**BUENA VISTA CITY SCHOOLS**

**REGULATIONS GOVERNING SPECIAL EDUCATION PROGRAMS FOR CHILDREN WITH DISABILITIES IN VIRGINIA**

**(8VAC20-81 Special Education Regulations)**

**REVISED 2010**

**TABLE OF CONTENTS**

**Part I - DEFINITIONS**

8VAC20-81-10 Definitions 3

**Part II - RESPONSIBILITY OF LOCAL SCHOOL DIVISIONS & STATE OPERATED PROGRAMS**

8VAC20-81-30 Responsibility of the local school divisions and state-operated programs 25

8VAC20-81-40 Special education staffing requirements 28

8VAC20-81-50 Child find 33

8VAC20-81-60 Referral for initial evaluation 36

8VAC20-81-70 Evaluation and Reevaluation 38

8VAC20-81-80 Eligibility 42

8VAC20-81-90 Termination of special education and related services 51

8VAC20-81-100 Free appropriate public education 52

8VAC20-81-110 Individualized education program 56

8VAC20-81-120 Children who transfer 64

8VAC20-81-130 Least restrictive environment and placements 66

8VAC20-81-140 Placement of children at Virginia School for the Deaf & the Blind in Staunton 67

8VAC20-81-150 Private school placement 68

8VAC20-81-160 Discipline procedures 76

8VAC20-81-170 Procedural safeguards 82

8VAC20-81-180 Transfer of rights to students who reach the age of Majority 93

8VAC20-81-190 Mediation 96

8VAC20-81-200 Complaint resolution procedures 98

8VAC20-81-210 Due process hearing 101

8VAC20-81-220 Surrogate parent procedures 118

8VAC20-81-230 Local educational agency administration and governance 119

**Part III – ATTACHMENTS**

Management of Student Records Notice 125

Notice of Directory Information and Opt-Out form 126

Full Educational Opportunity Goal 129

Caseload Maximums 130

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

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

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

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

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

"**Agree or Agreement**" – see the definition for "consent."

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

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

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

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

1. The evaluation of the needs of a child with a disability, including a functional evaluation of

the child in the child's customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology

devices by children with disabilities;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or

replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology

devices, such as those associated with existing education and rehabilitation plans and

programs;

5. Training or technical assistance for a child with a disability or, if appropriate, that child's

family; and

6. Training or technical assistance for professionals (including individuals providing education

or rehabilitation services), employers, or other individuals who provide services to employ or

are otherwise substantially involved in the major life functions of that child.

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

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

1. Identification of children with hearing loss;

2. Determination of the range, nature, and degree of hearing loss, including referral for

medical or other professional attention for the habilitation of hearing;

3. Provision of habilitative activities, such as language habilitation, auditory training, speech

reading (lip-reading), hearing evaluation, and speech conservation;

4. Creation and administration of programs for prevention of hearing loss;

5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and

6. Determination of children's needs for group and individual amplification, selecting and fitting

an appropriate aid, and evaluating the effectiveness of amplification.

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

"**Behavioral intervention plan**" means a plan that utilizes positive behavioral interventions and

supports to address behaviors that interfere with the learning of students with disabilities or with

the learning of others or behaviors that require disciplinary action.

"**Business day**" means Monday through Friday, 12 months of the year, exclusive of federal and

state holidays (unless holidays are specifically included in the designation of business days, as

in 8VAC20-81-150 B 4 a (2)). (34 CFR 300.11)

"**Calendar days**" means consecutive days, inclusive of Saturdays and Sundays. Whenever any

period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state

holiday, the period of time for taking such action under this chapter shall be extended to the next

day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

"**Career and technical education**" means organized educational activities that offer a

sequence of courses that: (20 USC § 2301 et seq.)

1. Provides individuals with the rigorous and challenging academic and technical knowledge

and skills the individuals need to prepare for further education and for careers (other than

careers requiring a master's or doctoral degree) in current or emerging employment sectors;

2. May include the provision of skills or courses necessary to enroll in a sequence of courses

that meet the requirements of this subdivision; or

3. Provides, at the postsecondary level, for a one-year certificate, an associate degree, or

industry-recognized credential and includes competency-based applied learning that

contributes to the academic knowledge, higher-order reasoning and problem-solving skills,

work attitudes, general employability skills, technical skills, and occupational-specific skills.

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

"**Change in identification**" means a change in the categorical determination of the child's

disability by the group that determines eligibility.

"**Change in placement**" or "**change of placement**" means when the local educational agency

places the child in a setting that is distinguishable from the educational environment to which

the child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR

300.532(b)(2)(ii) and 34 CFR 300.536)

1. The child's initial placement from general education to special education and related

services;

2. The expulsion or long-term removal of a student with a disability;

3. The placement change that results from a change in the identification of a disability;

4. The change from a public school to a private day, residential, or state-operated program;

from a private day, residential, or state-operated program to a public school; or to a

placement in a separate facility for educational purposes;

5. Termination of all special education and related services; or

6. Graduation with a standard or advanced studies high school diploma.

A "change in placement" also means any change in the educational setting for a child with a

disability that does not replicate the elements of the educational program of the child's

previous setting.

