

1 **Project 7984 - Fast-Track**

2 **State Board of Education**

3 **Regulatory Changes to Align with Chapter 502 of the 2024 Acts of the Assembly**

4 **8VAC20-81-10. Definitions.**

5 The following words and terms when used in this chapter shall have the following meanings
6 unless the context clearly indicates otherwise:

7 "Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446,
8 December 3, 2004, § 1400 et seq. (34 CFR 300.4)

9 "Age of eligibility" means all eligible children with disabilities who have not graduated with a
10 standard or advanced studies high school diploma who, because of such disabilities, are in need
11 of special education and related services, and whose second birthday falls on or before
12 September 30, and who have not reached their 22nd birthday on or before September 30 (two to
13 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday
14 is after September 30 remains eligible for the remainder of the school year. (§ 22.1-213 of the
15 Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(ii))

16 "Age of majority" means the age when the procedural safeguards and other rights afforded to
17 the parent of a student with a disability transfer to the student. In Virginia, the age of majority is
18 18. (§ 1-204 of the Code of Virginia; 34 CFR 300.520)

19 "Agree or agreement" – see the definition for "consent."

20 "Alternate assessment" means the state assessment program, and any school divisionwide
21 assessment to the extent that the school division has one, for measuring student performance
22 against alternate achievement standards for students with significant intellectual disabilities who
23 are unable to participate in statewide Standards of Learning testing, even with accommodations.
24 (34 CFR 300.320(a)(2)(ii) and 34 CFR 300.704(b)(4)(x))

25 "Alternative assessment" means the state assessment program for measuring student
26 performance on grade level standards for students with disabilities who are unable to participate
27 in statewide Standards of Learning testing, even with accommodations.

28 "Assistive technology device" means any item, piece of equipment, or product system,
29 whether acquired commercially off the shelf, modified, or customized, that is used to increase,
30 maintain, or improve the functional capabilities of a child with a disability. The term does not
31 include a medical device that is surgically implanted, or the replacement of that device. (34 CFR
32 300.5)

33 "Assistive technology service" means any service that directly assists a child with a disability
34 in the selection, acquisition, or use of an assistive technology device. The term includes: (34 CFR
35 300.6)

- 36 1. The evaluation of the needs of a child with a disability, including a functional evaluation
37 of the child in the child's customary environment;
- 38 2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology
39 devices by children with disabilities;
- 40 3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or
41 replacing assistive technology devices;
- 42 4. Coordinating and using other therapies, interventions, or services with assistive
43 technology devices, such as those associated with existing education and rehabilitation
44 plans and programs;

45 5. Training or technical assistance for a child with a disability or, if appropriate, that child's
46 family; and

47 6. Training or technical assistance for professionals (including individuals providing
48 education or rehabilitation services), employers, or other individuals who provide services
49 to employ or are otherwise substantially involved in the major life functions of that child.

50 "At no cost" means that all specially designed instruction is provided without charge, but does
51 not preclude incidental fees that are normally charged to students without disabilities or their
52 parent as part of the regular education program. (34 CFR 300.39(b)(1))

53 "Audiology" means services provided by a qualified audiologist licensed by the Board of
54 Audiology and Speech-Language Pathology and includes: (Regulations Governing the Practice
55 of Audiology and Speech-Language Pathology, 18VAC30-20; 34 CFR 300.34(c)(1))

- 56 1. Identification of children with hearing loss;
- 57 2. Determination of the range, nature, and degree of hearing loss, including referral for
58 medical or other professional attention for the habilitation of hearing;
- 59 3. Provision of habilitative activities, such as language habilitation, auditory training,
60 speech reading (lip-reading), hearing evaluation, and speech conservation;
- 61 4. Creation and administration of programs for prevention of hearing loss;
- 62 5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- 63 6. Determination of children's needs for group and individual amplification, selecting and
64 fitting an appropriate aid, and evaluating the effectiveness of amplification.

65 "Autism" means a developmental disability significantly affecting verbal and nonverbal
66 communication and social interaction, generally evident before age three, that adversely affects
67 a child's educational performance. Other characteristics often associated with autism are
68 engagement in repetitive activities and stereotyped movements, resistance to environmental
69 change or change in daily routines, and unusual responses to sensory experiences. Autism does
70 not apply if a child's educational performance is adversely affected primarily because the child
71 has an emotional disturbance. A child who manifests the characteristics of autism after age three
72 could be identified as having autism if the criteria in this definition are satisfied. (34 CFR
73 300.8(c)(1))

74 "Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and
75 supports to address behaviors that interfere with the learning of students with disabilities or with
76 the learning of others or behaviors that require disciplinary action.

77 "Business day" means Monday through Friday, 12 months of the year, exclusive of federal
78 and state holidays (unless holidays are specifically included in the designation of business days,
79 as in 8VAC20-81-150 B 4 a (2)). (34 CFR 300.11)

80 "Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever
81 any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state
82 holiday, the period of time for taking such action under this chapter shall be extended to the next
83 day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

84 "Career and technical education" means organized educational activities that offer a
85 sequence of courses that: (20 USC § 2301 et seq.)

- 86 1. Provides individuals with the rigorous and challenging academic and technical
87 knowledge and skills the individuals need to prepare for further education and for careers
88 (other than careers requiring a master's or doctoral degree) in current or emerging
89 employment sectors;
- 90 2. May include the provision of skills or courses necessary to enroll in a sequence of
91 courses that meet the requirements of this subdivision; or

92 3. Provides, at the postsecondary level, for a one-year certificate, an associate degree, or
93 industry-recognized credential and includes competency-based applied learning that
94 contributes to the academic knowledge, higher-order reasoning and problem-solving
95 skills, work attitudes, general employability skills, technical skills, and occupational-
96 specific skills.

97 "Caseload" means the number of students served by special education personnel.

98 "Change in identification" means a change in the categorical determination of the child's
99 disability by the group that determines eligibility.

100 "Change in placement" or "change of placement" means when the local educational agency
101 places the child in a setting that is distinguishable from the educational environment to which the
102 child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR 300.532(b)(2)(ii)
103 and 34 CFR 300.536)

- 104 1. The child's initial placement from general education to special education and related
105 services;
- 106 2. The expulsion or long-term removal of a student with a disability;
- 107 3. The placement change that results from a change in the identification of a disability;
- 108 4. The change from a public school to a private day, residential, or state-operated program;
109 from a private day, residential, or state-operated program to a public school; or to a
110 placement in a separate facility for educational purposes;
- 111 5. Termination of all special education and related services; or
- 112 6. Graduation with a standard or advanced studies high school diploma.

113 A "change in placement" also means any change in the educational setting for a child with a
114 disability that does not replicate the elements of the educational program of the child's previous
115 setting.

116 "Change in placement" or "change of placement," for the purposes of discipline, means: (34
117 CFR 300.536)

- 118 1. A removal of a student from the student's current educational placement is for more
119 than 10 consecutive school days; or
- 120 2. The student is subjected to a series of removals that constitute a pattern because they
121 cumulate to more than 10 school days in a school year, and because of factors such as:
 - 122 a. The length of each removal;
 - 123 b. The child's behavior is substantially similar to the child's behavior in previous
124 incidents that resulted in the series of removals;
 - 125 c. The total amount of time the student is removed; or
 - 126 d. The proximity of the removals to one another.

127 "Chapter" means these regulations.

128 "Charter schools" means any school meeting the requirements for charter as set forth in the
129 Code of Virginia. (§§ 22.1-212.5 through 22.1-212.16 of the Code of Virginia; 34 CFR 300.7)

130 "Child" means any person who shall not have reached his 22nd birthday by September 30 of
131 the current year.

132 "Child with a disability" means a child evaluated in accordance with the provisions of this
133 chapter as having an intellectual disability, a hearing impairment (including deafness), a speech
134 or language impairment, a visual impairment (including blindness), a serious emotional disability
135 (referred to in this part as "emotional disability"), an orthopedic impairment, autism, traumatic
136 brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple
137 disabilities who, by reason thereof, needs special education and related services. This also

138 includes developmental delay if the local educational agency recognizes this category as a
139 disability in accordance with 8VAC20-81-80 M 3. If it is determined through an appropriate
140 evaluation that a child has one of the disabilities identified but only needs a related service and
141 not special education, the child is not a child with a disability under this part. If the related service
142 required by the child is considered special education rather than a related service under Virginia
143 standards, the child would be determined to be a child with a disability. (§ 22.1-213 of the Code
144 of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii))

145 "Collaboration" means interaction among professionals as they work toward a common goal.
146 Teachers do not necessarily have to engage in co-teaching in order to collaborate.

