# VIRGINIA DEPARTMENT OF EDUCATION
## DEPARTMENT OF SPECIAL POPULATIONS

## Your Family's Special Education Rights
# VIRGINIA PROCEDURAL SAFEGUARDS NOTICE
# SPECIAL EDUCATION PROCEDURAL SAFEGUARDS REQUIREMENTS

**Revised September 2024**

This document amends the September 2013 Procedural Safeguards Document of the Virginia Department of Education (VDOE). The revisions reflect the mandates as found in the:

- *Individuals with Disabilities Education Improvement Act* of 2004 (IDEA; P.L. 108-446; 20 USC § 1400 et seq.) Issued December 3, 2004; effective July 1, 2005.
- Federal Regulations implementing IDEA. 34 CFR Part 300. Issued August 14, 2006; effective October 13, 2006.
- Additional federal IDEA regulations; 34 CFR Part 300; Federal Register, Vol. 73, No. 231. Issued December 1, 2008; effective December 31, 2008.
- Additional federal IDEA regulations: 34 CFR Part 300; Federal Register, Vol. 78, No. 31. Issued February 14, 2013; effective March 18, 2013.
- *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (Virginia Regulations). 8 VAC 20-81-10 et seq. Issued and effective July 7, 2009, as amended.

This document conforms to the U.S. Department of Education's Model Procedural Safeguards Notice (June 2009 revised) and includes specific Virginia requirements that must be included in this Notice.

Additional information about special education and these procedural safeguards is available by contacting the local director of special education or school principal, your local school division's Parent Resource Center, the Parent Educational Advocacy Training Center (PEATC), or VDOE's Office of Dispute Resolution and Administrative Services, (804) 750-8143. This document is also available at: https://www.doe.virginia.gov/home/showpublisheddocument/922.

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# GENERAL INFORMATION[1]

## Introduction: What are the Procedural Safeguards?

"Your Family's Special Education Rights" identifies key parts of the "*Individuals with Disabilities Education Improvement Act of 2004*" (IDEA), a federal law governing the education of students with disabilities. IDEA 2004 requires that families be informed of their special education rights, including how families and schools can resolve problems. If you have questions or want to learn more about how special education works, please contact VDOE's Parent Ombudsman at (804) 371-7420, your local director of special education, your local Parent Resource Center, or the Parent Educational Advocacy Training Center at 1 (800) 869-6782 or email partners@peatc.org.

## Overview: What are some of the Important Special Education Terms?

The IDEA says that each student that a school identifies as having a disability and who needs special education and related services to benefit from their education is entitled to a Free Appropriate Public Education (FAPE).

FAPE must be provided in the Least Restrictive Environment (LRE). This means that as much as possible, given the educational needs of a child, each child with a disability will attend class and participate in other activities with children without disabilities.

The plan for how to provide FAPE to each student is developed each year, and it is called the Individualized Education Program (IEP). IEPs are written by the child's IEP Team, which includes the parent(s). Parents have "consent rights," which means you must approve certain actions before the school can act. Families must receive regular progress reports about their children's progress toward reaching IEP goals.

IEPs include, in part, the following:

- A present level of academic achievement and functional performance,
- Statement of the specialized aids and services to be provided,
- Annual goals stated in measurable terms,
- An explanation of the amount of time when the child will not be participating in regular education classes,
- A list of accommodations necessary for classes and testing, and
- A plan for how the child will participate in the state's accountability system, including SOL tests.

[1] The Section of the IDEA that covers the provisions in this document is known as Part B. Hereinafter in this document, IDEA will be identified as IDEA, without the identifying section Part, unless needed for clarity. Virginia's Regulations governing special education are identified in this document as Virginia Regulations.

## Prior Written Notice

**You have the right to be given written information about the school division's actions that involve your child's educational needs. The information will assist you in providing informed consent for educational decisions.**

### Notice

Your school division must give you written notice (provide you with certain information in writing), whenever it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

### Content of Notice

The written notice must:

1. Describe the action that your school division proposes or refuses to take;
2. Explain why your school division is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school division used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school division is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding the IDEA;
7. Describe any other choices that your child's Individualized Education Program (IEP) Team considered and the reasons why those choices were rejected; **and**
8. Provide a description of other reasons why your school division proposed or refused the action.

### Notice in Understandable Language

The notice must be:

1. Written in language understandable to the general public; **and**
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your school division must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that 1 and 2 have been met.

## Native Language

**You have the right to have information in a language you understand.**

*Native language,* when used with an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. 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 a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

## Electronic Mail

**If offered by your school division, you have the right to choose to get information by email.**

If your school division offers parents the choice of receiving documents by email, you may choose to receive the following by email:

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a request for due process.

## Audio and video recording

**You have the right to audio record meetings involving your child's eligibility, IEP, and/or to review discipline matters.**

The federal law and regulations governing special education leave it to the states to determine the provisions, if any, for parents to audio or video record meetings related to their children's special education program. Virginia's special education regulations include provisions under Procedural Safeguards that define these requirements.

You may audio record meetings involving your child's eligibility; IEP; and/or review discipline matters.

- You must inform your school's personnel in writing before the meeting that you will be audio recording the meeting. If you do not inform school personnel of this action, you must provide them with a copy of the audio recording.
- You are responsible for your own audio equipment and materials for audio recording.
- If school personnel audio records the meeting or receives a copy of your audio recording, the audio recording becomes a part of your child's educational record.

