC 15-20-120	Amended	25:10 VA.R. 1848	2/18/09
2 VAC 20-10-10 through 2 VAC 20-10-120	Repealed	25:5 VA.R. 792	12/10/08
2 VAC 20-11-10 through 2 VAC 20-11-110	Added	25:5 VA.R. 792-795	12/10/08
2 VAC 20-20-10	Amended	25:12 VA.R. 2041	3/18/09
2 VAC 20-20-30	Amended	25:12 VA.R. 2041	3/18/09
2 VAC 20-20-120	Amended	25:12 VA.R. 2042	3/18/09
2 VAC 20-30-10	Amended	25:12 VA.R. 2043	3/18/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 20-30-30	Amended	25:12 VA.R. 2043	3/18/09
2 VAC 20-30-40	Amended	25:12 VA.R. 2043	3/18/09
2 VAC 20-40-10	Amended	25:12 VA.R. 2044	3/18/09
2 VAC 20-40-90	Amended	25:12 VA.R. 2045	3/18/09
2 VAC 20-51-10 through 2 VAC 20-51-50	Amended	25:3 VA.R. 346-350	12/1/08
2 VAC 20-51-70	Amended	25:3 VA.R. 350	12/1/08
2 VAC 20-51-90	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-100	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-160	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-170	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-200	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-210	Amended	25:3 VA.R. 352	12/1/08
Title 3. Alcoholic Beverages			
3 VAC 5-10	Erratum	25:9 VA.R. 1826	--
3 VAC 5-10-480	Repealed	25:6 VA.R. 1173	12/24/08
3 VAC 5-11-10 through 3 VAC 5-11-110	Added	25:6 VA.R. 1175-1178	12/24/08
3 VAC 5-50-40	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-50	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-80	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-100	Amended	25:11 VA.R. 1927	3/4/09
3 VAC 5-50-130	Amended	25:11 VA.R. 1928	3/4/09
3 VAC 5-50-140 emer	Amended	25:11 VA.R. 1925	1/9/08-6/30/09
3 VAC 5-50-140	Amended	25:11 VA.R. 1929	3/4/09
3 VAC 5-50-230 emer	Added	25:11 VA.R. 1929	1/13/09-1/12/10
Title 4. Conservation and Natural Resources			
4 VAC 3-10-10	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-20	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-30	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-11-10 through 4 VAC 3-11-110	Added	25:2 VA.R. 130-132	10/29/08
4 VAC 5-10-10	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-20	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-30	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-11-10 through 4 VAC 5-11-110	Added	25:2 VA.R. 133-136	10/29/08
4 VAC 5-36-50	Amended	25:6 VA.R. 1178	1/1/09
4 VAC 5-36-60	Amended	25:6 VA.R. 1183	1/1/09
4 VAC 5-36-70	Amended	25:6 VA.R. 1184	1/1/09
4 VAC 5-36-90	Amended	25:6 VA.R. 1185	1/1/09
4 VAC 5-36-100	Amended	25:6 VA.R. 1187	1/1/09
4 VAC 5-36-110	Amended	25:6 VA.R. 1191	1/1/09
4 VAC 5-36-115	Added	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-120	Amended	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-140	Amended	25:6 VA.R. 1193	1/1/09
4 VAC 5-36-150	Amended	25:6 VA.R. 1195	1/1/09
4 VAC 5-36-180	Amended	25:6 VA.R. 1198	1/1/09
4 VAC 5-36-200	Amended	25:6 VA.R. 1199	1/1/09
4 VAC 5-36-210	Amended	25:6 VA.R. 1204	1/1/09
4 VAC 10-10-10 through 4 VAC 10-10-30	Repealed	25:6 VA.R. 1208	12/24/08
4 VAC 10-11-10 through 4 VAC 10-11-110	Added	25:6 VA.R. 1209-1212	12/24/08
4 VAC 15-450-10 through 4 VAC 15-450-40	Added	25:10 VA.R. 1849-1850	1/1/09
4 VAC 20-20-50	Amended	25:6 VA.R. 1212	11/1/08
4 VAC 20-252-90	Amended	25:6 VA.R. 1213	11/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-252-100	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-260-35 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-35	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-260-40 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-40	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-270-10 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-40	Amended	25:12 VA.R. 2048	2/1/09
4 VAC 20-270-40 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-55 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-60 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-490-20	Amended	25:14 VA.R. 2593	3/1/09
4 VAC 20-490-30	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-40	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-41	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-530-10 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-20 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-31 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-530-40 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-620-20	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-30	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-40	Amended	25:3 VA.R. 355	10/1/08
4 VAC 20-620-70	Amended	25:14 VA.R. 2597	3/1/09
4 VAC 20-700-20	Amended	25:14 VA.R. 2598	3/1/09
4 VAC 20-720-20	Amended	25:3 VA.R. 357	10/1/08
4 VAC 20-720-40	Amended	25:3 VA.R. 359	10/1/08
4 VAC 20-720-50	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-60	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-70	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-75	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-80	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-95	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-100	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-106 emer	Amended	25:1 VA.R. 24	9/1/08-9/30/08
4 VAC 20-720-106	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-751-10 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-15 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20	Amended	25:6 VA.R. 1214	10/29/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
4 VAC 20-910-45	Amended	25:6 VA.R. 1214	11/1/08
4 VAC 20-950-47	Amended	25:8 VA.R. 1491	1/1/09
4 VAC 20-950-48	Amended	25:8 VA.R. 1491	1/1/09
4 VAC 20-1040-20	Amended	25:8 VA.R. 1492	11/30/08
4 VAC 20-1040-25	Added	25:8 VA.R. 1493	11/30/08
4 VAC 20-1150-10	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1150-20	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1170-10	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1170-20	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1180-10 through 4 VAC 20-1180-60	Added	25:9 VA.R. 1680-1681	12/22/08
4 VAC 20-1190-10	Added	25:12 VA.R. 2049	2/1/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-1190-20	Added	25:12 VA.R. 2049	2/1/09
4 VAC 25-10-10 through 4 VAC 25-10-90	Repealed	25:5 VA.R. 795	12/25/08
4 VAC 25-11-10 through 4 VAC 25-11-120	Added	25:5 VA.R. 797-800	12/25/08
4 VAC 25-130-816.22	Amended	25:12 VA.R. 2049	3/18/09
4 VAC 25-130-816.43	Amended	25:12 VA.R. 2051	3/18/09
4 VAC 25-130-816.116	Amended	25:12 VA.R. 2052	3/18/09
4 VAC 25-130-817.22	Amended	25:12 VA.R. 2054	3/18/09
4 VAC 25-130-817.43	Amended	25:12 VA.R. 2055	3/18/09
4 VAC 25-130-817.116	Amended	25:12 VA.R. 2057	3/18/09
4 VAC 25-130-842.15	Amended	25:12 VA.R. 2058	3/18/09
4 VAC 50-10-10	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-20	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-30	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-11-10 through 4 VAC 50-11-110	Added	25:2 VA.R. 138-141	10/29/08
4 VAC 50-20-20 through 4 VAC 50-20-90	Amended	24:25 VA.R. 3539-3554	9/26/08
4 VAC 50-20-51	Added	24:25 VA.R. 3544	9/26/08
4 VAC 50-20-52	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-54	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-58	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-59	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-100 through 4 VAC 50-20-140	Repealed	24:25 VA.R. 3554-3558	9/26/08
4 VAC 50-20-105	Added	24:25 VA.R. 3554	9/26/08
4 VAC 50-20-125	Added	24:25 VA.R. 3557	9/26/08
4 VAC 50-20-150 through 4 VAC 50-20-240	Amended	24:25 VA.R. 3558-3563	9/26/08
4 VAC 50-20-155	Added	24:25 VA.R. 3558	9/26/08
4 VAC 50-20-165	Added	24:25 VA.R. 3559	9/26/08
4 VAC 50-20-175	Added	24:25 VA.R. 3560	9/26/08
4 VAC 50-20-177	Added	24:25 VA.R. 3561	9/26/08
4 VAC 50-20-250	Repealed	24:25 VA.R. 3564	9/26/08
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08
4 VAC 50-20-330 through 4 VAC 50-20-400	Added	24:25 VA.R. 3565-3567	9/26/08
Title 5. Corporations			
5 VAC 5-20-10	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-20	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-80	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-90	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-100	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-120 through 5 VAC 5-20-150	Amended	25:14 VA.R. 2603-2604	3/11/09
5 VAC 5-20-170	Amended	25:14 VA.R. 2604	3/11/09
5 VAC 5-20-180	Amended	25:14 VA.R. 2605	3/11/09
5 VAC 5-20-240 through 5 VAC 5-20-280	Amended	25:14 VA.R. 2605-2608	3/11/09
Title 6. Criminal Justice and Corrections			
6 VAC 15-10-10 through 6 VAC 15-10-100	Repealed	25:3 VA.R. 363	11/15/08
6 VAC 15-11-10 through 6 VAC 15-11-110	Added	25:3 VA.R. 363-366	11/15/08
6 VAC 15-31-320	Amended	24:25 VA.R. 3568	9/18/08
6 VAC 15-70-10	Amended	25:3 VA.R. 367	11/15/08
6 VAC 15-70-40 through 6 VAC 15-70-130	Amended	25:3 VA.R. 367-372	11/15/08
6 VAC 15-70-160	Amended	25:3 VA.R. 372	11/15/08
6 VAC 20-10-10 through 6 VAC 20-10-50	Repealed	25:10 VA.R. 1850	2/20/09
6 VAC 20-11-10 through 6 VAC 20-11-110	Added	25:10 VA.R. 1851-1853	2/20/09
6 VAC 20-160-10	Amended	25:2 VA.R. 141	10/29/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 20-160-20	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-30	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-40	Amended	25:2 VA.R. 143	10/29/08
6 VAC 20-160-60	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-70	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-80	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-100	Amended	25:2 VA.R. 145	10/29/08
6 VAC 20-160-120	Amended	25:2 VA.R. 145	10/29/08
6 VAC 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08
6 VAC 35-11-10 through 6 VAC 35-11-110	Added	24:25 VA.R. 3574-3576	9/17/08
6 VAC 35-20-37 emer	Amended	25:3 VA.R. 373	8/1/07-1/31/09
6 VAC 35-20-37	Amended	25:4 VA.R. 626	12/12/08
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 35-140-46	Added	25:3 VA.R. 376	12/12/08
6 VAC 40-10-10 through 6 VAC 40-10-90	Repealed	25:2 VA.R. 146	10/30/08
6 VAC 40-11-10 through 6 VAC 40-110	Added	25:2 VA.R. 147-149	10/30/08
6 VAC 40-20-30	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-120	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-130	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-160	Amended	24:26 VA.R. 3718	10/16/08
Title 7. Economic Development			
7 VAC 10-20-10 through 7 VAC 10-20-350	Repealed	24:26 VA.R. 3719	9/1/08
7 VAC 10-21-10 through 7 VAC 10-21-610	Added	24:26 VA.R. 3719-3729	9/1/08
Title 8. Education			
8 VAC 20-10-10	Repealed	25:11 VA.R. 1930	3/19/09
8 VAC 20-11-10 through 8 VAC 20-11-110	Added	25:11 VA.R. 1932-1935	3/19/09
8 VAC 35-60-20	Amended	25:5 VA.R. 800	11/10/08
8 VAC 40-10-10 through 8 VAC 40-10-90	Repealed	25:3 VA.R. 376	1/1/09
8 VAC 40-11-10 through 8 VAC 40-11-110	Added	25:3 VA.R. 377-379	1/1/09
Title 9. Environment			
9 VAC 5-5-10 through 9 VAC 5-5-110	Added	25:5 VA.R. 801-804	1/1/09
9 VAC 5-10-20	Amended	25:12 VA.R. 2060	4/2/09
9 VAC 5-20-21	Amended	25:12 VA.R. 2068	3/18/09
9 VAC 5-30-55	Amended	25:12 VA.R. 2072	3/18/09
9 VAC 5-30-56	Added	25:12 VA.R. 2072	3/18/09
9 VAC 5-30-65	Amended	25:12 VA.R. 2072	3/18/09
9 VAC 5-40-5600 through 9 VAC 5-40-5645	Repealed	25:12 VA.R. 2088-2097	3/18/09
9 VAC 5-50-400	Amended	25:12 VA.R. 2073	3/18/09
9 VAC 5-50-410	Amended	25:12 VA.R. 2074	3/18/09
9 VAC 5-60-60	Amended	25:12 VA.R. 2079	3/18/09
9 VAC 5-60-90	Amended	25:12 VA.R. 2080	3/18/09
9 VAC 5-60-100	Amended	25:12 VA.R. 2080	3/18/09
9 VAC 5-80-5	Added	25:6 VA.R. 1231	12/31/08
9 VAC 5-80-15	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-25	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-35	Added	25:6 VA.R. 1235	12/31/08
9 VAC 5-80-150	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-230	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-270	Amended	25:6 VA.R. 1238	12/31/08
9 VAC 5-80-510	Amended	25:6 VA.R. 1239	12/31/08
9 VAC 5-80-590	Amended	25:6 VA.R. 1241	12/31/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-670	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-670	Erratum	25:8 VA.R. 1644	--
9 VAC 5-80-860	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-990	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-1020	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1100	Amended	25:6 VA.R. 1258	12/31/08
9 VAC 5-80-1110	Amended	25:6 VA.R. 1259	12/31/08
9 VAC 5-80-1160	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1170	Amended	25:6 VA.R. 1245	12/31/08
9 VAC 5-80-1290	Amended	25:6 VA.R. 1246	12/31/08
9 VAC 5-80-1320	Amended	25:6 VA.R. 1264	12/31/08
9 VAC 5-80-1450	Amended	25:6 VA.R. 1247	12/31/08
9 VAC 5-80-1450	Erratum	25:8 VA.R. 1644	--
9 VAC 5-80-1460	Amended	25:6 VA.R. 1248	12/31/08
9 VAC 5-80-1615	Amended	25:6 VA.R. 1218	12/31/08
9 VAC 5-80-1695	Amended	25:6 VA.R. 1229	12/31/08
9 VAC 5-80-1765	Amended	25:6 VA.R. 1249	12/31/08
9 VAC 5-80-1773	Added	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1775	Amended	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1955	Amended	25:6 VA.R. 1253	12/31/08
9 VAC 5-80-2060	Amended	25:6 VA.R. 1254	12/31/08
9 VAC 5-80-2070	Amended	25:6 VA.R. 1255	12/31/08
9 VAC 5-80-2230	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-91-20	Amended	25:6 VA.R. 1268	12/31/08
9 VAC 5-130-10 through 9 VAC 5-130-100	Added	25:12 VA.R. 2097-2106	3/18/09
9 VAC 5-140-900	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-920	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-930	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-1010	Amended	25:12 VA.R. 2107	3/18/09
9 VAC 5-140-1020	Amended	25:12 VA.R. 2107	3/18/09
9 VAC 5-140-1060	Amended	25:12 VA.R. 2115	3/18/09
9 VAC 5-140-2010	Amended	25:12 VA.R. 2116	3/18/09
9 VAC 5-140-2020	Amended	25:12 VA.R. 2117	3/18/09
9 VAC 5-140-3010	Amended	25:12 VA.R. 2126	3/18/09
9 VAC 5-140-3020	Amended	25:12 VA.R. 2126	3/18/09
9 VAC 5-151-10	Amended	25:6 VA.R. 1276	12/31/08
9 VAC 5-151-20	Amended	25:6 VA.R. 1278	12/31/08
9 VAC 5-151-40	Amended	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-61	Repealed	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-70	Amended	25:6 VA.R. 1280	12/31/08
9 VAC 5-170-20	Amended	25:5 VA.R. 804	1/1/09
9 VAC 5-170-30	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-40	Amended	25:5 VA.R. 806	1/1/09
9 VAC 5-170-80	Amended	25:5 VA.R. 807	1/1/09
9 VAC 5-170-90	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-100	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-110	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 5-170-180	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-190	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 5-170-200	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 10-10-10	Repealed	25:4 VA.R. 627	11/26/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 10-10-20	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-30	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-11-10 through 9 VAC 10-11-110	Added	25:4 VA.R. 627-630	11/26/08
9 VAC 15-10-10 through 9 VAC 15-10-40	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 15-11-10 through 9 VAC 15-11-110	Added	25:5 VA.R. 810-813	1/1/09
9 VAC 20-10-10 through 9 VAC 20-10-40	Repealed	25:9 VA.R. 1681	2/4/09
9 VAC 20-11-10 through 9 VAC 20-11-110	Added	25:9 VA.R. 1682-1685	2/4/09
9 VAC 20-80-10	Amended	25:2 VA.R. 150	11/1/08
9 VAC 20-80-60	Amended	25:2 VA.R. 160	11/1/08
9 VAC 20-80-250	Amended	25:2 VA.R. 166	11/1/08
9 VAC 20-80-260	Amended	25:2 VA.R. 176	11/1/08
9 VAC 20-80-270	Amended	25:2 VA.R. 183	11/1/08
9 VAC 20-80-280	Amended	25:2 VA.R. 191	11/1/08
9 VAC 20-80-485	Amended	25:2 VA.R. 193	11/1/08
9 VAC 20-80-500	Amended	25:2 VA.R. 200	11/1/08
9 VAC 20-80-510	Amended	25:2 VA.R. 203	11/1/08
9 VAC 25-10-10 through 9 VAC 25-10-40	Repealed	25:5 VA.R. 813	1/1/09
9 VAC 25-11-10 through 9 VAC 25-11-110	Added	25:5 VA.R. 813-816	1/1/09
9 VAC 25-32-480	Erratum	25:15 VA.R. 2804	--
9 VAC 25-210-10	Amended	25:5 VA.R. 894	12/10/08
9 VAC 25-210-50	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-60	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-130	Erratum	25:9 VA.R. 1826	--
9 VAC 25-210-130	Amended	25:5 VA.R. 902	12/10/08
9 VAC 25-210-220	Amended	25:5 VA.R. 903	12/10/08
9 VAC 25-260-10	Amended	25:12 VA.R. 2134	*
9 VAC 25-260-20	Amended	25:12 VA.R. 2135	*
9 VAC 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-260-30	Amended	25:5 VA.R. 904	10/22/08
9 VAC 25-260-30	Amended	25:12 VA.R. 2136	*
9 VAC 25-260-50	Amended	25:12 VA.R. 2139	*
9 VAC 25-260-55	Repealed	25:12 VA.R. 2139	*
9 VAC 25-260-90	Amended	25:12 VA.R. 2140	*
9 VAC 25-260-140	Amended	25:12 VA.R. 2140	*
9 VAC 25-260-160	Amended	25:12 VA.R. 2162	*
9 VAC 25-260-170	Amended	25:12 VA.R. 2162	*
9 VAC 25-260-185	Amended	25:12 VA.R. 2163	*
9 VAC 25-260-187	Amended	25:12 VA.R. 2167	*
9 VAC 25-260-290	Repealed	25:12 VA.R. 2170	*
9 VAC 25-260-310	Amended	25:12 VA.R. 2170	*
9 VAC 25-260-320	Repealed	25:12 VA.R. 2173	*
9 VAC 25-260-350	Amended	25:12 VA.R. 2173	*
9 VAC 25-260-360	Amended	25:12 VA.R. 2174	*
9 VAC 25-260-380	Amended	25:12 VA.R. 2175	*
9 VAC 25-260-390	Amended	25:12 VA.R. 2175	*
9 VAC 25-260-400	Amended	25:12 VA.R. 2179	*
9 VAC 25-260-410	Amended	25:12 VA.R. 2189	*
9 VAC 25-260-415	Amended	25:12 VA.R. 2190	*
9 VAC 25-260-420	Amended	25:12 VA.R. 2191	*

* Effective upon filing notice of U.S. EPA approval

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-260-430	Amended	25:12 VA.R. 2197	*
9 VAC 25-260-440	Amended	25:12 VA.R. 2210	*
9 VAC 25-260-450	Amended	25:12 VA.R. 2213	*
9 VAC 25-260-460	Amended	25:12 VA.R. 2220	*
9 VAC 25-260-470	Amended	25:12 VA.R. 2221	*
9 VAC 25-260-480	Amended	25:12 VA.R. 2224	*
9 VAC 25-260-490	Amended	25:12 VA.R. 2224	*
9 VAC 25-260-500	Amended	25:12 VA.R. 2225	*
9 VAC 25-260-510	Amended	25:12 VA.R. 2228	*
9 VAC 25-260-520	Amended	25:12 VA.R. 2233	*
9 VAC 25-260-530	Amended	25:12 VA.R. 2235	*
9 VAC 25-260-540	Amended	25:12 VA.R. 2236	*
9 VAC 25-640 Appendices I through IX	Amended	25:2 VA.R. 217-231	11/1/08
9 VAC 25-640-10	Amended	25:2 VA.R. 206	11/1/08
9 VAC 25-640-20	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-30	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-50	Amended	25:2 VA.R. 210	11/1/08
9 VAC 25-640-70 through 9 VAC 25-640-120	Amended	25:2 VA.R. 210-213	11/1/08
9 VAC 25-640-130	Repealed	25:2 VA.R. 213	11/1/08
9 VAC 25-640-150 through 9 VAC 25-640-230	Amended	25:2 VA.R. 213-217	11/1/08
9 VAC 25-640-250	Amended	25:2 VA.R. 217	11/1/08
9 VAC 25-720-120	Amended	25:12 VA.R. 2250	4/2/09
9 VAC 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
9 VAC 25-790 (Forms)	Added	25:6 VA.R. 1285	--
9 VAC 25-860-10 through 9 VAC 25-860-70	Added	25:6 VA.R. 1285-1295	12/24/08
Title 10. Finance and Financial Institutions			
10 VAC 5-160-10	Amended	24:26 VA.R. 3775	8/10/08
10 VAC 5-160-70	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-160-80	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-200-10	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-20	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-33	Added	25:4 VA.R. 638	1/1/09
10 VAC 5-200-35	Added	25:4 VA.R. 639	1/1/09
10 VAC 5-200-40	Amended	25:4 VA.R. 641	1/1/09
10 VAC 5-200-60	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-60	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-70	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-80	Amended	25:4 VA.R. 643	1/1/09
10 VAC 5-200-110	Added	25:4 VA.R. 646	1/1/09
10 VAC 5-200-110	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-115	Added	25:4 VA.R. 651	1/1/09
10 VAC 5-200-120	Added	25:4 VA.R. 650	1/1/09
10 VAC 5-200-130	Added	25:14 VA.R. 2613	3/1/09
Title 11. Gaming			
11 VAC 10-10-10 through 11 VAC 10-10-70	Repealed	25:5 VA.R. 904	12/10/08
11 VAC 10-11-10 through 11 VAC 10-11-110	Added	25:5 VA.R. 905-907	12/10/08
11 VAC 10-70-20	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-70-90	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 15-12-10	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-12-20	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-13-10 through 11 VAC 15-13-110	Added	25:4 VA.R. 652-654	11/26/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 12. Health			
12 VAC 5-10-10 through 12 VAC 5-10-80	Repealed	25:4 VA.R. 654	1/1/09
12 VAC 5-11-10 through 12 VAC 5-11-110	Added	25:4 VA.R. 655-657	1/1/09
12 VAC 5-67-10 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-20 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-30 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-90-80	Amended	25:11 VA.R. 1935	3/4/09
12 VAC 5-220-110	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-220-160	Amended	25:1 VA.R. 25	10/15/08
12 VAC 5-220-200	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-230-10	Amended	25:9 VA.R. 1707	2/15/09
12 VAC 5-230-10	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-20	Repealed	25:9 VA.R. 1711	2/15/09
12 VAC 5-230-30	Amended	25:9 VA.R. 1712	2/15/09
12 VAC 5-230-40 through 12 VAC 5-230-1000	Added	25:9 VA.R. 1713-1742	2/15/09
12 VAC 5-230-60	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-70	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-80	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-110	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-340	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-540	Amended	25:13 VA.R. 2316	4/1/09
12 VAC 5-230-550	Amended	25:13 VA.R. 2317	4/1/09
12 VAC 5-230-560	Amended	25:13 VA.R. 2317	4/1/09
12 VAC 5-230-870	Erratum	25:11 VA.R. 2018	--
12 VAC 5-240-10 through 12 VAC 5-240-60	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-250-10 through 12 VAC 5-250-120	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-260-10 through 12 VAC 5-260-130	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-270-10 through 12 VAC 5-270-60	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-280-10 through 12 VAC 5-280-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-290-10 through 12 VAC 5-290-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-300-10 through 12 VAC 5-300-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-310-10 through 12 VAC 5-310-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-320-10 through 12 VAC 5-320-480	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-330-10 through 12 VAC 5-330-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-340-10 through 12 VAC 5-340-120	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-350-10 through 12 VAC 5-350-60	Repealed	25:9 VA.R. 1707	2/15/09
12 VAC 5-360-10 through 12 VAC 5-360-70	Repealed	25:9 VA.R. 1707	2/15/09
12 VAC 5-481-10	Amended	25:2 VA.R. 231	11/1/08
12 VAC 5-481-390	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-400	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-450	Amended	25:2 VA.R. 257	11/1/08
12 VAC 5-481-451	Added	24:25 VA.R. 3612	10/3/08
12 VAC 5-481-480	Amended	25:2 VA.R. 260	11/1/08
12 VAC 5-481-2870	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3160	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3710	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-490-10	Amended	25:11 VA.R. 1942	3/4/09
12 VAC 5-490-20	Amended	25:11 VA.R. 1942	3/4/09
12 VAC 5-490-30	Added	25:11 VA.R. 1939	3/4/09
12 VAC 5-490-40	Added	25:11 VA.R. 1939	3/4/09
12 VAC 5-590-10	Amended	25:5 VA.R. 908	12/10/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-590-370	Amended	25:5 VA.R. 916	12/10/08
12 VAC 5-590-410	Amended	25:5 VA.R. 955	12/10/08
12 VAC 5-590-420	Amended	25:5 VA.R. 959	12/10/08
12 VAC 5-590-440	Amended	25:5 VA.R. 994	12/10/08
12 VAC 5-590-500	Amended	25:5 VA.R. 998	12/10/08
12 VAC 5-590-530	Amended	25:5 VA.R. 999	12/10/08
12 VAC 5-590-540	Amended	25:5 VA.R. 1011	12/10/08
12 VAC 5-590-545	Amended	25:5 VA.R. 1016	12/10/08
12 VAC 5-590-550	Amended	25:5 VA.R. 1021	12/10/08
12 VAC 30-5-10 through 12 VAC 30-5-110	Added	25:3 VA.R. 380-383	11/12/08
12 VAC 30-10-150	Amended	25:14 VA.R. 2614	4/15/09
12 VAC 30-10-815	Added	25:4 VA.R. 662	11/26/08
12 VAC 30-10-930	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-90	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-500	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-20-520	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-40-280	Amended	25:11 VA.R. 1945	3/19/09
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-2/24/09 **
12 VAC 30-40-345	Amended	25:11 VA.R. 1946	3/19/09
12 VAC 30-50-10	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-50-130	Amended	25:5 VA.R. 1041	12/10/08
12 VAC 30-50-140 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-150 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-180 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-228 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-229.1	Repealed	25:5 VA.R. 1045	12/10/08
12 VAC 30-50-320	Amended	25:8 VA.R. 1515	2/5/09
12 VAC 30-50-330 through 12 VAC 30-50-360	Added	25:8 VA.R. 1515-1520	2/5/09
12 VAC 30-50-491 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-530	Amended	25:5 VA.R. 1049	12/10/08
12 VAC 30-60-180 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-185 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-500 emer	Added	25:3 VA.R. 384	8/8/07-2/7/09
12 VAC 30-70-70	Amended	25:3 VA.R. 387	11/27/08
12 VAC 30-70-261	Amended	25:3 VA.R. 388	11/27/08
12 VAC 30-70-271	Amended	25:3 VA.R. 388	11/27/08
12 VAC 30-70-311	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-321	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-500	Repealed	25:3 VA.R. 389	11/27/08
12 VAC 30-80-32 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-80-40 emer	Amended	24:25 VA.R. 3617	8/4/08-8/3/09
12 VAC 30-80-95	Amended	25:12 VA.R. 2253	4/2/09
12 VAC 30-80-190 emer	Amended	25:1 VA.R. 41	8/27/08-8/26/09
12 VAC 30-90-41	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-90-264	Amended	25:3 VA.R. 390	11/27/08
12 VAC 30-100-10 through 12 VAC 30-100-60	Repealed	25:3 VA.R. 383-384	11/12/08
12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
12 VAC 30-110-40	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-370	Amended	25:14 VA.R. 2619	4/15/09

** Emergency Regulation Rescinded in 25:15 VA.R. 2613

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-110-380	Repealed	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-670	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-680	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-700	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-720	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-741	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-980	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-990	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1000	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1040	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-120-140	Amended	25:14 VA.R. 2624	4/15/09
12 VAC 30-120-61 through 12 VAC 30-120-68	Repealed	25:8 VA.R. 1520-1526	2/5/09
12 VAC 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
12 VAC 30-120-310 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-120-370 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-370	Amended	25:11 VA.R. 1947	3/4/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-120-380	Amended	25:11 VA.R. 1950	3/4/09
12 VAC 30-130-260	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-270	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-290	Amended	25:14 VA.R. 2627	4/15/09
12 VAC 30-130-370	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-380	Amended	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-410	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-540	Amended	25:14 VA.R. 2629	4/15/09
12 VAC 30-130-800	Amended	25:14 VA.R. 2630	4/15/09
12 VAC 30-130-820	Amended	25:14 VA.R. 2632	4/15/09
12 VAC 30-130-890	Amended	25:14 VA.R. 2633	4/15/09
12 VAC 30-130-910	Amended	25:14 VA.R. 2634	4/15/09
12 VAC 30-135-10	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-20	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-30	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-40	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-70	Amended	24:26 VA.R. 3784	10/16/08
12 VAC 30-141-60	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-120	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-660 emer	Amended	25:10 VA.R. 1854	12/22/08-12/21/09
12 VAC 30-141-720	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-760	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-150-40	Amended	25:14 VA.R. 2636	4/15/09
12 VAC 35-11-10 through 12 VAC 35-11-110	Repealed	25:2 VA.R. 271	10/29/08
12 VAC 35-12-10 through 12 VAC 35-12-110	Added	25:2 VA.R. 271-274	10/29/08
Title 13. Housing			
13 VAC 5-10-10 through 13 VAC 5-10-120	Repealed	25:4 VA.R. 666	11/26/08
13 VAC 5-11-10 through 13 VAC 5-11-110	Added	25:4 VA.R. 667-669	11/26/08
13 VAC 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
13 VAC 5-100-10	Amended	25:13 VA.R. 2363	2/12/09
13 VAC 5-100-20	Amended	25:13 VA.R. 2364	2/12/09
13 VAC 5-200-10	Amended	24:26 VA.R. 3784	10/1/08
13 VAC 5-200-40 through 13 VAC 5-200-80	Amended	24:26 VA.R. 3784-3785	10/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-200-100	Amended	24:26 VA.R. 3785	10/1/08
13 VAC 6-10-10 through 13 VAC 6-10-120	Repealed	25:3 VA.R. 394	11/13/08
13 VAC 6-11-10 through 13 VAC 6-11-110	Added	25:3 VA.R. 394-397	11/13/08
13 VAC 10-20-40	Amended	25:9 VA.R. 1743	12/15/08
13 VAC 10-180-40	Amended	25:7 VA.R. 1418	1/1/09
13 VAC 10-180-50	Amended	25:7 VA.R. 1419	1/1/09
13 VAC 10-180-60	Amended	25:7 VA.R. 1421	1/1/09
Title 14. Insurance			
14 VAC 5-323-10 through 14 VAC 5-323-70	Added	25:8 VA.R. 1527-1528	1/1/09
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
Title 16. Labor and Employment			
16 VAC 15-10-10 through 16 VAC 15-10-100	Repealed	25:4 VA.R. 672	11/26/08
16 VAC 15-11-10 through 16 VAC 15-11-110	Added	25:4 VA.R. 672-675	11/26/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
16 VAC 20-10-10 through 16 VAC 20-10-100	Repealed	25:4 VA.R. 675	11/27/08
16 VAC 20-11-10 through 16 VAC 20-11-110	Added	25:4 VA.R. 676-678	11/27/08
16 VAC 25-10-10 through 16 VAC 25-10-120	Repealed	24:26 VA.R. 3811	10/1/08
16 VAC 25-11-10 through 16 VAC 25-11-110	Added	24:26 VA.R. 3811-3814	10/1/08
16 VAC 25-20-10	Amended	25:8 VA.R. 1529	2/1/09
16 VAC 30-11-10 through 16 VAC 30-11-30	Repealed	25:6 VA.R. 1307	12/24/08
16 VAC 30-12-10 through 16 VAC 30-12-110	Added	25:6 VA.R. 1307-1310	12/24/08
16 VAC 30-90-10 through 16 VAC 30-90-80	Repealed	25:11 VA.R. 1951	3/4/09
16 VAC 30-91-10	Added	25:11 VA.R. 1951	3/4/09
16 VAC 30-91-20	Added	25:11 VA.R. 1952	3/4/09
Title 17. Libraries and Cultural Resources			
17 VAC 5-10-10 through 17 VAC 5-10-40	Repealed	25:6 VA.R. 1310	12/24/08
17 VAC 5-11-10 through 17 VAC 5-11-110	Added	25:6 VA.R. 1311-1313	12/24/08
17 VAC 10-10-10 through 17 VAC 10-10-40	Repealed	25:6 VA.R. 1313	12/24/08
17 VAC 10-11-10 through 17 VAC 10-11-110	Added	25:6 VA.R. 1314-1316	12/24/08
17 VAC 15-10-10	Repealed	25:5 VA.R. 1064	12/10/08
17 VAC 15-11-10 through 17 VAC 15-11-110	Added	25:5 VA.R. 1065-1067	12/10/08
17 VAC 15-120-10	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-20	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-30	Added	25:6 VA.R. 1317	12/24/08
Title 18. Professional and Occupational Licensing			
18 VAC 5-10-10 through 18 VAC 5-10-90	Repealed	25:4 VA.R. 678	11/26/08
18 VAC 5-11-10 through 18 VAC 5-11-110	Added	25:4 VA.R. 679-682	11/26/08
18 VAC 10-10-10 through 18 VAC 10-10-90	Repealed	25:4 VA.R. 682	11/27/08
18 VAC 10-11-10 through 18 VAC 10-11-110	Added	25:4 VA.R. 682-685	11/27/08
18 VAC 10-20-10	Amended	25:3 VA.R. 397	12/1/08
18 VAC 10-20-120	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-120	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-140	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-280	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-295	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-310	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-310	Erratum	25:7 VA.R. 1451	--
18 VAC 10-20-340	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-350	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-360	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-380	Amended	25:3 VA.R. 402	12/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 10-20-382	Added	25:3 VA.R. 403	12/1/08
18 VAC 10-20-392	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-395	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-670	Amended	25:12 VA.R. 2258	4/1/09
18 VAC 10-20-680	Amended	25:12 VA.R. 2258	4/1/09
18 VAC 10-20-683	Added	25:12 VA.R. 2259	4/1/09
18 VAC 10-20-683	Erratum	25:15 VA.R. 2804	--
18 VAC 10-20-687	Added	25:12 VA.R. 2260	4/1/09
18 VAC 10-20-760	Amended	25:3 VA.R. 404	12/1/08
18 VAC 10-20-790	Amended	25:12 VA.R. 2260	4/1/09
18 VAC 15-10-10 through 18 VAC 15-10-90	Repealed	25:1 VA.R. 55	10/15/08
18 VAC 15-11-10 through 18 VAC 15-11-110	Added	25:1 VA.R. 55-58	10/15/08
18 VAC 25-10-10 through 18 VAC 25-10-90	Repealed	25:6 VA.R. 1318	12/24/08
18 VAC 25-11-10 through 18 VAC 25-11-110	Added	25:6 VA.R. 1319-1321	12/24/08
18 VAC 25-21-20	Amended	25:7 VA.R. 1431	2/1/09
18 VAC 25-21-40	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-50	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-60	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-110	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-120	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-150	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-170	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-180	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-185	Added	25:7 VA.R. 1435	2/1/09
18 VAC 30-10-10 through 18 VAC 30-10-120	Repealed	25:5 VA.R. 1070	12/10/08
18 VAC 30-11-10 through 18 VAC 30-11-110	Added	25:5 VA.R. 1070-1073	12/10/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
18 VAC 41-10-10 through 18 VAC 41-10-90	Repealed	25:6 VA.R. 1321	12/24/08
18 VAC 41-11-10	Erratum	25:9 VA.R. 1826	--
18 VAC 41-11-20	Erratum	25:9 VA.R. 1826	--
18 VAC 41-11-10 through 18 VAC 41-11-110	Added	25:6 VA.R. 1322-1325	12/24/08
18 VAC 45-10-10 through 18 VAC 45- 10-90	Repealed	24:26 VA.R. 3815	10/2/08
18 VAC 45-11-10 through 18 VAC 45-11-110	Added	24:26 VA.R. 3815-3818	10/2/08
18 VAC 47-10-10 through 18 VAC 47-10-90	Repealed	25:6 VA.R. 1325	12/24/08
18 VAC 47-11-10 through 18 VAC 47-11-110	Added	25:6 VA.R. 1325-1328	12/24/08
18 VAC 48-10-10 through 18 VAC 48-10-110	Added	25:3 VA.R. 411-414	11/13/08
18 VAC 48-20-10 through 18 VAC 48-20-730 emer	Added	25:5 VA.R. 1074-1093	11/13/08-11/12/09
18 VAC 48-40-10 through 18 VAC 48-40-110	Added	25:4 VA.R. 685-688	11/27/08
18 VAC 48-50-10 through 18 VAC 48-50-200 emer	Added	25:5 VA.R. 1095-1100	11/13/08-11/12/09
18 VAC 48-60-10 through 18 VAC 48-60-60	Added	25:4 VA.R. 688-689	11/27/08
18 VAC 48-60-13	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-17	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-20	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 48-60-60	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 50-10-10 through 18 VAC 50-10-90	Repealed	25:6 VA.R. 1328	12/24/08
18 VAC 50-11-10 through 18 VAC 50-11-110	Added	25:6 VA.R. 1328-1331	12/24/08
18 VAC 50-22-40	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-50	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-60	Amended	25:3 VA.R. 416	12/1/08
18 VAC 50-22-300 through 18 VAC 50-22-350	Added	25:3 VA.R. 417-418	12/1/08
18 VAC 60-10-10 through 18 VAC 60-10-120	Repealed	25:3 VA.R. 418	11/12/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 60-11-10 through 18 VAC 60-11-110	Added	25:3 VA.R. 419-422	11/12/08
18 VAC 60-20 (Forms)	Amended	25:1 VA.R. 58	--
18 VAC 62-10-10 through 18 VAC 62-10-110	Added	25:6 VA.R. 1332-1334	12/24/08
18 VAC 65-10-10 through 18 VAC 65-10-120	Repealed	25:2 VA.R. 291	10/29/08
18 VAC 65-11-10 through 18 VAC 65-11-110	Added	25:2 VA.R. 291-294	10/29/08
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 70-10-10 through 18 VAC 70-10-90	Repealed	25:5 VA.R. 1100	12/10/08
18 VAC 70-11-10 through 18 VAC 70-11-110	Added	25:5 VA.R. 1100-1103	12/10/08
18 VAC 75-10-10 through 18 VAC 75-10-120	Repealed	25:2 VA.R. 294	10/29/08
18 VAC 75-11-10 through 18 VAC 75-11-110	Added	25:2 VA.R. 295-297	10/29/08
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-20 (Forms)	Amended	24:26 VA.R. 3819	--
18 VAC 76-30-10 through 18 VAC 76-30-120	Repealed	24:25 VA.R. 3632	9/17/08
18 VAC 76-31-10 through 18 VAC 76-31-110	Added	24:25 VA.R. 3633-3635	9/17/08
18 VAC 76-40 (Forms)	Amended	24:26 VA.R. 3820	--
18 VAC 80-10-10 through 18 VAC 80-10-90	Repealed	25:6 VA.R. 1334	12/24/08
18 VAC 80-11-10 through 18 VAC 80-11-110	Added	25:6 VA.R. 1335-1338	12/24/08
18 VAC 85-10-10 through 18 VAC 85-10-110	Repealed	24:26 VA.R. 3820	10/1/08
18 VAC 85-11-10 through 18 VAC 85-11-110	Added	24:26 VA.R. 3820	10/1/08
18 VAC 85-20 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-40 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-50 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80-10 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-26 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-40 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-45 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-50 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-61 emer	Repealed	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-65 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-70 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-72 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-73 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-80 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-90 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-100 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-110 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-111 emer	Added	25:5 VA.R. 1108	11/1/08-10/31/09
18 VAC 85-101 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-110 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-120 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-130 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 90-10-10 through 18 VAC 90-10-120	Repealed	24:25 VA.R. 3635	9/17/08
18 VAC 90-11-10 through 18 VAC 90-11-110	Added	24:25 VA.R. 3636-3639	9/17/08
18 VAC 90-20 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-25 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30-10	Amended	25:5 VA.R. 1111	12/25/08
18 VAC 90-30-20	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-30	Amended	25:5 VA.R. 1112	12/25/08

