

VIRGINIA DEPARTMENT OF EDUCATION
Division of Special Education and Student Services

COMPARISON OF VIRGINIA REGULATIONS AND IDEA 2004
LISTING OF VIRGINIA-SPECIFIC REGULATIONS

February 2010

This document compares the provisions of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, July 7, 2009, reissued January 25, 2010, following technical amendments to the document (Virginia Regulations) and the *Individuals with Disabilities Education Improvement Act 2004* (IDEA) and the federal implementing regulations of October 13, 2006 and December 31, 2008. The document identifies those areas where the Virginia Regulations exceed the federal mandates.

The purpose of this document is:

- to respond to the U.S. Department of Education's request for each State to attach to its application for Part B funds a list identifying any rule, regulation, or policy that is State-imposed (not required by IDEA or federal regulation). This request is pursuant to 20 U.S.C. §1407; and
- to inform local educational agencies in writing of such State-imposed rules, regulations or policy. This requirement is pursuant to 20 U.S.C. § 1407.

Copies of this document are available by contacting the Office of Dispute Resolution and Administrative Services, at 804-225-2013, or at the department's website: <http://www.doe.virginia.gov>

Table:

VAC: Virginia Administrative Code

COV: Code of Virginia

SOQ: Virginia's Standards of Quality

SOA: Virginia's Standards of Accreditation

CSA: Virginia's Comprehensive Services Act

VDHH: Virginia Department of the Deaf and Hard-of-Hearing Regulations

FERPA: Family Education Rights and Privacy Act

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SUMMARY

- Total number of Virginia-specific requirements: 192
 - New Virginia-specific provisions created in 2009-10 Virginia Regulations: 53
 - Virginia-specific provisions created in previous Virginia Regulations and carried over in 2009-10 Virginia Regulations: 139
- Provisions created by the Code of Virginia or other Virginia regulations in the total number of Virginia-Specific requirements: 65
- Provisions created by definitions: 63
- The 2001-02 Virginia Regulations contained 193 Virginia-specific requirements. The current Virginia Regulations, even with 53 newly created provisions, represent a consolidation of a number of areas in order to provide a more user-friendly document while retaining the Virginia-specific requirements carried over from previous Virginia Regulations.
- For historical purposes and where possible, the following pages identify the specific year in which a particular provision was implemented.

8 VAC 20-81-10 Definitions

Provision	Source of Requirement	Discussion
Age of eligibility	COV Prior Virginia Regulations	Long-standing Virginia requirement. Initial language in COV in 1972 and subsequent Virginia Regulations. Incorporates the COV, §22.1-213. Specifies services to begin at age 2. Current regulations add a statement to clarify that the student who turns 22 years of age after September 30 of the student's current school year remains eligible for the remainder of the school year.
Age of majority	COV Prior Virginia Regulations	Created definition in the Virginia Regulations in 2001-02 ¹ to specify the age of majority. Incorporates the COV, §1-13.42, specifying age 18 as the age of majority.
Alternate assessment	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of the federal requirements.
Alternative assessment	New in 2009-10 Virginia Regulations	Created definition to clarify and distinguish between alternate assessment and alternative assessment; to assist in the implementation of the federal requirements allowing states to create alternative assessments.
Audiology	COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to incorporate the COV, §54.1-2600. Includes provision that the services are to be provided by an audiologist licensed by the Board of Audiology and Speech-Language Pathology.
Behavioral intervention plan	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of the IDEA regulations.
Calendar days	Prior Virginia Regulations	Created definition in the 1994 Virginia Regulations; expanded federal definition to assist in the implementation of the federal requirements.
Career and Technical education	New in 2009-10 Virginia Regulations	Created definition to comport with the Carl Perkins Act; to ensure that these options are available to students with disabilities in career and technical programs.
Caseload	SOQ Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations, based on SOQ formula.
Change in identification	Prior Virginia Regulations	Created definition in the 1994 Virginia Regulations to assist in the implementation of federal requirements.
Change in placement	Prior Virginia Regulations	The current Virginia Regulations revised definition from previous Virginia Regulations (initiated in 1994); combined previous definitions to assist in the implementation of federal regulations.
Chapter	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of the IDEA 1999 regulations and to ensure clarity.
Charter schools	COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to tailor IDEA regulatory term to the COV in order to provide clearer meaning in accordance with Virginia's implementation of the COV requirements. §§22.1-212.5 et seq.

¹ The Virginia Regulations were issued in 2001 and then re-issued in 2002, following technical amendments to the document.