The school division may have policies that prohibit, limit, or otherwise regulate the use of:

- Video recording devices at meetings; or
- Audio or video recording devices at meetings other than those meetings identified above.

The school division's policies must:

- stipulate that the recordings become part of the child's educational record.
- ensure that the policy is uniformly applied.

If the policy prohibits the use of the devices, the policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP and the special education process or to implement other parental rights under the laws and regulations governing special education.

## Parental Consent – Definition

**You have the right to allow information to be shared or certain actions to be taken, and you must be told of that right in a language you understand. You have the right to take away (revoke) your consent.**

### Consent

*Consent* means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at any time. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

## Parental Consent

**You have certain consent rights. For example, the school must get your consent to evaluate your child for special education, and to start, change, or stop providing special education and related services.**

### Consent for Initial Evaluation

Your school division cannot conduct an initial evaluation of your child to determine whether your child is eligible under the IDEA to receive special education and related services without first doing the following:

1. Providing you with prior written notice of the proposed action; and
2. Obtaining your consent.

Your school division must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school division to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school division may, but is not required to, seek to conduct an initial evaluation of your child by utilizing mediation or due process procedures later described in this document. Your school division will not violate its obligations to locate, identify, and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

### Special Rules for Initial Evaluation of Wards of the State

[If a child is a ward of the State and is not living with his/her parent]

The school division does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school division cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; **or**
3. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

*Ward of the State*, as used in the IDEA, means a child who, as determined by the state where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; **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.

**Parental Consent for Services**

The school division must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, your school division **may not** use the procedures for mediation and due process in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent and the school division does not provide your child with the special education and related services for which it sought your consent, your school division:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an Individualized Education Program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

**Parental Consent for Reevaluations**

Your school division must obtain your informed consent before it reevaluates your child unless your school division can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. You did not respond.

In that case, the school division will proceed with the re-evaluation process.

If you refuse to consent to your child's reevaluation, the school division may, but is not required to, pursue your child's reevaluation by using the procedures for mediation and due process to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school division does not violate its obligations under the IDEA if it declines to pursue the reevaluation in this manner.

**Documentation of Reasonable Efforts to Obtain Parental Consent**

Your school division must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluate, and to locate parents of Wards of the State for initial evaluations. The documentation must include a record of the school division’s attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; **and**
3. Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

**Revoking Your Consent**

You have the right to revoke your consent for your child to continue receiving special education and related services at any time. Such revocation of consent applies to all the special education and related services that your child is receiving. If you disagree about a particular service, you may address this issue with your child's IEP Team and if the issue remains unresolved, mediation and due process are available options to resolve the matter.

- You must put this request in writing to your local director of special education, your child's principal, or your child's IEP Coordinator.
- Your school division must then provide you with written prior notice before ceasing the services for your child.
- Your school division may not use mediation or due process to attempt to change your mind or get a hearing officer to rule against your decision.
- Your school division may not require you to explain your reasons for requesting that the services stop for your child.
- If you change your mind later and want your child to receive services again, your school division must treat your request as a request for an initial evaluation, rather than a re-evaluation.

Please keep in mind that after your revocation of consent goes into effect;

- Your child is treated the same as any other non-disabled student, along with access to accommodations, if any, that are available to non-disabled students.
- Your child's IEP is no longer in effect.
- Your child will be subject to the discipline rules for students without disabilities.

**Other Consent Requirements**

In Virginia, your consent is also required before:

- Any changes in the identification of your child's disability and for any changes to your child's IEP;
- Any changes made to your child's eligibility for special education and related services; and
- Any partial or complete termination of special education and related services, except if your child graduates with a standard or advanced studies diploma.

Your consent is not required before your school division may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

Your school division may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you have enrolled your child in a private school at your own expense or if you are homeschooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school division may not use its consent override procedures (i.e., the mediation and due process procedures) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

**Consent – Special Requirement Regarding Foster Parents**

If your child is living with a foster parent, and your parental rights have not been terminated, your school division must send you a written notice that school personnel will rely on the foster parent to make decisions regarding your child's special education program. These decisions relate to matters regarding your child's IEP services and placement, as well as eligibility decisions.

The school division will send you this written notice at the beginning of the school year or at any time throughout the school year when there is a meeting related to your child's IEP or eligibility for special education and related services. The school division's notice remains in effect until you advise the school division that you will respond as your child's biological or adoptive parent in matters involving your child's special education program. Make sure that the school division has your current mailing address and contact information.

**Transfer Students – What happens if you move?**

If your family moves to another school division in Virginia or you have moved from another state to Virginia, your new school division does not need your consent to immediately implement your child's IEP in the new school; however, your new school division must ensure that your child has available special education and related services, in consultation with you, and include services comparable to those described in your child's IEP.

- Your new school division will contact your former school division and make every effort to obtain your child's records relative to the provision of special education and related services. Your new school division will then decide on one of the following options to:

    - adopt and implement the previous IEP with your consent,
    - develop and implement an interim IEP with your consent while obtaining and reviewing whatever information is needed to develop a new IEP, or
    - conduct an evaluation and develop and implement a new IEP with your consent.