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18 VAC 90-30-80	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-85	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-100	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-105	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-110	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-120	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-121	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-220	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-30-230	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-40-10	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40-20	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-40	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-50	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-55	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-60	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-90	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-100	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-121	Added	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-130	Amended	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-140	Amended	25:5 VA.R. 1118	12/25/08
18 VAC 90-50 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50-10	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-40	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-75	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-80	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-50-90	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-60 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 95-10-10 through 18 VAC 95-10-120	Repealed	25:6 VA.R. 1338	12/24/08
18 VAC 95-11-10 through 18 VAC 95-11-110	Added	25:6 VA.R. 1338-1341	12/24/08
18 VAC 95-20 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-225	Amended	25:6 VA.R. 1341	12/24/08
18 VAC 95-30 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 100-10-10 through 18 VAC 100-10-90	Repealed	25:6 VA.R. 1342	12/24/08
18 VAC 100-11-10 through 18 VAC 100-11-110	Added	25:6 VA.R. 1342-1345	12/24/08
18 VAC 105-10-10 through 18 VAC 105-10-120	Repealed	24:26 VA.R. 3828	10/1/08
18 VAC 105-11-10 through 18 VAC 105-11-110	Added	24:26 VA.R. 3828-3831	10/1/08
18 VAC 105-20 (Forms)	Amended	24:25 VA.R. 3639	--
18 VAC 110-10-10 through 18 VAC 110-10-120	Repealed	25:2 VA.R. 298	10/29/08
18 VAC 110-11-10 through 18 VAC 110-11-110	Added	25:2 VA.R. 298-301	10/29/08
18 VAC 110-20 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-20-20 emer	Amended	25:3 VA.R. 464	9/23/08-9/22/09
18 VAC 110-20-220	Amended	25:4 VA.R. 694	12/11/08
18 VAC 110-20-230	Repealed	25:4 VA.R. 695	12/11/08
18 VAC 110-30 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50-20 emer	Amended	25:3 VA.R. 466	9/23/08-9/22/09
18 VAC 112-10-10 through 18 VAC 112-10-120	Repealed	25:1 VA.R. 61	10/15/08
18 VAC 112-11-10 through 18 VAC 112-11-110	Added	25:1 VA.R. 62-64	10/15/08
18 VAC 112-20 (Forms)	Amended	24:26 VA.R. 3831	--

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 112-20-81 emer	Added	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-90 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-130 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-131 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-150 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 115-10-10 through 18 VAC 115-10-120	Repealed	24:26 VA.R. 3832	10/1/08
18 VAC 115-11-10 through 18 VAC 115-11-110	Added	24:26 VA.R. 3832-3835	10/1/08
18 VAC 115-20 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-30 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-40 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-60 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 120-10-100 through 18 VAC 120-10-180	Repealed	24:26 VA.R. 3835	10/2/08
18 VAC 120-11-10 through 18 VAC 120-11-110	Added	24:26 VA.R. 3836-3838	10/2/08
18 VAC 120-40-15	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-85	Added	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-240	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-411.1	Amended	25:15 VA.R. 2775	5/14/09
18 VAC 125-10-10 through 18 VAC 125-10-120	Repealed	25:4 VA.R. 699	11/26/08
18 VAC 125-11-10 through 18 VAC 125-11-110	Added	25:4 VA.R. 699-702	11/26/08
18 VAC 125-20 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-30 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 130-10-10 through 18 VAC 130-10-90	Repealed	25:6 VA.R. 1345	12/24/08
18 VAC 130-11-10 through 18 VAC 130-11-110	Added	25:6 VA.R. 1345-1348	12/24/08
18 VAC 130-20-30	Erratum	25:15 VA.R. 2804	--
18 VAC 135-10-10 through 18 VAC 135-10-90	Repealed	25:6 VA.R. 1348	12/24/08
18 VAC 135-11-10 through 18 VAC 135-11-110	Added	25:6 VA.R. 1348-1351	12/24/08
18 VAC 140-10-10 through 18 VAC 140-10-120	Repealed	24:25 VA.R. 3641	9/17/08
18 VAC 140-11-10 through 18 VAC 140-11-110	Added	24:25 VA.R. 3641-3644	9/17/08
18 VAC 140-20 (Forms)	Amended	25:1 VA.R. 67	--
18 VAC 140-20-10	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-40	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-50	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-51	Added	25:4 VA.R. 705	11/26/08
18 VAC 140-20-60	Amended	25:4 VA.R. 705	11/26/08
18 VAC 140-20-105	Amended	25:4 VA.R. 706	11/26/08
18 VAC 140-20-140	Repealed	25:4 VA.R. 707	11/26/08
18 VAC 140-20-150	Amended	25:4 VA.R. 707	11/26/08
18 VAC 140-20-160	Amended	25:4 VA.R. 709	11/26/08
18 VAC 145-10-10 through 18 VAC 145-10-90	Repealed	25:6 VA.R. 1351	12/24/08
18 VAC 145-11-10 through 18 VAC 145-11-110	Added	25:6 VA.R. 1352-1355	12/24/08
18 VAC 150-10-10 through 18 VAC 150-10-120	Repealed	25:1 VA.R. 68	10/15/08
18 VAC 150-11-10 through 18 VAC 150-11-110	Added	25:1 VA.R. 68-71	10/15/08
18 VAC 150-20 (Forms)	Amended	24:26 VA.R. 3838	--
18 VAC 155-10-5 through 18 VAC 155-10-80	Repealed	25:6 VA.R. 1355	12/24/08
18 VAC 155-11-10 through 18 VAC 155-11-110	Added	25:6 VA.R. 1355-1358	12/24/08
18 VAC 160-10-10 through 18 VAC 160-10-90	Repealed	25:4 VA.R. 709	11/26/08
18 VAC 160-11-10 through 18 VAC 160-11-110	Added	25:4 VA.R. 709-712	11/26/08
Title 19. Public Safety			
19 VAC 15-10-10 through 19 VAC 15-10-50	Repealed	25:5 VA.R. 1118	12/10/08
19 VAC 15-11-10 through 19 VAC 15-11-110	Added	25:5 VA.R. 1119-1121	12/10/08

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19 VAC 30-10-10 through 19 VAC 30-10-40	Repealed	24:26 VA.R. 3839	10/1/08
19 VAC 30-11-10 through 19 VAC 30-11-110	Added	24:26 VA.R. 3839-3842	10/1/08
19 VAC 30-20-40	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-60	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-80	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-270 through 19 VAC 30-20-300	Added	25:11 VA.R. 1968-1969	3/4/09
19 VAC 30-200-10	Added	25:12 VA.R. 2273	4/2/09
Title 20. Public Utilities and Telecommunications			
20 VAC 5-200-30	Repealed	25:9 VA.R. 1768	1/1/09
20 VAC 5-201-10 through 20 VAC 5-201-110	Added	25:9 VA.R. 1768-1816	1/1/09
20 VAC 5-302-10 through 20 VAC 5-302-35	Amended	25:10 VA.R. 1859-1863	1/15/09
20 VAC 5-312-10	Amended	25:8 VA.R. 1534	1/1/09
20 VAC 5-312-20	Amended	25:8 VA.R. 1535	1/1/09
20 VAC 5-312-60	Amended	25:8 VA.R. 1537	1/1/09
20 VAC 5-312-80	Amended	25:8 VA.R. 1538	1/1/09
20 VAC 5-312-90	Amended	25:8 VA.R. 1540	1/1/09
20 VAC 5-312-120	Repealed	25:8 VA.R. 1542	1/1/09
20 VAC 5-313-10	Amended	25:8 VA.R. 1543	1/1/09
20 VAC 5-313-20	Amended	25:8 VA.R. 1543	1/1/09
20 VAC 5-313-30	Repealed	25:8 VA.R. 1544	1/1/09
20 VAC 5-315-10	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-20	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-40	Amended	24:26 VA.R. 3846	8/25/08
20 VAC 5-315-50	Amended	24:26 VA.R. 3847	8/25/08
20 VAC 5-403-70	Amended	25:9 VA.R. 1816	1/1/09
20 VAC 5-414-10 through 20 VAC 5-414-70	Added	25:7 VA.R. 1437-1438	12/1/08
Title 22. Social Services			
22 VAC 5-10-10 through 22 VAC 5-10-110	Repealed	25:5 VA.R. 1122	1/1/09
22 VAC 5-11-10 through 22 VAC 5-11-110	Added	25:5 VA.R. 1122-1125	1/1/09
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-10-10 through 22 VAC 15-10-70	Repealed	25:4 VA.R. 712	1/1/09
22 VAC 15-11-10 through 22 VAC 15-11-110	Added	25:4 VA.R. 713-715	1/1/09
22 VAC 20-10-10 through 22 VAC 20-10-100	Repealed	25:7 VA.R. 1438	1/7/09
22 VAC 20-11-10 through 22 VAC 20-11-110	Added	25:7 VA.R. 1439-1441	1/7/09
22 VAC 27-10-10 through 22 VAC 27-10-110	Added	25:7 VA.R. 1442-1445	1/7/09
22 VAC 30-10-10	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-20	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-40	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-50	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-60	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-11-10 through 22 VAC 30-11-110	Added	25:1 VA.R. 72-74	10/15/08
22 VAC 40-11-10 through 22 VAC 40-11-70	Repealed	25:1 VA.R. 74	1/1/09
22 VAC 40-12-10 through 22 VAC 40-12-110	Added	25:1 VA.R. 74-78	1/1/09
22 VAC 40-72-10	Amended	25:8 VA.R. 1592	2/5/09
22 VAC 40-72-30	Repealed	25:8 VA.R. 1598	2/5/09
22 VAC 40-72-50	Amended	25:8 VA.R. 1598	2/5/09
22 VAC 40-72-90	Amended	25:8 VA.R. 1599	2/5/09
22 VAC 40-72-100	Amended	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-150	Amended	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-190	Repealed	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-191	Added	25:8 VA.R. 1601	2/5/09

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22 VAC 40-72-200	Repealed	25:8 VA.R. 1601	2/5/09
22 VAC 40-72-201	Added	25:8 VA.R. 1602	2/5/09
22 VAC 40-72-210	Amended	25:8 VA.R. 1603	2/5/09
22 VAC 40-72-220	Amended	25:8 VA.R. 1603	2/5/09
22 VAC 40-72-230	Amended	25:8 VA.R. 1605	2/5/09
22 VAC 40-72-260	Amended	25:8 VA.R. 1606	2/5/09
22 VAC 40-72-290	Amended	25:8 VA.R. 1606	2/5/09
22 VAC 40-72-340	Amended	25:8 VA.R. 1607	2/5/09
22 VAC 40-72-390	Amended	25:8 VA.R. 1609	2/5/09
22 VAC 40-72-420	Amended	25:8 VA.R. 1610	2/5/09
22 VAC 40-72-430	Amended	25:8 VA.R. 1610	2/5/09
22 VAC 40-72-440	Amended	25:8 VA.R. 1611	2/5/09
22 VAC 40-72-630	Amended	25:8 VA.R. 1612	2/5/09
22 VAC 40-72-660	Amended	25:8 VA.R. 1613	2/5/09
22 VAC 40-72-670	Amended	25:8 VA.R. 1613	2/5/09
22 VAC 40-72-910	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-920	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-930	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-950	Amended	25:8 VA.R. 1616	2/5/09
22 VAC 40-72-960	Amended	25:8 VA.R. 1616	2/5/09
22 VAC 40-72-970	Amended	25:8 VA.R. 1617	2/5/09
22 VAC 40-72-1010	Amended	25:8 VA.R. 1617	2/5/09
22 VAC 40-72-1120	Amended	25:8 VA.R. 1618	2/5/09
22 VAC 40-151-10 through 22 VAC 40-151-1020	Added	25:3 VA.R. 482-512	1/1/09
22 VAC 40-705-10	Amended	25:11 VA.R. 1993	3/4/09
22 VAC 40-705-30	Amended	25:11 VA.R. 1996	3/4/09
22 VAC 40-705-40	Amended	25:11 VA.R. 1997	3/4/09
22 VAC 40-705-50	Amended	25:11 VA.R. 1999	3/4/09
22 VAC 40-705-70	Amended	25:11 VA.R. 2000	3/4/09
22 VAC 40-705-80	Amended	25:11 VA.R. 2000	3/4/09
22 VAC 40-705-120	Amended	25:11 VA.R. 2001	3/4/09
22 VAC 40-705-140	Amended	25:11 VA.R. 2002	3/4/09
22 VAC 40-705-150	Amended	25:11 VA.R. 2003	3/4/09
22 VAC 40-705-180	Amended	25:11 VA.R. 2003	3/4/09
22 VAC 45-11-10 through 22 VAC 45-11-90	Repealed	25:5 VA.R. 1125	12/1/08
22 VAC 45-12-10 through 22 VAC 45-12-110	Added	25:5 VA.R. 1125-1128	12/1/08
Title 23. Taxation			
23 VAC 10-10-10 through 23 VAC 10-10-80	Repealed	25:4 VA.R. 730	1/10/09***
23 VAC 10-11-10 through 23 VAC 10-11-110	Added	25:4 VA.R. 732-735	1/10/09***
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-20 (Forms)	Amended	25:5 VA.R. 1128	--
23 VAC 10-20-20	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-80	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-90	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-110	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-130	Amended	25:11 VA.R. 2005	3/4/09
23 VAC 10-20-160	Amended	25:8 VA.R. 1620	3/8/09
23 VAC 10-20-165	Added	25:8 VA.R. 1622	3/8/09
23 VAC 10-20-170	Repealed	25:8 VA.R. 1627	3/8/09

*** See erratum (25:6 VA.R. 1375) for effective date

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
23 VAC 10-20-180	Amended	25:8 VA.R. 1628	3/8/09
23 VAC 10-20-190	Amended	25:8 VA.R. 1628	3/8/09
23 VAC 10-20-200	Amended	25:11 VA.R. 2005	3/4/09
23 VAC 10-55 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-60 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-65 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-75 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-210 (Forms)	Amended	25:6 VA.R. 1358	--
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
23 VAC 10-210-170	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-220	Amended	25:11 VA.R. 2006	3/4/09
23 VAC 10-210-250	Amended	25:11 VA.R. 2007	3/4/09
23 VAC 10-210-595	Added	25:4 VA.R. 736	11/26/08
23 VAC 10-210-870	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-3080	Amended	25:11 VA.R. 2007	3/4/09
23 VAC 10-210-4010	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-6060	Amended	25:8 VA.R. 1632	3/8/09
23 VAC 10-220 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230-20	Amended	25:8 VA.R. 1633	3/8/09
23 VAC 10-230-30	Amended	25:8 VA.R. 1633	3/8/09
23 VAC 10-230-40	Amended	25:8 VA.R. 1635	3/8/09
23 VAC 10-230-71	Added	25:8 VA.R. 1637	3/8/09 ****
23 VAC 10-230-75	Added	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-80	Amended	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-90	Amended	25:8 VA.R. 1638	3/8/09
23 VAC 10-230-110	Amended	25:8 VA.R. 1639	3/8/09
23 VAC 10-230-120	Amended	25:8 VA.R. 1639	3/8/09
23 VAC 10-240 (Forms)	Amended	25:6 VA.R. 1359	--
23 VAC 10-300 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-310 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-330 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-350 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-370 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-390 (Forms)	Amended	25:5 VA.R. 1130	--
Title 24. Transportation and Motor Vehicles			
24 VAC 20-10-10 through 24 VAC 20-10-140	Repealed	25:6 VA.R. 1360	12/24/08
24 VAC 20-11-10 through 24 VAC 20-11-110	Added	25:6 VA.R. 1361-1364	12/24/08
24 VAC 22-10-10 through 24 VAC 22-10-140	Repealed	25:4 VA.R. 752	11/26/08
24 VAC 22-11-10 through 24 VAC 22-11-110	Added	25:4 VA.R. 753-755	11/26/08
24 VAC 25-5-10 through 24 VAC 25-5-110	Added	25:7 VA.R. 1445-1448	1/7/09
24 VAC 25-10-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 25-20-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 27-10-10 through 24 VAC 27-10-120	Repealed	25:6 VA.R. 1364	12/24/08
24 VAC 27-11-10 through 24 VAC 27-11-110	Added	25:6 VA.R. 1364-1367	12/24/08
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-10-10 through 24 VAC 30-10-70	Repealed	25:6 VA.R. 1367	12/24/08
24 VAC 30-11-10 through 24 VAC 30-11-110	Added	25:6 VA.R. 1367-1370	12/24/08
24 VAC 30-15-10	Repealed	25:10 VA.R. 1863	2/18/09

**** See erratum (25:14 VA.R. 2682)

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
24 VAC 30-16-10	Repealed	25:3 VA.R. 520	11/12/08
24 VAC 30-92-10 through 24 VAC 30-92-150	Added	25:15 VA.R. 2777-2801	3/9/09
24 VAC 30-380-10	Amended	25:5 VA.R. 1130	10/22/08
24 VAC 35-10-10 through 24 VAC 35-10-70	Repealed	25:5 VA.R. 1131	12/10/08
24 VAC 35-11-10 through 24 VAC 35-11-110	Added	25:5 VA.R. 1132-1134	12/10/08

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Initial Agency Notice

Title of Regulation: **9 VAC25-720. Water Quality Management Planning Regulation.**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Name of Petitioner: Brian K. McReynolds, City of Waynesboro Director of Public Works.

Nature of Petitioner's Request: Amend the Water Quality Management Planning Regulation (9VAC25-720-50 C, Shenandoah-Potomac Basin), to increase total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) for the Waynesboro wastewater plant (VPDES Permit No. 0025151). Current nutrient WLAs are TN = 48,729 lb/yr; TP = 3,655 lb/yr, based on a design flow of four million gallons per day (MGD). The city is expanding the plant to six MGD, and installing state-of-the-art nutrient reduction technology. Construction is underway with work expected to be completed and the facility certified for operation by December 31, 2010. Waynesboro requests the WLAs be amended to TN = 73,058 lbs/yr (a 24,329 lb/yr increase) and TP = 5,479 lbs/yr (a 1,824 lb/yr increase) to reflect the six MGD design flow.

Agency's Plan for Disposition of Request: Public-notice receipt of the petition and provide for a 21-day public comment period. Upon close of the public comment period, review any comments received and then make a decision to either initiate a rulemaking or place the petition on the board's next meeting agenda for their consideration.

Public Comments: Comments may be submitted until May 4, 2009.

Agency Contact: John M. Kennedy, Department of Environmental Quality, Chesapeake Bay Program Manager, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, toll free (800) 592-5482, or email jmkennedy@deq.virginia.gov.

VA.R. Doc. No. R09-15; Filed March 26, 2009, 12:25 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Alden S. Anderson III.

Nature of Petitioner's Request: To amend 18VAC60-20-50 to allow the Roanoke Valley Dental Society to present continuing education programs without being affiliated with local organizations to be an approved sponsor.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board did not choose to establish another category of approved sponsors for continuing education. The Roanoke Valley Dental Society is one among a number of local dental societies and other dental-related organizations, so the board did not believe it was advisable to recognize one such group in regulation. Continuing education offerings by the Roanoke Valley Dental Society could be approved by the Academy of General Dentistry, the Virginia Dental Association, or other such bodies currently recognized as approved sponsors.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R09-10; Filed March 13, 2009, 2:23 p.m.

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic.**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Dag A. Gollopp.

Nature of Petitioner's Request: Amend 18VAC85-20-140 of the regulation that requires an applicant to pass Parts 1, 2 and 3 of the United States Medical Licensing Examination (USMLE) within 10 years or to hold board certification.

Agency's Plan for Disposition of Request: The board will receive public comment on the petition for rulemaking and will consider any public comment and the petition at a meeting of the board on June 25, 2009.

Public Comments: Comments may be submitted until May 13, 2009.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R09-13; Filed March 13, 2009, 2:23 p.m.

BOARD OF PHARMACY

Initial Agency Notice

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Eric D. Hampton.

Nature of Petitioner's Request: Amend regulations pertaining to automated devices for dispensing and administration of drugs to use the activity reports rather than having a nurse or other licensed person sign for the delivery.

Agency's Plan for Disposition of Request: The board will receive public comment on the petition for rulemaking until May 13, 2009, and will review the petition and any comments at its meeting on June 10, 2009, to make a decision on whether to initiate rulemaking.

Public Comments: Comments may be submitted until May 13, 2009.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 662-9911, FAX (804) 662-9313, or email scotti.russell@dhp.virginia.gov.

VA.R. Doc. No. R09-14; Filed March 13, 2009, 2:23 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Withdrawal of Notice of Intended Regulatory Action

The Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC30-141, Family Access to Medical Insurance Security Plan**, which was published in 25:10 VA.R. 1846 December 19, 2008. The agency has filed a final regulation in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations from Article 2 of the Administrative Process Act that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

Agency Contact: Molly Carpenter, Division of Maternal and Child Health, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 786-1680, or email molly.carpenter@dmas.virginia.gov.

VA.R. Doc. No. R09-1673; Filed March 24, 2009, 9:51 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider promulgating the following regulations: **18VAC48-70, Common Interest Community Ombudsman Regulations**. The purpose of the proposed action is to establish the requirement that each association must establish reasonable procedures for (i) the resolution of written complaints from the members of the association and other citizens, (ii) recordkeeping related to complaints filed, (iii) forms and procedures to be provided, (iv) transmittal of information to members regarding the Office of the Common Interest Community Ombudsman, and (v) procedures for filing a notice of final adverse decision with the board. The new regulation is necessary to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 55-530 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on May 13, 2009.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R09-1873; Filed March 27, 2009, 10:02 a.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Agriculture and Consumer Services will receive, consider and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 2VAC5-100. Rules and Regulations Governing the Qualifications for Humane Investigators (repealing 2VAC5-100-10 through 2VAC5-100-40).

Statutory Authority: § 3.1-796.106 (Repealed) of the Code of Virginia.

Effective Date: May 13, 2009.

Agency Contact: Colleen Calderwood, DVM, Program Manager, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email colleen.calderwood@vdacs.virginia.gov.

Summary:

This regulation governing the qualifications for humane investigators is repealed because the regulation is no longer authorized by law.

VA.R. Doc. No. R09-1778; Filed March 24, 2009, 9:35 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-30, 4VAC20-270-40, 4VAC20-270-55).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 26, 2009.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish the season for the harvest of blue crabs for 2009, without specifying a calendar year.

4VAC20-270-30. Daily time limits.

A. It shall be unlawful for any person licensed to catch and sell crabs taken by crab pot or peeler pot to take and harvest crabs from any crab pot or peeler pot, or to retrieve, bait or set any crab pot or peeler pot, except during the lawful daily time periods described in this subsection or subsection B of this section. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 6 a.m. to 2 p.m. from March 17 through April 30 and September 1 through November 30, except as described in subsection C of this section, and from 5 a.m. to 1 p.m. during the months of May, June, July, and August, except as specified in subsection B of this section. Crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in this subsection or subsection B of this section, may be set during the period starting immediately following the lawful daily time period and ending one hour after the lawful daily time period.

B. Any licensed crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his crab pot or peeler pot, or to retrieve, bait or set his crab pot or peeler pot during an alternate eight-hour daily time limit. That alternative eight-hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.

Regulations

Nothing in this regulation shall prohibit any licensed crab pot or peeler pot fisherman, who has been granted an exception to the eight-hour work schedule, on a medical basis, from using another licensed crab pot or peeler pot fisherman as a mate, provided; however, during the designated alternate work hours, only the crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further, it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any crab pot or peeler pot that is not owned and licensed by the fisherman granted the exception.

~~C. From October 27, 2008, through November 30, 2008, it shall be unlawful for any person to harvest from Virginia tidal waters, or to possess aboard a vessel, any female crab.~~

~~D. C.~~ The lawful daily time periods for the commercial harvest of crabs by crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when he determines that a pending weather event is sufficient cause for the removal of crab pots from the tidal waters of the Commonwealth.

4VAC20-270-40. Season limits.

A. The lawful season for the harvest of male crabs shall be March 17, ~~2008~~, through November 30, ~~2008~~. The lawful season for the harvest of female crabs shall be March 17, ~~2008~~, through ~~October 26, 2008~~ November 30.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot or peeler crab pot in any tidal waters of Virginia from December 1, ~~2008~~, through March 16, ~~2009~~.

D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland, to Dahlgren, Virginia.

2. This subsection shall not apply to lawful eel pots as described in 4VAC20-500-50.

4VAC20-270-55. Minimum size limits.

A. From March 17 through July 15, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From July 16, ~~2008~~, through November 30, ~~2008~~, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From July 16, ~~2008~~, through November 30, ~~2008~~, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

~~C. From October 27, 2008, through November 30, 2008, it shall be unlawful for any person to harvest from Virginia tidal waters, or to possess aboard a vessel, any female peeler crab.~~

~~D. C.~~ In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

~~E. D.~~ It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

VA.R. Doc. No. R09-1854; Filed March 26, 2009, 3:47 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-530. Pertaining to American Shad (amending 4VAC20-530-31).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 26, 2009.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments extend the 2008 provision for an American shad commercial bycatch fishery to the 2009 season.

4VAC20-530-31. Bycatch fishery.

A. Any registered commercial fisherman meeting the conditions described in this subsection shall be eligible to participate in the American shad bycatch fishery in ~~2008~~ 2009:

1. The registered commercial fisherman shall apply for a VMRC American Shad Bycatch Permit and possess that permit while fishing, landing, or selling his catch of American shad.

2. The registered commercial fisherman shall complete the VMRC American Shad Bycatch Survey form to describe his pending fishing activity.

B. It shall be unlawful for any person to possess aboard a vessel more than 10 American shad. When more than one registered and permitted fisherman is fishing on the same vessel, it shall be unlawful to possess more than 10 American shad aboard that vessel.

C. It shall be unlawful for any person to possess aboard a vessel or land any American shad unless that person possesses at least an equal number of fish of only the following food-grade species: spot, croaker, bluefish, catfish, striped bass or white perch.

D. Possession of American shad by any person permitted in accordance with this section shall be lawful only when those American shad were harvested from the bycatch area. Possession of any American shad harvested in Virginia waters that are outside of the bycatch area shall constitute a violation of this regulation, except as described in 4VAC20-530-32.

E. American shad harvested only as bycatch by anchored gill nets and staked gill nets may be possessed or retained for sale in accordance with the provisions of this regulation. It shall be unlawful for any person to harvest, land or possess any American shad taken by any commercial gear, except anchored gill net or staked gill net, or any recreational gear.

F. Every fisherman permitted for the American shad bycatch fishery shall contact the commission's interactive voice response system once weekly to report the following for the

preceding weekly period: name, registration number, number of fishing trips taken, water body fished, number of nets set, number of American shad caught and number retained.

VA.R. Doc. No. R09-1855; Filed March 26, 2009, 3:51 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-30).**

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: April 1, 2009.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment changes the minimum size of black sea bass harvested by recreational gear from 12 inches to 12-1/2 inches.

4VAC20-950-30. Minimum size limit.

A. The minimum size for black sea bass harvested by commercial fishing gear shall be 11 inches, total length.

B. The minimum size of black sea bass harvested by recreational gear, including but not limited to hook and line, rod and reel, spear and gig, shall be ~~12~~ 12-1/2 inches, total length.

C. It shall be unlawful for any person to possess any black sea bass smaller than the minimum size limit, as designated respectively, in subsections A and B of this section.

D. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than 11 inches, total length.

E. Total length shall be measured along the lateral midline from tip of nose to tip of tail excluding the caudal fin filament.

VA.R. Doc. No. R09-1793; Filed March 26, 2009, 3:54 p.m.

Regulations

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1200. Pertaining to Special Oyster Relay Season in the Rappahannock River (adding 4VAC20-1200-10, 4VAC20-1200-20, 4VAC20-1200-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: April 1, 2009.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This chapter establishes a special oyster relay season in the Rappahannock River at Russ' and Little Carters rocks in Area 9 open to harvest by hand or ordinary tongs from April 1 through April 30, 2009, and includes daily harvest limits (bushels) and time limits for that harvest.

CHAPTER 1200

PERTAINING TO THE SPECIAL OYSTER RELAY SEASON IN THE RAPPAHANNOCK RIVER

4VAC20-1200-10. Purpose.

The purpose of this chapter is to promote seasonal stability in the marketing of Virginia oysters without negatively impacting that resource.

4VAC20-1200-20. Special oyster relay season and limitations of the river.

A. Those portions of Area 9 in the Rappahannock River known as Russ' and Little Carters rocks shall be open to harvest by hand or ordinary tongs from April 1 through April 30, 2009. The remainder of Area 9 in the Rappahannock River will remain closed during this special relay season.

B. The lawful daily limit of clean cull oysters harvested from Russ' and Little Carters rocks shall be equal to the number of registered commercial fisherman licensees on board the vessel multiplied by 15 bushels. It shall be unlawful to possess on board any vessel or to land more than the lawful daily limit of clean cull oysters described in this section.

C. Russ' and Little Carters rocks are within Condemned Shellfish Growing Area Number 25A-068, and all applicable laws and regulations for the relaying of shellfish shall apply.

D. It shall be unlawful for any person to harvest or attempt to harvest oysters from Russ' and Little Carters rocks prior to sunrise or after 1 p.m.

E. Garrett's Marina at Bowler's Wharf shall be designated as the onshore loading and unloading location for oysters taken from Russ' and Little Carters rocks. It shall be unlawful for any person to load or unload oysters taken from Russ' and Little Carters rocks from any shoreside location except Garrett's Marina at Bowler's Wharf.

F. All laws as set forth in Chapter 8 (§ 28.2-800 et seq.) of Title 28.2 of the Code of Virginia (Health and Sanitation Provisions) and all regulations established by the Marine Resources Commission pertaining to the relaying of shellfish shall apply to this special relay season.

4VAC20-1200-30. Penalty.

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalty prescribed by law, any person violating any provisions of this chapter shall return all oysters in his possession to the water and shall cease harvesting on that day. All harvesting apparatus shall be subject to seizure, and pursuant to § 28.2-232 of the Code of Virginia, anyone found in violation of this chapter shall be subject to the immediate forfeiture of all oyster licenses and permits until that person appears before the Marine Resources Commission.

C. In addition to the penalty prescribed by § 28.2-802 of the Code of Virginia, any person violating any provisions of this chapter shall destroy all oysters harvested by that person in violation of this chapter in the presence of a marine police officer and shall be subject to the immediate forfeiture of all oyster licenses and permits until appearing before the Marine Resources Commission.

VA.R. Doc. No. R09-1798; Filed March 26, 2009, 3:57 p.m.

Emergency Regulation

Title of Regulation: **4VAC20-1210. Pertaining to a Blue Crab Sanctuary (adding 4VAC20-1210-10, 4VAC20-1210-20, 4VAC20-1210-30).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: March 26, 2009, through April 24, 2009.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This emergency regulation establishes a closed season for the harvest of crabs in the area described and defined in § 28.2-709 of the Code of Virginia as a blue crab sanctuary. This chapter makes it unlawful for any person to take or catch crabs for commercial purpose from the blue crab sanctuary area from May 1 through September 15.

**CHAPTER 1210
PERTAINING TO A BLUE CRAB SANCTUARY**

4VAC20-1210-10. Purpose.