Child	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of federal requirements.
Child with a disability	SOQ Prior Virginia Regulations	Revised definition in current regulations to: include developmental delay; use “intellectual disability” instead of “mental retardation” and “emotional disability” instead of “emotional disturbance”, and incorporate new wording from the 2006 federal regulations. Incorporates all categories included in Virginia’s SOQ funding formula.
Collaboration	New in 2009-10 Virginia Regulations	Created definition to assist in the implementation of least restrictive environment for caseload and teacher assignment responsibilities.
Complaint	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to distinguish “complaint” under the complaints resolution procedures and “complaint” in due process hearings.
Comprehensive Services Act	COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to incorporate COV requirements regarding CSA, the source of funding for private special education placements. §2.2-5200 et seq.
Correctional facility	COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to tailor IDEA language to COV language. §16.1-228; §53.1-1.
Coteaching	New in 2009-10 Virginia Regulations	Created definition to assist in the implementation of least restrictive environment for caseload and teacher assignment responsibilities.
Counseling services	VA Teacher Licensure Regulations Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations. Current regulations expand the definition and clarify that visiting teacher may provide service in certain instances. Reflects Virginia’s recognition of visiting teachers.
Dangerous weapon	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of the IDEA and the federal regulations.
Developmental Delay	Prior Virginia Regulations	Definition is long-standing Virginia requirement, since 1990. IDEA 1999 regulations directed SEA to establish definition if it uses DD as a special education category. Current Virginia Regulations establish age range as 2-6.
Due process hearing	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to clarify difference between due process and complaints systems as dispute resolution options.
Education record	New in 2009-10 Virginia Regulations	Expanded the federal definition to assist in the implementation of the federal requirements.
Eligible student	New in 2009-10 Virginia Regulations	Created definition to clarify that students who have reached the age of majority have rights transferred to them.
Federal core academic subjects	New in 2009-10 Virginia Regulations	Created definition to comport with the Elementary and Secondary Education Act; to ensure that children with disabilities are not excluded in considerations related to general education programs.
Functional behavioral assessment	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in implementation of the IDEA regulations. Current regulations expand definition to clarify the application of independent educational evaluations (IEE).
General curriculum	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to clarify meaning of term in Virginia.

Home-based instruction	SOQ Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to reflect SOQ funding and tailor IDEA regulatory terminology to Virginia.
Homebound instruction	SOA Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to incorporate SOA language.
Home instruction	COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to incorporate and clarify IDEA regulatory terminology and COV terminology. §22.1-254.1. Current definition modifies the language to assist in the implementation of the federal requirements.
Home tutoring	COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to incorporate and clarify IDEA regulatory terminology and COV terminology. §22.1-254.
Impartial hearing officer	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of the federal requirements.
Implementation plan	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of the federal requirements.
Individualized family service plan	Part C/IDEA Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to incorporate and clarify language from Part C (formerly Part H).
Infant and toddler with a disability	Part C/IDEA COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to incorporate language from Part C and COV to clarify the term. §2.1-760.
Initial placement	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to clarify the term as used in the IDEA regulations.
Intellectual disability	Prior Virginia Regulations	Prior Virginia Regulations mirrored the federal definition of “mental retardation”. Current Virginia Regulations also mirror the federal definition but revise the term as “intellectual disability” to address alternative to “mental retardation”; reflects national consensus for this term.
Interpreting services	VDHH Regulations Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to provide consistent terminology across state agencies, especially with the VDHH Regulations. Current Virginia Regulations create additional language to clarify the services provided by interpreters.
Level 1 and Level II services	SOQ Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to reflect SOQ formula.
Long-term placement	New in 2009-10 Virginia Regulations	Created definition to assist in the implementation of federal requirements.
Manifestation determination review	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of the IDEA regulations.
Medical services	COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to incorporate COV. §22.1-270. Added nurse practitioner to definition as a service provider.
Notice	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to assist in the implementation of the IDEA regulations.

Occupational therapy	COV Board of Health Professions Regulations Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations. Included IDEA regulatory language. Additionally, reflected licensure requirement for OT found in COV and the Board of Health Professions regulations. §§54.1-2956; 54.1-2400. Clarified that services may be provided under supervision of an OT.
Parent	COV Prior Virginia Regulations	Long-standing Virginia requirement. Includes foster parents under certain conditions. Language incorporates COV provision regarding foster parents. §§22.1-1; 16.1-283; 16.1-277.01; 16.1-277.02; 63.2-900. Current Virginia Regulations includes 2009 COV provisions 22.1-213.1, including notice requirement to parents of children in foster care whose parental rights have not been terminated.
Physical therapy	COV Board of Health Professions Regulations Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to include IDEA regulatory language and clarify that services may be provided under supervision of a PT. Reflects licensure requirements for PT found in COV and Board of Health Professions regulations. §§54.1-2400; 54.1-3475.
Program	Prior Virginia Regulations	Long-standing Virginia requirement. Current Virginia Regulations revise definition from previous state regulations to clarify the term.
Psychological services	COV Board of Health Professions Regulations Prior Virginia Regulations	Long-standing Virginia requirement, updating per IDEA regulatory language. Additionally, reflects licensure requirements for psychologist found in COV and Board of Health Professions regulations. §54.1-2400. Clarifies that services may be provided under supervision of a psychologist.
Public notice	Prior Virginia Regulations	Long-standing Virginia requirement. Current Virginia Regulations revise definition from previous state regulations to clarify the term.
Qualified person with a disability	The Rehabilitation Act Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to clarify the terminology as found in Section 504 of The Rehabilitation Act.
Reevaluation	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations based on USDOE analysis/comment on IDEA regulations and carried over in the current Virginia Regulations.
Screening	COV Prior Virginia Regulations	Long-standing Virginia requirement, since 1980.
Section 504	The Rehabilitation Act Prior Virginia Regulations	Long-standing Virginia requirement to include definition based on The Rehabilitation Act of 1973, as amended.
Social work services	VA Teacher Licensure Regulations Prior Virginia Regulations	Long-standing Virginia requirement. Added to federal definition to include visiting teachers, a category specific to Virginia and consistent with Virginia's Teacher Licensure Regulations.
Special education hearing officer	New in 2009-10 Virginia Regulations	Created definition to distinguish between those individuals conducting special education due process hearings from hearing officers who conduct hearings via the Supreme Court for other state agencies. This term more accurately describes the role of those conducting special education hearings.