- If you and school personnel cannot agree on interim services or a new IEP, either you and/or your new school division may initiate the dispute resolution options of mediation or due process to resolve the dispute. During the resolution of the disagreement, your new school division must provide FAPE, in consultation with you, including services comparable to those described in your child's IEP from the previous school division.

# INDEPENDENT EDUCATIONAL EVALUATIONS

**If you disagree with an evaluation completed by the school division, you have the right to have your child evaluated by someone not connected to your child's school division, at the school division's expense.**

### General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school division.

If you request an independent educational evaluation, the school division must provide you with information about where you may obtain an independent educational evaluation and about the school division's criteria that apply to independent educational evaluations.

### Definitions

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school division responsible for the education of your child.

*Public expense* means that the school division either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of the IDEA, which allow each State to use whatever State, local, Federal and private sources of support are available in the State to meet the requirements of the IDEA.

### Parent's Right to Evaluation at Public Expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your school division, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your school division must, without unnecessary delay, either: (a) File a request for due process to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school division demonstrates

in a hearing that the evaluation of your child that you obtained did not meet the school division's criteria.

2. If your school division requests a hearing and the final decision is that your school division's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.

3. If you request an independent educational evaluation of your child, the school division may ask why you object to the evaluation of your child obtained by your school division. However, your school division may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a request for due process to defend the school division's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school division conducts an evaluation of your child with which you disagree.

**Parent-initiated Evaluations**

If you obtain an independent educational evaluation of your child at public expense or you share with the school division an evaluation of your child that you obtained at private expense:

1. Your school division must consider the results of the evaluation of your child, if it meets the school division's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**

2. You or your school division may present the evaluation as evidence at a due process hearing regarding your child.

**Requests for Evaluations by Hearing Officers**

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

**School Division Criteria**

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, must be the same as the criteria that the school division uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, a school division may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

# CONFIDENTIALITY OF INFORMATION

Virginia's document, "Management of Student Scholastic Records," is available on the VDOE Student Records webpage (https://www.doe.virginia.gov/?navid=257).

## Definitions

As used under the heading **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the *Family Educational Rights and Privacy Act* of 1974, 20 U.S.C. 1232g (FERPA)).

## Personally Identifiable Information

*Personally identifiable* means information that has:

- Your child's name, your name as the parent, or the name of another family member;
- Your child's address;
- A personal identifier, such as your child's social security number or student number; **or**
- A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## Notice to Parents

**You have the right to be told by the state about how information about your child will be used and kept confidential by the state and the local school division.**

The Virginia Department of Education (VDOE) must give adequate notice to fully inform parents about the confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in Virginia;
    - This notice is provided in multiple languages on the VDOE website accessible at https://www.doe.virginia.gov/programs-services/special-education/regulations-laws-policies. Should you require an additional translation please contact your local educational agency with the request. For contact information for local educational agencies refer to https://www.doe.virginia.gov/about-vdoe/virginia-school-directories/virginia-public-school-division-staff-listing-by-division. For any additional information contact the VDOE at (804) 298-3148.
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods Virginia intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
    - The VDOE collects a variety of data on public education in the Commonwealth,

including information on enrollment, demographics, student achievement, finances, and safety. The VDOE's procedures for collecting data are intended to ensure the usefulness, timeliness, accuracy, and comparability of education data that inform key policy decisions in Virginia. Most data collections are related to specific requirements of state and federal law. School divisions report data to the department through secure web-based systems designed to increase accuracy while lessening administrative burdens on educators at the local level. All VDOE data systems are secured to the Commonwealth Security Standard SEC530 (https://www.vita.virginia.gov/media/vitavirginiagov/it-governance/psgs/pdf/SEC530_Information_Security_Standard.pdf). For more information and access to publicly available data, visit the VDOE's website at https://www.doe.virginia.gov/data-policy-funding/data-reports.

3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
    - The Library of Virginia Records Retention and Disposition Schedule addresses the responsibilities of LEAs to manage the scholastic records of all students in compliance with applicable federal and state laws and regulations, including the Board of Education's regulations, 8 VAC 20-150-10 (Management of the Student's Scholastic Record in the Public Schools of Virginia) and the *Virginia Public Records Act*. Additional information is available on the VDOE website at https://www.doe.virginia.gov/programs-services/student-services/student-records.
4. A description of all of the rights of parents and children regarding this information, including the rights under the *Family Educational Rights and Privacy Act* (FERPA) and its implementing regulations in 34 CFR Part 99.
    - The *Family Educational Rights and Privacy Act* (FERPA) is the federal law that protects the privacy of student education (scholastic) records. An education record is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18, "eligible student," or is enrolled in a postsecondary institution. Parents and eligible students are granted the following rights:
        - The right to inspect and review the student's education records
        - The right to request that a school correct the student's education record if he or she believes information is inaccurate or misleading
        - The right to a hearing if the school decides not to amend the student's education record
        - The right to place a statement with the education record on what he or she believes is accurate if the school decides not to amend the student's education record

More information is available on the VDOE website at https://www.doe.virginia.gov/programs-services/student-services/student-records or from the United States Department of Education at https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html.

Before any major identification, location, or evaluation activity (also known as "child find"), school divisions must publish or announce the notice in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity to locate, identify, and evaluate children in need of special education and related services.