The purpose of this emergency chapter is to establish a different closed season for the harvest of crabs for commercial purposes in that area described by § 28.2-709 of the Code of Virginia as a blue crab sanctuary. Section 28.2-709 authorizes the commission to establish alternative seasons for the harvest of crabs in this sanctuary, that is otherwise closed year round.

4VAC20-1210-20. Closed season.

A. The limits of the blue crab sanctuary area are defined as follows: beginning at the point of origin of the center line of the Hampton Roads Bridge-Tunnel facility where such facility commences in the City of Norfolk, Virginia, and following the shoreline in a general easterly direction, and also extending 200' out from the mean low-water mark of such shoreline into the Chesapeake Bay, to Harrison's fishing pier, Ocean View, and thence in a general northerly direction to Thimble Shoal Lighthouse; thence running in approximately a northeasterly direction to Cape Charles Lighthouse, located on Smith Island; and thence in approximately a southwestern direction to Cape Henry Lighthouse, and bounded by the shoreline; and thence following the shoreline in a general westerly direction back to the point of beginning.

B. It shall be unlawful for any person to take or catch crabs for commercial purposes from the area described in subsection A of this section, only from May 1 through September 15.

4VAC20-1210-30. Penalty.

As set forth in § 28.2-709 of the Code of Virginia, a violation of this chapter is a Class 3 misdemeanor.

VA.R. Doc. No. R09-1867; Filed March 26, 2009, 3:45 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Forms

NOTICE: The following forms have been filed by the Department of Mines, Minerals and Energy. The forms listed for 4VAC25-31, Reclamation Regulations for Mineral Mining, are available for public inspection at the Department of Mines, Minerals and Energy, 900 Natural Resources Drive,

Suite 400, Charlottesville, VA 22903; forms listed for 4VAC25-130, Coal Surface Mining Reclamation Regulations, are available for public inspection at the Department of Mines, Minerals and Energy, 3405 Mountain Empire Road, Big Stone Gap, VA 24219; and forms for both regulations are available for inspection at the Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23129, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, VA 23219. Copies of the forms may be obtained from David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone 804 692-3212, email david.spears@dmme.virginia.gov.

Titles of Regulations: 4VAC25-31. Reclamation Regulations for Mineral Mining.

4VAC25-130. Coal Surface Mining Reclamation Regulations.

FORMS (4VAC25-31)

- Permit/License Application, DMM-101 (rev. 2/06).
- Notice of Application to Mine, DMM-103 (rev. 2/06).
- Statement Listing the Names and Addresses of Adjoining Property Owners, DMM-103a (rev. 9/99); included in DMM-103 Notice of Application to Mine.
- Yearly Progress Report, DMM-105 (rev. 2/06).
- Surety Bond, DMM-107 (rev. 2/06).
- Legend, DMM-109 (rev. 2/06).
- Relinquishment of Mining Permit, DMM-112 (rev. 2/06).
- Request for Amendment, DMM-113 (rev. 2/06).
- Consolidated Biennial Report of Waivered Counties, Cities, and Towns, DMM-116 (rev. 2/06).
- Biennial Waivered Counties, Cities, and Towns, Report of Individual Mining Companies, DMM-117 (rev. 2/06).
- Consent for Right of Entry, DMM-120 (rev. 12/99).
- Mineral Mining Annual Tonnage Report, DMM-146 (rev. 2/06).
- Mineral Mining Annual Report for Contractors, DMM-146c (rev. ~~2/06~~ 12/08).
- DMM Application Checklist, DMM-148 (rev. 2/06).
- Request for Release of Mine Map, DMM-155 (rev. 2/06).
- Notice of Operator Intent, DMM-156 (rev. 2/06).
- License Renewal/Transfer Application, DMM-157 (rev. 2/06).
- Permit Transfer Acceptance, DMM-161 (rev. 2/06).

Regulations

Permit Renewal Checklist, DMM-163 (rev. 3/06).

Certification of No Change, DMM-164 (rev. 3/06).

Surety Bond Rider, DMM-167 (rev. 2/06).

General Permit for Sand and Gravel Operations Less Than Ten Acres in Size, DMM-168 (eff. 9/03).

Certificate of Deposit, DMM-169 (eff. 2/06).

Forms Notice is not available

FORMS (4VAC25-130)

Anniversary Notification, DMLR-PT-028 (eff. 11/07).

Anniversary Notification, DMLR-PT-028b (eff. 11/07).

Change Order Justification, DMLR-AML-065 (eff. 8/99).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 11/99).

Application for Exemption Determination (Extraction of Coal Incidental to the Extraction Of Other Minerals), DMLR-211 (rev. 4/96).

Applicant Violator System (AVS) Ownership Control Information, DMLR-AML-003 (rev. 1/95).

Consent for Right of Entry-Exploratory, DMLR-AML-122 (rev. 3/98).

Consent for Right of Entry-Construction, DMLR-AML-123 (rev. 3/98).

Consent for Right of Entry-Construction Lien Waiver, DMLR-AML-174 (rev. 3/91).

License for Performance-Acid Mine Drainage Investigations and Monitoring (Abandoned Mine Land Program), DMLR-AML-175c (11/96).

License for Performance-Acid Mine Drainage Reclamation and Construction (Abandoned Mine Land Program), DMLR-AML-176c, (rev. 12/96).

Consent for Right of Entry-Ingress/Egress, DMLR-AML-177 (rev. 3/98).

Application for Recertification: DMLR Endorsement/Blaster's Certification, DMLR-BCME-03 (rev. 5/05).

Application for DMLR Endorsement: Blaster's Certification (Coal Surface Mining Operation), DMLR-BCME-04 (rev. 5/05).

Geology and Hydrology Information Part A through E, DMLR-CP-186 (rev. 3/86).

Sediment and Pond Design Data Sheet, DMLR-CP-187 (rev. 12/85).

Notice of Temporary Cessation, DMLR-ENF-220 (rev. 2/96).

Application for Small Operator's Assistance, DMLR-OA-106 (rev. 12/85).

Lands Unsuitable Petition, DMLR-OA-131 (rev. 12/85).

Application for Permit for Coal Exploration and Reclamation Operations (which Remove More Than 250 Tons) and NPDES, DMLR-PS-062 (rev. 12/85).

Chapter 19-Statement for Third Party-Certificate of Deposit, DMLR-PS-093 (rev. 12/85).

Cognovit Note, Part I and II, DMLR-PS-095 (rev. 12/85).

Application-Coal Surface Mining Reclamation Fund, DMLR-PS-162 (rev. 7/89).

Application for Release of Bond-Estimated Cost, DMLR-PS-212 (rev. 3/88).

Application for Release of Bond-Reclamation Fund, DMLR-PS-213 (rev. 3/88).

Example-Waiver (300 Feet from Dwelling), DMLR-PT-223 (rev. 2/96).

Analysis, Premining vs Postmining Productivity Comparison (Hayland/Pasture Land Use), DMLR-PT-012 (eff. 8/03).

Surety Bond, DMLR-PT-013 (rev. 9/04).

Surety Bond-Federal Lands, DMLR-PT-013A (rev. 10/95).

Surety Bond Rider, DMLR-PT-013B (rev. 9/04).

Map Legend, DMLR-PT-017 (rev. 2/05).

Certificate of Deposit Example, DMLR-PT-026 (rev. 9/04).

Form Letter From Banks Issuing a CD for Mining on Federal Lands, DMLR-PT-026A (rev. 8/03).

Operator's Seeding Report, DMLR-PT-011 (rev. 3/06).

Request for Relinquishment, DMLR-PT-027 (rev. 4/96).

Water Supply Inventory List, DMLR-PT-030 (rev. 4/96).

Application for Permit for Coal Surface Mining and Reclamation Operations and National Pollutant Discharge Elimination Systems (NPDES), DMLR-PT-034 (rev. 2/99).

Request for DMLR Permit Data, DMLR-PT-034info (eff. 11/07).

Application for Permit: Coal Surface Mining and Reclamation Operations, DMLR-PT-034D (rev. 8/07).

Coal Exploration Notice, DMLR-PT-051 (rev. 11/98).

Well Construction Data Sheet, DMLR-WCD-034D (rev. 5/04).

Sediment Basin Design Data Sheet, DMLR-PT-086 (rev. 10/95).

Impoundment Construction and Annual Certification, DMLR-PT-092 (rev. 10/95).

Road Construction Certification, DMLR-PT-098 (rev. 10/95).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 2/95).

Rainfall Monitoring Report, DMLR-PT-102 (rev. 8/98).

Pre-Blast Survey, DMLR-PT-104 (rev. 10/95).

Excess Spoil Fills and Refuse Embankments Construction Certification, DMLR-PT-105 (rev. ~~4/96~~ 2/09).

Stage-Area Storage Computations, DMLR-PT-111 (rev. 10/95).

NPDES Discharge Monitoring Report, DMLR-PT-119 (rev. 2/95).

Water Monitoring Report-Electronic File/Printout Certification, DMLR-PT-119C (rev. 5/95; included in DMLR-PT-119).

Coal Surface Mining Reclamation Fund Application, DMLR-PT-162 (rev. 4/96).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Coal Surface Mining Reclamation Fund Tax Reporting Form, DMLR-PT-178 (rev. 10/95).

Surface Water Monitoring Report, DMLR-PT-210 (rev. 8/98).

Application For Performance Bond Release, DMLR-PT-212 (rev. 4/96).

Public Notice: Application for Transfer, Assignment, or Sale of Permit Rights under Chapter 19 of Title 45.1 of the Code of Virginia, DMLR-PT-219 (8/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase I, DMLR-PT-225 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase II, DMLR-PT-226 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase III, DMLR-PT-227 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Incremental Bond Reduction, DMLR-PT-228 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool

Bonding, Entire Permit Bond Reduction, DMLR-PT-229 (rev. 9/95).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Release, DMLR-PT-230 (rev. 4/96).

Verification of Public Display of Application, DMLR-PT-236 (8/01).

Affidavit (Permit Application Information: Ownership and Control Information and Violation History Information), DMLR-PT-240 (rev. 7/07).

Stream Channel Diversion(s) Certification, DMLR-PT-233 (rev. 2/96).

Quarterly Acid-Base Monitoring Report, DMLR-PT-239 (rev. 6/95).

Affidavit (No Legal Change in a Company's Identity), DMLR-PT-250 (rev. 12/98).

Blasting Plan Data, DMLR-PT-103 (rev. 4/96).

Affidavit (Reclamation Fee Payment), DMLR-PT-244 (rev. 7/07).

Application-National Pollutant Discharge Elimination System (NPDES) Permit-Short Form C, DMLR-PT-128 (rev. 5/96).

National Pollutant Discharge Elimination System (NPDES) Short Form C-Instructions, DMLR-PT-128A (rev. 5/96).

Impoundment Inspection Report, DMLR-PT-251 (rev. 12/93).

Water Sample Tag, DMLR-TS-107 (rev. 3/83).

Surface Water Baseline Data Summary, DMLR-TS-114 (rev. 4/82).

Diversion Design Computation Sheet, DMLR-TS-120 (rev. 12/85).

Sediment Channel Design Data Sheet, DMLR-TS-127 (rev. 12/85).

Virginia Stream Survey, DMLR-TS-217 (rev. 1/87).

Line Transect-Forest Land Count, DMLR-PT-224 (rev. 2/96).

Applicant Violator System (AVS) Ownership & Control Information, DMLR-AML-003 (rev. 4/97).

Application for Permit Renewal Coal Surface Mining and Reclamation Operations, DMLR-PT-034R (eff. 6/97).

Application for Coal Exploration Permit and National Pollutant Discharge Elimination System Permit, DMLR-PT-062 (formerly DMLR-PS-062) (rev. 6/97).

Regulations

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Vibration Observations, DMLR-ENF-032V (eff. 9/97).

Application for Small Operator Assistance, DMLR-PT-106 (formerly CP-106) (rev. 9/97).

Application-National Pollutant Discharge Elimination System Application Instructions, DMLR-PT-128 (rev. 9/97).

Blasting Plan Data, DMLR-PT-103 (rev. 10/97).

Request for Relinquishment, DMLR-PT-027 (rev. 1/98).

Written Findings, DMLR-PT-237 (rev. 1/98).

Irrevocable Standby Letter of Credit, DMLR-PT-255 (rev. 9/04).

Confirmation of Irrevocable Standby Letter of Credit, DMLR-PT-255A (eff. 8/03).

Affidavit DMLR-AML-312 (eff. 7/98).

Indemnity Agreement - Self Bond, DMLR-PT-221 (eff. 12/07).

Permittee Consent to Service by Electronic Mail, DMLR-PT-265 (eff. 1/09).

VA.R. Doc. No. R09-1850; Filed March 16, 2009, 4:13 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Virginia Soil and Water Conservation Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-1100 through 4VAC50-60-1190; adding 4VAC50-60-1182, 4VAC50-60-1184, 4VAC50-60-1186, 4VAC50-60-1188).

Statutory Authority: §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

Effective Date: July 1, 2009, EXCEPT 4VAC50-60-1150 and Form DCR199-146 are effective May 13, 2009.

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

This regulatory action amends the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations by developing a new General Permit for Stormwater Discharges from Construction Activities and amending associated definitions contained in Part I of the regulations and incorporated forms. Regulations developed under the federal Clean Water Act (33 USC § 1251 et seq.) and Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia require that VSMP permits be effective for a fixed term not to exceed five years (§ 10.1-603.2:2 B of the Code of Virginia). The existing five-year general permit was issued on July 1, 2004, thus necessitating the promulgation of a new general permit by the June 30, 2009, expiration date. This regulatory action becomes effective on July 1, 2009, except that 4VAC50-60-1150 and Form DCR199-146 have an effective date of May 13, 2009.

Part I

Definitions, Purpose, and Applicability

4VAC50-60-10. Definitions.

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

["Act" means the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.]

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or

prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed-specific values for the average land cover condition based upon 4VAC50-60-110.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, including both [a] structural [~~or~~ and] nonstructural [~~practice~~ practices], maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. [~~BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.~~]

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural or manmade waterway.

["Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.]

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

"Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR [~~41906~~ 11906 June 15, 1972]).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any ~~best management practice~~ BMP, stormwater facility, or other method used to ~~prevent, or reduce~~ minimize the discharge of pollutants to ~~surface state~~ waters.

"Co-operator" means an operator to a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

Regulations

"Department" means the Department of Conservation and Recreation.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to [surface state] waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the board, for the reporting of self-monitoring results by operators.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP program.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area [of the Commonwealth of Virginia] .

"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Hazardous substance" means any substance designated under the Code of Virginia [and or] 40 CFR Part 116 (2000) pursuant to § 311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; and
- e. Other relevant factors.

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; ~~and~~ (iii) highway construction projects; and (iv) construction of stormwater channels and stream restoration activities. Private subdivision roads or streets shall not be considered linear development projects.

"Local stormwater management program" or "local program" means a statement of the various methods employed by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection,

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enforcement, and evaluation consistent with the Act and this chapter. The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.

"Locality" means a county, city, or town.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall (or major outfall)" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; or
- e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration [for the reasons listed at 40 CFR 122.63 and] as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management

agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Virginia Stormwater Management Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or

aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Operator" means the owner or operator of any facility or activity subject to ~~the VSMP permit regulation under the VSMP program.~~ In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other

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conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality that is delegated authority by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter.

"Permittee" means the person or locality to which the permit is issued, including any owner or operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body (including but not limited to a federal, state, or local entity), any interstate body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does

not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Pre-development" refers to the conditions that exist at the time that plans for the land development of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

"Privately owned treatment works (PVOTW)" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works (POTW)" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a licensed professional engineer, responsible land disturber, or other [knowledgeable] person who holds a certificate of competency from the board in the area of project inspection or combined administrator.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.

"Regional (watershed-wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated planning area in which the land development project is located.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small

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construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an

extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a ~~document~~ document(s) containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the Virginia Stormwater Management Act, this chapter and associated guidance documents.

"Stormwater Pollution Prevention Plan" (~~SWPPP~~) or "~~plan~~" "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of ~~pollution~~ pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall ~~describe and ensure~~ identify and require the implementation of ~~best management practices~~ control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to ~~reduce~~ minimize pollutants in stormwater discharges from land-disturbing activities ~~and to assure~~ in compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued or general permit coverage authorized.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.

"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate

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measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable [federal] effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" [~~or "Act"~~] means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations and that is jointly created by the department and the Virginia Water Resources Research Center subject to advice to the director from a permanent stakeholder advisory committee.

"Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the

federal Clean Water Act, the Virginia Stormwater Management Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program (VSMP) permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), and the federal Clean Water Act (33 USC § 1251 et seq.).

"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream or system of connecting rivers or streams such that all surface water within the area flows through a single outlet.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Part XIV

General Virginia Stormwater Management Program (VSMP)
Permit for Discharges of Stormwater from Construction
Activities**4VAC50-60-1100. Definitions.**

The words and terms used in this part shall have the meanings defined in the Act and this chapter unless the context clearly indicates otherwise, except [~~that for as~~ otherwise specified in this section. Terms not defined in the Act, this chapter, or this section shall have the meaning attributed to them in the CWA. For] the purposes of this part:

"Commencement of construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed [~~, without large bare areas~~]), mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
 - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
 - b. The homebuilder establishing temporary stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.
3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"Minimize" means to prevent, reduce, or eliminate using practicable control measures to meet the conditions of this permit.

4VAC50-60-1110. Purpose.

This general permit regulation ~~governs~~ authorizes stormwater discharges from [regulated] construction

activities. For the purposes of this part, these discharges are defined as stormwater discharges associated with large construction activity, and stormwater discharges associated with small construction activity. Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit. This general permit covers only discharges through a point source to ~~a surface water state waters~~ or through a municipal or nonmunicipal separate storm sewer system to surface state waters. Stormwater discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this permit. The goal of this permit is to minimize [the discharge of] stormwater pollutants from construction activity by requiring that the operator plan and implement appropriate control measures. [Implementation of the strategies and control measures consistent with the provisions of this permit constitutes compliance with the assumptions of an approved TMDL, protects water quality in the absence of a TMDL wasteload allocation, ensures compliance by the operator with water quality standards, and satisfies the appropriate water quality requirements of the Clean Water Act and regulations.]

4VAC50-60-1120. Effective date of the permit.

This general permit [~~became is~~ is] effective on July 1, ~~2004~~ 2009. The general permit will expire on June 30, ~~2009~~ 2014.

4VAC50-60-1130. Authorization to discharge.

A. Any operator governed by this general permit is authorized [~~by this~~ is] to discharge to surface state waters of the Commonwealth of Virginia [~~upon issuance of coverage under the general permit by the permit issuing authority in accordance with 4VAC50-60-1150 A 4~~ upon issuance of coverage under the general permit by the permit issuing authority in accordance with 4VAC50-60-1140 4VAC50-60-1150], submitted any fees required by 4VAC50-60-700 et seq. (Part XIII) [~~unless exempted pursuant to 4VAC60-60-1150 A 3 (a)~~ has filed], complies ~~complied~~ with the requirements of 4VAC50-60-1150, [~~complied~~ complies] with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190, and provided that:

~~1. The operator shall not have been required to obtain an individual permit according to 4VAC50-60-410 B;~~

~~2. The operator shall not be authorized by this general permit to discharge to state waters specifically named in other State Water Control Board regulations or policies that prohibit such discharges;~~

3. 1.] Prior to commencing construction, the operator shall obtain approval of an erosion and sediment control plan from the locality in which the construction activity is to occur or from another appropriate plan-approving authority authorized under the Virginia Erosion and Sediment Control Regulations, 4VAC50-30, unless the operator

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receives from the locality an "agreement in lieu of a plan" ~~from the locality as defined in 4VAC50-30-10, or is exempt from the requirement to submit an erosion and sediment control plan by 4VAC50-30 [§ 10.1-560 of the Code of Virginia the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and Erosion and Sediment Control Regulations (4VAC50-30)];~~

~~[4. Stormwater discharges which that the permit-issuing authority State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards (9VAC25-260) are not covered by this permit;~~

~~5. 2.] The stormwater discharge authorized by this permit may be combined with other sources of stormwater that are not required to be covered under a VSMP permit, so long as the combined discharge is in compliance with this permit. Any discharge authorized by a different VSMP or a VPDES permit may be commingled with discharges authorized by this permit [so long as all such discharges comply with all applicable permits]; and~~

~~[6. 3.] Discharges to waters for which a "total maximum daily load" (TMDL) wasteload allocation for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) has been established by the State Water Control Board and approved by EPA are not eligible for coverage under this permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator incorporates measures and controls that are consistent with the assumptions and requirements of such TMDL. To be are not eligible for coverage under this general permit, the SWPPP must incorporate any conditions applicable to discharges from the construction site that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific wasteload allocation has been established that would apply to discharges from the construction site, the operator must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation, unless they are [addressed otherwise authorized] in accordance with 4VAC50-60-1170 Section II D [7. 6 and consistent with the requirements and assumptions of the wasteload allocations in the TMDL]; and~~

~~[7. 4.] Discharges to waters that have been identified as impaired in the [2006 2008] § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this general permit unless they are [addressed otherwise authorized] in accordance with 4VAC50-60-1170 Section I H.~~

B. [In addition to other prohibitions, the following discharges are not eligible for coverage under this general permit:

1. Discharges for which the operator has been required to obtain an individual permit according to 4VAC50-60-410 B;

2. Discharges to state waters specifically named in other State Water Control Board regulations or policies that prohibit such discharges; and

3. Stormwater discharges that the permit-issuing authority in consultation with the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards (9VAC25-260).

C.] This permit may also be used to authorize stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity;

2. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

3. Appropriate controls and control measures [that will be implemented to minimize pollutant discharges from the support activity] are identified in a stormwater pollution prevention plan covering the discharges from the support activity areas.

[C. D.] Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another VSMP or a VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

[D. E.] Receipt of this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

[E. F.] The board may waive the otherwise applicable requirements in this general permit regulation for a stormwater discharge from small construction activity where stormwater controls are not needed based on a "total maximum daily load" (TMDL) established by the board and approved by EPA that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small

~~construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this section, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. In order to obtain this waiver, prior to the commencement of construction the operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by a TMDL, or within the drainage area addressed by an equivalent analysis. The [permit issuing permit-issuing] authority may allow exceptions to technical criteria contained in the permit in accordance with Part III [of this chapter].~~

4VAC50-60-1140. Qualifying state, ~~tribal~~ and local programs.

Qualifying state, ~~tribal~~, or local erosion and sediment control program requirements may be incorporated by reference into the Stormwater Pollution Prevention Plan (SWPPP) required by 4VAC50-60-1170 of this permit. Where a qualifying state, ~~tribal~~, or local program does not include one or more of the elements in this section, then the ~~permittee~~ operator must include those elements as part of the SWPPP required by 4VAC50-60-1170 of this permit. A qualifying state, ~~tribal~~, or local erosion and sediment control program is one that is approved by the board [, meets the requirements of 4VAC50-60-460 L] and includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control ~~best management practices~~ measures;
2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; and
3. Requirements for construction site operators to develop and implement ~~an a~~ SWPPP in accordance with 4VAC50-60-1170 Section II. (An SWPPP includes site descriptions, descriptions of appropriate control measures, copies of approved state, tribal or local requirements, maintenance procedures, inspection procedures, and identification of nonstormwater discharges); and
4. Requirements to submit a site plan for review that ~~incorporates consideration of potential water quality impacts.~~

4VAC50-60-1150. Permit application (registration statement).

A. Deadlines for submitting registration statement.

1. Except as provided in subdivision 3 of this subsection, operators must submit a complete and accurate registration statement in accordance with the requirements of this section prior to the issuance of coverage under the general permit that authorizes the commencement of ~~construction land-disturbing~~ activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

2. For stormwater discharges from construction ~~projects activities~~ where the operator changes, ~~including instances where an operator is added after a registration statement has been submitted~~, the new operator must submit a complete ~~and accurate~~ registration statement or transfer form prior to assuming operational control over site specifications or commencing work on-site.

3. In order to continue permit coverage, operators of ongoing construction activity projects as of July 1, ~~2004~~ 2009, that received authorization to discharge for those projects under the construction stormwater general permit issued in ~~1999~~ 2004 must:

a. Submit a complete and accurate registration statement by ~~[July 1 June 1]~~, ~~2004~~ 2009 [. Provided that a complete and accurate registration statement is submitted by the June 1 reapplication date, the permit application (registration statement) fee will be waived for land-disturbing activities for which the department initially issued permit coverage on or after July 1, 2008]; and

b. Update their stormwater pollution prevention plan to comply with the requirements of this general permit within 30 days after the date of coverage under this general permit.

4. Effective date of permit coverage. The operator of a construction activity is authorized to discharge stormwater ~~from those construction activities~~ under the terms and conditions of this permit ~~immediately upon submission of a complete and accurate registration statement to [only upon issuance of coverage under the general permit by 15 business days following submission of a complete and accurate registration statement to]~~ the permit-issuing authority ~~, but in no event earlier than the effective date of this permit, except as noted in subdivision 3 of this subsection~~ [unless notification of coverage is made by the permit-issuing authority at an earlier time]. For the purposes of this [regulation permit], a registration statement that is mailed is considered to be submitted once it is postmarked. Operators are not authorized to discharge if the registration statement is incomplete or incorrect, or if the discharge(s) was not eligible for coverage under this permit. [NOTE: A stormwater pollution prevention plan

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(SWPPP) must be prepared in accordance with the requirements of the VSMP General Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared.]

5. Late notifications. Operators are not prohibited from submitting registration statements after initiating clearing, grading, excavation activities, or other ~~construction land-disturbing~~ activities. When a late registration statement is submitted, authorization for discharges ~~occurs no earlier than the submission date of the registration statement shall not occur until coverage under the general permit is issued.~~ The permit-issuing authority reserves the right to take enforcement action for any unpermitted discharges [~~or permit noncompliance~~] that [~~occurs occur~~] between the commencement of construction and discharge authorization.

B. Registration statement. The operator shall submit a registration statement on the official department form that shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator. No more than one operator may receive coverage under each registration statement. (NOTE: The permit will be issued to this operator, and the certification in subdivision ~~13~~ [~~11~~ 12] of this subsection must be signed by the appropriate person associated with this operator);

2. Name and location of the construction activity, including town, city, or county, and all off-site support activities to be covered under the permit. If a street address is unavailable, provide latitude and longitude;

3. Status of the activity: federal, state, public, or private;

4. Nature of the construction ~~project~~ activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

5. Name of the receiving water(s) and HUC. Direct discharges to any receiving water identified as impaired on the [2006 2008] § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity shall be noted;

6. If the discharge is through a municipal separate storm sewer system (MS4), the name of the municipal operator of the storm sewer;

7. Estimated project start date and completion date;

8. Total land area of development and estimated area to be disturbed by the construction activity (to the nearest ~~quarter~~ one-tenth of an acre);

9. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

[10.] ~~A topographic map or other map that clearly shows the location of the construction activity, the area to be disturbed (including off site support activities), and the receiving stream or streams for the stormwater discharges [An indication of whether nutrient offsets are intended to be acquired in accordance with § 10.1-603.8:1 of the Code of Virginia];~~

NOTE: [~~10.~~ 11.] A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the VSMP General Permit for Stormwater Discharges from Construction Activities prior to submitting [this the] registration statement. By signing [this the] registration statement you are the operator [~~is certifying certifies~~] that the SWPPP has been prepared; [and]

~~11. The location of where the SWPPP may be viewed, and the name and phone number of a contact person (NOTE: The contact person should be a person knowledgeable in the principles and practice of erosion and sediment controls, that is a licensed professional engineer, responsible land disturber (RLD), or other knowledgeable person that (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment); and~~

~~12. A list of the permanent BMPs (both structural and nonstructural) that will be installed at the construction activity site. For each BMP that will be installed, include the following information:~~

a. Type of permanent BMP to be installed;

b. Geographic location (county—state Hydrologic Unit Code);

e. Waterbody the BMP will discharge into;

d. Number of acres that will be treated (to the nearest one-tenth acre);

~~13.~~ [~~11.~~ 12.] The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly ~~gather~~ gathered and ~~evaluate~~ evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting

false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 4VAC50-60-1170, Section III K.

D. Where to submit. The registration statement shall be submitted to the permit-issuing authority.

[E. Registration statements in the custody of the permit-issuing authority are subject to requests made pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).]

4VAC50-60-1160. Termination of permit coverage.

A. Requirements. The operator ~~of the construction activity~~ [~~may only shall~~] submit a notice of termination on the official department form after one or more of the following conditions have been met:

1. Final Necessary postconstruction control measures included in the SWPPP for the site are in place and functioning [effectively] and final stabilization has been achieved on all portions of the site for which the operator is responsible;
2. Another operator has assumed control over all areas of the site that have not been finally stabilized [and obtained coverage for the ongoing discharge];
3. Coverage under an alternative VPDES or VSMP permit has been obtained; or
4. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The notice of termination must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates ~~seven days after~~ at midnight on the date that the notice of termination is submitted. ~~For the purposes of this regulation, a notice of termination that is mailed is considered to be submitted once it is postmarked.~~

B. Notice of termination. The notice of termination shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator.
2. Name and location of the construction activity. If a street address is unavailable, [~~provide~~] latitude and longitude [shall be provided].
3. The VSMP stormwater general permit number.
4. The basis for submission of the notice of termination, including: pursuant to subsection A.
 - a. ~~Final stabilization has been achieved on all portions of the site for which the operator is responsible;~~

~~b. Another operator has assumed control over all areas of the site that have not been finally stabilized;~~

~~e. Coverage under an alternative VPDES or VSMP permit has been obtained; or~~

~~d. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.~~

5. [A Where applicable, a] list of the permanent control measures (both structural and nonstructural) that were installed at the construction activity site. For each control measure that was installed, [include] the following information [shall be included]:

- a. Type of permanent control measure installed [and the date that it became functional as a permanent control measure];
- b. Geographic location (county or city and Hydrologic Unit Code) [. Latitude and longitude may additionally be included if available];
- c. Waterbody the control measure discharges into; and
- d. Number of acres treated (to the nearest one-tenth of an acre).

[6. Where applicable, the following information related to participation in a regional stormwater management plan:

- a. Type of regional facility or facilities to which the site contributes;
- b. Geographic location of any regional facility to which the site contributes (county or city and Hydrologic Unit Code);
- c. Geographic location of the site (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available; and
- d. Number of acres treated by a regional facility.

7. Where applicable, the following information related to nutrient offsets that were acquired in accordance with § 10.1-603.8:1 of the Code of Virginia:

- a. Name of the broker from which offsets were acquired;
- b. Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;
- c. Number of nutrient offsets acquired (lbs. per acre per year); and
- d. Nutrient reductions achieved on site (lbs. per acre per year).]

~~5. [6. 8.]~~ The following certification: "I certify under penalty of law that I have read and understand this notice of termination and that this document and all attachments were prepared under my direction or supervision in

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accordance with a system designed to assure that qualified personnel properly ~~gather~~ gathered and ~~evaluate~~ evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The notice of termination shall be signed in accordance with 4VAC50-60-1170; Section III K.

D. Where to submit. The notice of termination shall be submitted to the permit-issuing authority.

[E. Termination by the permit-issuing authority. The permit-issuing authority may terminate coverage under this permit during its term and require application for an individual permit or deny a permit renewal application on its own initiative in accordance with the Act and this chapter.]

4VAC50-60-1170. General permit.

Any operator whose registration statement is accepted by the permit-issuing authority will receive the following permit and shall comply with the requirements in it and be subject to all requirements of the Virginia Stormwater Management Act (Chapter 6, Article 1.1 (§ 10.1-603.1 et seq.) of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60). No more than one operator may receive coverage under each registration statement.

General Permit No.: ~~DCR01~~ VAR10

Effective Date: July 1, 2004 2009

Expiration Date: June 30, 2009 2014

GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and attendant regulations ~~adopted pursuant to that~~, operators of construction activities covered by this permit (those sites or common plans of development or sale that will result in the disturbance of one or more acres of total land area) with stormwater discharges from these construction activities are authorized to discharge to surface state waters, including discharges to a regulated MS4 system, within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations ~~and policies~~

~~or permit-issuing authority policies and ordinances which that~~ prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Section I—Discharge Authorization and Special Conditions, Section II—Stormwater Pollution Prevention Plan, and Section III—Conditions Applicable To All VSMP Permits as set forth herein.

SECTION I DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the ~~permittee~~ operator is authorized to discharge stormwater from construction activities.

2. This permit may also ~~authorizes~~ authorize stormwater discharges from ~~off-site~~ support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

a. The support activity is directly related to a the construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity;

b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

c. Appropriate ~~controls and pollution prevention control~~ measures for the discharges from the support activity areas are identified in the a stormwater pollution prevention plan required for the construction activity under Section II-D of this permit and implemented to address the discharges from the support activity areas.

3. There shall be no discharge of floating solids or visible foam ~~in other than trace amounts that contravenes established standards or interferes directly or indirectly with designated uses of surface waters.~~

B. Limitation on coverage.

1. Post-construction discharges. This permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

2. Discharges mixed with nonstormwater. This permit does not authorize discharges that are mixed with sources of

nonstormwater, other than those discharges that are identified in Section I D 2 (Exceptions to prohibition of nonstormwater discharges) and are in compliance with Section II D 5 (Nonstormwater discharge management).

3. Discharges covered by another permit. This permit does not authorize stormwater discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit ~~in accordance with Part Section III X.~~

4. TMDL limitation. Discharges to waters for which a wasteload allocation (WLA) for a pollutant has been established in a "total maximum daily load" (TMDL) allocation for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) has been established by the State Water Control Board and approved by EPA [by the Commonwealth and approved by the EPA approved by the State Water Control Board] that would apply to stormwater discharges from a construction activity are not eligible for coverage under this permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator ~~incorporates measures and controls that are is~~ consistent with the assumptions and requirements [of] ~~such TMDL [related to TMDLs contained in] Section II D [7 6] . To be eligible for coverage under this general permit, the SWPPP must incorporate any conditions applicable to discharges from the construction site that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific wasteload allocation has been established that would apply to discharges from the construction site, the operator must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation.~~

5. Impaired waters limitation. Discharges to waters that have been identified as impaired in the [~~2006~~ 2008] § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this permit unless the operator implements strategies and control measures consistent with Sections I H and II D [§ 7] .

C. Commingled discharges. Any discharge authorized by a different VSMP or VPDES permit may be commingled with discharges authorized by this permit.

D. Prohibition of nonstormwater discharges.

1. Except as provided in Sections I A 2, I C and I D 2, all discharges covered by this permit shall be composed entirely of stormwater associated with construction activity.

2. The following nonstormwater discharges from active construction sites are authorized by this permit provided the nonstormwater component of the discharge is in compliance with Section II D 5 (Nonstormwater discharges):

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Waters used to wash vehicles where detergents are not used;
- d. Water used to control dust;
- e. Potable water sources, including uncontaminated waterline flushings;
- ~~f. Water used for hydrostatic testing of new pipeline construction;~~
- ~~g. f.~~ Routine external building wash down which does not use detergents;
- ~~h. g.~~ Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
- ~~i. h.~~ Uncontaminated air conditioning or compressor condensate;
- ~~j. i.~~ Uncontaminated ground water or spring water;
- ~~k. j.~~ Foundation or footing drains where flows are not contaminated with process materials such as solvents;
- ~~l. k.~~ Uncontaminated excavation dewatering, and
- ~~m. l.~~ Landscape irrigation.

E. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharges from the construction site shall be prevented or minimized in accordance with the stormwater pollution prevention plan for the site. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) and 40 CFR Part 302 (2002) or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002), ~~or~~ 40 CFR Part 302 (2002), or § 62.1-44.34.19 of the Code of Virginia occurs during a 24-hour period:

- 1. The permittee operator is required to notify the Department of Environmental Quality and the permit-issuing authority in accordance with the requirements of Section III G as soon as he has knowledge of the discharge;
- 2. Where a release enters a municipal separate storm sewer system (MS4), the permittee operator shall also notify the owner operator of the MS4 ~~and the Department of Conservation and Recreation;~~ and

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3. The stormwater pollution prevention plan required under Section II D of this permit must be reviewed by the operator to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate within seven calendar days of knowledge of a release.

F. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

G. Termination of permit coverage. Coverage under this permit may be terminated in accordance with 4VAC50-60-1160.

~~1. The operator of the construction activity may only submit a notice of termination after one or more of the following conditions have been met:~~

- ~~a. Final stabilization has been achieved on all portions of the site for which the operator is responsible;~~
- ~~b. Another operator has assumed control over all areas of the site that have not been finally stabilized;~~
- ~~c. Coverage under an alternative VPDES or VSMP permit has been obtained; or~~
- ~~d. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.~~

~~2. The notice of termination must be submitted within 30 days of one of the conditions in Section I G 1 being met. Authorization to discharge terminates seven days after the notice of termination is submitted.~~

~~3. The notice of termination shall be signed in accordance with Section III K of this permit.~~

H. Water quality protection.

~~1. The permittee operator must select, install, implement and maintain best management practices (BMPs) control measures at the construction site that minimize pollutants in the discharge as necessary to [meet ensure that the operator's discharge does not cause or contribute to an excursion above any] applicable water quality standards. If there is evidence indicating that the stormwater discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, or are causing downstream pollution (as defined in this part), the permit issuing authority may take appropriate enforcement action, may require the permittee to include and implement appropriate controls in the SWPPP to correct the problem, and/or may require the permittee to obtain an individual permit in accordance with 4VAC50-60 410 B 3. [In general, except in situations explained in subdivision 2 of this subsection, the stormwater control measures developed, implemented, and updated consistent with Section II shall be considered as stringent as~~

~~necessary to ensure that the operator's discharges do not cause or contribute to an excursion above any applicable water quality standard.]~~

2. If it is determined [by the permit-issuing authority in consultation with the State Water Control Board] at any time that the operator's stormwater discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the permit-issuing authority shall require the operator to:

- a. Modify control measures in accordance with Section II C to adequately address the identified water quality concerns;
- b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
- c. Cease discharges of pollutants from construction activity and submit an individual permit application according to 4VAC50-60-410 B 3.

All written responses required under this part must include a signed certification consistent with Section III K.

SECTION II STORMWATER POLLUTION PREVENTION PLAN

A. Stormwater Pollution Prevention Plan Framework.

1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to submission of a registration statement and implemented for the construction activity covered by this permit. SWPPPs shall be prepared in accordance with good engineering practices.

2. The SWPPP shall:

~~identify~~ a. Identify potential sources of ~~pollution which pollutants that~~ may reasonably be expected to affect the quality of stormwater discharges from the construction site;:

~~In addition, the SWPPP shall describe and ensure the implementation of practices which~~ b. Describe control measures that will be used to ~~reduce minimize~~ pollutants in stormwater discharges from the construction site; and

~~to assure compliance~~ c. Comply with the terms and conditions of this permit.

3. The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other state, tribal or local plans such as (i) an erosion and sediment control (ESC) plan, (ii) an agreement in lieu of a plan as defined in 4VAC50-30-10, (iii) a stormwater management plan, (iv) a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or (v) best management practices (BMP) programs otherwise required for the facility provided that

the incorporated plan meets or exceeds the SWPPP requirements of Section II D. If an erosion and sediment control plan for the ~~construction~~ land-disturbing activity is being incorporated by reference, the referenced plan must be approved by the locality in which the construction activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulations (4VAC50-30) prior to the commencement of ~~construction~~ land disturbance.

4. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Section II D, the ~~permittee~~ operator must develop the missing elements and include them in the required SWPPP.

5. Once a definable area has been finally stabilized, the operator may mark this on the SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized; one mile of a roadway or pipeline project is done and finally stabilized, etc.).

6. The SWPPP shall identify all properties that are no longer under the control of the operator and the dates on which the operator no longer had control over each property.

7. The operator must implement the SWPPP as written and updated in accordance with Section II C from commencement of construction activity until final stabilization is complete.

~~A. Deadlines for SWPPP preparation and compliance.~~

~~1. The SWPPP shall be prepared prior to submittal of the registration statement and provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.~~

~~2. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.~~

B. Signature, ~~plan~~ SWPPP review and making ~~plans~~ SWPPPs available.

1. The SWPPP shall be signed in accordance with Section III K.

2. The SWPPP shall be retained, along with a copy of this permit, registration statement, and acknowledgement letter from the permit-issuing authority, at the construction site or other location easily accessible during normal business hours from the date of commencement of construction activity to the date of final stabilization. ~~Permittees~~ Operators with day-to-day ~~operation~~ operational control

over SWPPP implementation shall have a copy of the ~~plan~~ SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the ~~plan~~ SWPPP whenever they are on the construction site. The SWPPP must be made available, in its entirety, to the department ~~and~~ the permit-issuing authority, and the operator of a municipal separate storm sewer system receiving discharges from the site for review at the time of an on-site inspection. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance at the construction site.

3. The ~~permittee~~ operator shall make SWPPPs [and all updates] available upon request to the department; the permit-issuing authority; [EPA;] a state or local agency approving erosion and sediment control plans, grading plans, or stormwater management plans; local government officials; or the operator of a municipal separate storm sewer system receiving discharges from the site.

4. A sign or other notice must be posted conspicuously near the main entrance of the construction site. The sign or other notice must contain the following information:

a. A copy of the permit coverage letter that includes the registration number for the construction activity; and

b. [If the location of the SWPPP or the name and telephone number of the contact person for scheduling SWPPP viewing times has changed (i.e., is different than that submitted to the permit issuing authority in the registration statement), The Internet address at which a copy of the SWPPP may be found or] the [current] location of [the a hard copy of the] SWPPP and name and telephone number of a contact person for scheduling viewing times.

For linear projects, the sign or other notice must be posted at a publicly accessible location near [the an] active part of the construction project (e.g., where a pipeline project crosses a public road).

5. [The For discharges that commence on or after July 1, 2009, that have not previously held coverage under a VSMP or VPDES permit, the] operator shall make the SWPPP available to the public for review [upon request]; [Access A copy of the SWPPP for each site shall be made available on the Internet or in hard copy. The website address or contact person for access to the SWPPP shall be posted on the sign required by subdivision B 4 of this section. If not provided electronically, access] to the SWPPP may be arranged [upon request] at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less [that twice than once] per month and shall be during normal business hours. [If a reproduced copy of the SWPPP is provided to the requestor, the requestor shall be responsible for the costs of

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reproduction.] Information [excluded from disclosure under applicable law] shall not be required to be released [if it is excluded from disclosure under applicable law]. [Information not required to be contained within the SWPPP by this permit is not required to be released.]

C. Maintaining an updated SWPPP.

1. The ~~permittee operator~~ shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to ~~surface state~~ waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if during inspections or investigations by ~~site staff~~ the operator's qualified personnel, or by local, state or federal officials, it is determined that the ~~discharges are causing water quality exceedances, or the SWPPP is~~ existing control measures are ineffective in ~~eliminating or significantly~~ minimizing pollutants in stormwater discharges from the construction site. Revisions to the SWPPP shall include additional or modified control measures designed to correct problems identified. If approval by a plan-approving authority is necessary for the control measure, revisions to the SWPPP shall be completed within seven calendar days of approval. Implementation of these additional or modified control measures must be accomplished as described in Section II D 3 b.

3. ~~Based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within seven calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Section II D 3 b. Revisions to the SWPPP must be dated and signed in accordance with Section III K 2 [, but are not required to be certified in accordance with Section III K 4]~~.

4. The SWPPP must clearly identify ~~for each measure identified in the plan,~~ the contractor(s) or subcontractor(s) that will implement ~~the~~ and maintain each measure identified in the SWPPP. The SWPPP shall be ~~amended~~ revised to identify any new contractor that will implement a measure ~~of the plan~~.

D. Stormwater pollution prevention plan contents. The SWPPP shall include the registration statement, this permit, and the following items:

1. Site and activity description. Each SWPPP shall provide the following information:
 - a. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);

b. The intended sequence and timing of activities that disturb soils at the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation)-;

c. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated;

~~e.~~ d. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities including off-site borrow and fill areas;

~~d.~~ e. A description of any other potential ~~pollution~~ pollutant sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.;

~~e.~~ f. Identification of the nearest receiving waters at or near the construction site that will receive discharges from disturbed areas of the project;

~~f.~~ g. The location and description ~~on~~ of any discharge associated with industrial activity other than construction at the site. This includes stormwater discharges from dedicated asphalt plants and dedicated concrete plants that are covered by this permit-;

h. A legible general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with sufficient detail to identify the location of the construction activity and surface waters within one mile of the construction activity; and

~~g.~~ i. A legible site map ~~indicating~~ identifying:

(1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(2) Areas of soil disturbance and areas of the site which will not be disturbed;

(3) Locations of major structural and nonstructural ~~controls~~ control measures identified in the SWPPP, including those that will be permanent ~~controls that will remain~~ after construction activities have been completed;

(4) Locations where stabilization practices are expected to occur;

(5) ~~Surface water bodies (including wetlands)~~ Locations of surface waters;

(6) Locations where concentrated stormwater discharges ~~to a surface water;~~

(7) Locations of off-site material, waste, borrow or equipment storage areas covered by the ~~plan~~ SWPPP;

(8) Locations of other potential ~~pollution~~ pollutant sources, such as vehicle fueling, storage of chemicals, concrete wash-out areas, sanitary waste facilities , including those temporarily placed on the construction site, etc.; and

(9) Areas where final stabilization has been accomplished and no further construction phase permit requirements apply.

2. Controls to ~~reduce~~ minimize pollutants. The SWPPP shall include a description of all ~~pollution~~ control measures that will be implemented as part of the construction activity to ~~control~~ minimize pollutants in stormwater discharges. For each major activity identified in the project description, the SWPPP shall clearly describe appropriate control measures, the general sequencing during the construction process in which the control measures will be implemented, and which operator is responsible for the control measure's implementation.

a. Erosion and sediment controls.

~~(1) Stabilization practices. The SWPPP shall include a description of interim and permanent stabilization practices for the site. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, riprap, gabions, facines, biologs and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.~~

~~(a) A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be maintained and included in the SWPPP.~~

~~(b) Except as provided in Section II D 2 a (1) (c), (d) and (e), stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased.~~

~~(c) Where the initiation of stabilization measures by the seventh day after construction activity temporary or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.~~

~~(d) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 30 days, temporary stabilization measures do not have to be initiated on that portion of the site.~~

~~(e) In drought stricken areas where initiating perennial vegetative stabilization measures is not possible within seven days after construction activity has temporarily or~~

~~permanently ceased, final vegetative stabilization measures shall be initiated as soon as practicable.~~

~~(2) Structural practices. The SWPPP shall include a description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Such practices may include, but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be located on upland soils to the degree attainable. The department and the permit-issuing authority encourages the use of a combination of erosion and sediment control measures in order to achieve maximum pollutant removal.~~

~~(a) Sediment basins: For common drainage locations that serve an area with three or more acres disturbed at one time, a temporary (or permanent) sediment basin providing 3,618 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,618 cubic feet of storage area per acre drained does not apply to flows from off site areas and flows from on site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design.~~

~~(b) For drainage locations that serve three or more acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.~~

~~(c) For drainage locations serving less than three acres, smaller sediment basins or sediment traps or both should be used. At a minimum, silt fences, vegetative buffer strips or equivalent sediment controls are required for all downslope boundaries, and for those side slope boundaries deemed appropriate as dictated by individual site conditions, of the construction area unless a sediment basin providing storage for 3,618 cubic feet of storage per acre drained is provided.~~

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(1) An erosion and sediment control plan or an agreement in lieu of a plan shall be approved by the appropriate plan-approving authority for the land-disturbing activity in accordance with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq.) and regulations (4VAC50-30). Where applicable, a plan shall be developed in accordance with board-approved annual general erosion and sediment control specifications.

(2) All control measures required by the plan shall be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and regulations (4VAC50-30).

b. Management practices.

(1) [~~Site plans~~ Plans] should ensure that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized.

(2) All control measures must be properly selected, installed, and maintained in accordance with good engineering practices and, where applicable, manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the ~~permittee~~ operator must replace or modify the control for site situations as soon as practicable and update the SWPPP in accordance with Section II C.

~~(2)~~ (3) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient as soon as practicable to minimize off-site impacts. If approval by a plan-approving authority is necessary, control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

~~(3) Litter, construction~~ (4) Construction debris; and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges.

(5) Litter exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges and the construction site shall be policed daily to control litter.

c. Stormwater management.

(1) The operator shall ensure compliance with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190 of the Virginia Stormwater Management Regulations, including but not limited to water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting,

all post-construction stormwater management measures that will be installed [~~during~~ prior to the completion of] the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree ~~attainable~~ possible. Such measures must be designed and installed in accordance with applicable local ~~and/or~~, state, and federal requirements, and any necessary permits must be obtained.

~~(2) Such measures may include, but are not limited to: stormwater detention structures (including dry ponds); stormwater retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff on site; stormwater wetlands; sand filters; bioretention systems; water quality structures; and sequential systems (which combine several practices). The SWPPP shall include an explanation of the technical basis used to select the practices to control pollution and flows that exceed predevelopment levels. Control measures contained in Part II of the Virginia Stormwater Management Regulations, 4VAC50-60-1184, or on the Virginia BMP Clearinghouse may be utilized. Innovative or alternate control measures may be allowed by the department provided such measures effectively address water quality and quantity in accordance with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190 and are not restricted by the locality.~~

[(3) Where applicable, the SWPPP shall contain additional information related to participation in a regional stormwater management plan, including:

(a) Type of regional facility or facilities to which the site contributes;

(b) Geographic location of any regional facility to which the site contributes (county or city and Hydrologic Unit Code);

(c) Geographic location of the site (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available; and

(d) Number of acres treated by a regional facility.

(4) Where applicable, the SWPPP shall contain additional information related to nutrient offsets to be acquired in accordance with § 10.1-603.8:1 of the Code of Virginia, including:

(a) Name of the broker from which offsets will be acquired;

(b) Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;

(c) Number of nutrient offsets to be acquired (lbs. per acre per year); and

(d) Nutrient reductions to be achieved on site (lbs. per acre per year).]

[~~(3)~~ (5)] Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel as defined in the Virginia Erosion and Sediment Control Regulations (4VAC50-30). In addition, ~~the natural, physical, chemical, and biological characteristics and functions of the receiving waters must be maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water)~~ all control measures shall be employed in a manner that minimizes impacts on the physical, chemical and biological integrity of rivers, streams, and other state waters, is protective of water quality standards, and is consistent with Section II D 6 [through D 8 and D 7] and other applicable provisions of this permit.

d. Other controls.

(1) The SWPPP shall describe measures to prevent the discharge of solid materials, including building materials, garbage, and debris to surface state waters of the state, except as authorized by a Clean Water Act § 404 permit.

~~(2) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.~~

~~(3)~~ (2) The SWPPP shall ~~ensure and demonstrate compliance~~ describe control measures used to comply with applicable state or local waste disposal, sanitary sewer or septic system regulations.

(4) (3) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The plan SWPPP shall also include a description of controls ~~to reduce pollutants from these materials,~~ including storage practices, to minimize exposure of the materials to stormwater, and for spill prevention and response.

~~(5)~~ (4) The SWPPP shall include a description of pollutant sources from off-site areas ~~other than construction~~ (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of ~~controls and~~ control measures that will be implemented at those sites to minimize pollutant discharges.

e. Applicable state or local programs. The SWPPP control measures implemented at the site shall be

consistent with all applicable federal, state, or local requirements for erosion and sediment control and stormwater management ~~including updates to the~~ The SWPPP shall be updated as necessary to reflect any revisions to applicable federal, state or local requirements ~~for erosion and sediment control and stormwater management that affect the control measures implemented at the site.~~

3. Maintenance of controls.

a. ~~The SWPPP must include a description and schedule of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures during construction identified in the site plan. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If site inspections required by Section II D 4 identify BMPs control measures that are not operating effectively, maintenance shall be performed [before the next anticipated storm event, or] as soon as practicable to maintain the continued effectiveness of stormwater controls.~~

b. If site inspections required by Section II D 4 identify existing BMPs control measures that need to be modified or if additional BMPs control measures are necessary for any reason, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation shall be documented in the SWPPP and alternative BMPs control measures shall be implemented as soon as practicable.

4. Inspections. ~~Inspections by qualified personnel must be conducted of all areas of the site disturbed by construction activity, and areas used for storage of materials that are exposed to stormwater. "Qualified personnel" means a licensed professional engineer, responsible land disturber (RLD), or other knowledgeable person that (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment. The name and phone number of qualified personnel conducting inspections shall be included in the SWPPP.~~

a. Inspections shall be conducted (i) at least every seven calendar days or (ii) at least once every 14 calendar days and within 48 hours of the end of following any runoff producing storm event. Where areas have been finally or temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

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b. ~~Inspections must include all areas of the site disturbed by construction activity, off-site areas [covered by the permit], and areas used for storage of materials that are exposed to precipitation [, but does not need to include areas identified pursuant to Section II A 5].~~ Inspectors must look for evidence of, or the potential for, pollutants entering ~~the a~~ stormwater conveyance system. ~~Erosion and sediment control~~ Control measures identified in the SWPPP shall be ~~observed to ensure~~ inspected for proper installation, maintenance, and operation. Discharge locations, where accessible, shall be inspected to ascertain whether ~~erosion and sediment~~ control measures are effective in ~~preventing significant~~ minimizing impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

c. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Section II D 4 b. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25-mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25-mile segment to either the end of the next 0.25-mile segment, or to the end of the project, whichever occurs first. Inspection locations must be listed in the report required by Section II D 4 [e d].

~~d. Based on the results of the inspection, the site and activity description identified in the plan in accordance with Section II D 1 of this permit and pollution prevention measures identified in the SWPPP in accordance with Section II D 2 of this permit shall be revised as appropriate within seven calendar days following the inspection.~~

e. d. A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section II

D 4 d of the permit shall be made and retained as part of the SWPPP in accordance with Section III B of this permit. Major observations should include:

- (1) The location(s) of discharges of sediment or other pollutants from the site;
- (2) Location(s) of BMPs control measures that need to be maintained;
- (3) Location(s) of BMPs control measures that failed to operate as designed or proved inadequate for a particular location;
- (4) Location(s) where additional BMPs control measures are needed that did not exist at the time of inspection; ~~and~~
- (5) Corrective action required including any changes to the SWPPP that are necessary and implementation dates-;
- (6) [~~The~~ An estimate of the] amount of rainfall at the construction site (in inches) from the runoff producing storm event requiring the inspection, or if inspecting on a seven-day schedule, the amount of rainfall (in inches) since the previous inspection; and
- (7) Weather information and a description of any discharges occurring at the time of inspection.

A record of each inspection and of any actions taken in accordance with Section II must be retained by the operator as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the ~~stormwater pollution prevention plan~~ SWPPP and this permit. The report shall be signed in accordance with Section III K of this permit.

5. Nonstormwater discharge management. The SWPPP shall identify all allowable sources of nonstormwater discharges listed in Section I D 2 of this permit that are combined with stormwater discharges from the construction activity at the site, except for flows from fire fighting activities. The SWPPP shall identify and ~~ensure~~ require the implementation of appropriate ~~pollution prevention~~ control measures for the nonstormwater components of the discharge.

~~[6. Endangered species. The SWPPP shall include, if applicable, the following documentation with regard to endangered species:~~

~~a. Any correspondence for any stage of project planning between the U.S. Fish and Wildlife Service (FWS), EPA, the U.S. National Marine Fisheries Service (NMFS), or others and the operator regarding listed species and critical habitat; and~~

~~b. A description of measures that were determined necessary to protect federally listed endangered or threatened species, or federally designated critical habitat.~~

~~7. 6.] Total maximum daily loads. A total maximum daily load (TMDL) approved by the State Water Control Board may include a wasteload allocation to the regulated construction activity that identifies the pollutant for which stormwater [~~controls~~ control measures] are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this permit must be specified in the SWPPP [~~and addressed through the use of strategies and control measures as specified in the SWPPP.~~ Implementation of the strategies and control measures consistent with the provisions of this permit constitutes compliance with the assumptions and requirements of the approved TMDL. A wasteload allocation does not establish that the operator is in or out of compliance with the conditions of this permit. The SWPPP shall include strategies and control measures to ensure consistency with the assumptions and requirements of the TMDL WLA that apply to the operator's discharge. In a situation where a TMDL has specified a general wasteload allocation applicable to construction stormwater discharges, but no specific requirements for construction sites have been identified in the TMDL, the operator shall consult with the state or federal TMDL authority to confirm that meeting permit requirements will be consistent with the approved TMDL. If the TMDL specifically precludes such discharges, the operator is not eligible for coverage under the general permit.]~~

~~[The SWPPP shall include strategies and control measures to ensure consistency with the assumptions and requirements of the TMDL WLA; or shall be updated within 30 days of the effective date of any reopening of this permit to include wasteloads allocated to the construction activity after issuance of permit coverage and shall implement such strategies and control measures.~~

~~8. 7.] Impaired waters. [The In accordance with Section I H,] control measures shall be protective of water quality standards for impaired waters identified as having impairments for pollutants that may be discharged from the construction activity in the [~~2006~~ 2008] § 305(b)/303(d) Water Quality Assessment Integrated Report [~~in accordance with Section I H~~].~~

SECTION III

CONDITIONS APPLICABLE TO ALL VSMP PERMITS

NOTE: ~~Monitoring~~ Discharge monitoring is not required for this permit. If ~~you choose~~ the operator chooses to monitor ~~your~~ stormwater discharges or ~~BMPs~~ control measures, ~~you~~ the operator must comply with the requirements of subsections A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The ~~permittee~~ operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. ~~Records of monitoring information~~ Monitoring records and reports shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. The ~~permittee~~ operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the ~~permittee~~ operator, or as requested by the board.

C. Reporting monitoring results.

1. The ~~permittee~~ operator shall ~~submit~~ update the SWPPP to include the results of the monitoring ~~required by this permit not later than the 10th day of the month after monitoring takes place as may be performed in accordance with this permit, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the permit issuing authority.~~
2. Monitoring results shall be reported on a discharge monitoring report (DMR) ~~or~~ on forms provided, approved or specified by the department; or in any format provided

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that the date, location, parameter, method, and result of the monitoring activity are included.

3. If the permittee operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee operator shall furnish ~~to the permit-issuing authority~~, within a reasonable time, any information which the board, department, or other permit-issuing authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board, department, or other permit-issuing authority may require the permittee operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the CWA and the Virginia Stormwater Management Act. The permittee operator shall also furnish to the board, department, or other permit-issuing authority, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. ~~Except in compliance with this permit or another permit issued by the permit-issuing authority or the Department of Environmental Quality, it shall be unlawful for any person to:~~ Pursuant to § 10.1-603.2:2 A of the Code of Virginia, except in compliance with a permit issued by the permit-issuing authority, it shall be unlawful to cause a stormwater discharge from a construction activity.

~~1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or~~

~~2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.~~

G. Reports of unauthorized discharges. Any permittee operator who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002), or 40 CFR Part 302 (2002) that occurs during a 24-hour period into or upon state waters ~~in violation of Section III F~~, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters ~~in violation of Section III F~~, shall notify the ~~department, the~~ Department of Environmental Quality, ~~and the permit-issuing authority~~ of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, the Department of Environmental Quality, and the permit-issuing authority within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department, the Department of Environmental Quality, and the permit-issuing authority under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset", as defined herein, should occur from a facility and the discharge enters or could be expected to enter state waters, the permittee operator shall promptly notify, in no case later than within 24 hours, the department, the Department of Environmental Quality, and the permit-issuing authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee operator shall reduce the report to writing and shall submit it to the department, the Department of Environmental Quality, and the permit-issuing authority within five days of discovery of the discharge in accordance with Section III I 2. Unusual and

extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service of some or all of the facilities; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee operator shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report to the department, the Department of Environmental Quality, and the permit-issuing authority shall be provided within 24 hours from the time the permittee operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface state waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The permit-issuing authority may waive the written report on a case-by-case basis for reports of noncompliance under Section III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee operator shall report all instances of noncompliance not reported under Section III I 1 or 2 in writing ~~at the time the next monitoring reports are submitted~~ as part of the SWPPP. The reports shall contain the information listed in Section III I 2.

NOTE: The ~~immediate (within 24 hours)~~ reports required in Section III G, H and I ~~may~~ shall be made to the department's ~~Urban Program's~~ Stormwater Program Section of the Division of Soil and Water Conservation, appropriate Department of Environmental Quality's Regional Office Pollution Response Program, and the permit-issuing authority. Reports may be made by telephone or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the

immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the permittee operator becomes aware ~~that it failed of a failure~~ to submit any relevant facts ~~in a permit application, or submitted~~ submittal of incorrect information in a permit application or in any report [, including a registration statement.] to the department or the permit-issuing authority, ~~it~~ the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The permittee operator shall give notice to the permit-issuing authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required only when:

a. The permittee operator plans an alteration or addition to any building, structure, facility, or installation ~~from which there is or may be a discharge of pollutants, the construction of which commenced that may meet one of the criteria for determining whether a facility is a new source in 4VAC50-60-420;~~

~~(1) After promulgation of standards of performance under § 306 of the federal Clean Water Act that are applicable to such source; or~~

~~(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;~~

b. The operator plans an alteration or addition ~~could~~ would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this permit; or

2. The permittee operator shall give advance notice to the permit-issuing authority of any planned changes in the permitted facility or activity ~~that, which~~ may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this ~~section~~ part, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make

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management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term ~~environmental~~ compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this ~~section part~~, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, including SWPPPs, and other information requested by the board, the department, or the permit-issuing authority shall be signed by a person described in Section III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Section III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the ~~company~~ operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The signed and dated written authorization is ~~submitted to the department~~ included in the SWPPP. A copy must be provided to the permit-issuing authority, if requested.

3. Changes to authorization. If an authorization under Section III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the ~~facility~~ construction activity, a new authorization satisfying the requirements of Section III K 2 shall be submitted to the permit-issuing authority prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Section III K 1 or 2 shall make the following certification:

"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared ~~under my direction or supervision~~ in accordance with a system designed to assure that qualified personnel properly ~~gather~~ gathered and ~~evaluate~~ evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The ~~permittee~~ operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The ~~permittee~~ operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the ~~permittee~~ operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the ~~permittee~~ operator shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the ~~permittee~~ operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Section III U); and "upset" (Section III V),

nothing in this permit shall be construed to relieve the permittee operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee operator from any responsibilities, liabilities, or penalties to which the permittee operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The permittee operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~that, which~~ are installed or used by the permittee operator to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems ~~that, which~~ are installed by the permittee operator only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters [and in compliance with all applicable state and federal laws and regulations].

S. Duty to mitigate. The permittee operator shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass", as defined in 4VAC50-60-10, means the intentional diversion of waste streams from any portion of a treatment facility. The permittee operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Section III U 2 and 3 [herein].

2. Notice.

a. Anticipated bypass. If the permittee operator knows in advance of the need for a bypass, [the operator shall submit] prior notice [~~shall be submitted~~] to the

department, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee operator shall submit notice of an unanticipated bypass as required in Section III I [herein].

3. Prohibition of bypass.

a. Bypass Except as provided in Section III U 1, bypass is prohibited, and the permit-issuing authority may take enforcement action against a permittee an operator for bypass unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee operator submitted notices as required under Section III U 2.

b. The permit-issuing authority may approve an anticipated bypass, after considering its adverse effects, if the permit-issuing authority determines that it will meet the three conditions listed in Section III U 3 a.

V. Upset.

1. An upset, as defined in 4VAC50-60-10, [means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset] constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Section III V 2 [herein] are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance,

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is not a final administrative action subject to judicial review.

[~~2.~~ 3.] An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

~~2.~~ A permittee [~~3.~~ 4.] An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

- a. An upset occurred and that the permittee operator can identify the cause(s) of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee operator submitted notice of the upset as required in Section III I [herein]; and
- d. The permittee operator complied with any remedial measures required under Section III S [herein].

~~3.~~ [~~4.~~ 5.] In any enforcement proceeding, the permittee operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee operator shall allow the ~~director~~ department as the board's designee, the permit-issuing authority, [EPA,] or an authorized representative (~~including an authorized contractor acting as a representative of the administrator~~) of either [entity] (including an authorized contractor), upon presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee's operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act [~~and or~~] the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained

herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee operator for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the permit-issuing authority. Except as provided in Section III Y 2, a permit may be transferred by the permittee operator to a new ~~owner or~~ operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Section III Y 1, this permit may be automatically transferred to a new permittee operator if:

- a. The current permittee operator notifies the permit-issuing authority at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees operators containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The permit-issuing authority does not notify the existing permittee operator and the proposed new permittee operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

4VAC50-60-1180. [~~Reserved~~] Applicability.

[4VAC50-60-1180 Operators receiving coverage under this general permit shall remain subject to the water quality and quantity criteria set forth in 4VAC50-60-1182] through 4VAC50-60-1190 [, which] specify technical criteria for every [regulated] land-disturbing activity [regulated by this general permit].

4VAC50-60-1182. General.

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system, shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater

management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and (iii) the facility must be consistent with a stormwater management program that has been approved by the board [, the Chesapeake Bay Local Assistance Board, or the Board of Conservation and Recreation] .

4VAC50-60-1184. Water quality.

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

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Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.

Table 1*

<u>Water Quality BMP*</u>	<u>Target Phosphorus Removal Efficiency</u>	<u>Percent Impervious Cover</u>
<u>Vegetated filter strip</u>	<u>10%</u>	<u>16-21%</u>
<u>Grassed Swale</u>	<u>15%</u>	
<u>Constructed wetlands</u>	<u>20%</u>	<u>22-37%</u>
<u>Extended detention (2 x WQ Vol)</u>	<u>35%</u>	
<u>Retention basin I (3 x WQ Vol)</u>	<u>40%</u>	
<u>Bioretention basin</u>	<u>50%</u>	<u>38-66%</u>
<u>Bioretention filter</u>	<u>50%</u>	
<u>Extended detention-enhanced</u>	<u>50%</u>	

<u>Retention basin II (4 x WQ Vol)</u>	<u>50%</u>	
<u>Infiltration (1 x WQ Vol)</u>	<u>50%</u>	
<u>Sand filter</u>	<u>65%</u>	<u>67-100%</u>
<u>Infiltration (2 x WQ Vol)</u>	<u>65%</u>	
<u>Retention basin III (4 x WQ Vol with aquatic bench)</u>	<u>65%</u>	

*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.

4VAC50-60-1186. Stream channel erosion.

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The permit-issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

C. The permit-issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.

3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.

4. Criteria for the selection of proposed natural or manmade channel linings.

4VAC50-60-1188. Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

4VAC50-60-1190. ~~[Reserved]~~ Regional (watershed-wide) stormwater management plans.

This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.

The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site-specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed.

If developed, a regional plan shall, at a minimum, address the following:

1. The specific stormwater management issues within the targeted watersheds.
2. The technical criteria in 4VAC50-60-1180 through 4VAC50-60-1188 as needed based on subdivision 1 of this section.

3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.

4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.

5. Maintenance of the selected stormwater management facilities.

6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (4VAC50-60)

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1 [, DCR 199-149] (August 1990) [~~(DCR 199-149)~~].

Department of Conservation and Recreation Permit Application Fee Form, [() DCR 199-145 [()] ~~(09/04)~~ [~~(09/08)~~ (03/09)].

VSMP General Permit ~~Registration—Statement~~ for [Discharges of] Stormwater [Discharge] from Construction Activity—Stormwater Discharges, ~~(DCR01)~~ Activities (VAR10) [- Registration Statement], [() DCR 199-146 [()] ~~(09/04)~~ [~~(09/08)~~ (03/09)].

VSMP General Permit Notice of Termination ~~for~~ - Construction Activity Stormwater Discharges, ~~(DCR01)~~ (VAR10), [() DCR 199-147 [()] ~~(09/04)~~ [~~(09/08)~~ (03/09)].

VSMP General Permit for [Discharge Discharges] of Stormwater from Construction Activities (VAR10) [- Transfer Agreement], [~~(DCR199-191)~~ ~~(09/08)~~ DCR199-191 (03/09)].

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (VAR04), [() DCR 199-148 [()] (07/08).

VA.R. Doc. No. R08-1245; Filed March 24, 2009, 3:21 p.m.



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TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: Pursuant to § 2.2-4007.06 of the Code of Virginia, the State Board of Education is suspending the regulatory process on 8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia and the repeal of 8VAC20-80. Regulations Governing Special Education Programs for Children with Disabilities in Virginia. The regulatory process is suspended in order to solicit additional comments on those changes with substantial impact that were made to the regulations since they were published as proposed regulations. The regulation, with changes designated in brackets, is printed below.

A detailed notice regarding the additional public comment period for these regulations is published following the regulation.

Titles of Regulations: **8VAC20-80. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (repealing 8VAC20-80-10 through 8VAC20-80-190).**

8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (adding 8VAC20-81-10 through 8VAC20-81-340).

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia; 20 USC § 1400 et seq.; 34 CFR Part 300.

Effective Date: Regulatory process suspended (see suspension notice following the regulation).

Agency Contact: Melissa Smith, Coordinator of Administrative Services, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-0524, or email melissa.smith@doe.virginia.gov.

Summary:

The Board of Education is repealing the text of the current regulations (8VAC20-80) and promulgating new regulations (8VAC20-81). There are a number of substantive changes in the regulations, including the following areas: (i) functions of the Virginia Department of Education (VDOE); (ii) responsibilities of local school divisions and state-operated programs; (iii) qualifications for educational interpreters; (iv) child find; (v) eligibility determinations; (vi) development, review and revision of a student's individualized education program (IEP); (vii) parentally placed private school students; (viii) discipline; (ix) procedural safeguards, including the appointment of surrogate parents and dispute resolution; (x) local educational agency administration and governance; (xi)

funding; and (xii) requirements regarding highly qualified personnel.

In response to public comments received, several provisions that were proposed to be significantly revised or deleted have been retained, including provisions regarding parental consent for the termination of special education and related services and the current administration of the due process system.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 81 REGULATIONS GOVERNING SPECIAL EDUCATION PROGRAMS FOR CHILDREN WITH DISABILITIES IN VIRGINIA

Part I Definitions

8VAC20-81-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings [] unless the context clearly indicates otherwise:

"Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446, December 3, 2004, § 1400 et seq. (34 CFR 300.4)

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(ii))

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent(s) of a student with a disability transfer to the student. In Virginia, the age of majority is 18. (§ 1-204 of the Code of Virginia; 34 CFR 300.520)

["Agree or Agreement" – see the definition for "consent."]

"Alternate assessment" means the state assessment program, [and any school [~~division-wide~~ divisionwide] assessment to the extent that the school division has one,] for measuring student performance against alternate achievement standards for students with significant [~~cognitive~~ intellectual] disabilities who are unable to participate in statewide

Standards of Learning testing, even with accommodations. (34 CFR 300.320(a)(2)(ii) and 34 CFR 300.704(b)(4)(x))

"Alternative assessment" means the state assessment program for measuring student performance on grade level standards for students with disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. (34 CFR 300.5)

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: (34 CFR 300.6)

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ or are otherwise substantially involved in the major life functions of that child.

"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parent(s) as part of the regular education program. (34 CFR 300.39(b)(1))

"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes: (Regulations Governing the Practice of Audiology and Speech-Language Pathology, 18VAC30-20; 34 CFR 300.34(c)(1))

1. Identification of children with hearing loss;

2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

4. Creation and administration of programs for prevention of hearing loss;

5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and

6. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

"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~~ identified] as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8VAC20-81-150 B 4 a (2)). (34 CFR 300.11)

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

"Career and technical education" means organized educational activities that offer a sequence of courses that: (20 USC § 2301 et seq.)

1. Provides individuals with the rigorous and challenging academic and technical knowledge and skills the

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individuals need to prepare for further education and for careers (other than careers requiring a master's or doctoral degree) in current or emerging employment sectors;

2. May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subdivision; or

3. Provides, at the postsecondary level, for a one-year certificate, an associate degree, or industry-recognized credential and includes competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupational-specific skills.

"Caseload" means the number of students served by special education personnel.

"Change in identification" means a change in the categorical determination of the child's disability by the group that determines eligibility.