"**Change in placement**" or "**change of placement**," for the purposes of discipline, means: (34

CFR 300.536)

1. A removal of a student from the student's current educational placement is for more than

10 consecutive school days; or

2. The student is subjected to a series of removals that constitute a pattern because they

cumulate to more than 10 school days in a school year, and because of factors such as:

a. The length of each removal;

b. The child's behavior is substantially similar to the child's behavior in previous incidents

that resulted in the series of removals;

c. The total amount of time the student is removed; or

d. The proximity of the removals to one another.

"**Chapter**" means these regulations.

"**Charter schools**" means any school meeting the requirements for charter as set forth in the

Code of Virginia. (§§ 22.1-212.5 through 22.1-212.16 of the Code of Virginia; 34 CFR 300.7)

"**Child**" means any person who shall not have reached his 22nd birthday by September 30 of

the current year.

"**Child with a disability**" means a child evaluated in accordance with the provisions of this

chapter as having an intellectual disability , a hearing impairment (including deafness), a speech

or language impairment, a visual impairment (including blindness), a serious emotional

disability (referred to in this part as "emotional disability "), an orthopedic impairment, autism,

traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness,

or multiple disabilities who, by reason thereof, needs special education and related services.

This also includes developmental delay if the local educational agency recognizes this category

as a disability in accordance with 8VAC20-81-80 M.3. If it is determined through an appropriate

evaluation that a child has one of the disabilities identified but only needs a related service and

not special education, the child is not a child with a disability under this part. If the related

service required by the child is considered special education rather than a related service under

Virginia standards, the child would be determined to be a child with a disability. (§ 22.1-213 of

the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii))

"**Collaboration**" means interaction among professionals as they work toward a common goal.

Teachers do not necessarily have to engage in co-teaching in order to collaborate.

"**Complaint**" means a request that the Virginia Department of Education investigate an alleged

violation by a local educational agency of a right of a parent(s) of a child who is eligible or

suspected to be eligible for special education and related services based on federal and state

law and regulations governing special education or a right of such child. A complaint is a

statement of some disagreement with procedures or process regarding any matter relative to

the identification, evaluation, or educational placement of the child, or the provision of a free

appropriate public education. (34 CFR 300.151)

"**Comprehensive Services Act**" (CSA) means the Comprehensive Services Act for At-Risk

Youth and Families that establishes the collaborative administration and funding system

for services for certain at-risk youths and their families. (Chapter 52 (§ 2.2-5200 et seq.) of Title

2.2 of the Code of Virginia)

"**Consent**" means: (34 CFR 300.9)

1. The parent(s) or eligible student has been fully informed of all information relevant to the

activity for which consent is sought in the parent's(s') or eligible student's native language, or

other mode of communication;

2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of

the activity for which consent is sought, and the consent describes that activity and lists the

records (if any) that will be released and to whom; and

3. The parent(s) or eligible student understands that the granting of consent is voluntary on

the part of the parent(s) or eligible student and may be revoked any time.

a. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an

action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.).

b. If the parent revokes consent in writing for their child’s receipt of special education

services after the child is initially provided special education and related services, the local educational agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent. The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and parent(s) should document their agreement.

"**Controlled substance**" means a drug or other substance identified under Schedules I, II, or III,

IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c). (34 CFR 300.530(i)(1))

"**Core academic subjects**" means English, reading or language arts, mathematics, science,

foreign languages, civics, and government, economics, arts, history, and geography. (34 CFR

300.10)

"**Correctional facility**" means any state facility of the Virginia Department of Corrections or the

Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or

local jail. (§§ 16.1-228 and 53.1-1 of the Code of Virginia)

"**Coteaching**" means a service delivery option with two or more professionals sharing

responsibility for a group of students for some or all of the school day in order to combine their

expertise to meet student needs.

"**Counseling services**" means services provided by qualified visiting teachers, social workers,

psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2);

*Licensure Regulations for School Personnel* (8VAC20-22))

"**Dangerous weapon**" means a weapon, device, instrument, material, or substance, animate or

inanimate, that is used for or is readily capable of, causing death or bodily injury, except that

such term does not include a pocket knife with a blade of less than three inches in length.

(18 USC § 930(g)(2); § 18.2-308.1 of the Code of Virginia)

"**Day**" means calendar day unless otherwise indicated as business day or school day. (34 CFR

300.11)

"**Deaf-blindness**" means simultaneous hearing and visual impairments, the combination of

which causes such severe communication and other developmental and educational needs that

they cannot be accommodated in special education programs solely for children with deafness

or children with blindness. (34 CFR 300.8(c)(2))

"**Deafness**" means a hearing impairment that is so severe that the child is impaired in

processing linguistic information through hearing, with or without amplification, that adversely

affects the child's educational performance. (34 CFR 300.8(c)(3))

"**Destruction of information**" means physical destruction or removal of personal identifiers

from information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

"**Developmental delay**" means a disability affecting a child ages two by September 30 through

six, inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic

instruments and procedures, in one or more of the following areas: physical development,

cognitive development, communication development, social or emotional development, or

adaptive development, or (ii) who has an established physical or mental condition that has a

high probability of resulting in developmental delay;

2. The delay(s) is not primarily a result of cultural factors, environmental or economic

disadvantage, or limited English proficiency; and

3. The presence of one or more documented characteristics of the delay has an adverse

affect on educational performance and makes it necessary for the student to have specially

designed instruction to access and make progress in the general educational activities for this

age group.