## ACCESS RIGHTS

**You have the right to review your child's records.**

Your school division[2] must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school division under the IDEA. The school division must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the school division to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the school division provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The school division may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable Virginia law governing such matters as guardianship, or separation and divorce.

### Record of Access

**If your child's education record is seen by someone other than you, or an employee of the school division, the school that maintains your child's record must keep a record of who saw your child's record, and when and why they reviewed it.**

Each school division must keep a record of parties obtaining access to education records collected, maintained, or used under the IDEA (except access by parents and authorized employees of the school division), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

[2] These provisions regarding records apply to "participating agencies." "Participating agency" means any school division, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA. However, since this document focuses on the parent's involvement with the local school division, the term "local school division" is used, rather than "participating agency."

## Records on More Than One Child

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## List of Types and Locations of Information

On request, each school division must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

## Fees

Each school division may charge a fee for copies of records that are made for you under the IDEA if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A school division may not charge a fee to search for or to retrieve information under the IDEA.

## Amendment of Records at Parent's Request

**You have the right to ask that your child's education record be changed if you think the record is not correct or that it violates your child's privacy.**

If you believe that information in the education records regarding your child collected, maintained, or used under the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school division that maintains the information to change the information.

The school division must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the school division refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading ***Opportunity for a Hearing***.

## Opportunity for a Hearing

**You have the right to a hearing if your request to have your child's educational record changed is denied.**

The school division must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## Hearing Procedures

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the *Family Educational Rights and Privacy Act* (FERPA).

In Virginia, school divisions have the option of using the due process hearing procedures as described in the section of this document, "Due Process Procedures," or maintain their individual procedures as long as those procedures conform with FERPA.

## Result of Hearing

**You have the right to have your child's education record changed as a result of a hearing or to include a statement in the education record noting that you disagree with information in the record.**

If, as a result of the hearing, the information is found to be inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the school division must change the information accordingly and inform you in writing.

If, as a result of the hearing, the information is found not to be inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, the school division must inform you of your right to make a statement commenting on the information or providing any reasons you disagree with the decision. This statement must be placed in the records that the school division maintains on your child.

Such an explanation placed in the records of your child must:

1. Be maintained by the school division as part of the records of your child as long as the record or contested portion is maintained by the school division; **and**
2. If the school division discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

## Consent For Disclosure of Personally Identifiable Information

**You have the right to consent to release information that identifies your child. Your consent is not needed in some circumstances.**

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the *Family Educational Rights and Privacy Act* (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under Virginia law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If you have unilaterally placed your child in a private school that is not located in the same school division you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school division where the private school is located and officials in the school division where you reside.

## Safeguards

**You have the right to expect that your school division will keep your child's education record confidential.**

Each school division must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each school division must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding Virginia's policies and procedures regarding confidentiality under the IDEA and the *Family Educational Rights and Privacy Act* (FERPA).

Each school division must 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.

## Destruction of Information

**You have the right to ask the school division to destroy your child's education information when it is no longer needed.**

Your school division must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

# ALTERNATIVE DISPUTE RESOLUTION

Additional information regarding the procedures, and the forms for the mediation, complaint resolution, and due process systems are available on the Special Education Due Process Hearings webpage (https://www.doe.virginia.gov/?navid=652), or by contacting VDOE.

# MEDIATION

**You have the right to ask for mediation to resolve a disagreement, including those issues which lead to a request for a due process hearing. You and the school division have the right to refuse mediation. Your request for mediation cannot slow down or stop your request for due process.**

### General

The school division must make mediation available to allow you and the school division to resolve disagreements involving any matter under the IDEA, including matters arising prior to the filing of a request for due process. Thus, mediation is available to resolve disputes under the IDEA, whether or not you have filed a request for due process as described under the heading ***Filing a Request for due process***.

### Requirements

The mediation process:

1. must be voluntary on your part and the school division's part;
2. is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under the IDEA; **and**
3. is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

In order for parents to understand the benefits of mediation, the school division may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in Virginia; **and**
2. Who would explain the benefits and encourage the use of the mediation process to you?

The VDOE must have a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The VDOE must select mediators on a rotational basis.

The VDOE is responsible for the cost of the mediation process, including the costs of the mediation sessions.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school division.

If you and the school division resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
2. Is signed by both you and a representative of the school division who has the authority to bind the school division.

A written, signed mediation agreement is enforceable in any Virginia court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a Federal District Court.

**Impartiality of Mediator**

The mediator:

1. May not be an employee of either the school division that is involved in the education or care of your child or of VDOE if it is providing direct services to your child; **and**
2. Must not have a personal or professional interest that conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school division or State agency solely because he or she is paid by the agency or school division to serve as a mediator.

## STATE COMPLAINT RESOLUTION PROCEDURES

**Difference Between Due Process Hearing and State Complaint Resolution Procedures**

**In addition to mediation, you have the right to use the state complaint process or a due process hearing to resolve disagreements with the school division. These methods have different procedures. For example, only a parent or a school division can ask for a due process hearing. A state complaint, on the other hand, may be filed by any individual or organization.**

The regulations for IDEA set forth separate procedures for State complaints and for requests for due process hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any IDEA requirement by a school division, the VDOE, or any other public agency. Only you or a school division may file a request for due process on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or

educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.

The VDOE staff generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended. An impartial due process hearing officer must hear a request for due process (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days after the end of the resolution period, as described in this document under the heading ***Resolution Process***. The hearing officer may grant a specific extension of the timeline at your request or the school division's request.