147 "Complaint" means a request that the Virginia Department of Education investigate an alleged
148 violation by a local educational agency of a right of a parent of a child who is eligible or suspected
149 to be eligible for special education and related services based on federal and state law and
150 regulations governing special education or a right of such child. A complaint is a statement of
151 some disagreement with procedures or process regarding any matter relative to the identification,
152 evaluation, or educational placement of the child, or the provision of a free appropriate public
153 education. (34 CFR 300.151)

154 "Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk
155 Youth and Families that establishes the collaborative administration and funding system for
156 services for certain at-risk youths and their families. (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2
157 of the Code of Virginia)

158 "Consent" means: (34 CFR 300.9)

159 1. The parents or eligible student has been fully informed of all information relevant to the
160 activity for which consent is sought in the parent's or eligible student's native language, or
161 other mode of communication;

162 2. The parent or eligible student understands and agrees, in writing, to the carrying out of
163 the activity for which consent is sought, and the consent describes that activity and lists
164 the records (if any) that will be released and to whom; and

165 3. The parent or eligible student understands that the granting of consent is voluntary on
166 the part of the parent or eligible student and may be revoked any time.

167 a. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate
168 an action that has occurred after the consent was given and before the consent was
169 revoked. Revocation ceases to be relevant after the activity for which consent was
170 obtained was completed.)

171 b. If a parent revokes consent in writing for their child's receipt of special education
172 services after the child is initially provided special education and related services, the
173 local educational agency is not required to amend the child's education records to
174 remove any references to the child's receipt of special education and related services
175 because of the revocation of consent.

176 The meaning of the term "consent" is not the same as the meaning of the term "agree" or
177 "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local
178 educational agency about a particular matter and as required in this chapter. There is no
179 requirement that an agreement be in writing, unless stated in this chapter. The local educational
180 agency and parent should document their agreement.

181 "Controlled substance" means a drug or other substance identified under Schedule I, II, III,
182 IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c). (34 CFR 300.530(i)(1))

183 "Core academic subjects" means English, reading or language arts, mathematics, science,
184 foreign languages, civics, and government, economics, arts, history, and geography. (34 CFR
185 300.10)

186 "Correctional facility" means any state facility of the Virginia Department of Corrections or the
187 Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or
188 local jail. (§§ 16.1-228 and 53.1-1 of the Code of Virginia)

189 "Coteaching" means a service delivery option with two or more professionals sharing
190 responsibility for a group of students for some or all of the school day in order to combine their
191 expertise to meet student needs.

192 "Counseling services" means services provided by qualified visiting teachers, social workers,
193 psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2);
194 Licensure Regulations for School Personnel (8VAC20-22))

195 "Dangerous weapon" means a weapon, device, instrument, material, or substance, animate
196 or inanimate, that is used for or is readily capable of, causing death or bodily injury, except that
197 such term does not include a pocket knife with a blade of less than three inches in length. (18
198 USC § 930(g)(2); § 18.2-308.1 of the Code of Virginia)

199 "Day" means calendar day unless otherwise indicated as business day or school day. (34
200 CFR 300.11)

201 "Deaf-blindness" means simultaneous hearing and visual impairments, the combination of
202 which causes such severe communication and other developmental and educational needs that
203 they cannot be accommodated in special education programs solely for children with deafness or
204 children with blindness. (34 CFR 300.8(c)(2))

205 "Deafness" means a hearing impairment that is so severe that the child is impaired in
206 processing linguistic information through hearing, with or without amplification, that adversely
207 affects the child's educational performance. (34 CFR 300.8(c)(3))

208 "Destruction of information" means physical destruction or removal of personal identifiers from
209 information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

210 "Developmental delay" means a disability affecting a child ages two by September 30 through
211 six, inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

212 1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic
213 instruments and procedures, in one or more of the following areas: physical development,
214 cognitive development, communication development, social or emotional development, or
215 adaptive development, or (ii) who has an established physical or mental condition that has
216 a high probability of resulting in developmental delay;

217 2. The delay is not primarily a result of cultural factors, environmental or economic
218 disadvantage, or limited English proficiency; and

219 3. The presence of one or more documented characteristics of the delay has an adverse
220 affect on educational performance and makes it necessary for the student to have
221 specially designed instruction to access and make progress in the general educational
222 activities for this age group.

223 "Direct services" means services provided to a child with a disability directly by the Virginia
224 Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

225 "Due process hearing" means an administrative procedure conducted by an impartial special
226 education hearing officer to resolve disagreements regarding the identification, evaluation,
227 educational placement and services, and the provision of a free appropriate public education that
228 arise between a parent and a local educational agency. A due process hearing involves the
229 appointment of an impartial special education hearing officer who conducts the hearing, reviews
230 evidence, and determines what is educationally appropriate for the child with a disability. (34 CFR
231 300.507)

232 "Early identification and assessment of disabilities in children" means the implementation of a
233 formal plan for identifying a disability as early as possible in a child's life. (34 CFR 300.34(c)(3))

234 "Education record" means those records that are directly related to a student and maintained
235 by an educational agency or institution or by a party acting for the agency or institution. The term
236 also has the same meaning as "scholastic record." In addition to written records, this also includes
237 electronic exchanges between school personnel and parent regarding matters associated with
238 the child's educational program (e.g., scheduling of meetings or notices). This term also includes
239 the type of records covered under the definition of "education record" in the regulations
240 implementing the Family Education Rights and Privacy Act. (20 USC § 1232g(a)(3); § 22.1-289
241 of the Code of Virginia; 34 CFR 300.611(b))

242 "Educational placement" means the overall instructional setting in which the student receives
243 his education including the special education and related services provided. Each local
244 educational agency shall ensure that the parents of a child with a disability are members of the
245 group that makes decisions on the educational placement of their child. (34 CFR 300.327)

246 "Educational service agencies and other public institutions or agencies" include: (34 CFR
247 300.12)

- 248 1. Regional public multiservice agencies authorized by state law to develop, manage, and
249 provide services or programs to local educational agencies;
- 250 2. Recognized as an administrative agency for purposes of the provision of special
251 education and related services provided within public elementary schools and secondary
252 schools of the state;
- 253 3. Any other public institution or agency having administrative control and direction over a
254 public elementary school or secondary school; and
- 255 4. Entities that meet the definition of intermediate educational unit in § 1402(23) of the Act
256 as in effect prior to June 4, 1997.

257 "Eligible student" means a child with a disability who reaches the age of majority and to whom
258 the procedural safeguards and other rights afforded to the parent are transferred.

259 "Emotional disability" means a condition exhibiting one or more of the following characteristics
260 over a long period of time and to a marked degree that adversely affects a child's educational
261 performance: (34 CFR 300.8(c)(4))

- 262 1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- 263 2. An inability to build or maintain satisfactory interpersonal relationships with peers and
264 teachers;
- 265 3. Inappropriate types of behavior or feelings under normal circumstances;
- 266 4. A general pervasive mood of unhappiness or depression; or
- 267 5. A tendency to develop physical symptoms or fears associated with personal or school
268 problems.

269 Emotional disability includes schizophrenia. The term does not apply to children who are
270 socially maladjusted, unless it is determined that they have an emotional disability as defined in
271 this section.

272 "Equipment" means machinery, utilities, and built-in equipment, and any necessary
273 enclosures or structures to house machinery, utilities, or equipment and all other items necessary
274 for the functioning of a particular facility as a facility for the provision of educational services,
275 including items such as instructional equipment and necessary furniture, printed, published and
276 audio-visual instructional materials, telecommunications, sensory, and other technological aids
277 and devices and books, periodicals, documents, and other related materials. (34 CFR 300.14)

278 "Evaluation" means procedures used in accordance with this chapter to determine whether a
279 child has a disability and the nature and extent of the special education and related services that
280 the child needs. (34 CFR 300.15)

281 "Excess costs" means those costs that are in excess of the average annual per-student
282 expenditure in a local educational agency during the preceding school year for an elementary
283 school or secondary school student, as may be appropriate, and that shall be computed after
284 deducting: (34 CFR 300.16)

- 285 1. Amounts received:
 - 286 a. Under Part B of the Act;
 - 287 b. Under Part A of Title I of the ESEA; and
 - 288 c. Under Parts A and B of Title III of the ESEA; and
- 289 2. Any state or local funds expended for programs that would qualify for assistance under
290 any of the parts described in subdivision 1 a of this definition, but excluding any amounts
291 for capital outlay or debt service.

292 "Extended school year services" for the purposes of this chapter means special education and
293 related services that: (34 CFR 300.106(b))

- 294 1. Are provided to a child with a disability:
 - 295 a. Beyond the normal school year of the local educational agency;
 - 296 b. In accordance with the child's individualized education program;
 - 297 c. At no cost to the parent of the child; and

- 298 2. Meet the standards established by the Virginia Department of Education.

299 "Federal core academic subjects" means English, reading or language arts, mathematics,
300 science, foreign language (languages other than English), civics and government, economics,
301 arts, history, and geography. (20 USC § 7801(11))

302 "Federal financial assistance" means any grant, loan, contract or any other arrangement by
303 which the U.S. Department of Education provides or otherwise makes available assistance in the
304 form of funds, services of federal personnel, or real and personal property. (34 CFR 104.3(h))

305 "Free appropriate public education" or "FAPE" means special education and related services
306 that: (34 CFR 300.17)

- 307 1. Are provided at public expense, under public supervision and direction, and without
308 charge;
- 309 2. Meet the standards of the Virginia Board of Education;
- 310 3. Include an appropriate preschool, elementary school, middle school or secondary
311 school education in Virginia; and
- 312 4. Are provided in conformity with an individualized education program that meets the
313 requirements of this chapter.