"Change in placement" or "change of placement" means when the local educational agency places the child in a setting that is distinguishable from the educational environment to which the child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR 300.532(b)(2)(ii) and 34 CFR 300.536)

1. The child's initial placement from general education to special education and related services;

2. The expulsion or long-term removal of a student with a disability;

3. The placement change that results from a change in the identification of a disability;

4. The change from a public school to a private day, residential, or state-operated program; from a private day, residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;

5. Termination of all special education and related services; or

6. Graduation with a standard or advanced studies high school diploma.

[A "change in placement" also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.]

"Change in placement" or "change of placement," for the purposes of discipline, means: (34 CFR 300.536)

1. A removal of a student from the student's current educational placement is for more than 10 consecutive school days; or

2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:

a. The length of each removal;

b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;

c. The total amount of time the student is removed; or

d. The proximity of the removals to one another.

"Chapter" means these regulations.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. (§§ 22.1-212.5 [~~and 22.1-212.15~~ through 22.1-212.16] of the Code of Virginia; 34 CFR 300.7)

"Child" means any person who shall not have reached his 22nd birthday by September 30 of the current year.

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having [~~mental retardation~~ an intellectual disability], a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional [~~disturbance~~ disability] (referred to in this part as "emotional [~~disturbance~~ disability]"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. [This also includes developmental delay if the local educational agency recognizes this category as a disability in accordance with 8VAC20-81-80 M 3.] If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii) [])

["~~Cognitive disability~~" – see "~~Mental retardation~~."]

"Collaboration" means interaction among professionals as they work toward a common goal. Teachers do not necessarily have to engage in co-teaching in order to collaborate.

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a parent(s) of a child who is eligible or suspected to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A

complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. (34 CFR 300.151)

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk Youth and Families that establishes the collaborative administration and funding system [~~that addresses and funds for~~] services for certain at-risk youths and their families. (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia)

"Consent" means: (34 CFR 300.9)

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's(s)' or eligible student's native language, or other mode of communication;
2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.).

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and parent(s) should document their agreement.

"Controlled substance" means a drug or other substance identified under schedules I, II, or III, IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c). (34 CFR [~~300.530(i)(1)(e)~~ 300.530(i)(1)])

"Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics, and government, economics, arts, history, and geography. (34 CFR 300.10)

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or local jail. (§§ 16.1-228 and 53.1-1 of the Code of Virginia)

"Coteaching" means a service delivery option with two or more professionals sharing responsibility for a group of students for some or all of the school day in order to combine their expertise to meet student needs.

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2); Licensure Regulations for School Personnel (8VAC20-22))

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or bodily injury, except that such term does not include a pocket knife with a blade of less than [~~2-1/2~~ three] inches in length. (18 USC § 930(g)(2); [§ 18.2-308.1 of the Code of Virginia])

"Day" means calendar day unless otherwise indicated as business day or school day. (34 CFR 300.11)

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(2))

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

"Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

"Developmental delay" means a disability affecting a child ages two by September 30 through [~~five~~ six,] inclusive: (34 CFR 300.8(b) [; 34 CFR 300.306(b)])

1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, or (ii) who has an established physical or mental condition that has a high probability of resulting in developmental delay;
2. The delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and
3. The presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have

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pecially designed instruction to access and make progress in the general educational activities for this age group.

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

"Due process hearing" means an administrative procedure conducted by an impartial special education hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent(s) and a local educational agency. A due process hearing involves the appointment of an impartial special education hearing officer who conducts the hearing, reviews evidence, and determines what is educationally appropriate for the child with a disability. [(34 CFR 300.507(a) (34 CFR 300.507)

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (34 CFR 300.34(c)(3))

"Education record" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as "scholastic record." In addition to written records, this also includes electronic exchanges between school personnel and parent(s) regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act. (20 USC § 1232g(a)(3); § 22.1-289 of the Code of Virginia; 34 CFR 300.611(b))

"Educational placement" means the overall instructional setting in which the student receives his education including the special education and related services provided. Each local educational agency shall ensure that the parents of a child with a disability are members of the group that makes decisions on the educational placement of their child. (34 CFR 300.327)

"Educational service agencies and other public institutions or agencies" include: (34 CFR 300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;

2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;

3. Any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

4. Entities that meet the definition of intermediate educational unit in § 1402(23) of the Act as in effect prior to June 4, 1997.

"Eligible student" means a child with a disability who reaches the age of majority and to whom the procedural safeguards and other rights afforded to the parent(s) are transferred.

"Emotional [~~disturbance~~ disability]" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional [~~disturbance~~ disability] includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional [~~disturbance~~ disability] as defined in this section.

"Equipment" means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house machinery, utilities, or equipment and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices and books, periodicals, documents, and other related materials. (34 CFR 300.14)

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (34 CFR 300.15)

"Excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that shall be computed after deducting [:] (34 CFR 300.16)

1. Amounts received:

- a. Under Part B of the Act;
- b. Under Part A of Title I of the ESEA; and
- c. Under Parts A and B of Title III of the ESEA; and

2. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1 a of this definition, but excluding any amounts for capital outlay or debt service.

"Extended school year services" for the purposes of this chapter means special education and related services that: (34 CFR 300.106(b))

- 1. Are provided to a child with a disability:
 - a. Beyond the normal school year of the local educational agency;
 - b. In accordance with the child's individualized education program;
 - c. At no cost to the parent(s) of the child; and
- 2. Meet the standards established by the Virginia Department of Education.

"Federal core academic subjects" means English, reading or language arts, mathematics, science, foreign language (languages other than English), civics and government, economics, arts, history, and geography. (20 USC § 7801(11))

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property. (34 CFR 104.3(h))

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

- 1. Are provided at public expense, under public supervision and direction, and without charge;
- 2. Meet the standards of the Virginia Board of Education;
- 3. Include [an appropriate] preschool, elementary school, middle school or secondary school education in Virginia; and
- 4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

"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 include] a review of existing

data [or new testing data or evaluation as determined by the IEP team].

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (34 CFR 300.8(c)(5))

"Highly qualified special education teacher" means a teacher has met the requirements as specified in 34 CFR 300.18 for special education teachers in general, for special education teachers teaching core academic subjects, for special education teachers teaching to alternate achievement standards, or for special education teachers teaching multiple subjects as it applies to their teaching assignment. (34 CFR 300.18)

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the child's individualized education program.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-180)

"Home instruction" means instruction of a child or children by a parent(s), guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling. (§ 22.1-254.1 of the Code of Virginia)

"Homeless children" has the meaning given the term "homeless children and youth" in § 725 (42 USC § 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC § 11431 et seq. and listed below: (34 CFR 300.19)

The term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of § 103(a)(1) of the McKinney-Vento Homeless Assistance Act and includes the following:

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1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to a lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement [-;]

2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings within the meaning of § 103(a)(2)(C);

3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4. Migratory children (as such term is defined in § 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described in subdivisions 1 through 3 of this definition.

The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is not home instruction as defined in the Code of Virginia. (§ 22.1-254 of the Code of Virginia)

"Illegal drug" means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC § 812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

["Impartial special education hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.

"Implementation plan" means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.]

"Independent educational evaluation" means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question. (34 CFR 300.502 (a)(3)(i))

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in

accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

"Individualized education program team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (34 CFR 300.23)

"Individualized family service plan (IFSP) under Part C of the Act [-] means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family. (34 CFR 303.24 [; 20 USC § 636])

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who: (§ [~~22.1-213~~ 2.2-5300] of the Code of Virginia; 34 CFR 300.25)

1. Has delayed functioning;

2. Manifests atypical development or behavior;

3. Has behavioral disorders that interfere with acquisition of developmental skills; or

4. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.

"Informed parental consent": see "Consent."

"Initial placement" means the first placement for the child to receive special education and related services in either a local educational agency, other educational service agency, or other public agency or institution for the purpose of providing special education or related services.

"Intellectual disability" [~~see "Mental retardation."~~ means the definition formerly known as "mental retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6))]

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and includes oral transliteration services, cued [~~language~~ speech/language] transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell [and interpreting services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has language deficits, may receive interpreting services as directed by the

child's Individualized Education Program]. (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when 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. (34 CFR 300.114 through 34 CFR 300.120)

"Level I services" means the provision of special education to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Level II services" means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Limited English proficient" when used with respect to an individual means an individual: (20 USC § 7801(25); 34 CFR 300.27)

1. Who is aged 2 through 21;
2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or
3. Who:
 - a. Was not born in the United States or whose native language is a language other than English;
 - b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - c. Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual;

a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;

b. The ability to successfully achieve in classrooms where the language of instruction is English; or

c. The opportunity to participate fully in society.

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton [and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton (the Virginia schools)]. Neither state-operated programs nor the Virginia [schools-School for the Deaf and the Blind at Staunton] are considered a school division as that term is used in these regulations. (§ 22.1-346 C of the Code of Virginia; 34 CFR 300.28)

["Long-term placement" if used in reference to state-operated programs as outlined in 8VAC20-81-30 H means those hospital placements that are not expected to change in status or condition because of the child's medical needs.]

"Manifestation determination review" means a process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services. (§ 22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

"Mental retardation" [~~means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6)) - see "Intellectual disability."~~]

"Multiple disabilities" means simultaneous impairments (such as [~~mental retardation~~- intellectual disability with] blindness, [~~mental retardation~~ intellectual disability with] orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

"National Instructional Materials Access Center" or "NIMAC" means the national center established to do the following: [~~(20 USC § 1474(e)(1) and (e)(2) (34 CFR 300.172)]~~

1. Receive and maintain a catalog of print instructional materials prepared in the NIMAS, as established by the U.S. Secretary of Education, made available to such center

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by the textbook publishing industry, state educational agencies, and local educational agencies;

2. Provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the NIMAC may prescribe; and

3. Develop, adopt and publish procedures to protect against copyright infringement, with respect to print instructional materials provided in accordance with the Act.

"National Instructional Materials Accessibility Standard" or "NIMAS" means the standard [established by the United States Secretary of Education] to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats. [~~(20 USC § 1474(e)(3)(B))~~ (34 CFR 300.172)]

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent(s) of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.29)

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available. (34 CFR 300.107(b))

"Notice" means written statements in English or in the primary language of the home of the parent(s), or, if the language or other mode of communication of the parent(s) is not a written language, oral communication in the primary language of the home of the parent(s). If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.503(c))

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes: (Regulations Governing the Licensure of Occupational Therapists (18VAC85-80-10 et seq.); 34 CFR 300.34(c)(6))

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

3. Preventing, through early intervention, initial or further impairment or loss of function.

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

1. Spatial and environmental concepts and use of information received by the senses (e.g., sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

2. To use the long cane or service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; [and]

3. To understand and use remaining vision and distance low vision aids; and

4. Other concepts, techniques, and tools.

"Orthopedic impairment" means a severe orthopedic impairment [that adversely affects a child's educational performance], The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome [that adversely affects a child's educational performance]. (34 CFR 300.8(c)(9))

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter. (34 CFR 300.156(b)(2)(iii))

"Parent" means: (§ 20-124.6 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

1. Persons who meet the definition of "parent":

a. A biological or adoptive parent of a child;

b. A foster parent:

(1) If the biological parent(s)' authority to make educational decisions on the child's behalf has been extinguished under § 16.1-283, 16.1-277.01 or 16.1-277.02 of the Code of Virginia or a comparable law in another state;

(2) The child is in permanent foster care pursuant to Chapter 9 (§ 63.2-900 et seq.) of Title 63.2 of the Code of Virginia or comparable law in another state; and

(3) The foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of the parent under this chapter, and has no interest that would conflict with the interests of the child [- ;

c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not a guardian ad litem, or the state if the child is a ward of the state);

d. An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; [ø]

e. A surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220 [- ; or

f. A minor who is emancipated under § 16.1-333 of the Code of Virginia.]

2. If a judicial decree or order identifies a specific person(s) under subdivisions 1 a through 1 e of this subsection to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person(s) shall be determined to be the "parent" for purposes of this definition.

3. "Parent" does not include local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency.

4. The biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make educational decisions for the child.

5. Noncustodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child's records.

6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents do not have the right to access the child's record.

[7. A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record and, thus, assumes responsibilities of "parent" under this chapter.]

"Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (34 CFR 300.34(c)(8))

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. The term also means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c), 34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

"Personally identifiable" means information that contains the following: (34 CFR 300.32)

1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

"Physical education" means the development of: (34 CFR 300.39(b)(2))

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction. (Regulations Governing the Practice of Physical Therapy, 18VAC112-20; 34 CFR 300.34(c)(9))

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"Private school children with disabilities" means children with disabilities enrolled by their parent(s) in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined in this section other than children with disabilities who are placed in a private school by a local school division or a Comprehensive Services Act team in accordance with 8VAC20-81-150. (34 CFR 300.130)

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

1. Administering psychological and educational tests, and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, [direct observation,] and behavioral evaluations;
5. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
6. Assisting in developing positive behavioral intervention strategies.

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent(s). (34 CFR 300.502(a)(3)(ii))

"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, electronic means, and other methods that are likely to succeed in providing information to the public.

"Qualified person who has a disability" means a "qualified handicapped person" as defined in the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC § 701 et seq.)

"Recreation" includes: (34 CFR 30.34(c)(11))

1. Assessment of leisure function;
2. Therapeutic recreation services;

3. Recreation program in schools and community agencies; and

4. Leisure education.

"Reevaluation" means completion of a new evaluation in accordance with this chapter. (34 CFR 300.303)

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended. (34 CFR 300.34(c)(12))

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; [early identification and assessment of disabilities in children;] counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

Nothing in this section:

1. Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE;

2. Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

3. Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. (34 CFR 300.11)

"School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

"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: (20 USC § 9501(18); 34 CFR 300.35)

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; and
6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

"Screening" means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.

"Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC § 701 et seq.)

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. (18 USC § 1365(h)(3); 34 CFR 300.530(i)(3))

"Services plan" means a written statement that describes the special education and related services the [LEA local educational agency] will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-81-150. (34 CFR 300.37)

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including: (Licensure Regulations for School Personnel, 8VAC20-22-660); 34 CFR 300.34(c)(14))

1. Preparing a social or developmental history on a child with a disability;
2. Group and individual counseling with the child and family;
3. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
4. Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and
5. Assisting in developing positive behavioral intervention strategies for the child.

[A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.]

"Special education" means specially designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education: (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;

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2. Vocational education; and
3. Travel training.

"Special education hearing officer" has the same meaning as the term "[impartial] hearing officer" as that term is used in the Act and its federal implementing regulations.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction: (34 CFR 300.39(b)(3))

1. To address the unique needs of the child that result from the child's disability; and
2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of [mental retardation intellectual disabilities]; [of emotional disabilities;] of environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

[§] Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

"Speech-language pathology services" means the following: (34 CFR 300.34(c)(15))

1. Identification of children with speech or language impairments;
2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

"State assessment program" means the state assessment program in Virginia under the Act that is the component of the state assessment system used for accountability.

"State educational agency" means the Virginia Department of Education. (34 CFR 300.41)

"State-operated programs" means programs that provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions. (§§ 22.1-7, 22.1-340 and 22.1-345 of the Code of Virginia)

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with this chapter. (34 CFR 300.42)

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education. (34 CFR 300.519)

"Timely manner" if used with reference to the requirement for National Instructional Materials Accessibility Standard means that the local educational agency shall take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. [(34 CFR 300.172(b)(4))]

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to: (34 CFR 300.124)

1. Early childhood special education to the extent that those services are appropriate; or

2. Other services that may be available, if appropriate.

"Transition services" if used with reference to secondary transition means a coordinated set of activities for a student with a disability that is designed within a results-oriented process that: (34 CFR 300.43)

1. Is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

2. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education.

"Transportation" includes: (34 CFR 300.34(c)(16))

1. Travel to and from school and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, [that adversely affects a child's educational performance]. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to: (34 CFR 300.39(b)(4))

1. Develop an awareness of the environment in which they live; and

2. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

"Universal design" has the meaning given the term in § 3 of the Assistive Technology Act of 1998, as amended, 29 USC § 3002. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. (34 CFR 300.44)

"Virginia School for the Deaf and the Blind at Staunton [and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton" or "Virginia schools]" means the Virginia [schools school] under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of [the Virginia schools this school]. (§ 22.1-346 of the Code of Virginia)

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, and includes career and technical education. (34 CFR 300.39(b)(5))

"Ward of the state" means a child who, as determined by the state where the child resides is: (34 CFR 300.45)

1. A foster child;
2. A ward of the state; or
3. In the custody of a public child welfare agency.

"Ward of the state" does not include a foster child who has a foster parent who meets the definition of a "parent."

"Weapon" means dangerous weapon under 18 USC § 930(g)(2). (34 CFR 530(i)(4))

Part II

Responsibilities of the State Department of Education

8VAC20-81-20. Functions of the Virginia Department of Education.

The Virginia Department of Education (state educational agency) shall perform the following functions:

1. Ensure that all children with disabilities, aged two to 21, inclusive, residing in Virginia have a right to a free

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appropriate public education, including, but not limited to, children with disabilities who: (34 CFR 300.2 and 34 CFR 300.101)

a. Are migrant;

b. Are homeless;

c. Have been suspended or expelled from school, in accordance with this chapter;

d. Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8VAC20-81-110 I;

e. Are [~~in~~ receiving] special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;

f. Are in state-operated programs; or

g. Are in public charter schools in accordance with the Code of Virginia.

2. Except as provided in [~~8VAC20-81-80 F~~ 8VAC20-81-170 E 4 b (3)], ensure that each local school division develops an IEP for each child with a disability served by that local school division and that an IEP is developed for each child with a disability placed in a private school by a local school division or Comprehensive Services Act team. (34 CFR 300.112 [and 34 CFR 300.300(b)(4)(ii)])

3. Review and submit to the Virginia Board of Education for approval a plan for the provision of special education and related services from each local educational agency responsible for providing educational services to children with disabilities. (§ 22.1-215 of the Code of Virginia; 34 CFR 300.200)

4. Ensure that each local educational agency includes all children with disabilities in all general Virginia Department of Education and [~~division-wide~~ ~~divisionwide~~] assessment programs, including assessments described in § 1111 of ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs and in accordance with the provisions of the Act at § 1412. (20 USC § 1412(a)(16)(A))

5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the [~~areas served by the~~] local educational agency, including art, music, industrial arts, consumer and homemaking education, and career and technical education. (34 CFR 300.110)

6. Ensure that each educational program for children with disabilities administered within Virginia: (34 CFR 300.149(a))

a. Is under the general supervision of the persons responsible for educational programs for children with disabilities in Virginia; and

b. Meets the educational standards of the Virginia Department of Education.

In carrying out these requirements with respect to homeless children, the requirements of Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.) are met.

7. [~~Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools, and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Act are met. Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, VDOE shall ensure that public hearings are convened, adequate notice of the hearings are provided, and an opportunity for comment is made available to the public, members of the state special education advisory committee, and private special education schools.] (34 CFR 300.165)~~

8. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities. (§ 22.1-214 of the Code of Virginia; 34 CFR 300.199 and 34 CFR 300.129)

9. Assist local educational agencies and other participating state agencies in the implementation of state and federal laws and regulations pertaining to LRE requirements by: (34 CFR 300.119)

a. Ensuring that teachers and administrators are fully informed about their responsibilities for implementing LRE requirements; and

b. Providing them with technical assistance and training necessary to assist them in this effort.

10. Ensure that the requirements for LRE are implemented by each local educational agency. If there is evidence that a local educational agency's placements are inconsistent with LRE requirements, the Virginia Department of Education shall: (34 CFR 300.120)

a. Review the local educational agency's justification for its actions; and

b. Assist in planning and implementing any necessary corrective action.

11. Review and evaluate compliance of local educational agencies with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed. (34 CFR 300.149, 34 CFR 300.151 and 34 CFR 300.507)

a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers, [~~processing requests for a hearing, appointment of~~ evaluating special education hearing officers, [and] management and monitoring of hearings [~~and administration of the hearing system~~].

b. Maintain and operate a complaint system that provides for the investigation and issuance of findings regarding alleged violations of the educational rights of parents or children with disabilities. Allegations may be made by public or private agencies, individuals or organizations.

12. Establish and implement a mediation process in accordance with the Act. (§ 22.1-214 of the Code of Virginia; [] 34 CFR 300.506)

13. Review and evaluate compliance of private nonsectarian special education schools that are licensed or have a certificate to operate in order to ensure that each child with a disability placed in the school by a local school division or Comprehensive Services Act team is provided special education and related services at no cost to the parent(s) in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.129, 34 CFR 300.146 and 34 CFR 300.147)

a. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires [;]

b. Provide copies of all Virginia regulations and standards; and

c. Provide an opportunity for these schools to participate in the development and revision of Virginia's regulations that apply to them.

14. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~] to ensure that each child with a disability placed in the school by a local school division is provided special education and related services at no cost to the parent(s) in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.149)

15. Establish and maintain a state special education advisory committee composed of individuals involved in or concerned with the education of children with disabilities. (34 CFR 300.167 through 34 CFR 300.169)

a. Membership. The membership shall consist of individuals appointed by the Superintendent of Public Instruction or designee who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents

of children with disabilities (ages birth through 26). Membership shall include one or more of the following:

(1) Parents of children with disabilities (ages birth through 26);

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

(5) State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Act (42 USC § 11431 et seq.);

(6) Administrators of programs for children with disabilities;

(7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(10) A representative from Virginia's juvenile and adult corrections agencies; and

(11) A representative from Virginia's child welfare agency responsible for foster care.

b. Duties. The state special education advisory committee shall:

(1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;

(2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;

(3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Act;

(4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Act;

(5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and

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(6) Review the annual plan submitted in accordance with 8VAC20-81-230 B 2 submitted by state-operated programs [~~and~~] the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~].

c. Procedures.

(1) The state special education advisory committee shall meet as often as necessary to conduct its business.

(2) By October 1 of each year, the state special education advisory committee shall submit an annual report of committee activities and suggestions to the Virginia Board of Education. The report shall be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.

(3) Official minutes shall be kept on all committee meetings and shall be made available to the public on request.

(4) All meetings and agenda items shall be publicly announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend, and meetings shall be open to the public.

(5) Interpreters and other necessary accommodations shall be provided for advisory committee members or participants.

(6) The advisory committee shall serve without compensation, but the Virginia Department of Education shall reimburse the committee for reasonable and necessary expenses for attending meetings and performing duties.

16. Provide a report annually to the state special education advisory committee on the Virginia Department of Education's dispute resolution systems, including information related to due process hearings and decisions. This report and due process hearing decisions, with all personally identifiable information deleted, are made available to the public on the Virginia Department of Education's website. (34 CFR 300.513(d))

17. Establish goals for the performance of children with disabilities that: (34 CFR 300.157(a))

a. Promote the purposes of the Act;

b. Are the same as Virginia's objectives for progress by children in its definition of adequate yearly progress, including Virginia's objectives for progress by children with disabilities, under § 1111(b)(2)(C) of the ESEA, 20 USC § 6311;

c. Address graduation rates and drop out rates, as well as such other factors as Virginia may determine; and

d. Are consistent, to the maximum extent appropriate, with any other goals and academic standards for children as established by Virginia.

18. Establish performance indicators Virginia will use to assess progress toward achieving the goals in subdivision 17 of this section, including measurable annual objectives for progress by children with disabilities under § 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC § 6311. Annually report to the public and the United States Secretary of Education on the progress of children with disabilities in Virginia, toward meeting the goals described in subdivision 17 of this section, which may include elements of the reports required under § 1111(h) of the ESEA. (34 CFR 300.157(b) and (c))

19. Establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. These requirements include: (34 CFR 300.156(a) through (d))

a. Related services personnel and paraprofessionals. The qualifications shall:

(1) Be consistent with any Virginia-approved or Virginia-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(2) Ensure that related services personnel who deliver services in their discipline or profession have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services to children with disabilities.

b. Ensuring that each person employed as a public school special education teacher in Virginia who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in § 1119(a)(2) of the ESEA.

c. Requiring local educational agencies to take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.

20. Respond to complaints filed by a parent about staff qualifications as provided for under this chapter. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing

in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the Virginia Department of Education or local educational agency employee to be highly qualified. (34 CFR 300.156(e))

21. Secure agreements with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure that a free appropriate public education is provided to all children with disabilities. The agreements shall address financial responsibility for each nonpublic educational agency for the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings. (34 CFR 300.154)

22. Disburse the appropriated funds for the education of children with disabilities in Virginia to local school divisions and state-operated programs that are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities. (34 CFR 300.705 and 34 CFR 300.816)

23. Ensure that a practical method is developed and implemented to determine which children, including children with disabilities who are homeless or are wards of the state, are currently receiving needed special education and related services. Report and certify annually to the United States Department of Education the number of children with disabilities in local educational agencies who are receiving special education and related services on [~~any~~ a] date between October 1 and December 1 of each year [determined by the Superintendent of Public Instruction or designee]. The annual report of children served shall meet the provisions of 34 CFR 300.641 through 34 CFR 645. (34 CFR 300.111 and 34 CFR 300.640)

24. Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in the local educational agencies. This method shall include the collection and examination of data with respect to: (34 CFR 300.646(a) and 34 CFR 300.173)

- a. The identification of children as children with disabilities, including the identification of [children as children with disabilities in accordance with] a particular impairment described in 8VAC20-81-10, "Child with a disability";
- b. The placement in particular educational settings of these children; and
- c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

25. Ensure that in the [case of the] determination of significant disproportionality, [as outlined in subdivision 24 of this section], the Virginia Department of Education [shall]: (34 CFR 300.646(b))

a. [~~Reviews~~ Review] and, if appropriate, [~~revises~~ provide for the revision of] the policies, procedures, and practices used by the local educational agency in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of this chapter;

b. [~~Requires~~ Require] any local educational agency determined to have a significant disproportionality to reserve the maximum amount of funds under this chapter to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly, but not exclusively, children in those groups that were significantly overidentified; and

c. [~~Requires~~ Require] the local educational agency to publicly report on the revision of policies, practices, and procedures addressing the disproportionality.

26. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures, and ensure that each local educational agency is informed of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that local educational agency. (34 CFR 300.121 and 34 CFR 300.150)

27. Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met. (34 CFR 300.154(d) and (e))

28. Ensure that if the Virginia Department of Education provides direct services to children with disabilities, it complies with state and federal requirements as if it is a local educational agency and uses federal funds under Part B of the Act to provide services. (34 CFR 300.175)

a. The Virginia Department of Education [~~shall~~ may] use payments that would otherwise have been available to a local educational agency [under Part B of the Act] to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of [~~§ 1413(h) of the Act~~ the excess cost requirements as outlined in 8VAC20-81-260].

b. The Virginia Department of Education may provide special education and related services in the manner and at the location it considers appropriate, consistent with least restrictive environment requirements.

29. Ensure that children who participate in early intervention services assisted under Part C of the Act and who will participate in preschool programs assisted under Part B of the Act experience a smooth and effective

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transition to early childhood special education programs in a manner consistent with the Virginia Part C lead agency's early intervention policies and procedures as follows: (34 CFR 300.124)

a. For those children who at age two (on or before September 30) are found eligible for Part B early childhood special education programs, IEPs are developed and implemented for those children; and

b. The local educational agency will participate in transition planning conferences arranged by the designated local Part C early intervention agency.

30. Ensure the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Act. This shall include notice to fully inform parents about the confidentiality of information as specified in 34 CFR 300.612, and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records. These policies and procedures shall comply with the provisions of 34 CFR 300.612 through 34 CFR 300.626. (34 CFR 300.123 and 34 CFR 300.610)

31. Ensure that a practical method is developed and implemented to: (34 CFR 300.170)

a. Examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions with children with disabilities:

(1) Among local educational agencies in Virginia; or

(2) Compared to the rates for nondisabled children within the local school division.

b. Review discrepancies and, if appropriate, require the local educational agency to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

32. Adopt the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities. (34 CFR 300.172)

a. Ensure that local educational agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials; and

b. In carrying out the provisions of this subsection, to the maximum extent possible, work collaboratively with the state agency responsible for assistive technology programs.

33. Prohibit the Virginia Department of Education and local educational agency personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in § 202(c) of the Controlled Substances Act (21 USC § 812(c)) for a child as a condition of attending school, receiving an evaluation under this chapter, or receiving services under this chapter. (34 CFR 300.174(a))

34. Monitor, enforce, and provide technical assistance regarding the implementation of the requirements under the Act. These actions include: (34 CFR 300.600 through 34 CFR [~~300.645~~ 300.609; 34 CFR 300.640 through 34 CFR 300.645]; 34 CFR 300.149(b) and 34 CFR 300.165(b))

a. Providing the Secretary of Education state performance reports and data collections in accordance with the provisions of 34 CFR 300.600 through 34 CFR 300.602.

b. Taking appropriate enforcement and technical assistance measures to assist local educational agencies in complying with the provisions of the Act in accordance with the provisions of 34 CFR 300.600 through 34 CFR 300.602 and 34 CFR 300.608.

c. Establishing that the focus of Virginia's monitoring activities [~~are is~~] on:

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

d. Using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in 34 CFR 300.600(d), and the indicators established by the U.S. Secretary of Education for the state performance plans.

e. Using the targets established in Virginia's performance plan and the priority areas described in 34 CFR 300.600(d) to analyze the performance of each local educational agency.

f. Following all the reporting requirements under 34 CFR 300.602(b).

g. Notifying the public of the pendency of an enforcement action taken by the U.S. Department of Education pursuant to 34 CFR 300.604.

h. Prohibiting the local educational agency from reducing the local educational agency's maintenance of effort under 34 CFR 300.203 for any fiscal year if the Virginia Department of Education determines that a local

educational agency is not meeting the requirements of Part B of the Act, including the targets in Virginia's state performance plan.

Part III

Responsibilities of Local School Divisions and State-Operated Programs

8VAC20-81-30. Responsibility of local school divisions and state-operated programs.

A. The requirements set forth in this chapter are applicable to local school divisions and state-operated programs providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

B. Each local school division shall ensure that all children with [disabilities] aged two to 21, inclusive, residing in that school division have a right to a free appropriate public education. (§ 22.1-214 of the Code of Virginia; 34 CFR 300.2, 34 CFR 300.101, 34 CFR 300.124 and 34 CFR 300.209)

The children include:

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.)];
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 its jurisdiction, with the exception of those additional provisions identified in 8VAC20-81-110 I;
7. Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction;
8. Children with disabilities who are in foster care and residents of Virginia;
9. Children with disabilities who are placed for noneducational reasons; and
10. Children with disabilities regardless of citizenship or immigration status.

C. Every child with a disability is deemed to reside in a school division 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 § 22.1-1 of the Code of Virginia, not solely for school purposes [7;] 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 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. The 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 § 16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.]

[~~7~~ 8.] The child is in foster care and a resident of Virginia, but not a resident of the school division, 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 the school division, 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 the school division.

[~~8~~ 9.] The child is in foster care and a resident of Virginia, and a resident of the school division, under the provisions of subdivision [~~7~~ 8] of this subsection.

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D. If a child with a disability is living with the parent in the residence of the local school division, the local school division is responsible for ensuring that the child receives a free 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)

E. Requirements for children with disabilities who are placed for noneducational reasons:

1. The local school division that is 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 nonresidence 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 the local school division where the Virginia placing agency is located and is a participant in the community policy and management team of that local school division that has 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 [~~the mentally retarded~~ people with intellectual disabilities] under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides [~~, unless the child is in a state operated program~~].

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 where the parent(s) resides [~~, unless the child is in a state operated program~~].

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 [~~the mentally retarded~~ people with intellectual disabilities] under 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 [~~, unless the adult child with a disability is in a state operated program~~].

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 resides [~~, unless the adult child is in a state operated program~~].

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 not appointed a guardian to make decisions, [~~the adult child is a resident of the division where the guardian resides, unless the adult child is in a state operated program. The~~ the] adult child's residence is the fixed home to which the adult child will return following the child's return from a 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 [~~, unless the adult child is in a state operated program~~]. The adult child's residence shall be the fixed home to which the adult child will return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.

[9. If placed in a sponsored residential home, licensed in accordance with 12VAC35-105, the child is a resident of the division where the parent(s) resides.]

F. If there is a dispute between local school divisions regarding the parent's or legal guardian's residence, the local school division of the parent's or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's or legal guardian's residence is established in another local school division.

G. If there is dispute between the parent or legal guardian of a child with a disability and the local school division regarding residency, the local school division of where the child is last enrolled remains responsible for providing the child with a free appropriate public education until resolution of the dispute.

H. Each state-operated program shall ensure that [~~the requirements in this chapter are applied to~~] children with disabilities, aged two to 21, inclusive, in that institution [~~have the right to a free appropriate public education~~]. (§ 22.1-7 of the Code of Virginia)

[1. For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.

2. The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.]

I. Children with disabilities who are not residents of Virginia but are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within a school division may, in the discretion of the local school board's policies and procedures, be admitted to the public schools of the school division for special education and related services. Tuition charges associated with this admittance are subject to the provisions of § 22.1-5 of the Code of Virginia.

8VAC20-81-40. 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 [~~for instructing one or more federal core subjects to students with disabilities~~] 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.

(1) 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.

(2) 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.

(3) 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.

(1) 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.

(2) 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

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caseloads do not include children with disabilities who incidentally benefit from such services.

B. Staffing for early childhood special education.

1. Children of preschool ages (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 (IEP) team. A schedule comparable in length to school age students shall be made available 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 the funded caseloads. 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.

C. 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.

D. Alternative special education staffing plan. School divisions and private special education schools may offer for consideration of 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 local school divisions and private special education schools seeking to implement innovative programs that are not consistent with these staffing levels.

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services [for children who are deaf or hard of hearing] are as follows:

a. Personnel providing educational interpreting services for children using sign language shall [~~have~~:

(1) Have] a [valid] Virginia Quality Assurance Screening (VQAS) Level III [;] or

[(2) Have] a passing score on the Educational Interpreter Performance Assessment (EIPA) [~~written test~~ Written Test] along with a minimum of a Level 3.5 on the EIPA [~~performance test~~ Performance Test] or any other state [qualification] or national certification [~~(National Interpreter 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. [~~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. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent have one year to reach the required qualifications.~~]

b. Personnel providing educational interpreting services for children using cued speech/language shall have a 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].

c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance [~~Screening's~~ Screening] written assessment of the Code of Ethics [~~and hold a national Oral Interpreter Credential (OIC)~~].

[2. Personnel who provide interpreting services for children who use sign language or cued speech/language and who do not hold the required qualifications may be employed in accordance with 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:

(1) A valid Virginia Quality Assurance Screening (VQAS) Level III; or

(2) 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.

(3) 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.

(4) 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.

(1) 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.

(2) 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.

c. 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.]

8VAC20-81-50. Child find.

A. Child find.

1. Each local school division 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: (34 CFR 300.102 and 34 CFR 300.111)

a. Are highly mobile, such as migrant and homeless children;

b. Are wards of the state;

c. Attend private schools, including children who are home-instructed or home-tutored;

d. 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

e. 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. Each local school division shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council. (34 CFR 300.124)

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. (34 CFR 300.131, 34 CFR 300.133, 34 CFR 300.134)

a. The child find process shall be designed to ensure:

(1) The equitable participation of parentally placed private school children, and

(2) 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 [LEA local educational agency].

e. Each local school division in which private, including religious, elementary and secondary schools, are located, shall include parentally placed private school children, including those who reside in a state other than Virginia, or country other than the United States.

(1) 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

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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.~~] Each local school division shall, at least annually, conduct a public awareness campaign to:

[~~a.~~ 1.] 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.~~ 2.] Generate referrals; and

[~~c.~~ 3.] Explain the nature of disabilities, the early warning signs of disabilities, and the need for services to begin early.

C. Screening.

1. Each local school division shall have procedures, including timelines, to document the screening of children enrolled in the division, including transfers from out of state as follows:

a. Children shall be screened in the areas of hearing and vision in accordance with the requirements of 8VAC20-250-10. (§ 22.1-273 of the Code of Virginia)

b. Children shall be screened for scoliosis in accordance with the requirements of 8VAC20-690-20. (§ 22.1-273.1 of the Code of Virginia)

c. Children shall be screened in the areas of speech, voice, language, and fine and gross motor functions 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. The local school division shall provide all applicable procedural safeguards. These [~~safeguards~~] include the following:

a. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening;

b. Confidentiality; and

c. Maintenance of the student's scholastic record.