## Adoption of VDOE Complaint Resolution Procedures

### General

The VDOE must have written procedures for:

- Resolving any complaint, including a complaint filed by an organization or individual from another state;
- The filing of a complaint with VDOE;
- Widely disseminating VDOE's complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

The VDOE's Complaint Resolution Procedures are available on the Resolving Disputes webpage (https://www.doe.virginia.gov/?navid=248).

### Remedies for Denial of Appropriate Services

In resolving a State complaint in which VDOE has found a failure to provide appropriate services, VDOE must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; **and**
2. Appropriate future provision of services for all children with disabilities.

## Minimum VDOE Complaint Resolution Procedures

### Time Limit; Minimum Procedures

The VDOE must include in its complaint resolution procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if VDOE determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Provide the school division with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the school division, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent decision as to whether the school division is violating a requirement of the IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for VDOE's final decision.

**Time Extension; Final Decision; Implementation**

The VDOE's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) the parent and the school division voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution.

2. Include procedures for effective implementation of VDOE's final decision, if needed, including (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

## STATE COMPLAINTS AND DUE PROCESS HEARINGS

If a written State complaint is received that is also the subject of a due process hearing as described below under the heading ***Filing a Request for Due Process***, or the State complaint contains multiple issues of which one or more are part of such a hearing, VDOE must set aside the State complaint, or any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the school division), then the due process hearing decision is binding on that issue and VDOE must inform the complainant that the decision is binding.

The VDOE must resolve any complaint alleging a school division's failure to implement a due process hearing.

**Filing a Complaint**

**You have the right to file a complaint with VDOE, but your complaint must contain specific information.**

An organization or individual may file a signed written State complaint under the procedures described above. The State complaint must include:

1. A statement that a school division has violated a requirement of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations regarding a specific child:
   (a) The name of the child and the address of the child's residence;
   (b) The name of the school the child is attending;
   (c) In the case of a homeless child or youth, 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 filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Resolution Procedures.***

The party filing the State complaint must forward a copy of the complaint to the school division serving the child at the same time the party files the complaint with the VDOE.

In Virginia, parties to the complaint (both you and the school division) have the right to appeal the final complaint decision within 30 calendar days of the issuance of the decision. The Complaint Appeal Reviewer's decision is final. Additional information regarding this appeal process is available on VDOE's website noted above, or by contacting VDOE.

## DUE PROCESS PROCEDURES

### Filing a Request for a Due Process Hearing

**You have the right to ask for a due process hearing if you and the school cannot agree about your child's education. You have the right to receive information about free or low-cost legal help.**

#### General

You or the school division may file a request for due process on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The request for due process must allege a violation that happened not more than two years before you or the school division knew or should have known about the alleged action that forms the basis of the request for due process.

The above timeline does not apply to you if you could not file a request for due process within the timeline because:

1. The school division specifically misrepresented that it had resolved the issues identified in the request; **or**
2. The school division withheld information from you that it was required to provide you under the IDEA.

**Information for Parents**

The school division must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school division file a request for due process. The VDOE has a statewide listing of such services available on its website on the Special Education Due Process Hearings webpage (https://www.doe.virginia.gov/?navid=652). Then under "Due Process Documents," access "Legal/Advocacy Groups and Resources for Special Education."

Virginia law allows the parties to a due process hearing to be represented by non-attorneys. *Code of Virginia*, § 22.1-214 C.

## Request for due process

**Your request for due process must include certain information. You have the right to have the request kept confidential. You have the right to have a response to your request.**

**General**

In order to request a hearing, you or the school division (or your attorney or the school division's attorney) must submit a request for due process to the other party. That request for a due process hearing must contain all of the content listed below and must be kept confidential.

You or the school division, whichever one filed the request for a hearing, must also provide VDOE with a copy of the request.

**Content of the Request**

The request for due process must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;

5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to you or the school division at the time.

You or the school division may not have a due process hearing until you or the school division (or your attorney or the school division's attorney) file a request for due process that includes the information listed above.

**Sufficiency of the Request for Due Process**

In order for a request for due process to go forward, it must be considered sufficient. The request for due process will be considered sufficient (to have met the content requirements above) unless the party receiving the request for due process (you or the school division) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the request, that the receiving party believes that the request for due process does not meet the requirements listed above.

Within 5 calendar days of receiving the notification the receiving party (you or the school division) considers a request for due process insufficient, the hearing officer must decide if the request for due process meets the requirements listed above, and notify you and the school division in writing immediately.

**Request Amendment**

You or the school division may make changes to the request for due process only if:

1. The other party approves of the changes in writing and is given the chance to resolve the request for due process through a resolution meeting, described below; **or**
2. By no later than 5 days before the due process hearing begins, the hearing officer grants permission for the changes.

If the requesting party (you or the school division) makes changes to the request for due process, the timelines for the resolution meeting (within 15 calendar days of receiving the request) and the time period for resolution (within 30 calendar days of receiving the request) start again on the date the amended request is filed.