314 "Functional behavioral assessment" means a process to determine the underlying cause or
315 functions of a child's behavior that impede the learning of the child with a disability or the learning
316 of the child's peers. A functional behavioral assessment may include a review of existing data or
317 new testing data or evaluation as determined by the IEP team.

318 "General curriculum" means the same curriculum used with children without disabilities
319 adopted by a local educational agency, schools within the local educational agency or, where
320 applicable, the Virginia Department of Education for all children from preschool through secondary
321 school. The term relates to content of the curriculum and not to the setting in which it is taught.

322 "Hearing impairment" means an impairment in hearing in one or both ears, with or without
323 amplification, whether permanent or fluctuating, that adversely affects a child's educational

324 performance but that is not included under the definition of deafness in this section. (34 CFR
325 300.8(c)(5))

326 "Highly qualified special education teacher" means a teacher has met the requirements as
327 specified in 34 CFR 300.18 for special education teachers in general, for special education
328 teachers teaching core academic subjects, for special education teachers teaching to alternate
329 achievement standards, or for special education teachers teaching multiple subjects as it applies
330 to their teaching assignment. (34 CFR 300.18)

331 "Home-based instruction" means services that are delivered in the home setting (or other
332 agreed upon setting) in accordance with the child's individualized education program.

333 "Homebound instruction" means academic instruction provided to students who are confined
334 at home or in a health care facility for periods that would prevent normal school attendance based
335 upon certification of need by a licensed physician or licensed clinical psychologist. For a child with
336 a disability, the IEP team shall determine the delivery of services, including the number of hours
337 of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia,
338 8VAC20-131-180)

339 "Home instruction" means instruction of a child or children by a parent, guardian or other
340 person having control or charge of such child or children as an alternative to attendance in a
341 public or private school in accordance with the provisions of the Code of Virginia. This instruction
342 may also be termed home schooling. (§ 22.1-254.1 of the Code of Virginia)

343 "Homeless children" has the meaning given the term "homeless children and youth" in § 725
344 (42 USC § 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC §
345 11431 et seq. and listed below: (34 CFR 300.19)

346 The term "homeless children and youth" means individuals who lack a fixed, regular, and
347 adequate nighttime residence within the meaning of § 103(a)(1) of the McKinney-Vento Homeless
348 Assistance Act and includes the following:

349 1. Children and youth who are sharing the housing of other persons due to loss of housing,
350 economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or
351 camping grounds due to a lack of alternative adequate accommodations; are living in
352 emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care
353 placement;

354 2. Children and youth who have a primary nighttime residence that is a public or private
355 place not designed for or ordinarily used as a regular sleeping accommodation for human
356 beings within the meaning of § 103(a)(2)(C);

357 3. Children and youth who are living in cars, parks, public spaces, abandoned buildings,
358 substandard housing, bus or train stations, or similar settings; and

359 4. Migratory children (as such term is defined in § 1309 of the Elementary and Secondary
360 Education Act of 1965) who qualify as homeless because the children are living in
361 circumstances described in subdivisions 1 through 3 of this definition.

362 The term "unaccompanied youth" includes a youth not in the physical custody of a parent or
363 guardian.

364 "Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the
365 Virginia Board of Education, as an alternative to attendance in a public or private school and
366 approved by the division superintendent in accordance with the provisions of the Code of Virginia.
367 This tutoring is not home instruction as defined in the Code of Virginia. (§ 22.1-254 of the Code
368 of Virginia)

369 "Illegal drug" means a controlled substance, but does not include a controlled substance that
370 is legally possessed or used under the supervision of a licensed health-care professional or that

371 is legally possessed or used under any other authority under the Controlled Substances Act, 21
372 USC § 812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

373 "Impartial special education hearing officer" means a person, selected from a list maintained
374 by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process
375 hearing.

376 "Implementation plan" means the plan developed by the local educational agency designed
377 to operationalize the decision of the hearing officer in cases that are fully adjudicated.

378 "Independent educational evaluation" means an evaluation conducted by a qualified examiner
379 or examiners who are not employed by the local educational agency responsible for the education
380 of the child in question. (34 CFR 300.502(a)(3)(i))

381 "Individualized education program" or "IEP" means a written statement for a child with a
382 disability that is developed, reviewed, and revised in a team meeting in accordance with this
383 chapter. The IEP specifies the individual educational needs of the child and what special
384 education and related services are necessary to meet the child's educational needs. (34 CFR
385 300.22)

386 "Individualized education program team" means a group of individuals described in 8VAC20-
387 81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
388 (34 CFR 300.23)

389 "Individualized family service plan (IFSP) under Part C of the Act" means a written plan for
390 providing early intervention services to an infant or toddler with a disability eligible under Part C
391 and to the child's family. (34 CFR 303.24; 20 USC § 636)

392 "Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday
393 falls on or before September 30, or who is eligible to receive services in the Part C early
394 intervention system up to age three, and who: (§ 2.2-5300 of the Code of Virginia; 34 CFR 300.25)

- 395 1. Has delayed functioning;
396 2. Manifests atypical development or behavior;
397 3. Has behavioral disorders that interfere with acquisition of developmental skills; or
398 4. Has a diagnosed physical or mental condition that has a high probability of resulting in
399 delay, even though no current delay exists.

400 "Informed parental consent": see "Consent."

401 "Initial placement" means the first placement for the child to receive special education and
402 related services in either a local educational agency, other educational service agency, or other
403 public agency or institution for the purpose of providing special education or related services.

404 "Intellectual disability" means the definition formerly known as "mental retardation" and means
405 significantly subaverage general intellectual functioning, existing concurrently with deficits in
406 adaptive behavior and manifested during the developmental period that adversely affects a child's
407 educational performance. (34 CFR 300.8(c)(6))

408 "Interpreting services" as used with respect to children who are deaf or hard of hearing, means
409 services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and
410 includes oral transliteration services, cued speech/language transliteration services, sign
411 language transliteration and interpreting services, and transcription services, such as
412 communication access real-time translation (CART), C-Print, and TypeWell and interpreting
413 services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has
414 language deficits, may receive interpreting services as directed by the child's Individualized
415 Education Program. (Regulations Governing Interpreter Services for the Deaf and Hard of
416 Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

417 "Least restrictive environment" (LRE) means that to the maximum extent appropriate, children
418 with disabilities, including children in public or private institutions or other care facilities, are
419 educated with children who are not disabled, and that special classes, separate schooling or other
420 removal of children with disabilities from the regular educational environment occurs only when
421 the nature or severity of the disability is such that education in regular classes with the use of
422 supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 through 34
423 CFR 300.120)

424 "Level I services" means the provision of special education to children with disabilities for less
425 than 50% of their instructional school day (excluding intermission for meals). The time that a child
426 receives special education services is calculated on the basis of special education services
427 described in the individualized education program, rather than the location of services.

428 "Level II services" means the provision of special education to children with disabilities for
429 50% or more of the instructional school day (excluding intermission for meals). The time that a
430 child receives special education services is calculated on the basis of special education services
431 described in the individualized education program, rather than the location of services.

432 "Limited English proficient" when used with respect to an individual means an individual: (20
433 USC § 7801(25); 34 CFR 300.27)

- 434 1. Who is aged two through 21;
- 435 2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or
- 436 3. Who:
 - 437 a. Was not born in the United States or whose native language is a language other than English;
 - 438
 - 439 b. Is a Native American or Alaska Native, or a native resident of the outlying areas,
440 and comes from an environment where a language other than English has had a
441 significant impact on the individual's level of English language proficiency; or
 - 442 c. Is migratory, whose native language is a language other than English, and who
443 comes from an environment where a language other than English is dominant; and
- 444 4. Whose difficulties in speaking, reading, writing, or understanding the English language
445 may be sufficient to deny the individual:
 - 446 a. The ability to meet Virginia's proficient level of achievement on Virginia's
447 assessments;
 - 448 b. The ability to successfully achieve in classrooms where the language of instruction
449 is English; or
 - 450 c. The opportunity to participate fully in society.

451 "Local educational agency" means a local school division governed by a local school board,
452 a state-operated program that is funded and administered by the Commonwealth of Virginia or
453 the Virginia School for the Deaf and the Blind at Staunton. Neither state-operated programs nor
454 the Virginia School for the Deaf and the Blind at Staunton are considered a school division as that
455 term is used in these regulations. (§ 22.1-346 C of the Code of Virginia; 34 CFR 300.28)

456 "Long-term placement" if used in reference to state-operated programs as outlined in
457 8VAC20-81-30 H means those hospital placements that are not expected to change in status or
458 condition because of the child's medical needs.

459 "Manifestation determination review" means a process to review all relevant information and
460 the relationship between the child's disability and the behavior subject to the disciplinary action.