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.

1.] Each school [~~division~~] shall have procedures to [~~review records, assess whether the child was provided appropriate instruction, and review other performance evidence of the child referred through a screening process, or by school staff, the parent(s), or other individuals. (34 CFR 300.309(e))~~ process in a timely manner all referral requests for a child suspected of having a disability.]

[~~1. The local school division's procedures shall ensure that if a child received early intervening services or other scientific research based interventions these services do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. Such procedures shall include:~~

a. Tracking and reviewing timelines;

b. Instructions on maintaining data based documentation reflecting the child's progress during instruction in the child's area(s) of difficulty; and

c. Written progress reports to the child's parent(s) at reasonable intervals for documenting the progress of the intervention strategies to address the child's learning, behavior, communication, or development.

2. If the child has not made adequate progress after an appropriate period of time, during which the conditions of providing appropriate high quality, research based instruction in general education settings delivered by qualified personnel and data based documentation requirements have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be made to the special education administrator or designee.

E. Each school division shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability. (34 CFR 300.507)

1. The local school division's procedures shall ensure that the processing of such referrals do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.

2. If the school division decides not to evaluate, 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.

2. Each school shall have a team to review records and other performance evidence of the child being referred in order to make recommendations to meet the child's educational and behavioral needs.

a. The team shall include:

(1) The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the child);

(2) The principal or designee;

(3) At least one teacher; and

(4) At least one specialist.

b. 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.

c. 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.

3. 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:

(1) Initiate the evaluation eligibility process in accordance with 8VAC20-81-60, 8VAC20-81-70, and 8VAC20-81-80;

(2) Require that the school-based team review and respond to the request; or

(3) 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)

4. In reviewing the child's performance, the 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. Timelines for referral process.

a. The team shall meet within 10 business days following the receipt of the referral.

b. The team shall refer the child to the special education administrator or designee within three business days if the team determines that the child should be referred for an evaluation for special education and related services.

c. 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)

6. Actions by the team shall be documented in writing and shall include information upon which a decision was based.]

[~~F. E.~~] Prohibition on mandatory medication [(34 CFR 300.174)].

1. The Virginia Department of Education prohibits state and [~~LEA~~ local educational agency] personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in § 202(c) of the Controlled Substances Act (21 USC § 812(c)) for a child as a condition of attending school, receiving an evaluation under 34 CFR 300.300 through 34 CFR 300.311, or receiving services under this part.

2. 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. [~~(34 CFR 300.174)~~]

8VAC20-81-60. Referral for initial evaluation.

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 school staff, a parent(s), the Virginia Department of Education,

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any other state agency, ~~[or]~~ other individuals, ~~[or a school-based team in accordance with 8VAC20-81-50 D 5 b.]~~ (34 CFR 300.301(b))

2. 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.

~~[3. 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.]~~

B. Procedures for referral for initial evaluation.

~~1. [Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the] special education administrator, or designee, shall:~~

- ~~a. Record the date the referral was received, reason for referral, and names of the person or agency making the referral;~~
- ~~b. Implement procedures for maintaining the confidentiality of all data;~~
- ~~c. Provide written notice and procedural safeguards to inform the parent(s) in the parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:~~

- ~~(1) The referral for evaluation,~~
- ~~(2) The purpose of the evaluation, and~~
- ~~(3) 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:~~

- ~~(1) Gather relevant functional, developmental and academic information about the child to determine if the child is a child with a disability; and~~

~~(2) 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 [after the parent has provided written consent to the evaluation process 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))]~~

~~(1) The parent(s) of the child repeatedly fails or refuses to produce the child for the evaluation; or~~

~~(2) If the child enrolls in a school served by the local school division 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 local school division 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 agree to a specific time when the evaluation will be completed.~~

~~h. 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. (34 CFR 300.300(a), 34 CFR 300.3049(c))~~

~~i. If the decision is to not evaluate, 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 due process hearing procedures. (34 CFR 300.507)~~

~~[3- 2.] Parental consent requirements. (34 CFR 300.300)~~

~~a. 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.~~

~~b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.~~

~~c. 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.~~

~~d. 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:~~

(1) Despite reasonable efforts to do so, the local school division cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with Virginia law; or

(3) 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.

e. 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.

f. 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.

8VAC20-81-70. Evaluation and reevaluation.

A. Each local educational agency shall establish procedures for the evaluation and reevaluation of referrals of children in accordance with the provisions of this section. (34 CFR 300.122)

B. Determination of needed evaluation data for initial evaluation or reevaluation. (34 CFR 300.305 and 34 CFR 300.507)

1. Review of existing evaluation data. 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:

(1) Evaluations and information provided by the parent(s) of the child;

(2) Current classroom-based, local, or state assessments and classroom-based observations; and

(3) Observations by teachers and related services providers; and

b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine:

(1) Whether the child is, or continues to be, a child with a disability;

(2) The present educational needs of the child;

(3) The child's present level of academic achievement and related developmental needs; [~~and~~

(4) Whether the child needs or continues to need special education and related services; and]

[~~(4)~~ (5)] 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 education curriculum.

2. Conduct of review. The group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the parent(s) has the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate. The notice shall indicate the purpose, date, time, and location of the meeting and who will be in attendance.

3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

[4. Requirements if additional data are not needed:

a. If the team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency shall provide the child's parent(s) with prior written notice, including information regarding:

(1) The determination and the reasons for it; and

(2) The right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes.

c. The child's parent(s) has the right to resolve a dispute through mediation or due process as described in this chapter.]

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[4. d.] This process shall be considered the evaluation if no additional data are needed.

5. If the team determines not to evaluate a child suspected of a disability, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's rights to appeal the decision through due process proceedings.

C. The local educational agency shall establish policies and procedures to ensure that the following requirements are met. (§ 22.1-214 of the Code of Virginia; 34 CFR 300.304 and 34 CFR 300.310)

1. [~~Tests Assessments~~] and other evaluation materials used to assess a child under this chapter are [~~selected~~:

a. Selected] and administered so as not to be discriminatory on a racial or cultural basis [;]

[~~2. Each assessment and other evaluation materials shall be provided~~ b. Provided] and administered in the [child's native] language and [in the] 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. 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.]

[~~3. 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.~~

[4. 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(s), 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.

[~~5. 4.] The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.~~

[6. Any standardized tests that are given to a child:

a. Have been validated for the specific purpose for which they are used; and

~~b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests.~~

~~7. 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) shall be included in the evaluation report.~~

[~~8. 6.] Any nonstandardized [test 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.~~

[~~9. Tests 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.

[~~10. Tests 8. Assessments~~] are selected and administered so as to best ensure that if [~~a test~~ an assessment] is administered to a child with impaired sensory, motor, or communication skills, the [test assessment] 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).

[~~11. 9.] 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.~~

[~~12. 10.] Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.~~

[~~13. 11.] No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.~~

[~~14. 12.] 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.~~

[~~15. 13.] For a child suspected of having a specific learning disability, the evaluation shall include 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.~~

~~[14.]~~ 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, sociocultural, 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 that 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.

~~D. [A written copy of the evaluation report shall be provided at no cost to the parent(s). The [report evaluation report(s)] shall be available to the parent(s) no later than two business days before the meeting to determine eligibility. (34 CFR 300.306(a)(2))~~

[1. A written copy of the evaluation report(s) shall be provided to the parent(s) 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.

2. The evaluation report(s) shall be provided to the parent(s) at no cost.]

E. Assessments of children with disabilities or suspected of having a disability who transfer from one local educational agency to another local educational agency in the same school year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with [~~8VAC20-81-120~~ 8VAC20-81-60 B 1 g], to ensure prompt completion of full evaluations. (34 CFR 300.304(c)(5))

F. Reevaluation.

1. A reevaluation shall be conducted: (34 CFR 300.303(a) and (b)(2))

a. If the local educational agency 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 requests a reevaluation; or

c. At least once every three years, unless the parent and local educational agency agree that a reevaluation is unnecessary.

2. The local educational agency shall not conduct a reevaluation more than once a year unless the parent(s) and the local educational agency agree otherwise. If the local educational agency does not agree with the parent's request for a reevaluation, the local educational agency shall provide the parent(s) with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.303(b)(1))

~~3. [As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate follow the provisions of subsection B of this section in determining: (34 CFR 300.305(a)) The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section. (34 CFR 300.305)~~

~~a. Whether the child continues to have a disability;~~

~~b. The child's educational needs, including the present levels of academic achievement and related developmental needs of the child;~~

~~c. Whether the child continues to need special education and related services; or~~

~~d. Whether any additions or modifications to the special education and related services are needed to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general education curriculum.~~

~~4. The local educational agency shall administer tests and other evaluation materials, in accordance with subsection B of this section, as may be needed to produce the data identified in subdivision 3 of this subsection. (34 CFR 300.305(c))~~

~~5. Requirements if additional data are not needed: (34 CFR 300.305(d))~~

~~a. If the team determines that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall provide the child's parent(s) with written prior notice, including information regarding:~~

~~(1) The determination and the reasons for it; and~~

~~(2) The right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs;~~

~~b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes.~~

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~~e. The child's parent(s) has the right to resolve the issue through the dispute resolution options of mediation or due process as described in this chapter.~~

~~6. This process is considered the evaluation if no additional data are needed.]~~

G. Parental consent for reevaluation. [(34 CFR 300.300(c) and (d))]

1. Informed parental consent is required before conducting any reevaluation of a child with a disability.

a. If the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the child's parent(s) has failed to respond, the local educational agency shall proceed as if consent has been given by the parent(s). Reasonable measures include providing notice to the parent(s) in writing (or by telephone or in person with proper documentation).

b. If the parent(s) refuses consent, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures. The local educational agency does not violate its obligation under this chapter if it declines to pursue the reevaluation.

2. Parental consent is not required before:

a. Review of existing data as part of an evaluation or reevaluation;

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 parents of all children.

3. 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 reevaluation, or the parent(s) fails to respond to a request to provide consent, the local educational agency may not use mediation or due process to pursue the reevaluation. [(34 CFR 300.300(e) and (d))]

In this instance, the local school division is not required to consider the child as eligible for equitable services under the provisions of 8VAC20-81-150 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 [from the date of the parent's consent 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. The [LEA local educational agency] 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, the local educational agency is required to provide the parent with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.305(e)(2))

8VAC20-81-80. Eligibility.

A. Each local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services and educational needs is made in accordance with the provisions of this section.

B. The determination that a child is eligible for special education and related services shall be made on an individual basis by a group as designated in subdivision C 2 of this section.

C. Upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall 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 [~~needs~~ requires] special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110. (34 CFR 300.306, 34 CFR 300.308)

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:

- (1) Local educational agency personnel representing the disciplines providing assessments;
- (2) The special education administrator or designee;
- (3) The parent(s);
- (4) A special education teacher;
- (5) 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
- (6) At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.

D. Procedures for determining eligibility and educational need. (34 CFR 300.306 through 34 CFR 300.311)

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. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting to document academic performance and behavior in the areas of difficulty. 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.~~

~~b. a.] The local educational agency shall [:-(1) Have at least one member of the eligibility team 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. (2) Ensure 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.~~

~~[(3) Include 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.~~

b. The eligibility group, in determining whether a child is a child with a disability shall:

(1) 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

(2) 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, [~~and~~ or] the determinant factor is:

a. Lack of appropriate instruction in reading, including the essential components of reading instruction:

- (1) Phonemic awareness,
- (2) Phonics,
- (3) Vocabulary development,
- (4) Reading fluency, including oral reading skills, and
- (5) 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.

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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 [~~was implemented and whether the child does not achieve commensurate with the child's age~~]. This document shall also include:

(1) 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;

(2) The strategies that were used to increase the child's rate of learning; and

(3) The parent's right to request an evaluation.

f. For identification of [a child with a specific] learning [~~disabilities~~ disability], whether [~~there are~~ 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

(1) The child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or

(2) The child exhibits a pattern of] strengths and weaknesses in performance, [~~or~~] achievement, or both, [~~or there are strengths and weaknesses in performance or achievement or both~~] relative to [age, Virginia-approved grade-level standards or] intellectual development [~~in one or more of the areas listed in subsection K of this section~~].

[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 member's 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.

E. 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.

F. 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))

G. 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)

[~~H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the~~

~~child's access to the general educational activities for this age group:~~

~~I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability. (34 CFR 300.307)~~

~~J. 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)~~

~~K. Eligibility of a child with a specific learning disability. (34 CFR 300.307 and 34 CFR 300.311)~~

~~1. The group may determine that a child has a specific learning disability 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:~~

- ~~(1) Oral expression;~~
- ~~(2) Listening comprehension;~~
- ~~(3) Written expression;~~
- ~~(4) Basic reading skills;~~
- ~~(5) Reading fluency skills;~~
- ~~(6) Reading comprehension;~~
- ~~(7) Mathematical calculations; or~~
- ~~(8) 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 1 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; and~~

~~c. The group determines that its findings under subdivision 1 a and b of this subsection are not primarily the result of:~~

~~(1) A visual, hearing, or motor impairment;~~

~~(2) Mental retardation;~~

~~(3) Emotional disturbance;~~

~~(4) Environmental, cultural, or economic disadvantage; or~~

~~(5) Limited English proficiency.~~

~~2. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; or environmental, cultural, or economic disadvantage. A specific learning disability:~~

~~a. Is not the result of a lack of appropriate instruction in reading or math;~~

~~b. Data demonstrates that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and~~

~~c. Data based documentation reflecting student progress was collected.~~

~~L. Eligibility as a child with autism:~~

~~1. Any of the Pervasive Developmental Disorders, 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, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), 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.~~

~~2. A minimum of six characteristics from the following communication and social interaction areas shall be present to be considered for eligibility:~~

~~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,~~

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spontaneous make believe play or social imitative play appropriate to developmental level.

b. Two or more 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. Delay(s) or abnormal functioning in social interaction, language as used in social communication, or symbolic or imaginative play, with onset prior to age three are also evident.

M. Eligibility as a child with deafness.

1. Deafness may apply to a documented bilateral hearing loss (sensorineural, or mixed conductive and sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony (auditory neuropathy), or cortical deafness. This hearing loss results in qualitative impairments in communication/educational progress due to delays in one or more of the following: expressive/receptive vocabulary development, expressive/receptive language development (in English/primary language of the family or in sign language), speech development, written English skills.

2. Students suspected of being deaf shall have an evaluation of the student's language and communication needs and opportunities for direct communications with peers and professional personnel in the student's language and communication mode.

N. Eligibility as a child with developmental delay. (34 CFR 300.111(b))

1. The local educational agency 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.

2. Other disability categories may be used for any child with a disability aged two to five, inclusive.

3. Developmental delay may include a child who has an established physical or mental condition that has a high probability of resulting in a developmental delay.

O. Eligibility as a child with hearing impairment. Students suspected of having a hearing impairment shall have an evaluation of the student's language and communication needs and opportunities for direct communications with peers and professional personnel in the student's language and communication mode.

P. Eligibility as a child with mental retardation. The terms intellectual disability and cognitive impairment may be used to describe this category. The child exhibits 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 test, on an individually administered, standardized measure of intelligence. The child also concurrently exhibits significantly impaired adaptive behavior in the home or community as determined by a composite score on an individual standardized instrument that measures two standard deviations or more below the mean. Developmental history (birth through 18) indicates significant impairment in cognitive/intellectual abilities and a current demonstration of significant impairment is present.

Q. Eligibility as a child with other health impairment.

1. Attention deficit/hyperactivity disorder as indicated in diagnostic references, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), involve the following characteristics:

a. The symptoms do not occur exclusively during the course of a Pervasive Developmental Disorder, Schizophrenia, or other Psychotic Disorder and are not better accounted for by another mental disorder (e.g., Mood Disorder, Anxiety Disorder, Dissociative Disorder, or a Personality Disorder). The child shall exhibit six or more of the following symptoms of inattention that have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

(1) Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

(2) Often has difficulty sustaining attention in tasks or play activities;

(3) Often does not seem to listen when spoken to directly;

(4) Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (not due to oppositional behavior or failure to understand instructions);

(5) Often has difficulty organizing tasks and activities;

(6) Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as schoolwork or homework);

(7) Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);

(8) Often easily distracted by extraneous stimuli;

(9) Often forgetful in daily activities; or

~~b. A child shall exhibit six or more of the following symptoms of hyperactivity/impulsivity and have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:~~

- ~~(1) Often fidgets with hands, feet, or squirm in seat;~~
- ~~(2) Often leaves seat in classroom or in other situations in which remaining seated is expected;~~
- ~~(3) Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);~~
- ~~(4) Often has difficulty playing or engaging in leisure activities quietly;~~
- ~~(5) Is often "on the go" or often acts as if "driven by a motor" and often talks excessively; impulsivity;~~
- ~~(6) Often blurts out answers before questions have been completed;~~
- ~~(7) Often has difficulty awaiting turn; and~~
- ~~(8) Often interrupts or intrudes on others; or~~

~~c. If criteria for combined type inattention and hyperactivity are met for the past six months. Some hyperactive/impulsive or inattentive symptoms that caused the impairment were present before age 7 years. Some impairment from the symptoms is present in two or more settings (e.g., at school, or work, and at home):~~

~~2. Eligibility may also apply to children with Tourette Syndrome or acute health problems such as those found in the definition of "Other health impairment" at 8VAC20-81-10.~~

~~Eligibility criteria includes limited strength, vitality, or alertness and other elements as described in the definition of "Other health impairment" at 8VAC20-81-10.~~

~~R. Eligibility as a child with speech or language impairment:~~

~~1. The communication disorder results in 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. 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. Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of socio-cultural dialect, delays/differences associated with acquisition of English as a second language, or within the purview of established norms for articulation and language development.~~

~~2. Speech language pathology services may be special education or a related service.~~

~~S. Eligibility as a child with a visual impairment.~~

~~1. The child evidences at least one of the following characteristics:~~

~~a. Visual acuity in the better eye with best possible correction of:~~

~~(1) 20/200 or less at distance and/or near is considered blindness.~~

~~(2) Better than 20/200 but worse than 20/70 at distance and/or near is considered visual impairment.~~

~~b. Visual field restriction in the better eye:~~

~~(1) Remaining visual field of 20 degrees or less is considered blindness.~~

~~(2) Remaining visual field of 70 degrees or less but better than 20 degrees is considered visual impairment.~~

~~2. Special conditions, include, but are not limited to, oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision (documented medically and educationally), which may in the future, affect the student's ability to learn visually or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.~~

~~3. Students suspected of being blind or having a visual impairment, shall have an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the student's future needs for instruction in Braille or the use of Braille.~~

~~T. 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 300.507)~~

~~H. 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~~

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2. Have documented evidence that, by reason of the disability, the child needs special education and related services. (34 CFR 300.307(b))

I. 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)

J. 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:

(1) 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

(2) 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 (1) and 2 a (2) 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 (1), 2 a (2) and 2 b of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

R. 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.

S. 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.

T. 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:

- (1) Oral expression;
- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skills;
- (5) Reading fluency skills;
- (6) Reading comprehension;
- (7) Mathematical calculations; or
- (8) Mathematical problem solving.

b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or

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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:

- (1) A visual, hearing, or motor impairment;
- (2) Intellectual disability;
- (3) Emotional disability;
- (4) Environmental, cultural, or economic disadvantage;
or
- (5) Limited English proficiency.

3. 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))

U. 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.

V. 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.

W. 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:

(1) Demonstrates the characteristics of blindness or visual impairment, as outlined in subdivisions 2 and 3 of this subsection; or

(2) 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.

X. 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)]

8VAC20-81-90. Termination of special education and related services.

A. [~~A Local~~ 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 [special education and related services in the following areas:

~~1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services. 2. A] related service [may be terminated during an IEP meeting] 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 [~~making the shall make this] determination [shall include local educational agency personnel representing the specific related services discipline being terminated 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.]

[~~3. 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 [~~but parental consent is not required]~~.~~

[~~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))

[~~D. 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.

8VAC20-81-100. 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, who meet the [~~age of eligibility requirements~~ definition of "age of eligibility" as outlined] in 8VAC20-81-10 and who reside within the jurisdiction of each local educational agency. This includes children with disabilities who are in need of special education and related services even though they have not failed or been retained in a course or grade and are advancing from grade to grade, and students who have been suspended or expelled from school in accordance with the provisions of 8VAC20-81-160. The Virginia Department of Education has a goal of providing full educational opportunity to all children with disabilities aged birth through 21, inclusive, by 2015. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.101 and 34 CFR 300.109)

a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.

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b. The services and placement needed by each child with a disability to receive a free appropriate public education shall 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: (34 CFR 300.102(a))

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 students who have been awarded a general educational development (GED) credential.

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. Children with disabilities who are eligible under IDEA Part B, Subpart H, but who receive early intervention services under IDEA Part C.

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. Each local school division 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 the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (34 CFR 300.110)

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 nonmedical care and room and board, shall be at no cost to the parents of the child. (34 CFR 300.104)

E. Assistive technology devices. [(34 CFR 300.34(b) and 34 CFR 300.113)]

1. Each local educational agency 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; and

b. The external components of surgically implanted devices.

2. A local educational agency 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 []) [(34 CFR 300.34(b) and 34 CFR 300.113)]

F. Availability of assistive technology. (34 CFR 300.105)

1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 8VAC20-81-10, are made available to a child with a disability if required as part of the child's:

a. Special education;

b. Related services; or

c. Supplementary aids and services.

2. 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.

3. Local educational agencies are 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.

G. Transportation. (§§ 22.1-221 and 22.1-347 of the Code of Virginia; 34 CFR 300.107)

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 the local school division 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 shall 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. A local educational agency 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 a local educational agency 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(s).

5. If a child with a disability is placed in the Virginia School for the Deaf and the Blind at Staunton [~~or the Virginia School for the Deaf, Blind and Multi Disabled at Hampton~~], the Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, the local school division shall be responsible for the provision of transportation services to and from school.

H. Nonacademic and extracurricular services and activities. (34 CFR 300.107 and 34 CFR 300.117)

1. Each local educational agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. [(See also 8VAC20-81-130 A 2)]

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 the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.

I. Physical education. (34 CFR 300.108)

1. General. Physical education services, specially designed if necessary, shall 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 shall 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, the local educational agency 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. The local educational agency 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 [~~subdivision 3 of~~] this subsection.

J. Extended school year services. (34 CFR 300.106)

1. Each local educational agency shall ensure that extended school year services, including transportation to and from such 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, a local educational agency may not:

- a. Limit extended school year services to particular categories of disability;
- b. Unilaterally limit the type, amount, or duration of those services; or
- c. Limit the provision of extended school year services to only the summer.

K. Children with disabilities in public charter schools. (34 CFR 300.209)

1. Children with disabilities who attend charter schools shall be served by the local school division 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 the [~~LEA~~ local educational agency] provides such services on the site to its other public schools.

2. The local school division shall ensure that all requirements of this chapter are met.

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L. 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 their IEP specifies otherwise. [For preschool-aged children with disabilities, the IEP team determines the length of the school day.]

M. Methods and payments. (34 CFR 300.103)

1. The Virginia Department of Education may use whatever state, local, federal, and private sources of support [that] are available to meet the requirements of this part.

2. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

3. The Virginia Department of Education will ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

N. Disability harassment. Each local educational agency shall have in effect policies that prohibit harassment to children with disabilities. (28 CFR 35.149 and 34 CFR 104.4)

8VAC20-81-110. Individualized education program.

A. Responsibility. The local educational agency shall ensure that an IEP is developed and implemented for each child with a disability served by that local educational agency, including a child placed in a private special education school by: (34 CFR 300.112)

1. A local school division; or

2. A noneducational placement by a Comprehensive Services Act team that includes the school division. The local school division's responsibility is limited to special education and related services.

B. Accountability.

1. At the beginning of each school year, each local educational agency 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. (34 CFR 300.323(a))

2. Each local educational agency shall ensure that an IEP: (34 CFR 300.323(c))

a. Is in effect before special education and related services are provided to an eligible child;

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 [~~not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay~~].

3. Each local educational agency shall ensure that: (34 CFR 300.323(d))

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:

(1) Their specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

4. Each local educational agency is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability.

5. Each local educational agency shall 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: (34 CFR 300.324(b))

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(s);

d. The child's anticipated needs; or

e. Other matters.

6. Each local educational agency shall provide special education and related services to a child with a disability in accordance with the child's IEP. [~~(34 CFR 300.350(a)) (34 CFR 300.323 (c)(2))~~]

[~~7. This chapter does not require that any local educational agency, teacher, or other person 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.~~

~~§. 7.] Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the parent feels that the efforts required by this chapter are not being met.~~

~~[If the local educational agency considers the parent's request unreasonable and refuses to meet, the local educational agency shall advise the parent in writing of the reasons for denying the parent's request and provide the parent information on this chapter's dispute resolution options.~~

~~9. 8.] To the extent possible, the local educational agency shall encourage the consolidation of reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))~~

~~[10. 9.] In making changes to a 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. The local educational agency shall ensure that the IEP team for each child with a disability includes: (34 CFR 300.321(a) [~~and~~,] (c) [and (d)])

a. The parent(s) 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 educational environment);

c. Not less than one special education teacher of the child or, if appropriate, not less than 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 the local educational agency who is:

(1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;

(2) Knowledgeable about the general education curriculum; and

(3) Knowledgeable about the availability of resources of the local education agency. A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the 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 of the child;

f. At the discretion of the parent(s) or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (parent(s) or local educational agency) who invited the individual to be a member of the team; and

g. Whenever appropriate, the child.

2. The local educational agency determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection.

3. Secondary transition service participants. (34 CFR 300.321(b))

a. The local educational agency 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:

(1) The student's postsecondary goals;

(2) The needed transition services for the student; or

(3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall 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. Part C transition participants. In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent's(s') request, invite the Part C service coordinator or other representatives of the Part C system [to the initial IEP meeting] to assist

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with the smooth transition of services. (34 CFR 300.321(f))

D. IEP team attendance. (34 CFR 300.321(e))

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 the local educational agency consent 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. Each local educational agency shall 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: (34 CFR 300.322(a))

a. Notifying the parent(s) 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. (34 CFR 300.322(b))

a. General notice. The notice given to the parent(s):

(1) May be in writing, or given by telephone or in person with proper documentation;

(2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and

(3) Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child [under subdivision C 1 f of this section].

b. Additional notice requirements are provided if transition services are under consideration.

(1) 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].

(2) 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, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls and audio conferences. If the local educational agency uses an alternative means of meeting participation that results in additional costs, the local educational agency is responsible for those costs. (34 CFR 300.322(c))

4. A meeting may be conducted without a parent(s) in attendance if the local educational agency is unable to convince the parent(s) that they should attend. In this case, the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: (34 CFR 300.322(d))

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; or

c. Detailed records of visits made to the parent's(s') home or place of employment and the results of those visits.

5. The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (34 CFR 300.322(e))

[6. Audio and video recording of IEP meetings:

~~a. The local educational agency shall permit the use of audio recording devices at IEP meetings. 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 or parents shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records the meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes part of the child's educational record.~~

~~b. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:~~

~~(1) Video recording devices at IEP meetings; or~~

~~(2) Audio or video recording devices at meetings other than meetings that are for the purposes of developing, reviewing, revising the child's IEP or reviewing matters related to discipline provisions under 8VAC20-81-160.~~

~~e. These policies shall:~~

~~(1) Stipulate that the recordings become part of the child's educational record;~~

~~(2) Ensure that the policy is uniformly applied; and~~

~~(3) If the policy limits or 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.~~

7. 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.

[~~8. 7.] The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, [but no later than or within a reasonable period of time after the IEP meeting, not to exceed] 10 calendar days [from the date of the IEP meeting], (34 CFR 300.322(f))~~

F. Development, review, and revision of the IEP. (34 CFR 300.324(a))

1. In developing each child's IEP, the IEP team shall consider:

- a. The strengths of the child;
- b. The concerns of the parent(s) for enhancing the education of their child;
- c. The results of the initial or most recent evaluation of the child; and
- d. The academic, developmental, and functional needs of the child.

2. The IEP team also shall: (34 CFR 300.324(a))

- 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;]

[~~e. 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~~

[~~f. 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 shall include a statement to that effect in the child's IEP. (34 CFR 300.324(b)(2))

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: (34 CFR 300.324(a)(3))

- 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: (34 CFR 300.320(d))

- a. 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
- b. That additional information be included in the child's IEP beyond what is explicitly required in this chapter.

6. The IEP team shall consider all factors identified under a free appropriate public education in 8VAC20-81-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, the local educational agency shall

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provide the parent(s) with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8VAC20-81-170 [C].

G. Content of the individualized education program. The IEP for each child with a disability shall 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 curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. (34 CFR 300.320(a)(1))

a. The statement shall be written in objective measurable terms, to the extent possible. Test scores, if appropriate, shall be self-explanatory or an explanation shall be included.

b. The present level of performance shall directly relate to the other components of the IEP.

2. A statement of measurable annual goals, including academic and functional goals designed to: (34 CFR 300.320(a)(2))

a. Meet 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. 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. (34 CFR 300.320(a)(2))

[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. 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 for 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: (34 CFR 300.320(a)(4))

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. (34 CFR 300.320(a)(5))

6. The following information concerning state and divisionwide assessments shall be included: (34 CFR 300.320(a)(6))

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 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 [~~will not participate in~~] must take an alternate assessment instead of [] a particular state assessment of student achievement (or part of an assessment), a statement of:

(1) Why [~~that assessment is not appropriate for the child~~] the child cannot participate in the regular assessment [];

(2) [~~How the child will be assessed, including participation in the alternate assessment for those students who meet~~] Why the particular assessment selected is appropriate for the child, including that the child meets [] the criteria for the alternate assessment; and

(3) 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 a~~] 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 divisionwide 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~~] must take an alternate assessment instead

of] a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:

(1) Why [~~that assessment is not appropriate for the child~~ the child cannot participate in the regular assessment];

(2) [~~How the child will be assessed~~ Why the particular alternate assessment selected is appropriate for the child]; and

(3) 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. [~~Location refers to the continuum of alternative placements in 8VAC20 81 130 B.~~] (34 CFR 300.320(a)(7))

8. A statement of: (34 CFR 300.320(a)(3))

a. How the child's progress toward the annual goals will be measured; and

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 [, and at least as often as 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:

(1) A statement regarding natural environments, and

(2) 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]:

(1) [~~Appropriate measurable~~ Measurable] postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; [and]

(2) [~~The transition~~ Transition] services, including courses of study [~~(such as participation in advanced placement course or career and technical education program),~~] 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.]

[~~(3)~~ A 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.

[~~b.~~ 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.

[~~e.~~ Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.]

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~~ and parent(s) have] been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. (34 CFR 300.320(c))

H. Agency responsibilities for secondary transition services. (34 CFR 300.324(c))

1. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP of a student with a disability, the local educational agency shall 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. (34 CFR 300.324(d) and 34 CFR

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300.102(a)(2); Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131)

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 8VAC20-81-130 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.

8VAC20-81-120. 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. (34 CFR 300.323(e), (f), and (g))

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 does not provide written consent to a new IEP or an interim IEP, 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. The 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 [~~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.~~ 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)

8VAC20-81-130. Least restrictive environment and placements.

A. General least restrictive environment requirements.

1. Each local educational agency shall ensure: (34 CFR 300.114)

a. That to the maximum extent appropriate, children with disabilities, [aged two to 21, inclusive], 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 nonacademic and extracurricular services and activities provided for children without disabilities, each local educational agency 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. The local educational agency shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings. [(See also 8VAC20-81-100 H.)] (34 CFR 300.117)

3. For children placed by local school divisions in public or private institutions or other care facilities, the local

educational agency shall, if necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8VAC20-81-150.) (34 CFR 300.114 and 34 CFR 300.118)

B. Continuum of alternative placements. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.115)

1. Each local educational agency shall 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 shall:

a. Include the alternative placements listed in the term "special education" at 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 education 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 is acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions shall be based on the individual needs of each child.

4. Local educational agencies shall document all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities shall 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. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131); 34 CFR 300.116)

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, each local educational agency 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:

(1) Determined at least annually;

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(2) Based on the child's IEP; and

(3) 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 shall revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

8VAC20-81-140. Placement of children at the Virginia School for the Deaf and the Blind at Staunton [or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton].

A. Placements are made by the local school division, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton [or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton] (Virginia [schools school]). The Virginia [schools school] shall determine if the student meets the admission criteria of the Virginia [schools school]. (§ 22.1-348 of the Code of Virginia)

B. When an eligible child is placed in the Virginia [schools school], the local school division is responsible for ensuring compliance with the requirements of this chapter.

C. For students who are residential students, the [respective] Virginia school is responsible for transportation. For students who are day students, the placing local school division is responsible for transportation to and from the school. (§ 22.1-347 C of the Code of Virginia)

8VAC20-81-150. Private school placement.

A. Private school placement by a local school division or Comprehensive Services Act team.

1. When a child with a disability is placed by a local school division or is placed for noneducational reasons by a Comprehensive Services Act team that includes the school division in a private special education school or facility that is licensed or has a certificate to operate, the local school division is responsible for ensuring compliance with the requirements of this chapter, including participation in state and divisionwide assessments. The local school division 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. (34 CFR 300.325(c))

2. Before a local school division places a child with a disability in a private school or facility that is licensed or has a certificate to operate, the local school division shall initiate and conduct a meeting in accordance with 8VAC20-81-110 to develop an IEP for the child. The local school division shall ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by a private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a))

3. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, the local school division shall ensure that a representative of the private school or facility attends the IEP meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a)(2))

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 the local school division. (34 CFR 300.325(b)(1))

5. If the private school or facility initiates and conducts these meetings, the local school division shall ensure that the parent(s) and a local school division representative: (34 CFR 300.325(b)(2))

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 the local school division. (34 CFR 300.325(c))

7. When a child with a disability is placed by a local school division 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 are extended to the child. (34 CFR 300.101)

8. If the parent(s) requests a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent(s) and the local educational agency prior to placement by the Comprehensive Services Act team. (34 CFR 300.2(c))

9. When a child with a disability is placed in a private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children in accordance with the Code of Virginia. (§ 22.1-218.1 of the Code of Virginia)

B. Placement of children by parents if a free appropriate public education is at issue.

1. Local school divisions are not required 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 the local school division made a free appropriate public education available to the child and the parent(s) elected to place the child in a private school or facility. (34 CFR 300.148(a))

2. Disagreements between a parent(s) and a local school division regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of [8VAC20-81-200 8VAC20-81-210]. (34 CFR 300.148(b))

3. If the parent(s) of a child with a disability, who previously received special education and related services under the authority of a local school division, enrolls 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 special education hearing officer may require the local school division to reimburse the parent(s) for the cost of that enrollment if the court or the special education 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. 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 the local school division. (34 CFR 300.148(c))

4. The cost of reimbursement described in this section may be reduced or denied: (34 CFR 300.148(d))

a. If:

(1) At the most recent IEP meeting that the parent(s) attended prior to removal of the child from the public school, the parent(s) did not inform the IEP team that they were rejecting the placement proposed by the local school division 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

(2) 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(s) did not give written notice to the local school division of the information described above;

b. If, prior to the parent's(s') removal of the child from the public school, the local school division informed the parent(s), 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(s) 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(s).

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's(s') failure to provide the notice to the local school division if: (34 CFR 300.148(e))

a. The parent is illiterate or cannot write in English;

b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent(s) from providing the notice; or

d. The parent(s) 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. [~~Definitions applicable to this subsection~~ The following definitions are applicable for purposes of this subsection]. [(34 CFR 300.36)]

a. The term "private school" includes:

(1) 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;

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(2) Preschool facilities that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;

(3) Students who are home-tutored in accordance with § 22.1-254 of the Code of Virginia; or

(4) 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. (§ 22.1-254.1 of the Code of Virginia; 34 CFR 300.130, 34 CFR 300.131(a) and (b), 34 CFR 300.132(a) and 34 CFR 300.134(a))

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:

(1) How parentally placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

c. The child find process shall be designed to ensure:

(1) The equitable participation of parentally placed private school children; and

(2) 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. (34 CFR 300.132(b))

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:

(1) 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

(2) 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.