**School Division's Response to a Request for Due Process**

If the school division has not sent a prior written notice to you, as described under the heading ***Prior Written Notice***, regarding the issues contained in your request for due process, the school division must, within 10 calendar days of receiving the request for due process, send to you a response that includes:

1. An explanation of why the school division proposed or refused to take the action raised in the request for due process;
2. A description of other options that your child's Individualized Education Program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school division used as the basis for the proposed or refused action; **and**

4. A description of the other factors that are relevant to the school division's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school division from asserting that your request for due process was insufficient.

**Other Party Response to a Request for Due Process**

Except as stated under the sub-heading immediately above, ***School division's response to a request for due process***, the party receiving a request for due process must, within ten calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the request.

## Model Forms

**You have the right to use model forms to help you request due process.**

The VDOE must develop model forms to help you file a request for due process and a State complaint. However, VDOE or the school division may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a request for due process or a State complaint. The VDOE's model form is available on the Special Education Due Process Hearings webpage.

## The Child's Placement While the Hearing is Pending

**Except in specialized circumstances, your child has the right to continue getting the same educational services until the due process is resolved, unless you and the school division make a different agreement.**

Except as provided below under the heading ***Procedures When Disciplining Children with Disabilities,*** once a request for due process is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and VDOE or school division agree otherwise, your child must remain in his or her current educational placement.

If the request for due process involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the request for due process involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who 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 has been receiving.

If the child is found eligible under Part B of the IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school division must provide those special education and related services that are not in dispute (those which you and the school division both agree upon). Part C is the section of IDEA that relates to infants and toddlers. In Virginia, children with disabilities are age-eligible from 2 through 21 for Part B services.

## Resolution Process

**Before a due process hearing is held, you have the right to meet with school staff to discuss the issues in your due process case, and to try to resolve your concerns. However, you and the school division can agree that you both do not want a resolution meeting, or you can both agree to use mediation.**

### Resolution meeting

Within 15 calendar days of receiving notice of your request for due process, and before the due process hearing begins, the school division must convene a meeting with you and the relevant member or members of the Individualized Education Program (IEP) Team who have specific knowledge of the facts identified in your request for due process. The meeting:

1. Must include a representative of the school division who has decision-making authority on behalf of the school division; **and**
2. May not include an attorney of the school division unless you are accompanied by an attorney.

The purpose of the meeting is for you to discuss your request for due process, and the facts that form the basis of the request, so that the school division has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the school division agree in writing to waive the meeting; **or**
2. You and the school division agree to use the mediation process, as described under the heading ***Mediation***.

### Resolution Period

If the school division has not resolved the request for due process to your satisfaction within 30 calendar days of the receipt of your request for due process (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the school division have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the school division is not able to obtain your participation in the resolution meeting, the school division may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your request for due process. Documentation of such efforts must include a record of the school division's attempts to arrange a mutually agreed upon time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to you and any responses received; and
- Detailed records of visits made to your home or place of employment and the results of those visits.

If the school division fails to hold the resolution meeting within 15 calendar days of receiving notice of your request for due process **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

**Adjustments to the 30-Calendar-Day Resolution Period**

If you and the school division agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school division agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the school division agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school division withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

**Written Settlement Agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the school division must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school division who has the authority to bind the school division; **and**
2. Enforceable in any state court of competent jurisdiction (a State court that has authority to hear this type of case) or in a Federal District Court.

### Agreement Review Period

If you and the school division enter into an agreement as a result of a resolution meeting, either party (you or the school division) may void the agreement within 3 business days of the time that both you and the school division signed the agreement.

## Impartial Due Process Hearing

**You have the right to have a due process hearing by a knowledgeable hearing officer who is not employed by the school division or the Virginia Department of Education. You and the school division must follow the rules and timelines for due process hearings.**

### General

Whenever a request for due process is filed, you or the school division involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Request for Due Process*** and ***Resolution Process*** sections.

### Impartial Hearing Officer

At a minimum, a hearing officer:

1. Must not be an employee of VDOE or the school division that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each school division must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer. This information is also available on VDOE's website or by contacting VDOE.

# SUBJECT MATTER OF DUE PROCESS HEARING

The special education hearing officer has the discretionary authority to permit either party to raise issues at the hearing that were not raised in the notice by the party requesting the hearing in light of particular facts and circumstances of the case. In application, this means that:

The party (you or the school division) that requests the due process hearing does not have an absolute right to raise additional issues during the hearing that were not part of the request for the hearing. The party requesting the hearing may raise additional issues at the hearing only if the other party

agrees, except as follows:

If the other party will not agree to the additional issues being heard, the party requesting the hearing must initiate another request for a due process hearing to be heard separately on the additional issues.

In the event that the party requesting the hearing requests the hearing officer to include additional issues *in response to* facts, issues or arguments raised by the other party, then the hearing officer has the discretionary authority to permit the additional issues to be raised at the hearing, even if the other party does not agree.

## Hearing Rights

**You have certain rights during due process hearings, including the right to have access, before the hearing, to all of the evidence that the school will use during the hearing, to have a lawyer or other persons helping you, to have a record of the hearing at no cost, and to have the hearing open to the public.**

### General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. Request that the 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;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
5. Obtain written, or, at your option, electronic findings of fact and decisions.

### Additional Disclosure of Information

At least 5 business days prior to a due process hearing, you and the school division must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school division intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

### Parental Rights at Hearings

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

## Hearing Decisions

**You have the right to have a decision based on the issues in your due process request, to file a separate due process request if new issues arise, and to have information that specifically identifies your child removed from the hearing decision before the decision is made public.**

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:

1. Interfered with your child's right to a FAPE;
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a FAPE to your child; **or**
3. Caused a deprivation of an educational benefit.