State assessment program	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to identify what portion of the assessments in Virginia are the state assessment program under IDEA.
State educational agency	Prior Virginia Regulations	Long-standing Virginia requirement to specify that VDOE is the SEA.
State-operated program	COV Prior Virginia Regulations	Long-standing Virginia requirement. Modified definition to incorporate COV language. §§22.1-7; 22.1-340; 22.1-345.
Timely manner	New in 2009-10 Virginia Regulations	Created definition specific to application of National Instructional Materials Accessibility Standard (NIMAS); to further define when materials via the NIMAS must be provided to students.
Transition from Part C services	Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to clarify difference between this term and secondary transition; definition based on IDEA federal 1999 Part C regulations (formerly Part H).
Virginia schools for the deaf and the blind	COV Prior Virginia Regulations	Created definition in the 2001-02 Virginia Regulations to implement COV. §22.1-346. Current Virginia Regulations refer only to the Staunton School (Virginia School for the Deaf and the Blind) because of the closing of the VA School for the Deaf, the Blind, and the Multi-Disabled, Hampton.

8 VAC 20-81-20 Responsibilities of VDOE

Provision	Source of Requirement	Discussion
Requirements of SEA	Prior Virginia Regulations	Provisions in previous sets of and current Virginia Regulations modified IDEA regulatory terminology to reflect Virginia terminology (e.g., Virginia School for the Deaf and the Blind, state-operated programs).
State special education advisory committee annual report	Prior Virginia Regulations	Long-standing Virginia requirement for the SSEAC submitting its Annual Report to the Virginia Board of Education. The current Virginia Regulations require the submission of the report by October 1 of each year.

8 VAC 20-81-30 Responsibilities of local school divisions and state-operated programs

The following provisions are required to implement the IDEA under General Supervision. The provisions relate to residency for the purposes of services when children are placed for educational and non-educational reasons.

Provision	Source of Requirement	Discussion
Education in jails	VA Appropriation Act Prior Virginia Regulations	Long-standing Virginia requirement. 2001-02 Virginia Regulations identified responsibility for educating this population consistent with the Appropriation Act.
Children in foster care	COV CSA Prior Virginia Regulations	Long-standing Virginia requirement, referencing the COV and CSA funding requirements. §22.1-101.1.
Children in nursing homes	VA Dept. for Medical Assistance Services	Created provision in the 2001-02 Virginia Regulations in response to a 1995 Office for Civil Rights (OCR) interpretation to VDOE, and included Department of Medical Assistance Services

	Prior Virginia Regulations	terminology for facilities.
Children in group homes	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to apply 1995 OCR interpretation to children in group homes.
Children on house arrest	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to ensure that services to children with disabilities are not interrupted.
Students 18 with and w/o legal guardian	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to clarify responsibility for adult children with disabilities, consistent with Virginia requirements on legal guardianship.
Responsible division in the event there is a dispute about residency	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to ensure that services to children with disabilities are not interrupted.
Notice to parents of child in foster care	New in 2009-10 Virginia Regulations	Created provision to implement 2009 COV revision requiring notice to the biological/adoptive parents (whose parental rights have not been terminated) of a child in foster care and the foster parent's standing to serve as parent if the biological/adoptive parent is unavailable. § 22.1-213.1.
Children living with someone other than the biological parent	New in 2009-10 Virginia Regulations	Created provisions to ensure that services to children with disabilities are not interrupted.
Emancipated minors	New in 2009-10 Virginia Regulations	Created provisions to ensure that services to children with disabilities are not interrupted.
Validly married minors	New in 2009-10 Virginia Regulations	Created provision to ensure that services to children with disabilities are not interrupted.
Providing services regardless of citizenship or immigration status	New in 2009-10 Virginia Regulations	Created provisions to ensure that services to children with disabilities are not interrupted.
Children placed in a state-operated program as a long-term placement	New in 2009-10 Virginia Regulations	Created provisions to ensure that services to children with disabilities are not interrupted.

8 VAC 20-81-40 Special education staffing requirements

Provisions required to implement IDEA under “qualified provider” requirements.

Provision	Source of Requirement	Discussion
Staffing for school aged and pre-school-aged children	SOQ VA Teacher Licensure Regulations Prior VA Special Education Program Standards	Long-standing Virginia requirement. Established standards for grouping students and assigning teachers. Teacher assignments standards first established in 1962 and incorporated into Teacher Licensure regulations and former Special Education Program Standards regulations.

Staffing for jails	Prior Virginia Regulations	Created in the 2001-02 Virginia Regulations to clarify required teacher endorsements.
Educational interpreting services	VDHH Regulations Prior Virginia Regulations	Created in the 2001-02 Virginia Regulations to establish qualification standard, date certain for meeting standard, procedures for waivers.