"**Direct services**" means services provided to a child with a disability directly by the Virginia

Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

"**Due process hearing**" means an administrative procedure conducted by an impartial special

education hearing officer to resolve disagreements regarding the identification, evaluation,

educational placement and services, and the provision of a free appropriate public education

that arise between a parent(s) and a local educational agency. A due process hearing involves

the appointment of an impartial special education hearing officer who conducts the hearing,

reviews evidence, and determines what is educationally appropriate for the child with a

disability. (34 CFR 300.507)

"**Early identification and assessment of disabilities in children**" means the implementation

of a formal plan for identifying a disability as early as possible in a child's life. (34 CFR

300.34(c)(3))

"**Education record**" means those records that are directly related to a student and maintained

by an educational agency or institution or by a party acting for the agency or institution. The

term also has the same meaning as "scholastic record." In addition to written records, this also

includes electronic exchanges between school personnel and parent(s) regarding matters

associated with the child's educational program (e.g., scheduling of meetings or notices). This

term also includes the type of records covered under the definition of "education record" in the

regulations implementing the Family Education Rights and Privacy Act. (20 USC § 1232g(a)(3);

§ 22.1-289 of the Code of Virginia; 34 CFR 300.611(b))

"**Educational placement**" means the overall instructional setting in which the student receives

his education including the special education and related services provided. Each local

educational agency shall ensure that the parents of a child with a disability are members of the

group that makes decisions on the educational placement of their child. (34 CFR 300.327)

"**Educational service agencies and other public institutions or agencies**" include: (34 CFR

300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and

provide services or programs to local educational agencies;

2. Recognized as an administrative agency for purposes of the provision of special education

and related services provided within public elementary schools and secondary schools of the

state;

3. Any other public institution or agency having administrative control and direction over a

public elementary school or secondary school; and

4. Entities that meet the definition of intermediate educational unit in § 1402(23) of the Act as

in effect prior to June 4, 1997.

"**Eligible student**" means a child with a disability who reaches the age of majority and to whom

the procedural safeguards and other rights afforded to the parent(s) are transferred.

"**Emotional disability**" means a condition exhibiting one or more of the following characteristics

over a long period of time and to a marked degree that adversely affects a child's educational

performance: (34 CFR 300.8(c)(4))

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and

teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school

problems.

Emotional disability includes schizophrenia. The term does not apply to children who are

socially maladjusted, unless it is determined that they have an emotional disability as defined

in this section.

"**Equipment**" means machinery, utilities, and built-in equipment, and any necessary enclosures

or structures to house machinery, utilities, or equipment and all other items necessary for the

functioning of a particular facility as a facility for the provision of educational services, including

items such as instructional equipment and necessary furniture, printed, published and audiovisual

instructional materials, telecommunications, sensory, and other technological aids and

devices and books, periodicals, documents, and other related materials. (34 CFR 300.14)

"**Evaluation**" means procedures used in accordance with this chapter to determine whether a

child has a disability and the nature and extent of the special education and related services that

the child needs. (34 CFR 300.15)

"**Excess costs**" means those costs that are in excess of the average annual per-student

expenditure in a local educational agency during the preceding school year for an elementary

school or secondary school student, as may be appropriate, and that shall be computed after

deducting: (34 CFR 300.16)

1. Amounts received:

a. Under Part B of the Act;

b. Under Part A of Title I of the ESEA; and

c. Under Parts A and B of Title III of the ESEA; and

2. Any state or local funds expended for programs that would qualify for assistance under any

of the parts described in subdivision 1 a of this definition, but excluding any amounts for

capital outlay or debt service.

"**Extended school year services**" for the purposes of this chapter means special education

and related services that: (34 CFR 300.106(b))

1. Are provided to a child with a disability:

a. Beyond the normal school year of the local educational agency;

b. In accordance with the child's individualized education program;

c. At no cost to the parent(s) of the child; and

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

"**Federal core academic subjects**" means English, reading or language arts, mathematics,

science, foreign language (languages other than English), civics and government, economics,

arts, history, and geography. (20 USC § 7801(11))

"**Federal financial assistance**" means any grant, loan, contract or any other arrangement by

which the U.S. Department of Education provides or otherwise makes available assistance in

the form of funds, services of federal personnel, or real and personal property. (34 CFR

104.3(h))

"**Free appropriate public education**" or "**FAPE**" means special education and related services

that: (34 CFR 300.17)

1. Are provided at public expense, under public supervision and direction, and without charge;

2. Meet the standards of the Virginia Board of Education;

3. Include an appropriate preschool, elementary school, middle school or secondary school

education in Virginia; and

4. Are provided in conformity with an individualized education program that meets the

requirements of this chapter.