(3) 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. [(34 CFR 300.133(a))]

(4) Local educational agencies may supplement, but not supplant, the proportionate share amount of federal funds required to be expended in accordance with this subdivision. [(34 CFR 300.133(d))]

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. [(34 CFR 300.133(b))]

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 [~~by~~ 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. [~~(34 CFR 300.133(e))~~]

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. [~~(34 CFR 300.133(a))~~]

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. [~~(34 CFR 300.133(d))~~]

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: (34 CFR 300.134(a), (c), and (d))

(1) 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;

(2) How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities;

(3) The types of services, including direct services and alternate service delivery mechanisms;

(4) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and

(5) 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. (34 CFR 300.134(e))

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. (34 CFR 300.135)

d. A private school official has the right to submit a complaint to the Virginia Department of Education that the local school division: (34 CFR 300.136)

(1) Did not engage in consultation that was meaningful and timely; or

(2) 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. (34 CFR 300.136)

(1) 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.

(2) 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 [4 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:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) 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. (34 CFR 300.138 and 34 CFR 300.132(b))

a. The services provided to parentally placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel

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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.

(1) 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.

(2) 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:

(1) By employees of a local school division; or

(2) 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~~ on site] at the child's private school, including a religious school, to the extent consistent with law. (34 CFR 300.139(a))

9. Transportation. (34 CFR 300.139(b))

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:

(1) From the child's school or the child's home to a site other than the private school; and

(2) 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. (34 CFR 300.140)

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 [9 10] b and [9 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. (34 CFR 300.141)

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. (34 CFR 300.142(a))

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. (34 CFR 300.142(b))

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 (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) 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: (34 CFR 300.132(c))

a. The number of children evaluated;

b. The number of children determined to be children with disabilities; and

c. The number of children served.

8VAC20-81-160. Discipline procedures.

A. General. [(§ 22.1-277 of the Code of Virginia; 34 CFR 300.530(a); 34 CFR 300.324(a)(2)(i))]

[1.] A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency's 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. [(§ 22.1-277 of the Code of Virginia; 34 CFR 300.530(a))

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. (34 CFR 300.530(b))

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.

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(1) The local educational agency determines when isolated, short-term removals for unrelated instances of misconduct are considered a pattern.

(2) 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. (34 CFR 300.530(b)(2))

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. (34 CFR 300.530(b)(2))

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 divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC § 1412(a)(16)(A))

C. Long-term removals.

1. A long-term removal is for more than 10 consecutive school days; or [(34 CFR 300.530; 34 CFR 300.536)]

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. (34 CFR 300.530(a) and (b) and 34 CFR 300.536)

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. (34 CFR 300.530(h))

5. Special circumstances. (34 CFR 300.530(g))

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:

(1) 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

(2) 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

[~~b.~~ (3)] The child inflicts [~~seriously~~ 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.

[~~e. 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: (34 CFR 300.530(d) [~~and 34 CFR 300.531~~])

(1) Continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting;

(2) 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

(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.

b. For long-term removals, the local educational agency shall ensure that children with disabilities are included in

the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC § 1412(a)(16)(A))

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])

D. Manifestation determination. (34 CFR 300.530(c), (e), (f), and (g))

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:

(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 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 [~~the IEP team shall~~]:

[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.

~~a. (1)] 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 [~~or~~ .~~

(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]

~~[b. (2)] If a behavioral intervention plan already has been developed, review this plan, and modify it, as necessary, to address the behavior [~~and~~ .]~~

~~[c. 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.]~~

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. (34 CFR 300.532(a) and (c))

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.

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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,

(1) A resolution meeting shall occur within 7 calendar days of receiving the request for a hearing.

(2) 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. [(34 CFR 300.532(a) and (b))]

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: [(34 CFR 300.532(a) and (b))]

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. [(34 CFR 300.532(b)(3))]

G. Placement during appeals. (34 CFR 300.533)

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. (34 CFR 300.534)

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)

1. 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.

2. 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)

1. 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.

2. 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.

3. 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.

8VAC20-81-170. Procedural safeguards.

A. Opportunity to examine records; parent participation. (34 CFR 300.322(e), 34 CFR 300.500 and 34 CFR 300.501; 8VAC20-150)

1. Procedural safeguards. Each local educational agency shall establish, maintain, and implement procedural safeguards as follows:

a. The parent(s) of a child with a disability shall be afforded an opportunity to:

(1) 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.

(2) 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.

(1) Each local educational agency shall provide notice to ensure that the parent(s) of a child with a disability has the opportunity to participate in meetings described in subdivision 1 a (2) of this subsection, including notifying the parent(s) of the meeting early enough to ensure that the parent has an opportunity to participate. The notice shall:

(a) Indicate the purpose, date, time, and location of the meeting and who will be in attendance;

(b) Inform the parent(s) that at their discretion or at the discretion of the local educational agency, 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;

(c) Inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and

(d) 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.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching

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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 local educational agency 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.

(1) Each local educational agency shall ensure that a parent(s) of each child with a disability is a member of 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.

(2) In implementing the requirements of subdivision 1 c (1) of this subsection, the local educational agency shall provide notice in accordance with the requirements of 8VAC20-81-110 E.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent(s) if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency shall have a record of its attempt to ensure the parents' involvement.

(5) The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent(s) with deafness, or whose native language is other than English.

(6) 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 [e. a.] (34 CFR 300.530(f)(2) and (g))

B. Independent educational evaluation.

1. General. (34 CFR 300.502(a))

a. The parent(s) of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. The local educational agency shall provide to the parent(s) of a child with a disability, upon request for an independent educational evaluation, 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. (34 CFR 300.502 [~~(a)~~] (b) and (e))

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:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) 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: (34 CFR 300.502(c))

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 [for 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 [a at] public expense. (34 CFR 300.502(d))

C. Prior written notice by the local educational agency; content of notice.

1. Prior written notice shall be given to the parent(s) of a child with a disability within a reasonable time before the local educational agency: (34 CFR 300.503(a))

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 a free appropriate public education for the child.

2. The notice shall include: (34 CFR 300.503(b))

a. A description of the action proposed or refused by the local educational agency;

b. An explanation of why the local educational agency proposes or refuses to take the action;

c. A description of any other options the IEP team considered and the reasons for the rejection of those options;

d. A description of each evaluation procedure, assessment, record, or report the local educational agency used as a basis for the proposed or refused action;

e. A description of any other factors that are relevant to the local educational agency's proposal or refusal;

f. A statement that the parent(s) 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(s) to contact in order to obtain assistance in understanding the provisions of this section.

3. a. The notice shall be: (i) written in language understandable to the general public; and (ii) 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. (34 CFR 300.503(c))

b. If the native language or other mode of communication of the parent(s) is not a written language, the local educational agency shall take steps to ensure that:

(1) The notice is translated orally or by other means to the parent(s) in their native language or other mode of communication;

(2) The parent(s) understand the content of the notice; and

(3) There is written evidence that the requirements of subdivisions (1) and (2) of this subdivision have been met.

D. Procedural safeguards notice. (34 CFR 300.504 [~~and 34 CFR 300.508(e)(1)~~])

1. A copy of the procedural safeguards available to the parent(s) of a child with a disability shall be given to the parent(s) by the local educational agency only one time a 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; and

e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement [because of a violation of a code of student conduct].

2. The local educational agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists, but the local educational agency does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. The local educational agency 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 all of the procedural safeguards available relating to:

a. Independent educational evaluation;

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- b. Prior written notice;
- c. Parental consent;
- d. Access to educational records;
- e. Opportunity to present and resolve complaints through the due process procedures;
- 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 those actions;
- l. Attorneys' fees; and
- m. The opportunity to present and resolve complaints through the state complaint procedures, including:
 - (1) The time period in which to file a complaint;
 - (2) The opportunity for the local educational agency to resolve the complaint; and
 - (3) 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 shall meet the prior notice requirements regarding understandable language in subdivision C 3 of this section.

E. Parental consent.

- 1. 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; (34 CFR 300.300(a)(1)(i))
 - 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; (34 CFR 300.300(b)(1))
 - d. Any revision to the child's IEP services [~~except as outlined in subdivision 2 f of this subsection~~];

[e. Any partial or complete termination of special education and related services, except for graduation with a standard or advance 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;]

[~~e. 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)~~

[~~f. 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. (34 CFR 300.321(b)(3))~~

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; (34 CFR 300.300(d)(1))

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; (34 CFR 300.300(d)(1))

c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation; (34 CFR 300.302)

d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals [and is included in the child's IEP];

e. A teacher's or related service provider's observations or ongoing classroom evaluations;

[~~f. Any partial or complete termination of special education and related services;~~

~~g. 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: (34 CFR 300.300(a)(2))~~

(1) Despite reasonable efforts, the local educational agency cannot discover the whereabouts of the parent(s);

(2) The parent's rights have been terminated; or

(3) 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 [~~consent~~ consented] to the initial evaluation.

[~~h. The local educational agency provides a free appropriate public education to children with disabilities who transfer public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120. (34 CFR 300.323(e) and (f))]~~

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. (34 CFR 300.300(a)(3) and (c)(1))

b. If the parent(s) refuses to consent to the initial provision of special education and related services: (34 CFR 300.300(b)(3) and (4))

(1) 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;

(2) 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

(3) 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: (34 CFR 300.300(d)(4))

(1) 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

(2) 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

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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:

(1) The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;

(2) 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

(3) 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 [~~advised~~ 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. (34 CFR 300.614)

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. (34 CFR 300.615)

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. (34 CFR 300.616)

5. Fees. (34 CFR 300.617)

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. (34 CFR 300.618)

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. (34 CFR 300.619)

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:

(1) 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

(2) 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:

(1) Develop local procedures for such a hearing process; or

(2) 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:

(1) 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.

(2) 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. (34 CFR 300.623)

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.]

[~~b~~. c.] One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

[~~e~~. 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~~. 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. (34 CFR 300.624)

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 [; 34 CFR 300.9])

[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.

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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.]

8VAC20-81-180. Transfer of rights to students who reach the age of majority.

A. All rights accorded to the parent(s) under the Act transfer to the student 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. (34 CFR 300.520)

B. Notification.

1. The local educational agency shall notify the parent(s) and the student of the following: (34 CFR 300.520)

a. That educational rights under the Act will transfer from the parent(s) to the student upon the student reaching the age of majority; and

b. That procedures exist for appointing the parent(s) or, if the parent(s) 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. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student [has and parent(s) have] been informed of the rights that will transfer to the student on reaching the age of 18. (34 CFR 300.320(c))

3. The local educational agency shall provide any further notices required under the Act to both the student and the parent(s).

4. The local educational agency may continue to invite the parent(s), 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(s) 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 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. A local educational agency 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: (34 CFR 300.520(b))

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:

(1) 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.

(2) 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 [of Virginia]; or (v) a court-appointed special advocate for the adult student.

b. The individuals who provide the certification in subdivision 3 a of this subsection may not be employees of the local educational agency 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:

(1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(2) 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

(3) 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 recertified 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 the local educational agency's administrator of special education who then shall notify the adult student and current appointed representative.

(1) Upon receipt of a written challenge to the certification by the adult student, the local educational agency 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;

(2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, the local educational agency 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. The local educational agency 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 the local educational agency 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, the local educational agency shall designate the parent(s) 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(s) 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 the local educational agency.

8VAC20-81-190. Mediation.

A. Each local educational agency shall ensure that the parent(s) 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 [~~of the child~~], or educational placement and services of the child, [~~or~~] the provision of a free appropriate public education to the child, [~~including 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))

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B. The local educational agency shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is: (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.506(b)(1))

1. Voluntary on the part of both the local educational agency and parent;
2. Not used to deny or delay a parent's(s') 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. The local educational agency 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 § [~~1472~~ 1471] or [~~1473~~ 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: (34 CFR 300.506(b)(3) and (4))

1. The Virginia Department of Education maintains a list of individuals who are qualified mediators, knowledgeable in laws and regulations relating to the provision of special education and related services, and trained in effective mediation techniques;
2. The mediator is chosen on a rotation basis; and
3. The Virginia Department of Education bears the cost of the mediation process, including costs in subsection C of this section.

E. The mediation process shall: (34 CFR 300.506(b)(5) [~~(b)(6)~~, and ~~(b)(7)~~ through (b)(8)]

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 local educational agency who has the authority to bind the local educational agency; and

c. Is enforceable in any state or federal court of competent jurisdiction.

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 to mediate containing a confidentiality pledge prior to the commencement of the mediation process.

F. An individual who serves as a mediator: (34 CFR 300.506 [(c)])

1. May not be an employee of any local educational agency or the Virginia Department of Education if [~~the Virginia Department of Education~~ 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 the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

8VAC20-81-200. 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. (34 CFR 300.151)

B. A complaint may be filed with the Virginia Department of Education by any individual, organization, or an individual from another state and shall: ([~~34 CFR 300.151 and~~] 34 CFR 300.153)

1. Be in writing;
2. Include the signature and contact information for the complainant;
3. Contain a statement that a local educational agency has violated the Act or these special education regulations;
4. Include the facts upon which the complaint is based;
5. If alleging violations with respect to 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;
 - 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 complaint is received;

7. Contain all relevant documents; and

8. Be provided simultaneously to the local educational agency or public agency 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 the local educational agency 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 the local educational agency is in compliance with applicable law and regulations in accordance with the following procedures: (34 CFR 300.151 and 34 CFR 300.152)

1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and the local educational agency against which the violation has been alleged, acknowledging receipt of a complaint.

a. The notification sent to the local educational agency shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance in resolving the complaint;

(3) A statement that the local educational agency has the opportunity to propose, at the local educational agency's discretion, a resolution of the complaint;

(4) Notification of the opportunity for the parties to engage voluntarily in mediation;

(5) A request that the local educational agency 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 the local educational agency to the parents(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 the local educational agency 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 [~~completing~~ completion of] the investigation within [~~the 60 day regulatory timeline~~ 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 the local educational agency 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 the local educational agency 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 the local educational agency 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:

(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

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(2) 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 [~~ompete~~ 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.

(1) 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.

(2) 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.

(3) 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:

(1) Technical assistance activities;

(2) Negotiations; and

(3) 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 the local educational agency 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 shall 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. 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.

F. When the local educational agency develops a plan of action to correct the violations, such plan 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.

G. If the local educational agency 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.

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. (34 CFR 300.151)

8VAC20-81-210. Due process hearing.

A. The Virginia Department of Education [administers a provides for an impartial] special education due process hearing system to resolve disputes between parents and local educational agencies [regarding the 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. In administering the special education due process hearing system, the Virginia Department of Education establishes procedures for:

1. Recruitment, selection, and appointment of special education hearing officers. All special education hearing officers shall possess the following minimum qualifications for appointment to the special education hearing officers' list:
 - a. Active membership in good standing in the Virginia State Bar;
 - b. Active practice of law for at least five years. In order to satisfy this requirement, the applicant shall have completed five years of active practice of law with two of these years in Virginia. For purposes of this section, the active practice of law exists when, on a regular and systematic basis, in the relation of attorney and client, one furnishes to another advice or service under circumstances that imply his possession and use of legal knowledge and skill. If not presently engaged in the active practice of law, the applicant shall, in addition to the requirements of this section, have previously served as a hearing officer, administrative law judge, or possess extensive prior experience with administrative hearings;
 - c. Demonstrated knowledge of federal and state laws and regulations regarding special education;
 - d. Prior experience with administrative hearings or knowledge of administrative law;
 - e. Demonstrated legal writing ability;

f. Willingness to travel to any area of the state to conduct hearings; and

g. Completion of training programs, as required by the Virginia Department of Education;

2. 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;

3. Evaluation, continued eligibility, and disqualification requirements of special education hearing officers:

a. In considering whether a special education hearing officer will be removed from the list of eligible special education hearing officers, the Virginia Department of Education shall consider allegations of:

- (1) Continuous pattern of untimely decisions, or failure to render decision within regulatory time frames;
- (2) Unprofessional demeanor;
- (3) Inability to conduct orderly hearings;
- (4) Inability to conduct hearing in conformity with the federal and state laws and regulations regarding special education;
- (5) Improper ex parte contacts;
- (6) Violations of due process requirements;
- (7) Mental or physical incapacity;
- (8) Unjustified refusal to accept assignments;
- (9) Failure to complete training requirements as outlined by the Virginia Department of Education; or
- (10) Professional disciplinary action.

b. When one or more of the allegations outlined in subdivision 3 a of this subsection have been established by the Virginia Department of Education, the special education hearing officer may be removed from the Virginia Department of Education's list of special education hearing officers;

e. A special education hearing officer may be disqualified for a specific case.

- (1) A special education hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by applicable rules governing the practice of law in Virginia;
- (2) Any party may request disqualification of a special education hearing officer by filing an affidavit with the

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~~Virginia Department of Education prior to taking evidence at a due process hearing.~~

~~(a) The affidavit shall state, with particularity, the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.~~

~~(b) The special education hearing officer shall provide a response no less than 10 calendar days prior to the due process hearing. No oral hearing is permitted.~~

~~(c) The filing of such an affidavit shall not stay the proceedings or filing requirements in any way except the due process hearing may not be held.~~

~~(d) If the Virginia Department of Education determines that the special education hearing officer is not disqualified, the due process hearing shall proceed as scheduled.~~

~~(e) If the special education hearing officer is disqualified, the Virginia Department of Education shall appoint a new special education hearing officer so that the hearing can proceed as scheduled whenever possible.~~

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:

(1) Issuing an untimely decision, or failing to render decision within regulatory time frames;

(2) Unprofessional demeanor;

(3) Inability to conduct an orderly hearing;

(4) Inability to conduct a hearing in conformity with the federal and state laws and regulations regarding special education;

(5) Improper ex parte contacts;

(6) Violations of due process requirements;

(7) Mental or physical incapacity;

(8) Unjustified refusal to accept assignments;

(9) Failure to complete training requirements as outlined by the Virginia Department of Education;

(10) Professional disciplinary action; or

(11) 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.

[C. 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 [~~(b)~~ (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. A local educational agency 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, a local educational agency 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, the local educational agency 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)

[D. 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 local educational agency and~~] the Virginia Department of Education. [A copy of that request shall be delivered contemporaneously by the requesting party to the other party.]

a. If the local educational agency initiates the due process hearing, the local educational agency 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 the local educational agency by telephone or by facsimile and forward a copy of the request to the local educational agency as soon as reasonably possible, including those cases where mediation is requested.

c. The request for a hearing shall be kept confidential by the local educational agency 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

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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 party requesting the due process hearing shall not be allowed~~ The special education hearing officer has the discretionary authority to permit either party] to raise issues at the [due process] hearing that were not raised in the notice ~~[filed as described in subdivision 2 of this subsection~~ by the party requesting the due process hearing in light of particular facts and circumstances of the case] .

~~[If the local educational agency is not the initiating party to the due process hearing proceeding, the special education hearing officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s) request for due process in light of particular facts and circumstances of the case.]~~

7. The local educational agency 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. The local educational agency 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.

[~~E. 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.

[~~F. 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. The local educational agency shall contact the ~~[Virginia Department of Education~~ Supreme Court of Virginia] for the appointment of the special education hearing officer.

b. The ~~[Virginia Department of Education~~ local educational agency] contacts the special education hearing officer to confirm availability, and upon acceptance, ~~[notifies the local educational agency of the appointment.~~ c. ~~The local educational agency]~~ 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 the local educational agency.

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 ~~[objection~~ affidavit] with the ~~[Virginia Department of Education~~ 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 ~~[Virginia Department of Education~~ Supreme Court of Virginia] issues a decision on the request in accordance with ~~[the Virginia Department of Education's~~ its] procedures.

c. If a special education hearing officer recuses himself or is otherwise disqualified, the ~~[Virginia Department of Education~~ ensures 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.

[~~G. 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 [~~Virginia Department of Education~~ Supreme Court of Virginia] revokes such authority by removing or disqualifying the special education hearing officer.

[~~H. 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 local educational agency agree otherwise;
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.

[~~F. 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

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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:

(1) Have the child who is the subject of the hearing present; and

(2) 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].

[~~J. 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 [~~C 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; [~~and~~

6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated; and]

[~~6. 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.

[~~K. 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.

[~~L. 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 [~~the~~ 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; [and

[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:

(1) Must be based upon the decision of the hearing officer;

(2) Shall include the revised IEP if the decision affects the child's educational program; and

(3) Shall contain the name and position of a case manager in the local educational agency charged with implementing the decision; and]

[~~16.~~ 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.

[~~M. O.~~] Responsibilities of the special education hearing officer. The special education hearing officer shall: ([~~34 CFR 300.515,~~] 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; [and]

[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]

[~~b. 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

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the proceedings and that the record is forwarded to the local educational agency for the file after making a decision [1.]

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 [2.]

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 [3.]

11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing [4.]

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 [5.]

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 [6.]

14. Report findings of fact and decisions in writing to the parties [~~but if a party is represented by an attorney, then to their attorney 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 [7.]

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 [8.]

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 [9.]

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 [10.]

18. Maintain a well-documented record and return the official record to the local educational agency upon conclusion of the case [~~11~~ .]

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.

[~~N~~ 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 [LEA local educational agency] agree in writing to waive the resolution meeting or agree to use the mediation process:

(1) A resolution meeting shall occur within seven days of receiving notice of the due process notice; and

(2) 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:

(1) 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

(2) 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.~~ 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:

(1) Includes a representative of the local educational agency who has [~~decisionmaking~~ decision making] authority on behalf of the local educational agency; and

(2) 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:

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(1) The parent and the local educational agency agree in writing to waive the meeting; or

(2) 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 [~~as required to gain parental consent~~ 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 3] 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 [4 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.

[P. 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 [~~LEA~~ 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 [~~and~~ .]

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.

[~~Q. 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 [~~that are incidental to the hearing~~] are shared equally by the local educational agency and the Virginia Department of Education. [~~Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party.~~]

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.

[~~R. 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 [~~G 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.

[~~S. U.~~] Nothing in this chapter prohibits or limits rights under other federal laws or regulations. (34 CFR 300.516)

8VAC20-81-220. 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 [~~biological~~] 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

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in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.

2. [The 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 § [~~1143~~ [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 [~~D~~ E] 1 c of this section. (34 CFR 300.519(c))

[C. Procedures for surrogate parents.]

[~~5~~- 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))

[~~6~~- 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:

(1) The child with a disability, aged two to 21, inclusive, as appropriate to the disability;

(2) The surrogate parent-appointee; and

(3) 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.

[~~7~~- 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 [~~D~~ E] of this section.

[~~C~~- 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. Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child; and~~

~~d. c.]~~ The appropriateness of the child's participation in the selection of the surrogate parent.

[~~D. E.~~] Qualifications of surrogate parents. (34 CFR 300.519(d), (e), and (f))

1. The local educational agency 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.

[~~E. 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. The local educational agency 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. The local educational agency 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. [~~A copy of~~ 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. State-operated programs [and] the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton~~] shall submit their annual plan to the state special education advisory committee for review prior to submission to the Virginia Department of Education.

3. The local educational agency 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.

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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 representation of gender and the ethnic population of the local school division 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. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.

2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be 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 [~~34 CFR 303.148(b)~~ § 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 300.121 and 34 CFR 300.122~~ 34 CFR 300.101 and 34 CFR 300.102])

1. Each local school division with a regional or local jail in its jurisdiction 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. Each local school division with a regional or local jail in its jurisdiction shall establish 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. [(34 CFR 300.121 and 34 CFR 300.122)]

H. Each local educational agency 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. (34 CFR 300.226)

J. Access to instructional materials.

1. Each local educational agency 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. The local educational agency 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. Each local educational agency 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:

(1) 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

(2) 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 a local educational agency 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))

(1) 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;

(2) Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;

(3) Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or

(4) 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))

(1) In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses,

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therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).

(2) 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)])

Part IV Funding

8VAC20-81-240. Eligibility for funding.

A. Each local school division and state-operated program shall maintain current policies and procedures and supporting documentation to demonstrate compliance with the Act and the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures shall be made as determined by local need, as a result of changes in state or federal laws or regulations, as a result of required corrective action, or as a result of decisions reached in administrative proceedings, judicial determinations, or other findings of noncompliance. ([34 CFR 300.201;] 34 CFR 300.220)

B. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

8VAC20-81-250. State funds for local school divisions.

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality. (Chapter 13.2 (§ 22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia)

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement is made in the year following delivery of instruction. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

C. Children with disabilities enrolled in regional special education programs: ([§§ 22.1-211— and Virginia Appropriation Act; §] 22.1-218 of the Code of Virginia)

1. Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to policies and procedures established by the [~~Virginia Board of Education~~ Superintendent of Public Instruction or designee] .

2. Such reimbursement shall be in lieu of [~~the state per pupil basic aid otherwise~~ other state education funding] available for each child.

D. Applicability of least restrictive environment and FAPE provision in state-funded placements. No state-funding mechanism shall result in placements that deny children with disabilities their right to be educated with children without disabilities to the maximum extent appropriate, or otherwise result in a failure to provide a child with a disability a free appropriate public education. (34 CFR 300.114(b))

E. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions are reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails. (Virginia Appropriation Act)

F. Funds under the Comprehensive Services Act for At-Risk Youth and Families. (§§ 2.2-5211 through 2.2-5212 of the Code of Virginia)

1. Funds are available under the Comprehensive Services Act to support the cost of:

a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;

b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and

c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a special education hearing officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

G. Reimbursement shall be made for the education of children with disabilities who: (§ 22.1-101.1 B and C of the Code of Virginia)

1. Have been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency;

2. Have been placed in an orphanage or children's home, which exercises legal rights; or

3. Is a resident of Virginia, and has been placed, not solely for school purposes, in a child-caring institution or group home licensed in accordance with the Code of Virginia.

8VAC20-81-260. Federal funds.

A. In accordance with the provisions of the Act, the Virginia Department of Education disburses the federal funds that are available under Part B of the Act to assist local educational agencies with the excess cost of providing special education and related services to eligible children with disabilities. The local educational agency shall submit an annual plan to the Virginia Department of Education describing the use of such funds in accordance with subsection B of 8VAC20-81-230. (34 CFR 300.200; 34 CFR 76.301)

B. Excess costs means those costs that are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student as may be appropriate, and that shall be computed after deducting: [(34 CFR 300.16, 34 CFR 300.202 and Appendix A to 34 CFR Part 300)]

1. Amounts received under Part B of the Act;

2. Amounts received under Part A of Title I of the ESEA;

3. Amounts received under Parts A and B of Title III of the ESEA; or

4. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1, 2, or 3 of this subsection but excluding any amounts for capital outlay and debt service.

A local educational agency meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities in state and local funds before funds under Part B of the Act are used. (See 34 CFR Part 300, Appendix A for an example of how excess costs shall be calculated.) [(34 CFR 300.16, 34 CFR 300.202 and Appendix A)]

C. A local educational agency complies with the maintenance of effort requirement in establishing its eligibility for an award in a fiscal year if the local educational agency budgets the same total or per capita amount in state and local funds as it spent from the same sources to educate children with disabilities in the most recent prior year for which information is available. (34 CFR 300.203)

D. Part B funds may be used to supplement, but shall not be used to supplant state and local expenditures for special education and related services, and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local school division from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Act. (34 CFR 300.202 [, 34 CFR 300.203 and through] 34 CFR 300.204)

E. The amount of Part B funds determined to be available for each local educational agency is based upon the formulas specified under the Act. (34 CFR 300.705 and 34 CFR 300.816)

F. A local educational agency may use Part B funds to implement a schoolwide program under § 1114 of the ESEA, except that the amount of Part B funds used in any fiscal year shall not exceed the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by the number of children with disabilities participating in the schoolwide program. Part B funds used for this purpose are not subject to other Part B funding requirements, but the local educational agency shall

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ensure that all children with disabilities in schoolwide program schools: (34 CFR 300.206)

1. Receive services in accordance with a properly developed IEP; and

2. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

G. Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child. (34 CFR 300.208)

H. Early intervening services. (34 CFR 300.226 and 34 CFR 300.646)

1. Children who are not currently identified as needing special education or related services may need additional academic and behavioral supports to succeed in a general education environment. These supports may be in the form of early intervening services.

Early intervening services apply to children in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three.

2. To develop and implement coordinated, early intervening services, which may include interagency financing structures, a local school division may not use more than 15% of the amount the school division receives under Part B of the Act for any fiscal year. The 15% is less any amount reduced by the local school division pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds).

3. In implementing coordinated, early intervening services under this section, a local educational agency may carry out activities that include:

a. Professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

4. Nothing in this section shall be construed to either limit or create a right to a free appropriate public education under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

5. Each [LEA local educational agency] that develops and maintains coordinated, early intervening services under this section shall annually report to the Virginia Department of Education on:

a. The number of children served under this section who received early intervening services; and

b. The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

6. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

7. The amount of funds expended by a local educational agency for early intervening services shall count toward the maximum amount of expenditures that the [LEA local educational agency] may reduce when determining compliance with the requirement for maintenance of effort.

8. If the Virginia Department of Education determines significant disproportionality based on race and ethnicity is occurring in a local educational agency in the identification of children with disabilities, or the placement of identified children in a particular educational setting, the local educational agency shall:

a. Use 15% of its Part B funds to provide comprehensive coordinated early intervening services particularly, but not exclusively, to those groups that were significantly overidentified; and

b. Publicly report on the revision of policies, practices, and procedures used in the identification and placement of children with disabilities.

I. If the Virginia Department of Education determines that a local school division is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that school division with state and local funds, the department may reallocate any portion of the funds under Part B of the Act that are not needed by the school division to provide a free appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve. (34 CFR 300.705 and 34 CFR 300.817)

8VAC20-81-270. Funds to assist with the education of children with disabilities residing in state-operated programs.

A. State mental health facilities. State funds for education for children in state mental health facilities are appropriated

to the Virginia Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the mental health facilities. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

B. State training centers for [~~the mentally retarded~~ people with intellectual disabilities]. State funds for special education and related services for children with disabilities in state training centers for [~~the mentally retarded~~ people with intellectual disabilities] are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the centers. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

C. State specialized children's hospitals. State funds for special education and related services are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

D. Woodrow Wilson Rehabilitation Center. State funds for education for children are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

E. Regional and local juvenile detention homes. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

F. State-operated diagnostic clinics. State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state Department of Health are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

G. Virginia Department of Correctional Education. State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available

under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

H. The Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~]. State funds are appropriated directly to [~~these schools~~ the school] to operate day and residential special education programs for children placed by local school divisions. Local funds for the education of children at the Virginia [~~schools~~ school] shall be the amount equal to the local per pupil expenditure for the period in which the child is a resident of the school. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the Virginia schools. (Virginia Appropriation Act; 34 CFR 300.705)

I. Regional and local jails. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

8VAC20-81-280. Funding, withholding, and recovery of funds.

A. The Virginia Department of Education shall disburse funds to local educational agencies for the education of children with disabilities, aged two to 21, inclusive, when they provide documentation of compliance with state and federal laws and regulations. (34 CFR 300.200)

B. If documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall provide reasonable notice to the local educational agency that state and federal funds will not be available for reimbursement for special education programs and services. (34 CFR 300.155 and 34 CFR 300.221)

1. The notification shall include the substance of the alleged violation, and the local educational agency shall be given an opportunity to submit a written response; and

2. The local educational agency shall have the right to appeal to the Virginia Board of Education under 8VAC20-81-290.

C. Whenever the Virginia Board of Education, in its discretion, determines that a local educational agency fails to establish and maintain programs of free and appropriate public education that comply with the regulations established by the board, the board may withhold all state and federal funds for the education of eligible children with disabilities and may use the payments that would have been available to such local educational agency to provide special education, directly or by contract, to eligible children with disabilities in such manner as the board considers appropriate. (§ 22.1-214 E of the Code of Virginia)

D. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8VAC20-81-290, finds that a local educational agency has failed to comply with the state and federal laws and

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regulations and determines that compliance cannot be secured by voluntary means, the Superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be made available to that local educational agency until it complies with the state and federal laws and regulations. (34 CFR 300.155 and 34 CFR 300.222)

E. If there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the local educational agency, the foregoing due process procedures shall apply. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

F. If it is determined that such funds have been erroneously claimed, the Virginia Department of Education shall bill the local educational agency for the amount of funds improperly received and withhold an equal amount of state or federal funds for the following year if not repaid by the local educational agency. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

G. Any local educational agency in receipt of a notice, as described in subsection C of this section, shall provide public notice to the local educational agency's jurisdiction regarding pendency of the action. (34 CFR 300.222)

8VAC20-81-290. Appeal of administrative decision regarding funding.

A. The Virginia Department of Education's recommendation to disapprove local eligibility for funding under the Act, or withhold state and federal funds for special education and related services, may be appealed by a local educational agency. (34 CFR 76.401 and 34 CFR 300.155)

B. The procedures for the appeal of administrative decisions are as follows: (34 CFR 76.401 and 34 CFR 300.155)

1. The local educational agency shall request, in writing, a hearing by the Virginia Department of Education within 30 business days from the receipt of notification from the Superintendent of Public Instruction;

2. Within 10 business days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the local educational agency in writing of the date, time, and location of the hearing;

3. The hearing shall be conducted within 15 business days from the date of notification;

4. The hearing shall be conducted by an independent hearing officer in conformance with the provisions of §§ 2.2-4020 and 2.2-4024 of the Code of Virginia;

5. Witnesses and attorneys may be present and testify for the Virginia Department of Education or the local educational agency;

6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

7. The hearing officer shall review all pertinent evidence presented and shall render a decision based on the preponderance of evidence presented at the hearing and on applicable state and federal law;

8. No later than 10 business days after the hearing, the hearing officer shall issue a written ruling, including findings of fact and reasons for the findings;

9. The decision made by the hearing officer shall be final unless an appeal is requested by a local educational agency;

10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of the Education Department General Administrative Regulations; and

11. Notice of appeal shall be filed within 20 days after the local educational agency has been notified by the Virginia Department of Education of the results of the hearing.

8VAC20-81-300. Use of public and private insurance.

A. Children with disabilities who are covered by public benefits or insurance. (34 CFR 300.154(d))

1. A local educational agency may use Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public benefits or insurance program except as provided in subdivision 2 of this subsection.

2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, a local educational agency:

a. Shall provide notice to the parent(s) that the local educational agency:

(1) May not require the parent(s) to sign up for or enroll in public [benefits or] insurance programs in order for their child to receive a free appropriate public education;

(2) May not require the parent(s) to incur any out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this section, but in accordance with subsection C of this section may pay the cost that the parent(s) otherwise would be required to pay; and

(3) May not use a child's benefits under a public benefits or insurance program if that use would:

(a) Decrease available lifetime coverage or any other insured benefit;

(b) Result in the family's paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(c) Increase premiums or lead to the discontinuation of benefits insurance; or

(d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

b. Shall obtain informed parental consent each time that access to public benefits or insurance is sought, including parental consent to release educational information to the public benefits of insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and

c. Shall provide notice to the parent(s) that refusal to allow access to their public benefits or insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

B. Children with disabilities who are covered by private insurance. (34 CFR 300.154(e))

1. With regard to services required to provide a free appropriate public education to an eligible child under this chapter, a local educational agency may access a parent's private insurance proceeds only if the parent provides informed consent.

2. Each time the local educational agency proposes to access a parent's private insurance proceeds, it shall:

a. Obtain informed parental consent, including parental consent to release educational information to the private insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and

b. Inform the parent(s) that the refusal to permit the local educational agency to access their private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

C. Use of Part B funds. (34 CFR 300.154(f))

1. If a local educational agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent(s) would incur a cost for a specified service required under this chapter to ensure a free appropriate public education, the local educational agency may use its Part B funds under the Act to pay for the service.

2. To avoid financial cost to a parent who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the local educational agency may use its Part B funds to pay the costs the parent otherwise would have to pay to use the parent's [benefits or] insurance (e.g., deductible or co-pay amounts).

D. Proceeds from public or private insurance. (34 CFR 80.25 and 34 CFR 300.154(g))

1. Proceeds from public benefits or insurance or private insurance is not treated as program income for purposes of the Education Department General Administrative Regulations.

2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds are not considered state or local funds for purposes of the maintenance of effort provisions.

E. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency or any other agency administering a public benefits or insurance program by federal law, regulations, or policy under [~~title~~ Title] XIX or [~~title~~ Title] XXI of the Social Security Act, or any other public benefits or insurance program. (34 CFR 300.154(h))

8VAC20-81-310. Attorneys' fees.

A. In any action or proceeding brought under § 1415 of the Act, the court in its discretion may award reasonable attorneys' fees as part of the costs: (34 CFR 300.517(a))

1. To the prevailing party who is the parent(s) of a child with a disability;

2. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

3. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent, or against the parent, if the parent's request for a due process hearing, or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

B. Funds under Part B may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under § 1415 and Subpart E of the Act. This section does not preclude a local educational agency from using funds under the Act for conducting an action or proceeding under § 1415 of the Act. (34 CFR 300.517(b))

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C. A court awards reasonable attorneys' fees under § 1415 of the Act consistent with the following: (34 CFR 300.517(c))

1. Determination of amount of attorneys' fees. Fees awarded under § 1415 [(i)(3)] of the Act shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

2. Prohibition of attorneys' fees and related costs for certain services.

a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under § 1415 of the Act for services performed subsequent to the time of a written offer of settlement to a parent(s) if:

(1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 calendar days before the proceeding begins;

(2) The offer is not accepted within 10 calendar days; and

(3) The court or administrative special education hearing officer finds that the relief finally obtained by the parent(s) is not more favorable to the parent(s) than the offer of settlement.

b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation session.

c. A resolution session convened in accordance with 8VAC20-81-210 will not be considered:

(1) A meeting convened as a result of an administrative hearing or judicial action; or

(2) An administrative hearing or judicial action for purposes of this subsection.

3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent(s) who is the prevailing party and who was substantially justified in rejecting the settlement offer.

4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter if the court finds that:

a. The parent(s), or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by

attorneys of reasonably comparable skill, reputation, and experience;

c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. The attorney representing the parent(s) did not provide to the local educational agency the appropriate information in the request for a due process hearing in accordance with this chapter.

5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of this subsection do not apply in any action or proceeding if the court finds that the Virginia Department of Education or the local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of § 1415 of the Act.

Part V

Additional Responsibilities of State Boards, Agencies, and Institutions for Education and Training of Children with Disabilities in Residence or Custody

8VAC20-81-320. Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.

A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education that is comparable to that provided to children with disabilities in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. (§§ 22.1-7 and 22.1-340 of the Code of Virginia)

b. The Superintendent of Public Instruction shall approve the education programs at the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi Disabled at Hampton~~]. (§§ 22.1-7, 22.1-347, and 22.1-348 of the Code of Virginia)

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The

Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities. (§ 22.1-7 of the Code of Virginia)

d. The Virginia Board of Education shall provide for and direct the education of school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. (§§ 22.1-7 and 22.1-209.2 of the Code of Virginia)

e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes. (§§ 22.1-7 and 22.1-209.2 of the Code of Virginia)

f. The Virginia Board of Education shall supervise the evaluation, education, and training provided to school-age children by the Virginia Department of Health and to school-age children in the teaching hospitals associated with the Eastern Virginia Medical Center, the Virginia Commonwealth University Health System Authority, and The University of Virginia Hospitals. (§§ 22.1-7 and 22.1-209.2 of the Code of Virginia)

2. The procedures outlined in 8VAC20-81-230 are applicable to each state board, agency, and institution having children with disabilities in residence and custody. (§ 22.1-7 of the Code of Virginia)

B. Annual program plan. Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the Virginia Department of Education for approval by the Virginia Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Virginia Board of Education, shall include the provisions and assurances as specified in 8VAC20-81-230.

1. In addition, the program plan shall include the following:

a. The educational objectives of the state board, agency, or institution;

b. Strategies for achieving the educational objectives, including an organized program for staff development;

c. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;

d. A system of communication to ensure service continuity in the transition of the student into and out of the educational program of the facility and, where applicable, the requirements for reenrollment of juveniles committed to the Department of Juvenile Justice, as

provided for in the Code of Virginia; (§§ 16.1-293 and 22.1-289 E of the Code of Virginia)

e. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;

f. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner;

g. A cooperatively developed procedure for the evaluation of educational personnel; and

h. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board.

2. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week available for each student to implement the student's IEP.

a. If a student has a medical or physical condition that requires modification of the school schedule, a waiver statement shall be placed on file.

b. This waiver statement shall document the physical or mental condition of the individual student that requires significant modification of this schedule, and personnel from the following facilities shall file statements of concurrence:

(1) The attending physician -- the Department of Mental Health, Mental Retardation and Substance Abuse Services facilities;

(2) The central review committee, institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions, with a waiver statement signed by the Department of Juvenile Justice security staff or designee for safety or security conditions -- the Department of Correctional Education;

(3) The physician, staffing committee or principal -- the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton~~];

(4) The center counselor upon recommendation of the staffing committee -- Woodrow Wilson Rehabilitation Center;

(5) The attending physician -- state medical facilities;

(6) The detention superintendent or designee -- juvenile detention homes.

3. The Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and~~

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Multi Disabled at Hampton] shall provide for each age group of children a planned dormitory and a student-life program, including social and daily living skills, recreation, and cultural activities.

C. Staff and facility.

1. Each state board, agency or institution shall assign personnel to the educational program who are appropriately and adequately prepared and trained, including having the knowledge and skills to [~~service~~ serve] children with disabilities, and as follows: (34 CFR 300.156)

a. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).

b. Additional education personnel to provide required related services as delineated in the child's IEP. [Related services providers must be qualified consistent with the requirements of subdivision 19 a of 8VAC20-81-20.]

c. Paraprofessionals who are trained and supervised in accordance with the requirements of the Board of Education.

2. Each state board, agency or institution shall staff the educational program as follows:

a. A principal, supervisor, education director, or lead teacher for the educational program provided at each school or institution, except for juvenile detention homes;

b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:

(1) Emotional disturbance - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(2) Hearing impairment/deaf - one teacher for every seven children with one paraprofessional for every three classroom teachers; at the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi Disabled at Hampton~~] - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(3) Mental retardation - one teacher and one paraprofessional for every 10 children;

(4) Severe disability - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;

(5) Visual impairment - one teacher for every seven children and one paraprofessional for every three classroom teachers;

(6) Other health impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(7) Orthopedic impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(8) Specific learning disability - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(9) Multiple disabilities or deaf-blindness - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;

(10) Autism - one teacher for every six children or one teacher and one paraprofessional for every eight children;

(11) Traumatic brain injury - students may be placed in any program, according to the student's IEP;

(12) Department of Correctional Education - no greater than an average of one teacher and one paraprofessional for every 10 children;

(13) Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children; and

(14) Juvenile detention homes - one teacher for every 12 beds, based on the bed capacity of the facility. If the number of students exceeds the bed capacity, then the ratio shall be one teacher for every 12 students based on the average daily attendance from the previous school year. If unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

3. Each facility shall have available adequate and appropriate classroom space, a library, and instructional materials and supplies to meet the educational needs of the children.

Part VI

Compliance with § 504 of the Rehabilitation Act of 1973, as Amended

8VAC20-81-330. Compliance with § 504 of the Rehabilitation Act of 1973, as amended.

A. Each state-operated program providing educational services to persons of school age [and] the Virginia School for the Deaf and the Blind at Staunton [~~and the Virginia School for the Deaf, Blind and Multi Disabled at Hampton~~] shall provide a free appropriate public education to each qualified person with a disability of school age and provide procedural safeguards in accordance with the Virginia Department of Education's 504 plan. (34 CFR 104.33)

B. Local educational agencies are required to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints. In meeting the due process portion of this requirement, local educational agencies may utilize the due process hearing system specified in 8VAC20-81-210 to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a **8VAC20-81-340. Special education caseload staffing requirements.**

disability. If this procedure is selected, the local school system is responsible for 100 percent of the reimbursement costs to the special education hearing officer and any other costs incurred and requested by the special education hearing officer or school division. The Virginia Department of Education trains special education hearing officers on 504 requirements. (34 CFR 104.7 and 34 CFR 104.36)

Figure 1: Local school division caseload maximums as funded by the Virginia Appropriation Act.

Disability Category	Level II		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the Time	
Autism	8	6	24
Deaf-blindness	8	6	
Developmental Delay: age [5-8 5-6]	10	8	
Developmental Delay: age 2-5	8 Center-based 10 Combined	12 Home-based and/or Itinerant	
Emotional [Disturbance Disability]	10	8	24
Hearing Impairment/Deaf	10	[10 8]	24
Learning Disability	10	[10 8]	24
[Mental Retardation Intellectual Disability]	10	[10 8]	24
Multiple Disabilities	8	6	
Orthopedic Impairment	10	[10 8]	24
Other Health Impaired	10	[10 8]	24
[Severe Disabilities]	[8]	[6]	
Speech or Language Impairment	[NA]	[NA]	68 (Itinerant)
Traumatic Brain Injury	May be placed in any program, according to the IEP.		
Combined group of students needing Level I services with students needing Level II services	20 Points (see Figure 2)		

Figure 2: Values for students receiving Level I services when combined with students receiving Level II services.

Disability Category	Level II Values		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the time	Values

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<u>Autism</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>Deaf-blindness</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>Developmental Delay: age</u> [5-8 <u>5-6</u>]	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Emotional [Disturbance</u> <u>Disability]</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Hearing Impairment/Deaf</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Learning Disability</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
[Mental Retardation <u>Intellectual Disability</u>]	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Multiple Disabilities</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>Orthopedic Impairment</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Other Health Impairment</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
[Severe Disabilities]	[2.0]	[2.5]	[1]
<u>Traumatic Brain Injury</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>

VA.R. Doc. No. R07-95; Filed March 24, 2009, 3:25 p.m.

Notice of Suspension of Regulatory Process

Titles of Regulations: **8VAC20-80. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.**

8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia; 20 USC §1400 et seq.; 34 CFR Part 300.

Public Comments: Public comments may be submitted until 5 p.m. on May 13, 2009.

In accordance with §§ 2.2-4007.06 and 2.2-4015 of the Administrative Process Act, the Department of Education, on behalf of the Virginia Board of Education, has suspended the regulatory process pertaining to the repeal of 8VAC20-80 and promulgation of 8VAC20-81, Regulations Governing Special Education Programs for Children with Disabilities in Virginia. The suspension is in response to requests from at least 25 people for an additional public comment period regarding those changes with substantial impact that were made to the regulations since they were published as proposed regulations. The proposed regulations were published in the Virginia Register of Regulations in 24:17 VA.R. 2360-2450 April 28, 2008. The final regulations are simultaneously published in this issue of the Virginia Register of Regulations.

The Virginia Department of Education will receive comments regarding 8VAC20-81 until 5 p.m. on May 13, 2009. Comments may be submitted by mail, facsimile, or email. All

comments must include the name and contact information of the commenter. Comments may be submitted by mail to the Special Education Regulations Revision Process, Office of Dispute Resolution and Administrative Services, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120; by facsimile to (804) 786-8520; or by email to ReviseSpedRegs@doe.virginia.gov.

Agency Contact: Melissa Smith, Coordinator of Administrative Services, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-0524, or email melissa.smith@doe.virginia.gov.

VA.R. Doc. No. R07-95; Filed March 24, 2009, 3:23 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-660).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: May 13, 2009.

Agency Contact: Molly Carpenter, Division of Maternal and Child Health, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 786-1680, or email molly.carpenter@dmas.virginia.gov.

Summary:

The amendment authorizes the use of state general funds to cover MCHIP services to FAMIS newborns for the birth month plus two additional months if federal funds are not available. Most newborns of FAMIS enrollees are subsequently enrolled in either Medicaid or FAMIS and receive retroactive coverage for the first three months. For these newborns, any general funds used to provide coverage upon birth will continue to be replaced by Medicaid or FAMIS funds with a federal match.

12VAC30-141-660. Assignment to managed care.

A. Except for children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 of the Code of Virginia, all eligible enrollees shall be assigned in managed care through the department or the central processing unit (CPU) under contract to DMAS. FAMIS recipients, during the ~~pre-assignment~~ preassignment period to a PCP or MCHIP, shall receive Title XXI benefits via fee-for-service utilizing a FAMIS card issued by DMAS. After assignment to a PCP or MCHIP, benefits and the delivery of benefits shall be administered specific to the type of managed care program in which the recipient is enrolled. DMAS shall contract with MCHIPs to deliver health care services for infants born to mothers enrolled in FAMIS for the month of birth plus two additional months regardless of the status of the newborn's application for FAMIS. If federal funds are not available for those months of coverage, DMAS shall use state funding only.

1. MCHIPs shall be offered to enrollees in certain areas.
2. In areas with one contracted MCHIP, all enrollees shall be assigned to that contracted MCHIP.
3. In areas with multiple contracted MCHIPs or in PCCM areas without contracted MCHIPs, enrollees shall be assigned through a random system algorithm; provided however, all children within the same family shall be assigned to the same MCHIP or primary care provider (PCP), as is applicable.

4. In areas without contracted MCHIPs, enrollees shall be assigned to the primary care case management program (PCCM) or into the fee-for-service component. All children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program shall be assigned to the fee-for-service component.

5. Enrolled individuals residing in PCCM areas without contracted MCHIPs or in areas with multiple MCHIPs, will receive a letter indicating that they may select one of the contracted MCHIPs or primary care provider (PCP) in the PCCM program, in each case, which serve such area. Enrollees who do not select an MCHIP/PCP as described above, shall be assigned to an MCHIP/PCP as described in subdivision 3 of this section.

6. Individuals assigned to an MCHIP or a PCCM who lose and then regain eligibility for FAMIS within 60 days will be re-assigned to their previous MCHIP or PCP.

B. Following their initial assignment to a MCHIP/PCP, those enrollees shall be restricted to that MCHIP/PCP until their next annual eligibility redetermination, unless appropriately disenrolled by the department.

1. During the first 90 calendar days of managed care assignment, an enrollee may request ~~re-assignment~~ reassignment for any reason from that MCHIP/PCP to another MCHIP/PCP serving that geographic area. Such ~~re-assignment~~ reassignment shall be effective no later than the first day of the second month after the month in which the enrollee requests ~~re-assignment~~ reassignment.

2. ~~Re-assignment~~ Reassignment is available only in areas with the PCCM program or where multiple MCHIPs exist. If multiple MCHIPs exist, enrollees may only request ~~re-assignment~~ reassignment to another MCHIP serving that geographic area. In PCCM areas, an enrollee may only request ~~re-assignment~~ reassignment to another PCP serving that geographic area.

3. After the first 90 calendar days of the assignment period, the enrollee may only be ~~re-assigned~~ reassigned from one MCHIP/PCP to another MCHIP/PCP upon determination by DMAS that good cause exists pursuant to subsection C of this section.

C. Disenrollment for good cause may be requested at any time.

1. After the first 90 days of assignment in managed care, enrollees may request disenrollment from DMAS based on good cause. The request must be made in writing to DMAS and cite the reasons why the enrollee wishes to be ~~re-assigned~~ reassigned. The department shall establish procedures for good cause ~~re-assignment~~ reassignment through written policy directives.

2. DMAS shall determine whether good cause exists for ~~re-assignment~~ reassignment.

Regulations

VA.R. Doc. No. R09-1673; Filed March 23, 2009, 10:13 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Final Regulation

REGISTRAR'S NOTICE: The Board of Dentistry is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Dentistry will receive, consider and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18VAC60-20-190).

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Effective Date: May 13, 2009.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

The amendments conform the regulation to Chapter 858 of the 2006 Acts of Assembly by adding language that allows a dentist to authorize a dental hygienist under his direction to administer Schedule VI local anesthesia to persons 18 years of age or older.

Part VI

Direction and Delegation of Duties

18VAC60-20-190. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;
2. Performing surgical or cutting procedures on hard or soft tissue;
3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-20-81, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth;
5. Operation of high speed rotary instruments in the mouth;
6. Performing pulp capping procedures;
7. Administering and monitoring general anesthetics and conscious sedation except as provided for in § 54.1-2701 of the Code of Virginia and 18VAC60-20-108 C, 18VAC60-20-110 F, and 18VAC60-20-120 F;
8. Condensing, contouring or adjusting any final, fixed or removable prosthodontic appliance or restoration in the mouth;
9. Final positioning and attachment of orthodontic bonds and bands;
10. Taking impressions for master casts to be used for prosthetic restoration of teeth or oral structures;
11. Final cementation of crowns and bridges; and
12. Placement of retraction cord.

VA.R. Doc. No. R09-1815; Filed March 25, 2009, 2:39 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Health Professions will receive, consider and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC76-20. Regulations Governing the Prescription Monitoring Program (amending 18VAC76-20-60, 18VAC76-20-70).

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Effective Date: May 13, 2009.

Agency Contact: Ralph Orr, Program Manager, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4523, FAX (804) 527-4470, or email ralph.orr@dhp.virginia.gov.

Summary:

The amendments conform the regulation to Chapters 158 and 162 of the 2009 Acts of Assembly. The amendments relate to (i) disclosures by prescribers that they may query the Prescription Monitoring Program for the purpose of establishing a treatment history; (ii) requests for

information from health care professionals designated by prescribers to request information; and (iii) removal of the requirement for dispensers to hold a license as a nonresident pharmacy in order to permit interoperability among state monitoring programs.

18VAC76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in a format designated by the department.

B. The director may disclose information to:

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18 and includes a notarized signature of the requesting party. The report shall be mailed to the address on the license or delivered to the recipient at the department.

2. The prescriber for the purpose of establishing a treatment history for a patient or prospective patient, provided the request is accompanied by the prescriber's registration number with the United States Drug Enforcement Administration (DEA) and attestation of having obtained written consent for such disclosure from the recipient. Such written consent shall be maintained as part of the patient record that the prescriber is in compliance with patient notice requirements of 18VAC76-20-70. The prescriber may delegate the submission of a request for information, provided the delegation is in compliance with § 54.1-2523.2 of the Code of Virginia. The health care professionals to whom the prescriber has authorized access to information shall be registered with the program. Requests for information made by a delegated health care professional shall be made in his own name, using his own unique identifiers assigned by the program.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request is related to an allegation of a possible controlled substance violation and that it is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.

5. A dispenser for the purpose of establishing a prescription history for a specific person to assist in determining the validity of a prescription, provided the request is accompanied by the dispenser's license number issued by the relevant licensing authority in Virginia and an attestation that the dispenser is in compliance with patient notice requirements of 18VAC76-20-70. ~~If the dispensing occurs in a pharmacy located outside Virginia, the request shall include the registration number issued by the Virginia Board of Pharmacy for a nonresident pharmacy.~~

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient and/or dispenser.

D. Except as provided in subdivision B 1 of this section, the request form shall include an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

E. In order to request disclosure of information contained in the program, a designated employee of the Department of Medical Assistance Services or of the Office of the Chief Medical Examiner shall register with the director as an authorized agent entitled to receive reports under § 54.1-2523 C of the Code of Virginia.

1. Such request for registration shall include an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

18VAC76-20-70. Notice of requests for information.

A. Any dispenser who intends to request information from the program for a recipient or prospective recipient of a Schedule II, III, or IV controlled substance shall post a sign that can be easily viewed by the public at the place where the prescription is accepted for dispensing and that discloses to the public that the pharmacist may access information contained in the program files on all Schedule II, III or IV prescriptions dispensed to a patient. In lieu of posting a sign, the dispenser may provide such notice in written material provided to the recipient, or may obtain written consent from the recipient.

B. Any prescriber who intends to request information from the program about a patient or prospective patient shall post a sign that can be easily viewed by the public that discloses to the public that the prescriber may access information contained in the program files on all Schedule II, III or IV prescriptions dispensed to a patient. In lieu of posting a sign, the prescriber may provide such notice in written material

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provided to the patient, or may obtain written consent from the patient.

VA.R. Doc. No. R09-1826; Filed March 25, 2009, 10:30 a.m.

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Health Professions will receive, consider and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-90; adding 18VAC90-60-91, 18VAC90-60-92).

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Effective Date: May 13, 2009.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments (i) conform the time limit for acceptance of one year of experience and the eight-hour refresher course to the dates specified in the law; (ii) add a section to specify the requirements for provisional practice for up to 120 days; and (iii) add a section to specify the requirements for registration by endorsement.

Part III

Registration of Medication Aides

18VAC90-60-90. Requirements for initial registration.

A. To be registered as a medication aide, an applicant shall:

1. Provide documentation of successful completion of a staff training program in direct client care approved by the Department of Social Services or of an approved nurse aide education program;
2. Provide documentation of successful completion of one of the following:
 - a. A medication aide training program approved by the board in accordance with this chapter;
 - b. A nursing education program preparing for registered nurse licensure or practical nurse licensure; or

c. An eight-hour refresher course preparing a person to take the competency evaluations required for registration and one year of experience working as a medication aide in an assisted living facility. The one year of experience working as a medication aide in an assisted living facility shall be immediately completed prior to applying for registration December 31, 2008, and may only be accepted as evidence of training until ~~July 1, 2008~~ August 1, 2009;

3. Submit the required application and fee as prescribed by the board;

4. Disclose whether there are grounds for denial of registration as specified in § 54.1-3007 of the Code of Virginia; and

5. Provide documentation of successful completion of competency evaluations consisting of:

- a. A clinical evaluation of minimal competency in the skills of administering medications as specified in 18VAC90-60-60 B 2; and
- b. A written examination as specified by the board with a passing score determined by the board.

B. An applicant who fails to take the board-approved examination within one year of completion of the training or who has failed the examination in three attempts shall reenroll and successfully complete another approved medication aide training program.

18VAC90-60-91. Requirements for provisional practice.

A. An applicant for registration who wants to practice as a medication aide on a provisional basis shall:

1. Submit the required application for registration and fee as prescribed by the board; and
2. Provide evidence to the board of successful completion of the medication aide training course or a nursing education program.

B. An applicant shall practice for no more than 120 days from the date of a letter from the board acknowledging receipt of the documentation required in subsection A of this section and granting provisional authorization.

C. An applicant acting as a medication aide under provisional authorization shall be identified as a provisional medication aide.

D. An applicant with provisional authorization shall immediately cease acting as a medication aide at the conclusion of the 120-day period or upon notification of failure after three attempts to pass the written examination required for registration, whichever comes first.

18VAC90-60-92. Requirements for registration by endorsement.

An applicant applying for registration by endorsement who has met the requirements for registration or certification as a medication aide in another state or the District of Columbia may be deemed eligible to sit for the competency evaluation upon submission of:

1. A completed application and fee; and
2. Verification of registration or certification as a medication aide in another state or the District of Columbia.

VA.R. Doc. No. R09-1824; Filed March 25, 2009, 10:30 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF CONSERVATION AND RECREATION AND DEPARTMENT OF ENVIRONMENTAL QUALITY

Watershed Cleanup Plan

The Department of Conservation and Recreation and the Department of Environmental Quality hosted a public meeting on Wednesday, April 8, 2009, at St. Mary's Whitechapel Episcopal Church Assembly Hall in Lancaster, Virginia, on the development of a cleanup plan for Greenvale and Beach Creeks in Lancaster County, Virginia. The meeting covered the process for developing the plan and how citizens can be involved in the clean-up plan development and implementation.

DEQ has developed a total maximum daily load (TMDL) for polluted streams in the Greenvale and Beach Creek watersheds. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. The streams have excessive bacteria that decrease the quality of the water, prohibiting the harvest of molluscan shellfish. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend to May 13, 2009. For more information, contact May Sligh, IP Coordinator, Department of Conservation and Recreation, Tappahannock Field Office, Tappahannock, VA 22560, telephone (804) 443-1494, or email may.sligh@dcr.virginia.gov. Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 16, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

CASE NO. INS-2009-00008

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Life Insurance Reserves and Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities

CONTINUANCE ORDER

By Order entered January 23, 2009, all interested persons were ordered to take notice that subsequent to February 24,

2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting revisions proposed by the Bureau of Insurance ("Bureau") to the Commission's rules entitled "Life Insurance Reserves" and "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities," set forth in 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40, unless on or before February 24, 2009, any person objecting to the adoption of the proposed new rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the proposed new rules on or before February 24, 2009.

Genworth Financial and the American Council of Life Insurers timely filed comments with the Clerk recommending amendments to the proposed revisions. There was no request for a hearing filed with the Clerk.

THE COMMISSION is of the opinion that this matter should be continued generally to allow further consideration of the proposed new rules and possible changes.

IT IS THEREFORE ORDERED THAT:

(1) This matter is continued generally pending further order by the Commission.

(2) AN ATTESTED COPY hereof, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall mail a copy of this Order to all licensed life insurers, burial societies, fraternal benefit societies, and qualified reinsurers authorized by the Commission pursuant to Title 38.2 of the Code of Virginia, and certain interested parties designated by the Bureau.

March 9, 2009

ADMINISTRATIVE LETTER 2009-03

TO: All Insurers Licensed to Write Accident and Sickness Insurance in Virginia, and All Health Services Plans and Health Maintenance Organizations Licensed in Virginia

RE: 14 VAC 5-190-10 et seq.: Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers - 2008 Reporting Period

The purpose of this Administrative Letter is to assist carriers in the preparation of the Annual Report of Cost and Utilization Data relating to Mandated Benefits and Providers required pursuant to 14 VAC 5-190-10 et seq. and § 38.2-3419.1 of the Code of Virginia, and to remind all affected carriers of the reporting requirements applicable to mandated

benefits and providers for the 2008 reporting year. Carriers should refer to 14 VAC 5-190-40 for an explanation of the circumstances under which a full and complete or an abbreviated report must be filed, or under which a company may be exempt from filing a report. The Virginia total annual written premium for all accident and sickness policies or contracts referred to in the regulation is the amount reported to the Commission on the company's Annual Statement for the year ending December 31, 2008. This is the amount used to determine if a report is required. Each affected carrier must submit a completed Form MB-1 to furnish the required information. It is not acceptable to submit more than one Form MB-1 for a single carrier or to consolidate information from different carriers on one form.

The completed Form MB-1 (cover sheet and sections) is due on or before May 1, 2009 and may be submitted electronically. The due date may not be extended for any reason, including the inability to file the reports electronically. The instructions, representative CPT and ICD-9-CM codes, and forms for the 2008 reporting period are available on the Bureau of Insurance's website at:

<http://www.scc.virginia.gov/boi/webpages/boimandatedforms.htm>

The instructions explain the type of information necessary to complete Form MB-1. All sources of information, including 14 VAC 5-190-10 et seq., §§ 38.2-3408 through 38.2-3418.14, as applicable, § 38.2-4221, and CPT and ICD-9-CM codes, should be consulted in the preparation of this report. Please note that the CPT and ICD-9-CM codes are not intended to exhaust all medical codes that may be used in collecting data for Form MB-1, but are representative of some of the more common codes associated with the mandated benefits.

Due to the repeal of Section 38.2-3418.1:1, data is no longer required for coverage of bone marrow transplants, beginning with the 2008 reporting period.

Carriers are reminded that failure to submit a substantially complete and accurate report pursuant to the provisions of 14 VAC 5-190-10 et seq., by May 1, 2009, may be considered a violation subject to a penalty as set forth in § 38.2-218 of the Code of Virginia. Lack of notice, lack of information, lack of means of producing the required data, or other such reasons will not be accepted for not submitting a complete and accurate report in a timely manner.

Correspondence regarding reporting requirements should be directed to: Mary Ann Mason, Senior Insurance Market Examiner, Forms and Rates Section, Bureau of Insurance, Life and Health Division, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9348, FAX (804) 371-9944, or email maryann.mason@scc.virginia.gov. *System related* questions or problems should be directed to: Andrew Iverson, Insurance Analyst, Bureau of Insurance, Automated Systems, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-

9851, FAX (804) 371-9516, or email andrew.iverson@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

<p>EDITOR'S NOTICE: The Virginia Small Employer Group Health Insurance Medical History Form referenced in the following letter is not printed below; however, the form is available at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5 p.m. Monday through Friday.</p>
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March 10, 2009

ADMINISTRATIVE LETTER 2009-04

To: All Companies Licensed In Virginia To Write Accident And Sickness Insurance, All Health Maintenance Organizations Licensed In Virginia, And All Health Services Plans Licensed In Virginia

Re: Virginia Small Employer Group Health Insurance Medical History Form

In accordance with the provisions of House Bill 728 approved by the Virginia General Assembly during its 2008 legislative session, the Bureau of Insurance (the Bureau), with the assistance of a number of interested parties, has developed the Virginia Small Employer Group Health Insurance Medical History Form, a copy of which is attached to this letter. This form may be used by small employers submitting group health insurance applications to, or seeking rate and coverage information from, one or more insurers. Use of the form, which is completely voluntary, is intended to relieve small employers and their employees of the burden of completing multiple forms.

Provided this form is used in the exact format attached with no modifications except as otherwise noted below, insurers may use the form immediately without obtaining approval from the Bureau. The form is exempt from filing and approval requirements, in accordance with Virginia Code § 38.2-316 I.

Insurers, Health Services Plans, and Health Maintenance Organizations opting to use and accept this form should prepare and communicate their instructions for use and acceptance of the form to their respective agents and other interested parties. While it will generally be up to carriers to prepare and communicate instructions and guidelines for use of the form, the Bureau does expect and require all carriers to comply with the following general requirements:

- The full and proper corporate name of the insurer, health services plan or health maintenance organization

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must be recorded in Section 5 of the form. It is acceptable for a carrier to pre-print forms with the full and corporate name included, but sufficient space must be allowed for the entry of other carriers as well.

- Carriers are encouraged to include within their instructions for completion and return of the form, a prominent statement to the effect that completed forms should not, under any circumstances, be submitted to the Bureau.
- The type-size used in the form may be enlarged if a carrier so chooses, but it may not be reduced. Text may not be altered or changed.
- The form may be placed on a carrier's website or other electronic medium provided the format is not changed, or only minimal formatting changes are made to accommodate website specifications.

The Bureau will periodically survey carriers concerning their use of this form, and will review and revise this form, as appropriate, to ensure its ongoing compliance with applicable statutory and regulatory requirements and to ensure that it meets the needs of the insurers and small employers using it. Changes to the form will be communicated to insurers and interested parties by Administrative Letter.

If you have any questions concerning the use of this form, please contact: Robert Grissom, Supervisor, Forms and Rates Section, Life and Health Division, Bureau of Insurance, P.O. Box 1157, Richmond, Virginia 23218, telephone (804) 371-9152, FAX (804) 371-9944.

/s/ Alfred W. Gross
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice to Restore Water Quality for Shellfish Growing Areas Along Jackson, Bonum, and Gardner Creeks

Public meeting: April 22, 2009, at the Cople Episcopal Parish Hall, 72 Coles Point Road, Hague, VA 22469. Public meetings will be held from 2 p.m. to 4 p.m. and 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are holding the final public meetings for a study to restore water quality for three shellfish growing areas and a public comment opportunity.

Meeting description: Final public meetings on a study to restore water quality for shellfish growing areas along Jackson, Bonum, and Gardner Creeks that are impaired due to bacterial violations.

Description of study: Virginia agencies have worked to identify sources of the bacterial contamination in the shellfish growing waters of the (tidal) Jackson, Bonum, and Gardner Creeks, an area totalling approximately 0.531 square miles in Westmoreland County. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations.

Stream	County	Area (miles ²)	Impairment
Jackson Creek	Westmoreland	0.137	Shellfish Use (Fecal Coliform) Bacteria
Bonum Creek	Westmoreland	0.210	
Gardner Creek	Westmoreland	0.184	

The study reports the current status of the creeks via sampling performed by the Virginia Department of Health, Division of Shellfish Sanitation, shellfish area condemnations, and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will begin April 22, 2009, and end on May 21, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949 A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email mjasmigo@deq.virginia.gov.

Total Maximum Daily Load - Tuckahoe Creek, Little Tuckahoe Creek, Anderson, Broad, Georges and Readers Branches, and Deep Run

Notice is hereby given that the Department of Environmental Quality seeks comment on proposed modifications to the bacteria total maximum daily load (TMDL) developed for Tuckahoe Creek, Little Tuckahoe Creek, Anderson, Broad, Georges, and Readers Branches, and Deep Run located in Henrico, Goochland, and Hanover Counties, Virginia. A total maximum daily load of E. coli was developed to address the bacterial impairments in Tuckahoe Creek, Little Tuckahoe

Creek, Anderson, Broad, Georges and Readers Branches, and Deep Run located in Henrico, Goochland, and Hanover Counties. This TMDL was approved by the Environmental Protection Agency on September 20, 2004, and can be found at the following website:

<http://www.deq.virginia.gov/tmdl/apptmdls/jamesrvr/tuckcr.pdf>

The Virginia Department of Environmental Quality (VDEQ) seeks written comments from interested persons on the minor modification of this TMDL. Richmond Country Club Waste Water Treatment Plant (VPDES Permit #0063649) is a municipal minor facility that discharges to an unnamed tributary of Tuckahoe Creek. This facility should have an assigned a waste load allocation (WLA) in the TMDL based on the design flow of 0.0036 MGD. Therefore, DEQ's proposes the following changes to the report:

- Add Richmond Country Club WWTP to TMDL as a facility permitted for control of fecal coliform in text of TMDL.
- Assign the facility a WLA of 6.27E+09 in Table 7 page 20 of TMDL.

For the bacterial TMDL, the proposed WLA addition will neither cause nor contribute to the nonattainment of the Tuckahoe Creek basin. The addition of the Richmond Country Club WWTP WLA does not affect the total TMDL amount (0% increase).

The public comment period for this modification will end May 12, 2009. Please include the name, address, and telephone number of the person submitting comments or questions and send to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, or email mjsmigo@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on March 26, 2009. The order may be viewed at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Twenty-Seven (09)

Virginia's Instant Game Lottery 1122; "Monopoly" (effective 3/25/09)

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Consent Special Order - Fountainhead Land Company, LLC.

Purpose of notice: To seek public comment on the terms of a proposed Consent Special Order (order) issued to Fountainhead Land Company, LLC (Fountainhead).

Public comment period: April 13, 2009, through May 12, 2009.

Summary of proposal: The order describes a settlement between the board and Fountainhead to resolve alleged past violations of the Virginia Stormwater Management Act and Regulations at Fountainhead's Ballyhack Golf Course construction project located southeast of the City of Roanoke in Roanoke County. The proposed order requires payment of \$5,888.

How to comment: The Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received before the end of the comment period on May 12, 2009. A copy of the order is available on request.

Contact for copies of documents (e.g., proposed order) or other information: Edward A. Liggett, Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Proposed Consent Special Order - Mr. John Cannon

Purpose of notice: To seek public comment on the terms of a proposed Consent Special Order (order) issued to Mr. John Cannon.

Public comment period: April 13, 2009, through May 12, 2009.

Summary of proposal: The order describes a settlement between the board and Mr. Cannon to resolve alleged past violations of the Virginia Stormwater Management Act and regulations at a construction project near Highways 58 and 360 in South Boston. The proposed order requires payment of a \$6,750 civil charge.

How to comment: The Department of Conservation and Recreation accepts written comments from the public by mail,

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email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received before the end of the comment period at midnight on May 12, 2009. A copy of the order is available on request.

Contact for copies of documents (e.g., proposed order) or other information: Edward A. Liggett, Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

ERRATA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-120. Waiver Services.**

Publication: 20:11 VA.R. 1178 February 9, 2004.

Correction to Final Regulation:

Page 1178, 12VAC30-120-140, column 2, strike the Registrar's Notice in its entirety and insert the following:

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:2 VA.R. 100-127 October 6, 2003, with a correction to an error on page 105, 12VAC30-120-140, definition of "Personal services." Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the correction to the definition of "Personal services" is noted as follows:

Page 105, 12VAC30-120-140, definition of "Personal services," change "Personal ~~care~~ services" to "Personal ~~care~~ [assistance] services."

VA.R. Doc. No. R03-157

COMMONWEALTH TRANSPORTATION BOARD

Title of Regulation: **24VAC30-92. Secondary Street Acceptance Requirements.**

Publication: 25:15 VA.R. 2776-2802 March 30, 2009.

Correction to Final Regulation:

Page 2800, column 2, 24VAC30-92-140 D, paragraph 3, line 4, change "subdivision B 2 c" to "subdivision B 2 a."

VA.R. Doc. No. R07-217; Filed April 1, 2009, 8:38 a.m.