8 VAC 20-81-50 Child find

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Public awareness	Prior Virginia Regulations	Long-standing Virginia requirement, since 1980. Established standards relative to VDOE’s obligation to create and implement a child find process. Current Virginia Regulations contain amended language.
Screening – hearing and vision (including timelines)	COV Prior Virginia Regulations	Long-standing Virginia requirement. Prior to 1950, COV established requirement to screen hearing and vision, charging VDOE with establishing grade levels. §§22.1-270; 22.1-273. Screening requirements for new students established in Virginia Regulations in 1980.
Screening – speech-language, gross and fine motor	Prior Virginia Regulations	Long-standing Virginia requirement, since 1980.
Screening for scoliosis	New in 2009-10 Virginia Regulations	Created provision to comply with new COV requirement to screen for scoliosis. §22.1-273.1.
Confidentiality and parent notification	COV FERPA Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to include COV notification, and IDEA and FERPA confidentiality requirements. §22.1-273.
School-based team	New in 2009-10 Virginia Regulations	Long-standing Virginia requirements, since 1980, for LEAs to have Child Study Committees. The current Virginia Regulations revise the term to “school-based teams”, maintain the same general framework as the previous regulations, and support local flexibility in determining additional procedures.
Timelines	Prior Virginia Regulations	Long-standing requirements relative to timelines for referrals. Current Virginia Regulations shortened timeline for submission of referrals to special education administrator/designee.

8 VAC 20-81-60 Referral for initial evaluation

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Referral requirements (timelines and process)	Prior Virginia Regulations	Long-standing Virginia requirements, since 1980.

Timeline for evaluation	Prior Virginia Regulations	Long-standing Virginia requirement for parental consent as the initiation of the timeline for completing the evaluation.
Exceeding timeline	New in 2009-10 Virginia Regulations	Created provision to increase flexibility for local school divisions and parents; tailored the IDEA regulatory timeline exception regarding obtaining additional data to apply to all eligibility categories, rather than just specific learning disability.

8 VAC 20-81-70 Evaluation and Reevaluation

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Nonstandardized assessments	New in 2009-10 Virginia Regulations	Prior 2001-02 Virginia Regulations established use of nonstandardized tests (e.g., structured observations or sampling) with conditions, based on USDOE commentary on IDEA regulations. Current Virginia Regulations change references of “tests” to “assessments”.
Test the hearing of each child prior to placement	COV Prior Virginia Regulations	Long-standing Virginia requirement to implement COV requirement that hearing be tested during evaluation for special education. §22.1-214.
Evaluation reports shall be in writing	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to assist in the implementation of IDEA regulations.
Evaluation reports available to parents 2 business days before the eligibility meeting	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations in response to Board of Education decision based on parent comments to revisions of state special education regulations during 2000-01. Support for provision continued during the current revision process. The purpose of the provision is to assist parents in being knowledgeable of the evaluation results prior to the eligibility group meeting, if the parent elects to review the report in advance of the meeting.
Evaluation report copy to parents within timelines	New in 2009-10 Virginia Regulations	Created provision to ensure that LEAs provide parents copy of the evaluation report within reasonable time periods. Establishes timelines for this purpose.
Timelines	Prior Virginia Regulations	Long-standing Virginia requirement, since 1980, of 65-day timeline from receipt of referral to complete evaluations and determine eligibility; and completion of reevaluations. IDEA 2004 permits SEA to have an established timeline.
Exceeding timeline	New in 2009-10 Virginia Regulations	Created provision to increase flexibility for local school divisions and parents; tailored the IDEA regulatory timeline exception regarding obtaining additional data to apply to all eligibility categories, rather than just specific learning disability.

8 VAC 20-81-80 Eligibility

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
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Eligibility group	Prior Virginia Regulations	Long-standing Virginia requirement, since 1980, establishing an eligibility team to meet the IDEA requirements. Current Virginia Regulations expand provision to ensure implementation of the federal requirements.
Team work toward consensus in making decisions	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to implement USDOE interpretation in 1999 IDEA regulations that voting is inappropriate and working toward consensus ensures parental rights of participation.
Forwarding information to the IEP team	Prior Virginia Regulations	Long-standing Virginia requirement to clarify VDOE's responsibility under general supervision to establish process for ensuring the evaluation-eligibility information is provided the IEP team.
Reports by persons who do not agree with the team decision	Prior Virginia Regulations	Long-standing Virginia requirement to apply rights of students with specific learning disabilities to all students with disabilities and their parents.
Eligibility of 2-year olds	COV Prior Virginia Regulations	Long-standing Virginia requirement to implement the COV. §22.1-213.
Eligibility of child with developmental delay	Prior Virginia Regulations	Long-standing Virginia requirement to include DD as a disability category. IDEA 1999 regulations directed SEA to establish definition and age range (up to age 9) if SEA chooses to use DD. Current Virginia Regulations establish the age range 2-6.
Forward relevant information for instruction to the child's teachers if the child is not found eligible.	FERPA Prior Virginia Regulations	Long-standing Virginia requirement to reflect established practice of using diagnostic information to improve instruction. Reflects FERPA requirement regarding consent when sharing with private schools.
Requirements for LD eligibility applied to all disabilities	New in 2009-10 Virginia Regulations	Created a provision to apply eligibility requirements for LD to all students considered for eligibility, including: group considerations; requirements for documenting the eligibility group's determination of eligibility; required members of the eligibility group; require that the eligibility group include at least one member trained in observation; and the LEA's responsibility to observe the child as part of the evaluation process.
Determination of eligibility	New in 2009-10 Virginia Regulations	Created a provision requiring that eligibility determination must be made on an individual basis by the eligibility group, to remind school personnel and parents that such decisions must be individualized and not based on administrative or reasons other than the child's educational needs.
Eligibility criteria	New in 2009-10 Virginia Regulations	Created provisions for eligibility criteria for the following disabilities: autism, deafness, developmental delay, hearing impairment, intellectual disability, other health impairment, speech or language impairment, and visual impairment.
IEP team meeting following eligibility meeting after a reevaluation	New in 2009-10 Virginia Regulations	Created a provision to provide LEAs with flexibility: if the eligibility group determines that there is no change in eligibility and educational needs, the IEP team is not required to convene, unless the parent requests it.