"**Functional behavioral assessment**" means a process to determine the underlying cause or

functions of a child's behavior that impede the learning of the child with a disability or the

learning of the child's peers. A functional behavioral assessment may include a review of

existing data or new testing data or evaluation as determined by the IEP team.

"**General curriculum**" means the same curriculum used with children without disabilities

adopted by a local educational agency, schools within the local educational agency or, where

applicable, the Virginia Department of Education for all children from preschool through

secondary school. The term relates to content of the curriculum and not to the setting in which it

is taught.

"**Hearing impairment**" means an impairment in hearing in one or both ears, with or without

amplification, whether permanent or fluctuating, that adversely affects a child's educational

performance but that is not included under the definition of deafness in this section. (34 CFR

300.8(c)(5))

"**Highly qualified special education teacher**" means a teacher has met the requirements as

specified in 34 CFR 300.18 for special education teachers in general, for special education

teachers teaching core academic subjects, for special education teachers teaching to alternate

achievement standards, or for special education teachers teaching multiple subjects as it

applies to their teaching assignment. (34 CFR 300.18)

"**Home-based instruction**" means services that are delivered in the home setting (or other

agreed upon setting) in accordance with the child's individualized education program.

"**Homebound instruction**" means academic instruction provided to students who are confined

at home or in a health care facility for periods that would prevent normal school attendance

based upon certification of need by a licensed physician or licensed clinical psychologist. For a

child with a disability, the IEP team shall determine the delivery of services, including the

number of hours of services. (*Regulations Establishing Standards for Accrediting Public Schools*

*in Virginia*, 8VAC20-131-180)

"**Home instruction**" means instruction of a child or children by a parent(s), guardian or other

person having control or charge of such child or children as an alternative to attendance in a

public or private school in accordance with the provisions of the Code of Virginia. This

instruction may also be termed home schooling. (§ 22.1-254.1 of the Code of Virginia)

"**Homeless children**" has the meaning given the term "homeless children and youth" in § 725

(42 USC § 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC §

11431 et seq. and listed below: (34 CFR 300.19)

The term "homeless children and youth" means individuals who lack a fixed, regular, and

adequate nighttime residence within the meaning of § 103(a)(1) of the McKinney-Vento

Homeless Assistance Act and includes the following:

1. Children and youth who are sharing the housing of other persons due to loss of housing,

economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping

grounds due to a lack of alternative adequate accommodations; are living in emergency or

transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

2. Children and youth who have a primary nighttime residence that is a public or private place

not designed for or ordinarily used as a regular sleeping accommodation for human beings

within the meaning of § 103(a)(2)(C);

3. Children and youth who are living in cars, parks, public spaces, abandoned buildings,

substandard housing, bus or train stations, or similar settings; and

4. Migratory children (as such term is defined in § 1309 of the Elementary and Secondary

Education Act of 1965) who qualify as homeless because the children are living in

circumstances described in subdivisions 1 through 3 of this definition.

The term "unaccompanied youth" includes a youth not in the physical custody of a

parent or guardian.

"**Home tutoring**" means instruction by a tutor or teacher with qualifications prescribed by the

Virginia Board of Education, as an alternative to attendance in a public or private school and

approved by the division superintendent in accordance with the provisions of the Code of

Virginia. This tutoring is not home instruction as defined in the Code of Virginia. (§ 22.1-254 of

the Code of Virginia)

"**Illegal drug**" means a controlled substance, but does not include a controlled substance that is

legally possessed or used under the supervision of a licensed health-care professional or that is

legally possessed or used under any other authority under the Controlled Substances Act, 21

USC § 812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

**“Impartial special education hearing officer**" means a person, selected from a list maintained

by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due

process hearing.

"**Implementation plan**" means the plan developed by the local educational agency designed to

operationalize the decision of the hearing officer in cases that are fully adjudicated.

"**Independent educational evaluation**" means an evaluation conducted by a qualified

examiner or examiners who are not employed by the local educational agency responsible for

the education of the child in question. (34 CFR 300.502 (a)(3)(i))

"**Individualized education program**" or "**IEP**" means a written statement for a child with a

disability that is developed, reviewed, and revised in a team meeting in accordance with this

chapter. The IEP specifies the individual educational needs of the child and what special

education and related services are necessary to meet the child's educational needs. (34 CFR

300.22)

"**Individualized education program team**" means a group of individuals described in 8VAC20-

81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a

disability. (34 CFR 300.23)

"**Individualized family service plan (IFSP) under Part C of the Act**" means a written plan for

providing early intervention services to an infant or toddler with a disability eligible under Part C

and to the child's family. (34 CFR 303.24; 20 USC § 636)

"**Infant and toddler with a disability**" means a child, ages birth to two, inclusive, whose

birthday falls on or before September 30, or who is eligible to receive services in the Part C

early intervention system up to age three, and who: (§2.2-5300 of the Code of Virginia; 34 CFR

300.25)

1. Has delayed functioning;

2. Manifests atypical development or behavior;

3. Has behavioral disorders that interfere with acquisition of developmental skills; or

4. Has a diagnosed physical or mental condition that has a high probability of resulting in

delay, even though no current delay exists.

