# Superintendent’s Memo #250-20


**COMMONWEALTH of VIRGINIA
Department of Education**

DATE: September 21, 2020

TO: Division Superintendents

FROM: James F. Lane, Ed.D., Superintendent of Public Instruction

## SUBJECT: Required Actions from the Differentiated Monitoring and Support Letter from the U. S. Department of Education’s Office of Special Education Programs

The Virginia Department of Education’s (VDOE’s) Department of Special Education and Student Services is responsible for general supervision and monitoring the implementation of the *Individuals with Disabilities Education Act* (IDEA) in accordance with the provisions at 34 CFR 300.604(a)(1), and (a)(3), (b)(2)(i) and (b)(2)(v), and (c)(2) and the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*, 8 VAC 20-80.

Virginia’s general supervision is a system that involves the following components: State Performance Plan (SPP) and Annual Performance Reports (APR); effective policies and procedures; targeted technical assistance and professional development; effective dispute resolution system; integrated on-site and off-site monitoring activities; data verification; improvement and corrective action planning; and follow-up to ensure timely corrections.

Consistent with these requirements, VDOE has revised its monitoring of special education to implement required actions from the Differentiated Monitoring and Support Report from the
U. S. Department of Education’s Office of Special Education Programs to include the policies, practices, and procedures for general supervision and monitoring.

The VDOE has established and will continue to implement general supervision and monitoring procedures and practices that are designed to ensure that local educational agencies (LEAs) meet the IDEA program requirements. This is accomplished by the following:

* On-site comprehensive reviews: LEAs are selected based on VDOE’s risk assessment from data of an LEA’s State Performance Plan/Annual Performance Report (SPP/APR), annual determinations, and other factors;
* Targeted review: Noncompliance identified by any means (i.e., SPP/APR indicator, dispute resolution, investigation) will result in a notification letter of noncompliance, creation of corrective action plan, completion of the Prong1 and Prong 2 process, closure of noncompliance within one year of notification;
* Desk audits: Annual desk audits are completed on LEAs that report 100 percent compliance on SPP/APR indicators, and the overuse of the alternate assessments based on alternate achievement standards (AA-AAAS); and
* LEA self-assessments: All LEAs will be placed on a cyclical monitoring schedule that consists of a self-assessment regarding compliance with special education regulations. Any noncompliance will result in a notification letter of noncompliance, creation of corrective action plan, completion of the Prong 1 and Prong 2 process, and closure of noncompliance within one year of notification. LEAs reporting 100 percent compliance will also be randomly selected for a desk/on-site monitoring visit to verify compliance.

The VDOE has revised its Policies and Procedures for Due Special Education Process Hearings as well as the document titled *Managing the Timelines in Due Process Hearings: A Guidance Document for Special Education Hearing Officers* and related documents intended for hearing officer use to ensure consistent and accurate tracking of expedited and non-expedited due process hearings, including the resolution period and whether a resolution meeting has timely occurred. This process also serves as a record for the VDOE to ensure compliance with meeting required timelines related to due process.

The VDOE has also provided clarification regarding the role of its Coordinator of Mediation Services and the training and support provided to mediators, particularly to those who are new to special education mediation. The VDOE’s Frequently Asked Questions (FAQ) document detailing the services and supports offered by Virginia Special Education Mediation Services provides documentation of specific detail regarding the role of the VDOE. It also states that the mediator is not an employee of any LEA or the VDOE. The VDOE also maintains documentation surrounding its Mentoring Program for New Mediators that details the role of the Coordinator of Mediation Services.

The VDOE has also worked with OSEP to clarify guidance concerning the provision of an Independent Educational Evaluation (IEE) at public expense. A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to certain conditions. If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either:

1. Initiate due process procedures under 34 C.F.R. §§ 300.507 through 300.513 to show that its evaluation is appropriate; or
2. Ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under 34 C.F.R. §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502.

Once parental consent is obtained, each public agency must conduct a full and individual initial evaluation in accordance with 34 C.F.R. §§ 300.304 through 300.306 before the initial provision of special education and related services to a child with a disability under this part. 34 C.F.R. §§ 300.300(a) and 300.301(a). The public agency must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4); also 20 U.S.C. § 1414(b)(3)(B). In addition, in conducting an initial evaluation (or reevaluation) of a child, the public agency must ensure that the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6).

The Virginia Department of Education requests that this information be shared with members of your education community and local board of education. For additional information, please contact the Department of Special Education and Student Services, at specialed.assistantsuperintendent.memo@doe.virginia.gov; telephone (804) 786-8079.

JFL/SMH