8 VAC 20-81-90 Termination of special education and related services

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Parental consent to terminate services	Prior Virginia Regulations	Long-standing Virginia requirement. Consent requirements established in 1980.
Terminating related service	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to specify a process that is necessary but absent in IDEA regulations; minimizes extra meeting requirements.
Summary of academic achievement and functional performance	New in 2009-10 Virginia Regulations	Expanded federal provision that mandates if a student graduates with a regular diploma or when the student reaches age 22, the LEA provides the summary. Current Virginia Regulations address when the summary must be provided if the student leaves prior to graduation/age 22 and returns to school.

8 VAC 20-81-100 Free appropriate public education

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Graduation	SOA SOQ Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to implement the SOA and SOQ requirements. Tailored IDEA regulations to Virginia, defining “regular diploma” as a “standard” or “advanced studies” diploma.
FAPE exception for certain incarcerated students	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to implement Virginia’s decision to exclude students 18-21 not previously identified.
Transportation for students with disabilities	COV Prior Virginia Regulations	Long-standing Virginia requirement to comport with COV requirements. §22.1-347 C.
Length of school day	Prior Virginia Regulations	Long-standing Virginia requirement to ensure that school-aged students with disabilities are provided a school day comparable in length to the day provided to school-aged students without disabilities, unless their IEP specifies otherwise.
LEA responsibility for the provision of personal devices	New in 2009-10 Virginia Regulations	Created a provision consistent with USDOE guidance regarding an LEA not being responsible for student’s personal devices, including eyeglasses or hearing aids, unless the IEP team determines that the device is necessary for the child to receive FAPE.
LEA responsibility for the length of a commute for a child with a	New in 2009-10 Virginia Regulations	Created a provision consistent with USDOE guidance regarding comparable length of commute, unless the child’s IEP team determines that a longer or shorter commute is necessary for the child to receive FAPE.

disability		
LEA responsibility for the provision of extended school year services	New in 2009-10 Virginia Regulations	Created a provision consistent with USDOE guidance prohibiting an LEA from restricting the provision of ESY to only the summer.
LEA responsibility for disability harassment	New in 2009-10 Virginia Regulations	Created a provision consistent with USDOE guidance regarding LEA's responsibility to ensure measures protecting students with disabilities from disability harassment, which may result in a denial of FAPE. Virginia Regulations also require LEAs to have a policy prohibiting harassment to children with disabilities.
Students with disabilities and questionable immigration status	New in 2009-10 Virginia Regulations	Created a provision to ensure LEA's responsibility to provide FAPE to children with disabilities who are residing within a school division regardless of citizenship or visa status.

8 VAC 20-81-110 Individualized education program

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
LEA responsibility for IEP meetings	Prior Virginia Regulations	Created a provision in the 2001-02 Virginia Regulations to specify that each local school division is responsible for initiating and conducting meetings to develop, review, and revise the IEP for a child with a disability; to assist in the implementation of the federal requirements.
Speech-language pathologist	Prior Virginia Regulations	Created a provision in the 2001-02 Virginia Regulations to specify that the special education teacher on IEP team for students whose only disability is speech-language impairment is the speech-language pathologist. Ensured that qualified providers would develop the child's IEP, in accordance with Appendix A of the IDEA federal 1999 regulations.
IEP timeline after reevaluation	New in 2009-10 Virginia Regulations	Created a provision to clarify and provide consistency; that the 30-day timeline that applies to the development of an IEP following the initial eligibility determination also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary.
Written description of development factors	Prior Virginia Regulations	Created a provision in the 2001-02 Virginia Regulations establishing the LEA's responsibility to provide parents with a written description of the factors (federal requirements) being considered by the IEP team in the development, review, and revision of the child's IEP; to assist in the implementation of the federal requirements.
Transition services – mandatory age	Prior Virginia Regulations	Created a provision in the 2001-02 Virginia Regulations requiring secondary transition services be addressed in an IEP beginning at age 14.
IEP team members	New in 2009-10 Virginia Regulations	Created a provision, in accordance with USDOE guidance, specifying that the LEA determines the school personnel to fill the roles of the required IEP team members.
IEP teams work toward	Prior Virginia Regulations	Created a provision in the 2001-02 Virginia Regulations to incorporate language from Appendix A