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

"**Initial placement**" means the first placement for the child to receive special education and

related services in either a local educational agency, other educational service agency, or other

public agency or institution for the purpose of providing special education or related services.

"**Intellectual disability**" means the definition formerly known as "mental retardation" and means

significantly subaverage general intellectual functioning, existing concurrently with deficits in

adaptive behavior and manifested during the developmental period that adversely affects a

child's educational performance. (34 CFR 300.8(c)(6))

"**Interpreting services**" as used with respect to children who are deaf or hard of hearing,

means services provided by personnel who meet the qualifications set forth under 8VAC20-81-

40 and includes oral transliteration services, cued speech/language transliteration services, sign

language transliteration and interpreting services, and transcription services, such as

communication access real-time translation (CART), C-Print, and TypeWell and interpreting

services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has

language deficits, may receive interpreting services as directed by the child's Individualized

Education Program. (*Regulations Governing Interpreter Services for the Deaf and Hard of*

*Hearing* 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"**Least restrictive environment**" (LRE) means that to the maximum extent appropriate,

children with disabilities, including children in public or private institutions or other care facilities,

are educated with children who are not disabled, and that special classes, separate schooling or

other removal of children with disabilities from the regular educational environment occurs only

when the nature or severity of the disability is such that education in regular classes with the

use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114

through 34 CFR 300.120)

"**Level I services**" means the provision of special education to children with disabilities for less

than 50 percent of their instructional school day (excluding intermission for meals). The time that a

child receives special education services is calculated on the basis of special education services

described in the individualized education program, rather than the location of services.

"**Level II services**" means the provision of special education to children with disabilities for 50 percent or more of the instructional school day (excluding intermission for meals). The time that a child

receives special education services is calculated on the basis of special education services

described in the individualized education program, rather than the location of services.

"**Limited English proficient**" when used with respect to an individual means an individual: (20

USC § 7801(25); 34 CFR 300.27)

1. Who is aged 2 through 21;

2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or

3. Who:

a. Was not born in the United States or whose native language is a language other than

English;

b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and

comes from an environment where a language other than English has had a significant

impact on the individual's level of English language proficiency; or

c. Is migratory, whose native language is a language other than English, and who comes

from an environment where a language other than English is dominant; and

4. Whose difficulties in speaking, reading, writing, or understanding the English language may

be sufficient to deny the individual:

a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;

b. The ability to successfully achieve in classrooms where the language of instruction is

English; or

c. The opportunity to participate fully in society.

"**Local educational agency**" means a local school division governed by a local school board, a

state-operated program that is funded and administered by the Commonwealth of Virginia or the

Virginia School for the Deaf and the Blind at Staunton. Neither state-operated programs nor the

Virginia School for the Deaf and the Blind at Staunton are considered a school division as that

term is used in these regulations. (§ 22.1-346 C of the Code of Virginia; 34 CFR 300.28)

"**Long-term placement**" if used in reference to state-operated programs as outlined in 8VAC20-

81-30 H means those hospital placements that are not expected to change in status or condition

because of the child's medical needs.

"**Manifestation determination review**" means a process to review all relevant information and

the relationship between the child's disability and the behavior subject to the disciplinary action.

"**Medical services**" means services provided by a licensed physician or nurse practitioner to

determine a child's medically related disability that results in the child's need for special

education and related services. (§ 22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

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

"**Multiple disabilities**" means simultaneous impairments (such as intellectual disability

with blindness, intellectual disability with orthopedic impairment), the combination of which

causes such severe educational needs that they cannot be accommodated in special education

programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR

300.8(c)(7))

"**National Instructional Materials Access Center"** or "**NIMAC**" means the national center

established to do the following: (34 CFR 300.172)

1. Receive and maintain a catalog of print instructional materials prepared in the NIMAS, as

established by the U.S. Secretary of Education, made available to such center by the

textbook publishing industry, state educational agencies, and local educational agencies;

2. Provide access to print instructional materials, including textbooks, in accessible media,

free of charge, to blind or other persons with print disabilities in elementary schools and

secondary schools, in accordance with such terms and procedures as the NIMAC may

prescribe; and

3. Develop, adopt and publish procedures to protect against copyright infringement, with

respect to print instructional materials provided in accordance with the Act.

"**National Instructional Materials Accessibility Standard**" or "**NIMAS**" means the standard

established by the United States Secretary of Education to be used in the preparation of

electronic files suitable and used solely for efficient conversion of print instructional materials

into specialized formats. (34 CFR 300.172)

**Native language**" if used with reference to an individual of limited English proficiency, means

the language normally used by that individual, or, in the case of a child, the language normally

used by the parent(s) of the child, except in all direct contact with a child (including evaluation of

the child), the language normally used by the child in the home or learning environment. For an

individual with deafness or blindness, or for an individual with no written language, the mode of

communication is that normally used by the individual (such as sign language, Braille, or oral

communication). (34 CFR 300.29)