461 "Medical services" means services provided by a licensed physician or nurse practitioner to
462 determine a child's medically related disability that results in the child's need for special education
463 and related services. (§ 22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

464 "Mental retardation" - see "Intellectual disability."

465 "Multiple disabilities" means simultaneous impairments (such as intellectual disability with
466 blindness, intellectual disability with orthopedic impairment), the combination of which causes
467 such severe educational needs that they cannot be accommodated in special education programs
468 solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

469 "National Instructional Materials Access Center" or "NIMAC" means the national center
470 established to do the following: (34 CFR 300.172)

471 1. Receive and maintain a catalog of print instructional materials prepared in the NIMAS,
472 as established by the U.S. Secretary of Education, made available to such center by the
473 textbook publishing industry, state educational agencies, and local educational agencies;

474 2. Provide access to print instructional materials, including textbooks, in accessible media,
475 free of charge, to blind or other persons with print disabilities in elementary schools and
476 secondary schools, in accordance with such terms and procedures as the NIMAC may
477 prescribe; and

478 3. Develop, adopt and publish procedures to protect against copyright infringement, with
479 respect to print instructional materials provided in accordance with the Act.

480 "National Instructional Materials Accessibility Standard" or "NIMAS" means the standard
481 established by the United States Secretary of Education to be used in the preparation of electronic
482 files suitable and used solely for efficient conversion of print instructional materials into specialized
483 formats. (34 CFR 300.172)

484 "Native language" if used with reference to an individual of limited English proficiency, means
485 the language normally used by that individual, or, in the case of a child, the language normally
486 used by the parent of the child, except in all direct contact with a child (including evaluation of the
487 child), the language normally used by the child in the home or learning environment. For an
488 individual with deafness or blindness, or for an individual with no written language, the mode of
489 communication is that normally used by the individual (such as sign language, Braille, or oral
490 communication). (34 CFR 300.29)

491 "Nonacademic services and extracurricular services" may include counseling services,
492 athletics, transportation, health services, recreational activities, special interest groups or clubs
493 sponsored by the local educational agency, referrals to agencies that provide assistance to
494 individuals with disabilities, and employment of students, including both employment by the local
495 educational agency and assistance in making outside employment available. (34 CFR
496 300.107(b))

497 "Notice" means written statements in English or in the primary language of the home of the
498 parent, or, if the language or other mode of communication of the parent is not a written language,
499 oral communication in the primary language of the home of the parent. If an individual is deaf or
500 blind, or has no written language, the mode of communication would be that normally used by the
501 individual (such as sign language, Braille, or oral communication). (34 CFR 300.503(c))

502 "Occupational therapy" means services provided by a qualified occupational therapist or
503 services provided under the direction or supervision of a qualified occupational therapist and
504 includes: (Regulations Governing the Licensure of Occupational Therapists (18VAC85-80-10 et
505 seq.); 34 CFR 300.34(c)(6))

506 1. Improving, developing, or restoring functions impaired or lost through illness, injury, or
507 deprivation;

508 2. Improving ability to perform tasks for independent functioning if functions are impaired
509 or lost; and

510 3. Preventing, through early intervention, initial or further impairment or loss of function.

511 "Orientation and mobility services" means services provided to blind or visually impaired
512 children by qualified personnel to enable those children to attain systematic orientation to and
513 safe movement within their environments in school, home, and community; and includes travel
514 training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

515 1. Spatial and environmental concepts and use of information received by the senses
516 (e.g., sound, temperature, and vibrations) to establish, maintain, or regain orientation and
517 line of travel (e.g., using sound at a traffic light to cross the street);

518 2. To use the long cane or service animal to supplement visual travel skills or as a tool for
519 safely negotiating the environment for students with no available travel vision;

520 3. To understand and use remaining vision and distance low vision aids; and

521 4. Other concepts, techniques, and tools.

522 "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a
523 child's educational performance. The term includes impairments caused by congenital anomaly,
524 impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments
525 from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause
526 contractures). (34 CFR 300.8(c)(8))

527 "Other health impairment" means having limited strength, vitality or alertness, including a
528 heightened alertness to environmental stimuli, that results in limited alertness with respect to the
529 educational environment, that is due to chronic or acute health problems such as asthma,
530 attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart
531 condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia
532 and Tourette syndrome that adversely affects a child's educational performance. (34 CFR
533 300.8(c)(9))

534 "Paraprofessional," also known as paraeducator, means an appropriately trained employee
535 who assists and is supervised by qualified professional staff in meeting the requirements of this
536 chapter. (34 CFR 300.156(b)(2)(iii))

537 "Parent" means: (§ 20-124.6 and § 22.1-213.1 of the Code of Virginia; 34 CFR 99.4 and 34
538 CFR 300.30)

539 1. Persons who meet the definition of "parent":

540 a. A biological or adoptive parent of a child;

541 b. A foster parent, even if the biological or adoptive parent's rights have not been
542 terminated, but subject to subdivision 8 of this definition;

543 c. A guardian generally authorized to act as the child's parent, or authorized to make
544 educational decisions for the child (but not a guardian ad litem, or the state if the child
545 is a ward of the state);

546 d. An individual acting in the place of a biological or adoptive parent (including a
547 grandparent, stepparent, or other relative) with whom the child lives, or an individual
548 who is legally responsible for the child's welfare;

549 e. If no party qualified under subdivisions 1 a through 1 d of this definition can be
550 identified, or those parties are unwilling to act as parent, a surrogate parent who has
551 been appointed in accordance with requirements detailed under 8VAC20-81-220; or

552 f. A minor who is emancipated under § 16.1-333 of the Code of Virginia.

553 2. If a judicial decree or order identifies a specific person under subdivisions 1 a through
554 1 e of this subsection to act as the "parent" of a child or to make educational decisions on
555 behalf of a child, then such person shall be determined to be the "parent" for purposes of
556 this definition.

557 3. "Parent" does not include local or state agencies or their agents, including local
558 departments of social services, even if the child is in the custody of such an agency.

559 4. The biological or adoptive parent, when attempting to act as the parent under this
560 chapter and when more than one party is qualified under this section to act as a parent,
561 shall be presumed to be the parent for purposes of this section unless the biological or
562 adoptive parent's or parents' authority to make educational decisions on the child's behalf
563 has been extinguished pursuant to § 16.1-277.01, 16.1-277.02, or 16.1-283 of the Code
564 of Virginia or a comparable law in another state.

565 5. Noncustodial parents whose parental rights have not been terminated are entitled to all
566 parent rights and responsibilities available under this chapter, including access to their
567 child's records.

568 6. Custodial stepparents have the right to access the child's record. Noncustodial
569 stepparents do not have the right to access the child's record.

570 7. A validly married minor who has not pursued emancipation under § 16.1-333 of the
571 Code of Virginia may assert implied emancipation based on the minor's marriage record
572 and, thus, assumes responsibilities of "parent" under this chapter.

573 8. The local educational agency shall provide written notice to the biological or adoptive
574 parents at their last known address that a foster parent is acting as the parent under this
575 section, and the local educational agency is entitled to rely upon the actions of the foster
576 parent under this section until such time that the biological or adoptive parent attempts to
577 act as the parent.

578 "Parent counseling and training" means assisting parents in understanding the special needs
579 of their child, providing parents with information about child development, and helping parents to
580 acquire the necessary skills that will allow them to support the implementation of their child's IEP
581 or IFSP. (34 CFR 300.34(c)(8))

582 "Participating agency" means a state or local agency (including a Comprehensive Services
583 Act team), other than the local educational agency responsible for a student's education, that is
584 financially and legally responsible for providing transition services to the student. The term also
585 means any agency or institution that collects, maintains, or uses personally identifiable
586 information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c),
587 34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

588 "Personally identifiable" means information that contains the following: (34 CFR 300.32)

- 589 1. The name of the child, the child's parent, or other family member;
- 590 2. The address of the child;
- 591 3. A personal identifier, such as the child's social security number or student number; or
- 592 4. A list of personal characteristics or other information that would make it possible to
593 identify the child with reasonable certainty.

594 "Physical education" means the development of: (34 CFR 300.39(b)(2))

- 595 1. Physical and motor fitness;
- 596 2. Fundamental motor skills and patterns; and
- 597 3. Skills in aquatics, dance, and individual and group games and sports (including
598 intramural and lifetime sports). The term includes special physical education, adapted
599 physical education, movement education, and motor development.

600 "Physical therapy" means services provided by a qualified physical therapist or under the
601 direction or supervision of a qualified physical therapist upon medical referral and direction.
602 (Regulations Governing the Practice of Physical Therapy, 18VAC112-20; 34 CFR 300.34(c)(9))

603 "Private school children with disabilities" means children with disabilities enrolled by their
604 parent in private, including religious, schools or facilities that meet the definition of elementary
605 school or secondary school as defined in this section other than children with disabilities who are
606 placed in a private school by a local school division or a Comprehensive Services Act team in
607 accordance with 8VAC20-81-150. (34 CFR 300.130)

608 "Program" means the special education and related services, including accommodations,
609 modifications, supplementary aids and services, as determined by a child's individualized
610 education program.