consensus		of the IDEA regulations, clarifying the importance of IEP teams working toward consensus in their determinations.
Costs for LEA actions to ensure parent participation	New in 2009-10 Virginia Regulations	Created a provision to clarify that if an LEA uses alternative means of ensuring parent participation in meetings resulting in additional costs, the LEA is responsible for those costs.
IEP copy timeline	New in 2009 Virginia Regulations	Created a provision requiring the LEA provide the parent with a copy of the IEP no later than 10 days after the IEP meeting, to ensure the parent's receipt of the document in a reasonable period of time.
Benchmarks/short-term objectives	New in 2009-10 Virginia Regulations	Created a provision that all IEP teams document their consideration of whether the child's IEP should include short-term objectives or benchmarks regardless if the child is not a child who takes the alternate assessments aligned to alternate achievement standards.
Modified standard diploma provision	New in 2009-10 Virginia Regulations	Created a provision to facilitate appropriate post-secondary outcomes for a child pursuing a modified standard diploma; to ensure that the IEP team considers the child's need for occupational readiness upon school completion.
Modified standard diploma	SOA Prior Virginia Regulations	Created a provision in the 2001-02 Virginia Regulations, reflecting the addition of the modified standard diploma option in the SOA requirements.
Children with disabilities in state, regional, or local adult or juvenile correctional facilities	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations. Added language in the current Virginia Regulations that tailors IDEA regulations' flexibility to Virginia's jails.
Notice to parents re. transfer of rights	New in 2009-10 Virginia Regulations	Expanded the notification requirements for transfer of rights to include parents in the notification.

8 VAC 20-81-120 Children who transfer

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Failure of an LEA to provide educational records	New in 2009-10 Virginia Regulations	Created a provision specifying that if an LEA is not forthcoming in the provision of a child's educational records, VDOE may be contacted for assistance.
Inability to obtain an IEP	New in 2009-10 Virginia Regulations	Created a provision, consistent with USDOE guidance, specifying that if the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting pending an evaluation, if an evaluation is necessary.
Interim IEP	New in 2009-10 Virginia	Created a provision specifying that an IEP team may develop an interim IEP while obtaining and

	Regulations	reviewing the information needed to develop a new IEP.
Lack of parental consent	New in 2009-10 Virginia Regulations	Created a provision specifying that if a parent does not consent to a new or interim IEP, or the LEA determines that an evaluation is necessary, the LEA must provide FAPE to a child in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous LEA, and dispute resolution options may be initiated, if necessary.
Evaluation requirements	New in 2009-10 Virginia Regulations	Created a provision specifying requirements including notice, before initiating an evaluation.
Private residential transfer	Prior Virginia Regulations CSA	Created a provision in the 2001-02 Virginia Regulations specifying requirements when a child transfers from one LEA to another and is in a private residential school.

8 VAC 20-81-130 Least restrictive environment and placements

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Home-based and homebound services requirements	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to distinguish between home-based and homebound services.
Document LRE alternatives and rationale	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations requiring LEAs to document all alternatives considered and the rationale for choosing the selected placement; to assist in the implementation of federal requirements.

8 VAC 20-81-140 Placements at the Virginia schools for the deaf and the blind

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
VSDB	COV Prior Virginia Regulations	Long-standing Virginia regulations; created to clarify roles and responsibilities of school divisions and the Virginia Schools. Reflected how the Virginia Schools are recognized in the COV §§22.1-348; 22.1-347 c. 2001-02 Virginia Regulations added requirement that a contract be established between VSDBs and LEAs placing children, to ensure that children's rights are maintained. Current regulations deleted this provision. The current Virginia Regulations, consistent with the COV changes, deleted references to the former Virginia School for the Deaf, the Blind, and Multi-Disabled in Hampton; only school now is the Virginia School for the Deaf and the Blind in Staunton.

8 VAC 20-81-150 Private school placement

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements of the CSA, the source of funding for LEA placements	COV CSA Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations that linked IDEA regulations with CSA requirements. Included language from the COV and CSA administrative requirements for funding. §2.2-5200 et seq.
Interstate Compact for the Placement of Children	COV Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations that incorporated COV requirements. §22.1-218.1.
Children who are home-instructed or home-tutored	COV Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations that incorporated COV requirements to include home instructed and home tutored students with private school students placed by parents when FAPE is not at issue. §22.1-254.1.
Definition of private school	COV	Created provision to be consistent with the COV at §22.1-254.
Transportation	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to clarify the LEA's responsibility to transport the student for whom the LEA is providing services.

8 VAC 20-81-160 Discipline

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Due process rights for all students	COV Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations that expanded the right of children with disabilities to be provided the same rights under disciplinary actions as children without disabilities by assuring that all the due process protections of the COV §22.1-214 are included.
Isolated short-term suspensions for unrelated instances of misconduct not equating to a pattern and therefore, not a change in placement	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations that incorporated USDOE guidance and analysis/comment on the IDEA federal 1999 regulations; clarifying that isolated short-term suspensions that do not equate to a pattern are not a change in placement.
Referral to and action by law enforcement and judicial authorities	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations that added language to the IDEA regulatory requirement; that referral is made consistently for children with disabilities and children without disabilities.