"**Nonacademic services and extracurricular services**" may include counseling services,

athletics, transportation, health services, recreational activities, special interest groups or clubs

sponsored by the local educational agency, referrals to agencies that provide assistance to

individuals with disabilities, and employment of students, including both employment by the local

educational agency and assistance in making outside employment available. (34 CFR

300.107(b))

"**Notice**" means written statements in English or in the primary language of the home of the

parent(s), or, if the language or other mode of communication of the parent(s) is not a written

language, oral communication in the primary language of the home of the parent(s). If an

individual is deaf or blind, or has no written language, the mode of communication would be that

normally used by the individual (such as sign language, Braille, or oral communication). (34

CFR 300.503(c))

"**Occupational therapy**" means services provided by a qualified occupational therapist or

services provided under the direction or supervision of a qualified occupational therapist and

includes: (*Regulations Governing the Licensure of Occupational Therapists* (18VAC85-80-10 et

seq.); 34 CFR 300.34(c)(6))

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or

deprivation;

2. Improving ability to perform tasks for independent functioning if functions are impaired or

lost; and

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

"**Orientation and mobility services**" means services provided to blind or visually impaired

children by qualified personnel to enable those children to attain systematic orientation to and

safe movement within their environments in school, home, and community; and includes travel

training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

1. Spatial and environmental concepts and use of information received by the senses (e.g.,

sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of

travel (e.g., using sound at a traffic light to cross the street);

2. To use the long cane or service animal to supplement visual travel skills or as a tool for

safely negotiating the environment for students with no available travel vision;

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

4. Other concepts, techniques, and tools.

"**Orthopedic impairment**" means a severe orthopedic impairment that adversely affects a

child's educational performance. The term includes impairments caused by congenital anomaly,

impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments

from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause

contractures). (34 CFR 300.8(c)(8))

"**Other health impairment**" means having limited strength, vitality or alertness, including a

heightened alertness to environmental stimuli, that results in limited alertness with respect to the

educational environment, that is due to chronic or acute health problems such as asthma,

attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart

condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell

anemia and Tourettes syndrome that adversely affects a child's educational performance. (34

CFR 300.8(c)(9))

"**Paraprofessional**," also known as paraeducator, means an appropriately trained employee

who assists and is supervised by qualified professional staff in meeting the requirements of this

chapter. (34 CFR 300.156(b)(2)(iii))

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

CFR 300.30)

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

a. A biological or adoptive parent of a child;

b. A foster parent, even if the biological or adoptive parent’s rights have not been

terminated, but subject to subdivision 8 of this subsection;

c. A guardian generally authorized to act as the child's parent, or authorized to make

educational decisions for the child (but not a guardian ad litem, or the state if the child is a ward of the state);

d. An individual acting in the place of a biological or adoptive parent (including a

grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;

e. If no party qualified under subdivisions 1.a. through 1.d. of this subsection can be

identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220; or

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

2. If a judicial decree or order identifies a specific person(s) under subdivisions 1 a through 1

e of this subsection to act as the "parent" of a child or to make educational decisions on

behalf of a child, then such person(s) shall be determined to be the "parent" for purposes of

this definition.

3. "Parent" does not include local or state agencies or their agents, including local

departments of social services, even if the child is in the custody of such an agency.

4. The biological or adoptive parent, when attempting to act as the parent under this chapter

and when more than one party is qualified under this section to act as a parent, shall be

presumed to be the parent for purposes of this section unless the biological or adoptive

parent(s)' authority to make educational decisions on the child's behalf has been extinguished

pursuant to § 16.1-277.01, 16.1-277.02, or 16.1-283 of the Code of Virginia or a comparable

law in another state.

5. Noncustodial parents whose parental rights have not been terminated are entitled to all

parent rights and responsibilities available under this chapter, including access to their child's

records.

6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents

do not have the right to access the child's record.

7. A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of

Virginia may assert implied emancipation based on the minor's marriage record and, thus,

assumes responsibilities of "parent" under this chapter.

8. The local educational agency shall provide written notice to the biological or adoptive

parents at their last known address that a foster parent is acting as the parent under this

section, and the local educational agency is entitled to rely upon the actions of the foster

parent under this section until such time that the biological or adoptive parent attempts to act

as the parent.

"**Parent counseling and training**" means assisting parents in understanding the special needs

of their child, providing parents with information about child development, and helping parents to

acquire the necessary skills that will allow them to support the implementation of their child's

IEP or IFSP. (34 CFR 300.34(c)(8))

"**Participating agency**" means a state or local agency (including a Comprehensive Services

Act team), other than the local educational agency responsible for a student's education, that is

financially and legally responsible for providing transition services to the student. The term also

means any agency or institution that collects, maintains, or uses personally identifiable

information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c),

34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

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

1. The name of the child, the child's parent, or other family member;

2. The address of the child;

3. A personal identifier, such as the child's social security number or student number; or

4. A list of personal characteristics or other information that would make it possible to identify

the child with reasonable certainty.

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

1. Physical and motor fitness;

2. Fundamental motor skills and patterns; and

3. Skills in aquatics, dance, and individual and group games and sports (including intramural

and lifetime sports). The term includes special physical education, adapted physical

education, movement education, and motor development.