611 "Psychological services" means those services provided by a qualified psychologist or under
612 the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

- 613 1. Administering psychological and educational tests, and other assessment procedures;
- 614 2. Interpreting assessment results;
- 615 3. Obtaining, integrating, and interpreting information about child behavior and conditions
616 relating to learning;
- 617 4. Consulting with other staff members in planning school programs to meet the special
618 needs of children as indicated by psychological tests, interviews, direct observation, and
619 behavioral evaluations;
- 620 5. Planning and managing a program of psychological services, including psychological
621 counseling for children and parents; and
- 622 6. Assisting in developing positive behavioral intervention strategies.

623 "Public expense" means that the local educational agency either pays for the full cost of the
624 service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to
625 the parent. (34 CFR 300.502(a)(3)(ii))

626 "Public notice" means the process by which certain information is made available to the
627 general public. Public notice procedures may include newspaper advertisements, radio
628 announcements, television features and announcements, handbills, brochures, electronic means,
629 and other methods that are likely to succeed in providing information to the public.

630 "Qualified person who has a disability" means a "qualified handicapped person" as defined in
631 the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC § 701
632 et seq.)

633 "Recreation" includes: (34 CFR 30.34(c)(11))

- 634 1. Assessment of leisure function;
- 635 2. Therapeutic recreation services;
- 636 3. Recreation program in schools and community agencies; and
- 637 4. Leisure education.

638 "Reevaluation" means completion of a new evaluation in accordance with this chapter. (34
639 CFR 300.303)

640 "Rehabilitation counseling services" means services provided by qualified personnel in
641 individual or group sessions that focus specifically on career development, employment
642 preparation, achieving independence, and integration in the workplace and community of a
643 student with a disability. The term also includes vocational rehabilitation services provided to
644 students with disabilities by vocational rehabilitation programs funded under the Rehabilitation
645 Act of 1973 (29 USC § 701 et seq.), as amended. (34 CFR 300.34(c)(12))

646 "Related services" means transportation and such developmental, corrective, and other
647 supportive services as are required to assist a child with a disability to benefit from special
648 education and includes speech-language pathology and audiology services; interpreting services;

649 psychological services; physical and occupational therapy; recreation, including therapeutic
650 recreation; early identification and assessment of disabilities in children; counseling services,
651 including rehabilitation counseling; orientation and mobility services; and medical services for
652 diagnostic or evaluation purposes. Related services also includes school health services and
653 school nurse services; social work services in schools; and parent counseling and training.
654 Related services do not include a medical device that is surgically implanted including cochlear
655 implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the
656 replacement of that device. The list of related services is not exhaustive and may include other
657 developmental, corrective, or supportive services (such as artistic and cultural programs, and art,
658 music and dance therapy), if they are required to assist a child with a disability to benefit from
659 special education. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

660 Nothing in this section:

- 661 1. Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to
662 receive related services that are determined by the IEP team to be necessary for the child
663 to receive FAPE;
- 664 2. Limits the responsibility of a public agency to appropriately monitor and maintain
665 medical devices that are needed to maintain the health and safety of the child, including
666 breathing, nutrition, or operation of other bodily functions, while the child is transported to
667 and from school or is at school; or
- 668 3. Prevents the routine checking of an external component of a surgically implanted device
669 to make sure it is functioning properly.

670 "School day" means any day, including a partial day, that children are in attendance at school
671 for instructional purposes. The term has the same meaning for all children in school, including
672 children with and without disabilities. (34 CFR 300.11)

673 "School health services and school nurse services" means health services that are designed
674 to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse
675 services are services provided by a qualified school nurse. School health services are services
676 that may be provided by either a qualified school nurse or other qualified person. (Chapter 30 (§
677 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

678 "Scientifically based research" means research that involves the application of rigorous,
679 systematic, and objective procedures to obtain reliable and valid knowledge relevant to education
680 activities and programs and includes research that: (20 USC § 9501(18); 34 CFR 300.35)

- 681 1. Employs systematic, empirical methods that draw on observation or experiment;
- 682 2. Involves rigorous data analyses that are adequate to test the stated hypotheses and
683 justify the general conclusions drawn;
- 684 3. Relies on measurements or observational methods that provide reliable and valid data
685 across evaluators and observers, across multiple measurements and observations, and
686 across studies by the same or different investigators;
- 687 4. Is evaluated using experimental or quasi-experimental designs in which individuals,
688 entities, programs, or activities are assigned to different conditions and with appropriate
689 controls to evaluate the effects of the condition of interest, with a preference for random-
690 assignment experiments, or other designs to the extent that those designs contain within-
691 condition or across-condition controls;
- 692 5. Ensures that experimental studies are presented in sufficient detail and clarity to allow
693 for replication or, at a minimum, offer the opportunity to build systematically on their
694 findings; and
- 695 6. Has been accepted by a peer-reviewed journal or approved by a panel of independent
696 experts through a comparably rigorous, objective, and scientific review.

697 "Screening" means those processes that are used routinely with all children to identify
698 previously unrecognized needs and that may result in a referral for special education and related
699 services or other referral or intervention.

700 "Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is
701 designed to eliminate discrimination on the basis of disability in any program or activity receiving
702 federal financial assistance. (29 USC § 701 et seq.)

703 "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme
704 physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the
705 function of a bodily member, organ or mental faculty. (18 USC § 1365(h)(3); 34 CFR 300.530(i)(3))

706 "Services plan" means a written statement that describes the special education and related
707 services the local educational agency will provide to a parentally placed child with a disability
708 enrolled in a private school who has been designated to receive services, including the location
709 of the services and any transportation necessary, and is developed and implemented in
710 accordance with 8VAC20-81-150. (34 CFR 300.37)

711 "Short term objectives" means measurable intermediate steps that enable an Individualized
712 Education Program (IEP) team to monitor a student's progress toward achieving the annual goals.

713 "Social work services in schools" means those services provided by a school social worker or
714 qualified visiting teacher, including: (Licensure Regulations for School Personnel, 8VAC20-22-
715 660); 34 CFR 300.34(c)(14))

- 716 1. Preparing a social or developmental history on a child with a disability;
- 717 2. Group and individual counseling with the child and family;
- 718 3. Working in partnership with parents and others on those problems in a child's living
719 situation (home, school, and community) that affect the child's adjustment in school;
- 720 4. Mobilizing school and community resources to enable the child to learn as effectively
721 as possible in the child's educational program; and
- 722 5. Assisting in developing positive behavioral intervention strategies for the child.

723 A local educational agency, in its discretion, may expand the role of a school social worker or
724 visiting teacher beyond those services identified in this definition, as long as the expansion is
725 consistent with other state laws and regulations, including licensure.

726 "Special education" means specially designed instruction, at no cost to the parent, to meet
727 the unique needs of a child with a disability, including instruction conducted in a classroom, in the
728 home, in hospitals, in institutions, and in other settings and instruction in physical education. The
729 term includes each of the following if it meets the requirements of the definition of special
730 education: (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

- 731 1. Speech-language pathology services or any other related service, if the service is
732 considered special education rather than a related service under state standards;
- 733 2. Vocational education; and
- 734 3. Travel training.

735 "Special education hearing officer" has the same meaning as the term "impartial hearing
736 officer" as that term is used in the Act and its federal implementing regulations.

737 "Specially designed instruction" means adapting, as appropriate to the needs of an eligible
738 child under this chapter, the content, methodology, or delivery of instruction: (34 CFR
739 300.39(b)(3))

- 740 1. To address the unique needs of the child that result from the child's disability; and

741 2. To ensure access of the child to the general curriculum, so that the child can meet the
742 educational standards that apply to all children within the jurisdiction of the local
743 educational agency.

744 "Specific learning disability" means a disorder in one or more of the basic psychological
745 processes involved in understanding or in using language, spoken or written, that may manifest
746 itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical
747 calculations, including conditions such as perceptual disabilities, brain injury, minimal brain
748 dysfunction, dyslexia, and developmental aphasia.

749 Specific learning disability does not include learning problems that are primarily the result of
750 visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of
751 environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR
752 300.8(c)(10))

753 Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the
754 phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is
755 characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and
756 decoding abilities. These difficulties typically result from a deficit in the phonological component
757 of language that is often unexpected in relation to other cognitive abilities and the provision of
758 effective classroom instruction. Secondary consequences may include problems in reading
759 comprehension and reduced reading experience that can impede growth of vocabulary and
760 background knowledge.

761 "Speech or language impairment" means a communication disorder, such as stuttering,
762 impaired articulation, expressive or receptive language impairment, or voice impairment that
763 adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

764 "Speech-language pathology services" means the following: (34 CFR 300.34(c)(15))

- 765 1. Identification of children with speech or language impairments;
- 766 2. Diagnosis and appraisal of specific speech or language impairments;
- 767 3. Referral for medical or other professional attention necessary for the habilitation of
768 speech or language impairments;
- 769 4. Provision of speech and language services for the habilitation or prevention of
770 communicative impairments; and
- 771 5. Counseling and guidance of parents, children, and teachers regarding speech and
772 language impairments.