Transmission of records	COV FERPA Virginia Management of Student Scholastic Record Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations that incorporated COV, FERPA, and IDEA regulations. §§22.1-16; 22.1-287.1; 22.1-288.2; 22.1-289.
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8 VAC 20-81-170 Procedural safeguards

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Parental consent required for change in identification, revisions to IEP; partial or complete termination of services; provide services to transfer students	Prior Virginia Regulations	Long-standing Virginia requirement, since 1980. Historically, strong support throughout previous and current public comment periods for inclusion of these parent consent requirements.
Parental consent to release student information to public and private insurance companies	FERPA Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations that expanded the IDEA regulatory requirement to include FERPA compliance.
Parental consent not required for teacher's or related service provider's observations or classroom evaluations	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to incorporate USDOE guidance on issue, clarifying an instance when parental consent is not required.
Confidentiality provisions	Prior Virginia Regulations	Language was in the 1980 Virginia Regulations; deleted in 1990. Reinserted provision in the 2001-02 Virginia regulations to implement the IDEA regulations. Current Virginia Regulations expanded language to include clarification regarding parent access rights.
Parental notice requirement	New in 2009-10 Virginia Regulations	Created provision to clarify that the school division is required to "take whatever action is necessary" to ensure parental comprehension and ability to participate. This puts higher burden on school division than the federal standard requiring "reasonable effort".
Procedural safeguards notice on web site	New in 2009-10 Virginia Regulations	Created a provision to clarify the federal requirement that allows school division to put copy of procedural safeguards notice on its internet web site, but notes that obligation to provide parents

		with copy of PSN is not satisfied by merely directing parent to the web site; LEA must provide hard copy of PSN to parent.
Parental consent not required for initial evaluation of ward of state	New in 2009-10 Virginia Regulations	Expanded federal regulatory language to clarify what actions school divisions must take to locate parents and determine their rights.
FERPA hearings	New in 2009-10 Virginia Regulations	Created provision to allow school divisions to develop local procedures for hearings under FERPA where the parent disagrees with a school division's refusal to amend the child's educational record.
Electronic signature	COV New in 2009-10 Virginia Regulations	Created provision to establish legal effect and enforceability of electronic signatures, consistent with federal guidance.
Audio and video recordings	Prior Virginia Regulations	Created provision in 2001-02 Virginia Regulations. Current Virginia Regulations expanded language to clarify procedures for recording of eligibility, IEP team meetings, including for the purpose of manifestation determination. Authorizes school divisions to establish policies and procedures regarding such recordings. Also authorizes school divisions to establish policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at IEP meetings, or audio or video recording devices at meetings other than the meetings identified above.

8 VAC 20-81-180 Transfer of rights to students who reach the age of majority

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Transfer rights	COV Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to incorporate COV and IDEA regulations; specified that rights transfer at age 18. §1-13.42.
Standard for determining a representative for the student	Prior Virginia Regulations	Established standard in the 2001-02 Virginia Regulations. IDEA 1999 regulations allowed States to provide a vehicle for an educational representative to be determined without going to court or using a power of attorney.

8 VAC 20-81-190 Mediation

No Virginia-specific requirements

8 VAC 20-81-200 Complaint resolution procedures

In accordance with the IDEA federal 2006 regulations, at § 300.151 *et. seq.*, and the SEA’s general supervision responsibility, VDOE has procedures for resolving complaints. All of the procedures comport with the federal regulations and contain no Virginia-specific provisions that exceed the federal requirements.

8 VAC 20-81-210 Due process hearing

The Virginia Regulations mandate the following provisions to fulfill the SEA’s responsibility to establish and manage a due process hearing system:

- procedures for managing and monitoring of the hearing system, including: qualifications of special education hearing officers; training requirements; evaluation of hearing officers; process wherein parties may object to a hearing officer’s appointment.
- procedures for hearing officer’s management of hearing, including prehearing activities.
- procedures related to VDOE’s responsibility to ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must provide upon VDOE’s request, documentation that any areas of noncompliance have been corrected.
- provisions that detail the responsibilities of the parties and the hearing officer.
- provisions related to the costs of the hearing.

Additional provisions that are specific to Virginia:

Provision	Source of Requirement	Discussion
Administration of oath	COV New in 2009-10 Virginia Regulations	Created provision to comply with the 2008 COV requirement that an oath is administered to witnesses testifying at a due process hearing; that all witnesses testify under oath or affirmation.
Appeal to State Circuit Court	COV New in 2009-10 Virginia Regulations	Created provision to comply with the 2009 COV requirement that the timeline for appealing due process decisions to state court is 180 days. § 22.1-214 B.