"**Physical therapy**" means services provided by a qualified physical therapist or under the

direction or supervision of a qualified physical therapist upon medical referral and direction.

(*Regulations Governing the Practice of Physical Therapy*, 18VAC112-20; 34 CFR 300.34(c)(9))

"**Private school children with disabilities**" means children with disabilities enrolled by their

parent(s) in private, including religious, schools or facilities that meet the definition of elementary

school or secondary school as defined in this section other than children with disabilities who

are placed in a private school by a local school division or a Comprehensive Services Act team

in accordance with 8VAC20-81-150. (34 CFR 300.130)

"**Program**" means the special education and related services, including accommodations,

modifications, supplementary aids and services, as determined by a child's individualized

education program.

"**Psychological services**" means those services provided by a qualified psychologist or under

the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

1. Administering psychological and educational tests, and other assessment procedures;

2. Interpreting assessment results;

3. Obtaining, integrating, and interpreting information about child behavior and conditions

relating to learning;

4. Consulting with other staff members in planning school programs to meet the special needs

of children as indicated by psychological tests, interviews, direct observation, and behavioral

evaluations;

5. Planning and managing a program of psychological services, including psychological

counseling for children and parents; and

6. Assisting in developing positive behavioral intervention strategies.

"**Public expense**" means that the local educational agency either pays for the full cost of the

service or evaluation or ensures that the service or evaluation is otherwise provided at no cost

to the parent(s). (34 CFR 300.502(a)(3)(ii))

"**Public notice**" means the process by which certain information is made available to the

general public. Public notice procedures may include, but not be limited to, newspaper

advertisements, radio announcements, television features and announcements, handbills,

brochures, electronic means, and other methods that are likely to succeed in providing

information to the public.

"**Qualified person who has a disability**" means a "qualified handicapped person" as defined in

the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC §

701 et seq.)

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

1. Assessment of leisure function;

2. Therapeutic recreation services;

3. Recreation program in schools and community agencies; and

4. Leisure education.

"**Reevaluation**" means completion of a new evaluation in accordance with this chapter. (34

CFR 300.303)

"**Rehabilitation counseling services**" means services provided by qualified personnel in

individual or group sessions that focus specifically on career development, employment

preparation, achieving independence, and integration in the workplace and community of a

student with a disability. The term also includes vocational rehabilitation services provided to

students with disabilities by vocational rehabilitation programs funded under the Rehabilitation

Act of 1973 (29 USC § 701 et seq.), as amended. (34 CFR 300.34(c)(12))

"**Related services**" means transportation and such developmental, corrective, and other

supportive services as are required to assist a child with a disability to benefit from special

education and includes speech-language pathology and audiology services; interpreting

services; psychological services; physical and occupational therapy; recreation, including

therapeutic recreation; early identification and assessment of disabilities in children; counseling

services, including rehabilitation counseling; orientation and mobility services; and medical

services for diagnostic or evaluation purposes. Related services also includes school health

services and school nurse services; social work services in schools; and parent counseling and

training. Related services do not include a medical device that is surgically implanted including

cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the

device, or the replacement of that device. The list of related services is not exhaustive and may

include other developmental, corrective, or supportive services (such as artistic and cultural

programs, and art, music and dance therapy), if they are required to assist a child with a

disability to benefit from special education. (§ 22.1-213 of the Code of Virginia; 34 CFR

300.34(a) and (b))

Nothing in this section:

1. Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to

receive related services that are determined by the IEP team to be necessary for the child to

receive FAPE;

2. Limits the responsibility of a public agency to appropriately monitor and maintain medical

devices that are needed to maintain the health and safety of the child, including breathing,

nutrition, or operation of other bodily functions, while the child is transported to and from

school or is at school; or

3. Prevents the routine checking of an external component of a surgically implanted device to

make sure it is functioning properly.

"**School day**" means any day, including a partial day, that children are in attendance at school

for instructional purposes. The term has the same meaning for all children in school, including

children with and without disabilities. (34 CFR 300.11)

"**School health services and school nurse services**" means health services that are

designed to enable a child with a disability to receive FAPE as described in the child's IEP.

School nurse services are services provided by a qualified school nurse. School health services

are services that may be provided by either a qualified school nurse or other qualified person.

(Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

"**Scientifically based research**" means research that involves the application of rigorous,

systematic, and objective procedures to obtain reliable and valid knowledge relevant to

education activities and programs and includes research that: (20 USC § 9501(18); 34 CFR

300.35)

1. Employs systematic, empirical methods that draw on observation or experiment;

2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify

the general conclusions drawn;

3. Relies on measurements or observational methods that provide reliable and valid data

across evaluators and observers, across multiple measurements and observations, and

across studies by the same or different investigators;

4. Is evaluated using experimental or quasi-experimental designs in which individuals,

entities, programs, or activities are assigned to different conditions and with appropriate

controls to evaluate the effects of the condition of interest, with a preference for random assignment, experiments, or other designs to the extent that those designs contain within condition or across-condition controls;

5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for

replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. Has been accepted by a peer-reviewed journal or approved by a panel of independent

experts through a comparably rigorous, objective, and scientific review.