773 "State assessment program" means the state assessment program in Virginia under the Act
774 that is the component of the state assessment system used for accountability.

775 "State educational agency" means the Virginia Department of Education. (34 CFR 300.41)

776 "State-operated programs" means programs that provide educational services to children and
777 youth who reside in facilities according to the admissions policies and procedures of those
778 facilities that are the responsibility of state boards, agencies, or institutions. (§§ 22.1-7, 22.1-340
779 and 22.1-345 of the Code of Virginia)

780 "Supplementary aids and services" means aids, services, and other supports that are provided
781 in general education classes or other education-related settings to enable children with disabilities
782 to be educated with children without disabilities to the maximum extent appropriate in accordance
783 with this chapter. (34 CFR 300.42)

784 "Surrogate parent" means a person appointed in accordance with procedures set forth in this
785 chapter to ensure that children are afforded the protection of procedural safeguards and the
786 provision of a free appropriate public education. (34 CFR 300.519)

787 "Timely manner" if used with reference to the requirement for National Instructional Materials
788 Accessibility Standard means that the local educational agency shall take all reasonable steps to
789 provide instructional materials in accessible formats to children with disabilities who need those
790 instructional materials at the same time as other children receive instructional materials. (34 CFR
791 300.172(b)(4))

792 "Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities)
793 services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken
794 to support the transition of the child to: (34 CFR 300.124)

- 795 1. Early childhood special education to the extent that those services are appropriate; or
- 796 2. Other services that may be available, if appropriate.

797 "Transition services" if used with reference to secondary transition means a coordinated set
798 of activities for a student with a disability that is designed within a results-oriented process that:
799 (34 CFR 300.43)

800 1. Is focused on improving the academic and functional achievement of the child with a
801 disability to facilitate the child's movement from school to post-school activities, including
802 postsecondary education, vocational education, integrated employment (including
803 supported employment), continuing and adult education, adult services, independent
804 living, or community participation.

805 2. Is based on the individual child's needs, taking into account the child's strengths,
806 preferences, and interests and includes instruction, related services, community
807 experiences, the development of employment and other post-school adult living objectives
808 and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

809 Transition services for students with disabilities may be special education, if provided as
810 specially designed instruction, or related services, if they are required to assist a student with a
811 disability to benefit from special education.

812 "Transportation" includes: (34 CFR 300.34(c)(16))

- 813 1. Travel to and from school and between schools;
- 814 2. Travel in and around school buildings; and
- 815 3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required
816 to provide special transportation for a child with a disability.

817 "Traumatic brain injury" means an acquired injury to the brain caused by an external physical
818 force or by other medical conditions, including stroke, anoxia, infectious disease, aneurysm, brain
819 tumors, and neurological insults resulting from medical or surgical treatments, resulting in total or
820 partial functional disability or psychosocial impairment, or both, that adversely affects a child's
821 educational performance. Traumatic brain injury applies to open or closed head injuries resulting
822 in impairments in one or more areas, such as cognition; language; memory; attention; reasoning;
823 abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities;
824 psychosocial behavior; physical functions; information processing; and speech. Traumatic brain
825 injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries
826 induced by birth trauma. (34 CFR 300.8(c)(12))

827 "Travel training" means providing instruction, as appropriate, to children with significant
828 cognitive disabilities, and any other children with disabilities who require this instruction, to enable
829 them to: (34 CFR 300.39(b)(4))

- 830 1. Develop an awareness of the environment in which they live; and
- 831 2. Learn the skills necessary to move effectively and safely from place to place within that
832 environment (e.g., in school, in the home, at work, and in the community).

833 "Universal design" has the meaning given the term in § 3 of the Assistive Technology Act of
834 1998, as amended, 29 USC § 3002. The term "universal design" means a concept or philosophy
835 for designing and delivering products and services that are usable by people with the widest
836 possible range of functional capabilities, which include products and services that are directly
837 usable (without requiring assistive technologies) and products and services that are made usable
838 with assistive technologies. (34 CFR 300.44)

839 "Virginia School for the Deaf and the Blind at Staunton" means the Virginia school under the
840 operational control of the Virginia Board of Education. The Superintendent of Public Instruction
841 shall approve the education programs of this school. (§ 22.1-346 of the Code of Virginia)

842 "Visual impairment including blindness" means an impairment in vision that, even with
843 correction, adversely affects a child's educational performance. The term includes both partial
844 sight and blindness. (34 CFR 300.8(c)(13))

845 "Vocational education," for the purposes of special education, means organized educational
846 programs that are directly related to the preparation of individuals for paid or unpaid employment
847 or for additional preparation for a career not requiring a baccalaureate or advanced degree, and
848 includes career and technical education. (34 CFR 300.39(b)(5))

849 "Ward of the state" means a child who, as determined by the state where the child resides is:
850 (34 CFR 300.45)

- 851 1. A foster child;
- 852 2. A ward of the state; or
- 853 3. In the custody of a public child welfare agency.

854 "Ward of the state" does not include a foster child who has a foster parent who meets the
855 definition of a "parent."

856 "Weapon" means dangerous weapon under 18 USC § 930(g)(2). (34 CFR 530(i)(4))

857 **8VAC20-81-110. Individualized education program.**

858 A. Responsibility. The local educational agency shall ensure that an IEP is developed and
859 implemented for each child with a disability served by that local educational agency, including a
860 child placed in a private special education school by: (34 CFR 300.112)

- 861 1. A local school division; or
- 862 2. A noneducational placement by a Comprehensive Services Act team that includes the
863 school division. The local school division's responsibility is limited to special education and
864 related services.

865 B. Accountability.

866 1. At the beginning of each school year, each local educational agency shall have an IEP
867 in effect for each child with a disability within its jurisdiction, with the exception of children
868 placed in a private school by parents when a free appropriate public education is not at
869 issue. (34 CFR 300.323(a))

870 2. Each local educational agency shall ensure that an IEP: (34 CFR 300.323(c))

- 871 a. Is in effect before special education and related services are provided to an eligible
872 child;
- 873 b. Is developed within 30 calendar days of the date of the initial determination that the
874 child needs special education and related services;
- 875 c. Is developed within 30 calendar days of the date the eligibility group determines that
876 the child remains eligible for special education and related services following
877 reevaluation, if the IEP team determines that changes are needed to the child's IEP,
878 or if the parent requests it; and

- 879 d. Is implemented as soon as possible following parental consent to the IEP.
- 880 3. Each local educational agency shall ensure that: (34 CFR 300.323(d))
- 881 a. The child's IEP is accessible to each regular education teacher, special education
- 882 teacher, related service provider, and other service provider who is responsible for its
- 883 implementation; and
- 884 b. Teachers and providers are informed of:
- 885 (1) Their specific responsibilities related to implementing the child's IEP; and
- 886 (2) The specific accommodations, modifications, and supports that shall be provided
- 887 for the child in accordance with the IEP.
- 888 4. Each local educational agency is responsible for initiating and conducting meetings to
- 889 develop, review, and revise the IEP of a child with a disability.
- 890 5. Each local educational agency shall ensure that the IEP team reviews the child's IEP
- 891 periodically, but not less than annually, to determine whether the annual goals are being
- 892 achieved and to revise its provisions, as appropriate, to address: (34 CFR 300.324(b))
- 893 a. Any lack of expected progress toward the annual goals and in the general
- 894 curriculum, if appropriate;
- 895 b. The results of any reevaluation conducted under this chapter;
- 896 c. Information about the child provided to or by the parent;
- 897 d. The child's anticipated needs; or
- 898 e. Other matters.
- 899 6. Each local educational agency shall provide special education and related services to
- 900 a child with a disability in accordance with the child's IEP. (34 CFR 300.323(c)(2))
- 901 7. Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the
- 902 parent feels that the efforts required by this chapter are not being met.
- 903 8. To the extent possible, the local educational agency shall encourage the consolidation
- 904 of reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))
- 905 9. In making changes to a child's IEP after the annual IEP team meeting for the school
- 906 year, the parent and the local educational agency may agree not to convene an IEP team
- 907 meeting for the purposes of making those changes, and instead may develop a written
- 908 document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))
- 909 a. If changes are made to the child's IEP, the local educational agency shall ensure
- 910 that the child's IEP team is informed of those changes.
- 911 b. Upon request, a parent shall be provided with a revised copy of the IEP with the
- 912 amendments incorporated.
- 913 c. This meeting is not a substitute for the required annual IEP meeting.
- 914 C. IEP team.
- 915 1. General. The local educational agency shall ensure that the IEP team for each child
- 916 with a disability includes: (34 CFR 300.321(a), (c) and (d))
- 917 a. The parent of the child;
- 918 b. Not less than one regular education teacher of the child (if the child is or may be
- 919 participating in the regular educational environment);
- 920 c. Not less than one special education teacher of the child or, if appropriate, not less
- 921 than one special education provider of the child. For a child whose only disability is
- 922 speech-language impairment, the special education provider shall be the speech-
- 923 language pathologist;