**Note**

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school division to comply with the requirements in the procedural safeguards section of the Federal regulations under the IDEA (34 CFR §§300.500 through 300.536).

### Separate Request for a Due Process Hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate request for due process on an issue separate from a request for due process already filed.

### Findings and Decisions to the Virginia State Special Education Advisory Committee and General Public

The VDOE is responsible for deleting any personally identifiable information, as well as:

1. Providing the findings and decisions in the due process hearing to the State Special Education Advisory Committee; **and**
2. Making those findings and decisions available to the public.

The VDOE fulfills these responsibilities by posting these decisions quarterly on its website.

## Timelines and Convenience of Hearings and Reviews

**You have the right to have the hearing at a time and place that is convenient to you, to have a final decision in the hearing within a set timeline, and to receive a copy of the decision.**

The VDOE must ensure that not later than 45 calendar days after the expiration of the 30-calendar- day period for resolution meetings **or**, as described under the sub-heading ***Adjustments to the 30-Calendar-Day***

***Resolution Period,*** not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party. Virginia Regulations further require that the hearing officer may only grant the extension if it is in the best interest of the child.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

## Civil Actions, Including the Time Period in Which to File Those Actions

**If either you or the school division disagrees with the hearing decision, a civil action can be filed in state or federal court, but there is a time limit.**

### General

Any party (you or the school division) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a Virginia court of competent jurisdiction (a State court that has authority to hear this type of case) or in a Federal District Court without regard to the amount in dispute.

### Time Limitation

The party (you or the school division) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action in a Federal District Court, or within 180 days in a state circuit court.

### Additional procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school division's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

### Jurisdiction of Federal District Courts

The Federal District Courts have the authority to rule on actions brought under the IDEA without regard to the amount in dispute.

**Note**

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the *Americans with Disabilities Act of 1990*, Title V of the *Rehabilitation Act of 1973* (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA.

This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., due process hearing procedures) before going directly into court.

## Attorneys' Fees

**A court may decide that the losing party must pay the other party's legal fees.**

### General

In any action or proceeding brought under the IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to VDOE or school division as prevailing party, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

In any action or proceeding brought under the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to VDOE or school division as the prevailing party, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

### Award of Fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under the IDEA for services performed after a written offer of settlement to you if:
    a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than ten calendar days before the proceeding begins;
    b. The offer is not accepted within ten calendar days; **and**
    c. The court or hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

    Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the Individualized Education Program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action. In Virginia, this also extends to mediation that is conducted prior to the filing of a request for due process.

    A resolution meeting, as described under the heading ***Resolution Meeting***, is not considered a meeting convened as a result of a due process hearing or court action, and also is not considered a due process hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. 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 similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. The attorney representing you did not provide to the school division the appropriate information in the due process request notice as described under the heading ***Request for Due Process***.

However, the court may not reduce fees if the court finds that the State or school division unreasonably delayed the final resolution of the action or proceeding or if there was a violation under the procedural safeguards provisions of the IDEA.

# PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

**You have the right to respond to certain disciplinary actions taken with your child. If your child breaks school rules, your child's educational placement may be changed. However, the school division must follow certain steps.**

## Authority of School Personnel

### Case-by-Case Determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

### General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **ten school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **ten school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (refer to ***Change of Placement Because of Disciplinary Removals*** for the definition, below).

Once a child with a disability has been removed from his or her current placement for a total of **ten school days** in the same school year, the school division must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading ***Services***.

### Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (refer to ***Manifestation Determination***, below) and the disciplinary change of placement would exceed **ten school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under ***Services***. The child's IEP Team, which includes the parent(s), determines the interim alternative educational setting for such services.

**Services**

**If your child is removed from school for more than ten days during a school year because they are being disciplined for breaking school rules, your child must be given educational services. Also, your child's behavior may be reviewed, and a plan developed so that the behavior does not happen again.**

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

A school division is only required to provide services to a child with a disability who has been removed from his or her current placement for **ten school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed.

A child with a disability who is removed from the child's current placement for **more than ten school days** must:

1. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; **and**
2. 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 happen again.

After a child with a disability has been removed from his or her current placement for **ten school days** in that same school year, and **if** the current removal is for **ten school days** in a row or less **and** if the removal is not a change of placement (refer to definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (refer to definition below), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

**Manifestation Determination**

**If the school division decides to change your child's placement because of behavior, you and the school staff must meet to determine if the behavior was connected to your child's disability. The school must also consider if the behavior was caused by the school division not following your child's IEP.**

Within **ten school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **ten school days** in a row or less and not a change of placement), the school division, the parent, and relevant members of the IEP Team (as determined by the parent and the school division) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

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 school division's failure to implement the child's IEP.

If the school division, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school division, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school division's failure to implement the IEP, the school division must take immediate action to remedy those deficiencies.

**Determination that Behavior was a Manifestation of the Child's Disability**

If the school division, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school division had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special circumstances***, the school division must return the child to the placement from which the child was removed, unless the parent and the division agree to a change of placement as part of the modification of the behavioral intervention plan.