8 VAC 20-81-220 Surrogate parent procedures

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Role of foster parent	Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to implement and clarify the IDEA

		regulatory option for recognizing foster parents, as well as provide more local flexibility to the school divisions to ensure that the child's rights are protected without delay.
Surrogate parents appointment	COV Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to incorporate the COV and IDEA regulations. §§16.1-283; 277.01-02.
Procedures for identification and recruitment of surrogate parents, including qualifications	Prior Virginia Regulations	Long-standing Virginia provision; established as part of the SEA's general supervision responsibility. Current Virginia Regulations deleted previous requirement that individuals being considered for surrogate appointment must reside in the LEA appointing the surrogate.
LEA procedures for the appointment of surrogate parents and the provision of their services	Prior Virginia Regulations	Long-standing Virginia provision; established as part of the SEA's general supervision responsibility.

8 VAC 20-81-230 Local educational agency administration and governance

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements for submission of Annual Plans to VDOE for approval	COV Prior Virginia Regulations	Long-standing Virginia requirement, since 1980, to ensure that LEAs conform to IDEA; part of the SEA's general supervision responsibilities. COV §22.1-215.
Local Advisory Committee	Prior Virginia Regulations	Long-standing Virginia requirement, since 1980.
Responsibilities of LAC	Prior Virginia Regulations	Long-standing Virginia requirements, since 1980.
Added person with disabilities to LAC membership	Prior Virginia Regulations	Required member in 1980 Virginia Regulations; deleted in 1985; reinserted in the 2001-02 Virginia Regulations. This provision is consistent with the requirements for the SSEAC composition.
Added teacher to LAC membership	New in 2009-10 Virginia Regulations	Created provision in response to public comment during the 2006-2009 regulation revision process.
Regional special education programs	VA Appropriations Act Prior Virginia Regulations	Long-standing Virginia requirement. Regional programs first established in 1984 Virginia Regulations.
Programs in jails	VA Appropriations Act Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to meet IDEA requirements for this student population; to clarify VDOE's and LEAs' responsibilities.
Part B eligibility	New in 2009-10 Virginia	Created provision to clarify that Part B eligibility applies to some 2 year olds.

	Regulations	
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8 VAC 20-81-240 Eligibility for funding

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements for VA educational agencies	Prior Virginia regulations	Created provisions in the 2001-02 Virginia Regulations to tailor IDEA regulations to VA terminology and responsibilities.

8 VAC 20-81-250 State funds for local school divisions

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements associated with ADM, transportation, regional special education, jails, CSA and foster care funding for LEAs	COV VA Appropriations Act CSA Administrative Requirements Prior Virginia Regulations	Long-standing requirements to ensure VDOE meets general supervision responsibilities under IDEA. §22.1-211.

8 VAC 20-81-260 Federal Funds

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements	COV Prior Virginia Regulations	Long-standing requirements to tailor IDEA regulations to VA educational agencies.

8 VAC 20-81-270 Funds to assist with the education of children with disabilities in state-operated programs

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements	COV VA Appropriations Act Prior Virginia Regulations	Long-standing Virginia requirement, since 1980. COV §22.1-7.

8 VAC 20-81-280 Funding, withholding, and recovery of funds

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements	COV Prior Virginia Regulations	Long-standing requirements, to provide procedures for VDOE to withhold state and federal funding when a locality fails to establish and provide a system of free appropriate public education to children with disabilities, and use the funding to provide services. §22.1-214 E.

8 VAC 20-81-290 Appeal of administrative decision regarding funding

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements	Education Division General Administrative Regulations (EDGAR) Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to create an appeal mechanism in concert with the EDGAR provisions.

8 VAC 20-81-300 Use of public and private insurance

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements	EDGAR Prior Virginia Regulations	Created provision in the 2001-02 Virginia Regulations to tailor IDEA regulatory requirements to VA educational agencies, to ensure compliance with EDGAR.

8 VAC 20-81-310 Attorneys' fees

No Virginia-specific requirements

8 VAC 20-81-320 Additional responsibilities of state boards, agencies, and institutions

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Requirements for State-operated programs	COV Prior Virginia Regulations	Long-standing Virginia requirements to incorporate the COV and ensure VDOE's general supervision responsibilities under IDEA. §§22.1-7; 22.1-340; 22.1-347-8; 22.1-289; 16.1-293.
Caseloads	VA Appropriations Act Prior Virginia Regulations	Long-standing Virginia requirements to incorporate Appropriations Act requirements, and ensure SOP compliance with VDOE's requirements.

8 VAC 20-81-330 Compliance with §504 of the Rehabilitation Act

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Compliance requirements	Prior Virginia Regulations	Long-standing Virginia requirement, since 1990, to clarify the obligations of the State-operated programs and the Virginia Schools in complying with VDOE's state 504 Plan.
Due process	New in 2009-10 Virginia Regulations Section 504 of the Rehabilitation Act, 1973, as amended	Amplified the provision established in the 2001-02 Virginia Regulations to clarify the LEAs' responsibilities in resolving 504 disputes.

Appendix A. Caseload maximums

Provisions required to implement IDEA under general supervision requirements.

Provision	Source of Requirement	Discussion
Caseloads	SOQ VA Appropriations Act Prior Virginia Regulations [Special Education Program Standards]	Long-standing Virginia requirements to define case loads as funded by the SOQ formula in the VA Appropriations Act. Previously these requirements were in the Special Education Program Standards.