- 924 d. A representative of the local educational agency who is:
925 (1) Qualified to provide or supervise the provision of specially designed instruction to
926 meet the unique needs of children with disabilities;
927 (2) Knowledgeable about the general education curriculum; and
928 (3) Knowledgeable about the availability of resources of the local education agency. A
929 local educational agency may designate another member of the IEP team to serve
930 simultaneously as the agency representative if the individual meets the above criteria;
- 931 e. An individual who can interpret the instructional implications of evaluation results.
932 This individual may be a member of the team serving in another capacity, other than
933 the parent of the child;
- 934 f. At the discretion of the parent or local educational agency, other individuals who
935 have knowledge or special expertise regarding the child, including related services
936 personnel, as appropriate. The determination of knowledge or special expertise of any
937 individual shall be made by the party (parent or local educational agency) who invited
938 the individual to be a member of the team; and
- 939 g. Whenever appropriate, the child.
- 940 2. The local educational agency determines the school personnel to fill the roles of the
941 required IEP team members in subdivisions 1 b through 1 e of this subsection.
- 942 3. Secondary transition service participants. (34 CFR 300.321(b))
- 943 a. The local educational agency shall invite a student with a disability of any age to
944 attend the student's IEP meeting if a purpose of the meeting will be the consideration
945 of:
- 946 (1) The student's postsecondary goals;
947 (2) The needed transition services for the student; or
948 (3) Both.
- 949 b. If the student does not attend the IEP meeting, the local educational agency shall
950 take other steps to ensure that the student's preferences and interests are considered.
- 951 c. To the extent appropriate and with the consent of the parent or a child who has
952 reached the age of majority, the local educational agency shall invite a representative
953 of any participating agency that is likely to be responsible for providing or paying for
954 transition services. If an agency invited to send a representative to a meeting does not
955 do so, the local educational agency shall take other steps to obtain the participation of
956 the other agency in the planning of any transition services.
- 957 4. Part C transition participants. In the case of a child who was previously served under
958 Part C of the Act, the local educational agency shall, at the parent's request, invite the Part
959 C service coordinator or other representatives of the Part C system to the initial IEP
960 meeting to assist with the smooth transition of services. (34 CFR 300.321(f))
- 961 D. IEP team attendance. (34 CFR 300.321(e))
- 962 1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of
963 this section is not required to attend an IEP team meeting, in whole or in part, if the parent
964 and the local educational agency agree, in writing, that the attendance of this member is
965 not necessary because the member's area of the curriculum or related services is not
966 being modified or discussed in the meeting.
- 967 2. A required member of the IEP team may be excused from attending the IEP team
968 meeting, in whole or in part, when the meeting involves a modification to or discussion of
969 the member's area of curriculum or related services, if:

- 970 a. The parent and the local educational agency consent in writing to the excusal; and
971 b. The member submits, in writing, to the parent and the IEP team input into the
972 development of the IEP prior to the meeting.

973 E. Parent participation.

974 1. Each local educational agency shall take steps to ensure that one or both of the parents
975 of the child with a disability are present at each IEP meeting or are afforded the opportunity
976 to participate including: (34 CFR 300.322(a))

977 a. Notifying the parent of the meeting early enough to ensure that they will have an
978 opportunity to attend; and

979 b. Scheduling the meeting at a mutually agreed on time and place.

980 2. Notice. (34 CFR 300.322(b))

981 a. General notice. The notice given to the parent:

982 (1) May be in writing, or given by telephone or in person with proper documentation;

983 (2) Shall indicate the purpose, date, time, and location of the meeting, and who will be
984 in attendance; and

985 (3) Shall inform the parent of the provisions relating to the participation of other
986 individuals on the IEP team who have knowledge or special expertise about the child
987 under subdivision C 1 f of this section.

988 b. Additional notice requirements are provided if transition services are under
989 consideration.

990 (1) For Part C transition, the notice shall inform the parents of the provisions relating
991 to the participation of the Part C service coordinator or other representative of the Part
992 C system under subdivision C 4 of this section.

993 (2) For secondary transition, the notice shall also:

994 (a) Indicate that a purpose of the meeting will be the consideration of the
995 postsecondary goals and transition services for the child;

996 (b) Indicate that the local educational agency will invite the student; and

997 (c) Identify any other agency that will be invited to send a representative.

998 3. If neither parent can attend, the local educational agency shall use other methods to
999 ensure parent participation, including individual or conference telephone calls and audio
1000 conferences. If the local educational agency uses an alternative means of meeting
1001 participation that results in additional costs, the local educational agency is responsible
1002 for those costs. (34 CFR 300.322(c))

1003 4. A meeting may be conducted without a parent in attendance if the local educational
1004 agency is unable to convince the parent that they should attend. In this case, the local
1005 educational agency shall have a record of the attempts to arrange a mutually agreed on
1006 time and place, such as: (34 CFR 300.322(d))

1007 a. Detailed records of telephone calls made or attempted and the results of those calls;

1008 b. Copies of correspondence (written, electronic, or facsimile) sent to the parent and
1009 any responses received; or

1010 c. Detailed records of visits made to the parent's home or place of employment and
1011 the results of those visits.

1012 5. The local educational agency shall take whatever action is necessary to ensure that the
1013 parent understands the proceedings at the IEP meeting, including arranging for an
1014 interpreter for parents with deafness or whose native language is other than English. (34
1015 CFR 300.322(e))

1016 6. At the IEP meeting, the IEP team shall provide the parent of a child with a disability with
1017 a written description of the factors in subdivisions F 1 and F 2 of this section that will be
1018 considered during the IEP meeting. The description shall be written in language
1019 understandable by the general public and provided in the native language of the parent or
1020 other mode of communication used by the parent(s), unless it is clearly not feasible to do
1021 so.

1022 7. The local educational agency shall give the parent a copy of the child's IEP at no cost
1023 to the parent at the IEP meeting, or within a reasonable period of time after the IEP
1024 meeting, not to exceed 10 calendar days. (34 CFR 300.322(f))

1025 8. If the local educational agency elects to use a draft version of an IEP in any IEP team
1026 meeting, such draft shall be developed and a copy shall be provided to the parent at least
1027 two business days in advance of the IEP meeting.

1028 F. Development, review, and revision of the IEP. (34 CFR 300.324(a))

1029 1. In developing each child's IEP, the IEP team shall consider and document in the IEP:

1030 a. The strengths of the child;

1031 b. The concerns of the parent (and child, whenever appropriate) for enhancing the
1032 education of their child;

1033 c. The results of the initial or most recent evaluation of the child; and

1034 d. The academic, developmental, and functional needs of the child.

1035 2. The IEP team also shall: (34 CFR 300.324(a))

1036 a. In the case of a child whose behavior impedes the child's learning or that of others,
1037 consider the use of positive behavioral interventions, strategies, and supports to
1038 address the behavior;

1039 b. In the case of a child with limited English proficiency, consider the language needs
1040 of the child as those needs relate to the child's IEP;

1041 c. In the case of a child who is blind or visually impaired, provide for instruction in
1042 Braille and the use of Braille unless the IEP team determines after an evaluation of the
1043 child's reading and writing skills, needs, and appropriate reading and writing media,
1044 including an evaluation of the child's future needs for instruction in Braille or the use
1045 of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;

1046 d. Consider the communication needs of the child;

1047 e. Consider the child's needs for benchmarks or short-term objectives;

1048 f. In the case of a child who is deaf or hard of hearing, consider the child's language
1049 and communication needs, opportunities for direct communications with peers and
1050 professional personnel in the child's language and communication mode, academic
1051 level, and full range of needs, including opportunities for direct instruction in the child's
1052 language and communication mode; and

1053 g. Consider whether the child requires assistive technology devices and services.