**Special Circumstances**

**If your child's behavior involves illegal or controlled drugs, a dangerous weapon, or serious bodily injury, the school division has greater flexibility to discipline your child.**

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the child:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of VDOE or a school division;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of VDOE or a school division; **or**
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of VDOE or a school division.

**Definitions**

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*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 healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Serious bodily injury* has the meaning given the term ''serious bodily injury'' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. It means "bodily injury that involves a 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."

*Weapon* has the meaning given the term ''dangerous weapon'' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code and § 18.2-308.1 of the *Code of Virginia*. *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 serious bodily injury, except that such term does not include a pocket knife with a blade of less than three inches in length.

**Notification**

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the school division must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

## Change of Placement Because of Disciplinary Removals

**Your child's suspension from school can be considered to be a "change in placement," in some circumstances.**

A removal of a child with a disability from the child's current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. The child has been subjected to a series of removals that constitute a pattern because:
    a. The series of removals total more than 10 school days in a school year;
    b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; **and**
    c. Of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school division and, if challenged, is subject to review through due process and judicial proceedings.

### Determination of Setting

The Individualized Education Program (IEP) Team must determine the interim alternative educational setting for removals that are **changes of placement**, and removals under the headings ***Additional authority*** and ***Special circumstances***, above.

### Appeal

**You have the right to file for a due process hearing if you disagree with the school division's decisions when disciplining your child.**

#### General

The parent of a child with a disability may file a request for due process (see above) if he or she disagrees with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

The school division may file a request for due process if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

#### Authority of Hearing Officer

A hearing officer that meets the requirements described under the sub-heading ***Impartial Hearing Officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading ***Authority of School Personnel***, 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 hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated if the school division believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a school division files a request for due process to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Request for Due Process Procedures, Hearings on Request for Due Process***, except as follows:

1. The school division must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless the parents and the school division agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **7** calendar days of receiving notice of the request for due process. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of

receipt of the request for due process.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (refer to ***Appeals***, above).

**Placement During Appeals**

When, as described above, the parent or school division has filed a request for due process related to disciplinary matters, the child must (unless the parent and school division agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

**Protections for Children Not Yet Eligible for Special Education and Related Services**

**You have the right to expect certain protections for your child who is disciplined but not yet receiving special education and related services.**

**General**

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the school division had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

## BASIS OF KNOWLEDGE FOR DISCIPLINARY MATTERS

A school division must be deemed to have knowledge that a child is a child with a disability before the behavior that brought about the disciplinary action occurred:

1. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;
2. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; **or**
3. The child's teacher or other school division personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school division's director of special education or to other supervisory personnel of the school division.

**Exception**

A school division would not be deemed to have such knowledge if:

1. The child's parent has not allowed an evaluation of the child or refused special education services; **or**
2. The child has been evaluated and determined to not be a child with a disability under the IDEA.

### Conditions that Apply if There is No Basis of Knowledge

If prior to taking disciplinary measures against the child, a school division does not have knowledge that a child is a child with a disability, as described above under the sub-headings ***Basis of Knowledge for Disciplinary Matters*** and ***Exception***, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors. However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school division, and information provided by the parents, the school division must provide special education and related services in accordance with the IDEA, including the disciplinary requirements described above.

## Referral to and Action by Law Enforcement and Judicial Authorities

**In some instances, the police or courts may be able to get information about your child from your child's school division.**

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**
2. Prevent Virginia 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.

### Transmittal of Records

If a school division reports a crime committed by a child with a disability, the school division:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the *Family Educational Rights and Privacy Act* (FERPA).

## Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense

**You may have the right to certain services when you independently place your child in a private school.**

**General**

The IDEA does not require a school division to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school division made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school division where the private school is located must include your child in the population whose needs are addressed under the IDEA provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

**Reimbursement for Private School Placement**

If your child previously received special education and related services under the authority of a school division, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school division, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet Virginia standards that apply to education provided by VDOE and school divisions.

**Limitation on Reimbursement**

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent Individualized Education Program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the school division to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least ten business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school division of that information;
2. If, prior to your removal of your child from the public school, the school division provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for the parent's failure to provide the required notice if: (a) The parent is not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in

serious emotional harm to the child.

## NOTICE OF PARENTAL RIGHTS CONCERNING THE USE OF PUBLIC BENEFITS OR INSURANCE

**The school division must obtain your written consent before using any public or private benefits or insurance, and must provide annual notice of your rights related to the use of public benefits or insurance.**

Local educational agencies may request the use of Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under IDEA, Part B, as permitted under the public benefits or insurance program. The IDEA requires that public agencies obtain one-time parental consent before accessing the child's or the parent's public benefits or insurance for the first time. The one-time parent consent must specify:

1. The personally identifiable information that may be disclosed.
2. The purpose of the disclosure.
3. The agency to which the disclosure may be made.
4. That the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under Part B of the IDEA.

Local educational agencies must also provide written notification to the child's parent before accessing the child's or the parent's public insurance for the first time, prior to obtaining the one-time parental consent, and annually thereafter.

Parents have the right to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program at any time. Withdrawal of consent or refusal to provide consent to disclose personally identifiable information does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost.

Local educational agencies:

1. May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under IDEA Part B;
2. May not require parents to incur an 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 part, but the local educational agency may pay the cost that the parents otherwise would be required to pay;
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 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 or insurance; or
    d. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.