1054 3. If, in considering the special factors, the IEP team determines that a child needs a
1055 particular device or service, including an intervention, accommodation, or other program
1056 modification in order for the child to receive a free appropriate public education, the IEP
1057 team shall include a statement to that effect in the child's IEP. (34 CFR 300.324(b)(2))

1058 4. The regular education teacher of a child with a disability, as a member of the IEP team,
1059 shall participate, to the extent appropriate, in the development, review, and revision of the
1060 child's IEP, including assisting in the determination of: (34 CFR 300.324(a)(3))

- 1061 a. Appropriate positive behavioral interventions and supports and other strategies for
1062 the child; and
- 1063 b. Supplementary aids and services, accommodations, program modifications or
1064 supports for school personnel that will be provided for the child.
- 1065 5. Nothing in this section shall be construed to require: (34 CFR 300.320(d))
- 1066 a. The IEP team to include information under one component of a child's IEP that is
1067 already contained under another component of the child's IEP; or
- 1068 b. That additional information be included in the child's IEP beyond what is explicitly
1069 required in this chapter.
- 1070 6. The IEP team shall consider all factors identified under a free appropriate public
1071 education in 8VAC20-81-100, as appropriate, and work toward consensus. If the IEP team
1072 cannot reach consensus, the local educational agency shall provide the parent with prior
1073 written notice of the local educational agency's proposals or refusals, or both, regarding
1074 the child's educational placement or provision of a free appropriate public education in
1075 accordance with 8VAC20-81-170 C.
- 1076 G. Content of the individualized education program. The IEP for each child with a disability
1077 shall include:
- 1078 1. A statement of the child's present levels of academic achievement and functional
1079 performance, including how the child's disability affects the child's involvement and
1080 progress in the general curriculum or, for preschool children, as appropriate, how the
1081 disability affects the child's participation in appropriate activities. (34 CFR 300.320(a)(1))
- 1082 a. The statement shall be written in objective measurable terms, to the extent possible.
1083 Test scores, if appropriate, shall be self-explanatory or an explanation shall be
1084 included.
- 1085 b. The present level of performance shall directly relate to the other components of the
1086 IEP.
- 1087 2. A statement of measurable annual goals, including academic and functional goals
1088 designed to: (34 CFR 300.320(a)(2))
- 1089 a. Meet the child's needs that result from the child's disability to enable the child to be
1090 involved in and progress in the general curriculum, or for preschool children, as
1091 appropriate, to participate in appropriate activities; and
- 1092 b. Meet each of the child's other educational needs that result from the child's disability.
- 1093 3. If determined appropriate by the IEP team, as outlined in subdivision F 2 of this section,
1094 a description of benchmarks or short-term objectives. For children with disabilities who
1095 take alternate assessments aligned to alternate achievement standards, the IEP shall
1096 include a description of benchmarks or short-term objectives. (34 CFR 300.320(a)(2))
- 1097 The IEP team shall document its consideration of the inclusion in the child's IEP of
1098 benchmarks or short-term objectives.
- 1099 4. A statement of the special education and related services and supplementary aids and
1100 services, based on peer-reviewed research to the extent practicable, to be provided for
1101 the child, or on behalf of the child, and a statement of the program modifications or
1102 supports for school personnel that will be provided to enable the child: (34 CFR
1103 300.320(a)(4))
- 1104 a. To advance appropriately toward attaining the annual goals;
- 1105 b. To be involved and progress in the general curriculum and to participate in
1106 extracurricular and other nonacademic activities; and

- 1107 c. To be educated and participate with other children with disabilities and children
1108 without disabilities in the activities described in this section.
- 1109 5. An explanation of the extent, if any, to which the child will not participate with children
1110 without disabilities in the regular class and in the activities described in this section. (34
1111 CFR 300.320(a)(5))
- 1112 6. The following information concerning state and divisionwide assessments shall be
1113 included: (34 CFR 300.320(a)(6))
- 1114 a. A statement of any individual appropriate accommodations or modifications that are
1115 necessary to measure the child's academic achievement and functional performance,
1116 in accordance with the guidelines approved by the Board of Education, in the
1117 administration of state assessments of student achievement that are needed in order
1118 for the child to participate in the assessment;
- 1119 b. If the IEP team determines that the child must take an alternate assessment instead
1120 of a particular state assessment of student achievement (or part of an assessment), a
1121 statement of:
- 1122 (1) Why the child cannot participate in the regular assessment;
- 1123 (2) Why the particular assessment selected is appropriate for the child, including that
1124 the child meets the criteria for the alternate assessment; and
- 1125 (3) How the child's nonparticipation in the assessment will impact the child's promotion;
1126 graduation with a modified standard, standard, or advanced studies diploma; or other
1127 matters.
- 1128 c. A statement that the child shall participate in either a state assessment for all
1129 children that is part of the state assessment program or the state's alternate
1130 assessment;
- 1131 d. A statement of any individual appropriate accommodations or modifications
1132 approved for use in the administration of divisionwide assessments of student
1133 achievement that are needed in order for the child to participate in the assessment;
- 1134 e. If the IEP team determines that the child must take an alternate assessment instead
1135 of a particular divisionwide assessment of student achievement (or part of an
1136 assessment), a statement of:
- 1137 (1) Why the child cannot participate in the regular assessment;
- 1138 (2) Why the particular alternate assessment selected is appropriate for the child; and
- 1139 (3) How the child's nonparticipation in the assessment will impact the child's courses;
1140 promotion; graduation with a modified standard, standard, or advanced studies
1141 diploma; or other matters.
- 1142 7. The projected dates (month, day, and year) for the beginning of the services and
1143 modifications and the anticipated frequency, location, and duration of those services and
1144 modifications. (34 CFR 300.320(a)(7))
- 1145 8. A statement of: (34 CFR 300.320(a)(3))
- 1146 a. How the child's progress toward the annual goals will be measured; and
- 1147 b. When periodic reports on the progress the child is making toward meeting the
1148 annual goals will be provided; for example, through the use of quarterly or other
1149 periodic reports, concurrent with the issuance of report cards, and at least as often as
1150 parents are informed of the progress of their children without disabilities.
- 1151 9. Initial transition services (34 CFR 300.101(b) and 34 CFR 300.323(b))

1152 a. In the case of a preschool-aged child with a disability, age two (on or before
1153 September 30) through age five (on or before September 30), whose parent elect to
1154 receive services under Part B of the Act, the local educational agency shall develop
1155 an IEP.

1156 b. The IEP team shall consider an IFSP that contains the IFSP content described
1157 under Part C of the Act (§ 1431 et seq.) including:

1158 (1) A statement regarding natural environments; and

1159 (2) A component that promotes school readiness and incorporates pre-literacy,
1160 language, and numeracy skills.

1161 c. These components of the child's IFSP may be incorporated into the child's IEP.

1162 10. Secondary transition services. (34 CFR 300.43 and 34 CFR 300.320(b))

1163 a. Prior to the child entering secondary school but not later than the first IEP to be in
1164 effect when the child turns 14, or younger if determined appropriate by the IEP team,
1165 and updated annually thereafter, the IEP shall include age-appropriate:

1166 (1) Measurable postsecondary goals based upon age-appropriate transition
1167 assessments related to training, education, employment, and where appropriate,
1168 independent living skills; and

1169 (2) Transition services, including courses of study, needed to assist the child in
1170 reaching those goals. Transition services shall be based on the individual child's
1171 needs, taking into account the child's strengths, preferences, and interests.

1172 b. Beginning not later than the first IEP to be in effect when the child turns 16, or
1173 younger if determined appropriate by the IEP team, and updated annually, in addition
1174 to the requirements of subdivision 10 a of this subsection, the IEP shall also include a
1175 statement, if appropriate, of interagency responsibilities or any linkages.

1176 c. For a child pursuing a modified standard diploma, the IEP team shall consider the
1177 child's need for occupational readiness upon school completion, including
1178 consideration of courses to prepare the child as a career and technical education
1179 program completer.

1180 11. Beginning at least one year before a student reaches the age of majority, the student's
1181 IEP shall include a statement that the student and parent have been informed of the rights
1182 under this chapter, if any, that will transfer to the student on reaching the age of majority.
1183 (34 CFR 300.320(c))

1184 H. Agency responsibilities for secondary transition services. (34 CFR 300.324(c))

1185 1. If a participating agency, other than the local educational agency, fails to provide the
1186 transition services described in the IEP of a student with a disability, the local educational
1187 agency shall reconvene the IEP team to identify alternative strategies to meet the
1188 transition objectives for the student set out in the IEP.

1189 2. Nothing in this part relieves any participating agency, including a state vocational
1190 rehabilitation agency, of the responsibility to provide or pay for any transition service that
1191 the agency would otherwise provide to students with disabilities who meet the eligibility
1192 criteria of that agency.

1193 I. Additional requirements for eligible students with disabilities in state, regional, or local adult
1194 or juvenile correctional facilities. (34 CFR 300.324(d) and 34 CFR 300.102(a)(2); Regulations
1195 Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

1196 1. A representative of the state from a state, regional, or local adult or juvenile correctional
1197 facility may participate as a member of the IEP team.

1198 2. All requirements regarding IEP development, review, and revision in this section apply
1199 to students with disabilities in state, regional, or local adult or juvenile correctional facilities,
1200 including assessment requirements to graduate with a modified standard, standard, or
1201 advanced studies diploma. The requirements related to least restrictive environment in
1202 8VAC20-81-130 do not apply.

1203 3. The following additional exceptions to subdivision 2 of this subsection apply only to
1204 students with disabilities who are convicted as an adult under state law and incarcerated
1205 in adult prisons:

1206 a. The IEP team may modify the student's IEP or placement if the state has
1207 demonstrated to the IEP team a bona fide security or compelling penological interest
1208 that cannot be otherwise accommodated.

1209 b. IEP requirements regarding participation in state assessments, including alternate
1210 assessments, do not apply.

1211 c. IEP requirements regarding transition planning and transition services do not apply
1212 to students whose eligibility for special education and related services will end because
1213 of their age before they will be eligible for release from the correctional facility based
1214 on consideration of their sentence and their eligibility for early release.