"**Screening**" means those processes that are used routinely with all children to identify

previously unrecognized needs and that may result in a referral for special education and

related services or other referral or intervention.

"**Section 504**" means that section of the Rehabilitation Act of 1973, as amended, which is

designed to eliminate discrimination on the basis of disability in any program or activity receiving

federal financial assistance. (29 USC § 701 et seq.)

"**Serious bodily injury**" means bodily injury that involves substantial risk of death, extreme

physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the

function of a bodily member, organ or mental faculty. (18 USC § 1365(h)(3); 34 CFR

300.530(i)(3))

"**Services plan**" means a written statement that describes the special education and related

services the local educational agency will provide to a parentally placed child with a disability

enrolled in a private school who has been designated to receive services, including the location

of the services and any transportation necessary, and is developed and implemented in

accordance with 8VAC20-81-150. (34 CFR 300.37)

"**Social work services in schools**" means those services provided by a school social worker or

qualified visiting teacher, including: (*Licensure Regulations for School Personnel*, 8VAC20-22-

660; 34 CFR 300.34(c)(14))

1. Preparing a social or developmental history on a child with a disability;

2. Group and individual counseling with the child and family;

3. Working in partnership with parents and others on those problems in a child's living

situation (home, school, and community) that affect the child's adjustment in school;

4. Mobilizing school and community resources to enable the child to learn as effectively as

possible in the child's educational program; and

5. Assisting in developing positive behavioral intervention strategies for the child.

A local educational agency, in its discretion, may expand the role of a school social

worker or visiting teacher beyond those services identified in this definition, as long as the

expansion is consistent with other state laws and regulations, including licensure.

"**Special education**" means specially designed instruction, at no cost to the parent(s), to meet

the unique needs of a child with a disability, including instruction conducted in a classroom, in

the home, in hospitals, in institutions, and in other settings and instruction in physical education.

The term includes each of the following if it meets the requirements of the definition of special

education: (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

1. Speech-language pathology services or any other related service, if the service is

considered special education rather than a related service under state standards;

2. Vocational education; and

3. Travel training.

"**Special education hearing officer**" has the same meaning as the term "impartial hearing

officer" as that term is used in the Act and its federal implementing regulations.

"**Specially designed instruction**" means adapting, as appropriate to the needs of an eligible

child under this chapter, the content, methodology, or delivery of instruction: (34 CFR

300.39(b)(3))

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

2. To ensure access of the child to the general curriculum, so that the child can meet the

educational standards that apply to all children within the jurisdiction of the local educational

agency.

"**Specific learning disability**" means a disorder in one or more of the basic psychological

processes involved in understanding or in using language, spoken or written, that may manifest

itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical

calculations, including conditions such as perceptual disabilities, brain injury, minimal brain

dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the

result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities;

of environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34

CFR 300.8(c)(10))

Dyslexia is distinguished from other learning disabilities due to its weakness occurring at

the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It

is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling

and decoding abilities. These difficulties typically result from a deficit in the phonological

component of language that is often unexpected in relation to other cognitive abilities and the

provision of effective classroom instruction. Secondary consequences may include problems in

reading comprehension and reduced reading experience that can impede growth of vocabulary

and background knowledge.

"**Speech or language impairment**" means a communication disorder, such as stuttering,

impaired articulation, expressive or receptive language impairment, or voice impairment that

adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

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

1. Identification of children with speech or language impairments;

2. Diagnosis and appraisal of specific speech or language impairments;

3. Referral for medical or other professional attention necessary for the habilitation of speech

or language impairments;

4. Provision of speech and language services for the habilitation or prevention of

communicative impairments; and

5. Counseling and guidance of parents, children, and teachers regarding speech and

language impairments.

"**State assessment program**" means the state assessment program in Virginia under the Act

that is the component of the state assessment system used for accountability.

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

"**State-operated programs**" means programs that provide educational services to children and

youth who reside in facilities according to the admissions policies and procedures of those

facilities that are the responsibility of state boards, agencies, or institutions. (§§ 22.1-7, 22.1-340

and 22.1-345 of the Code of Virginia)

"**Supplementary aids and services**" means aids, services, and other supports that are

provided in general education classes or other education-related settings to enable children with

disabilities to be educated with children without disabilities to the maximum extent appropriate in

accordance with this chapter. (34 CFR 300.42)

"**Surrogate parent**" means a person appointed in accordance with procedures set forth in this

chapter to ensure that children are afforded the protection of procedural safeguards and the

provision of a free appropriate public education. (34 CFR 300.519)

"**Timely manner**" if used with reference to the requirement for National Instructional Materials

Accessibility Standard means that the local educational agency shall take all reasonable steps

to provide instructional materials in accessible formats to children with disabilities who need

those instructional materials at the same time as other children receive instructional materials.

(34 CFR 300.172(b)(4))

"**Transition from Part C (Early Intervention Program for Infants and Toddlers with**

**Disabilities) services**" means the steps identified in the Individualized Family Services Plan

(IFSP) to be taken to support the transition of the child to: (34 CFR 300.124)

1. Early childhood special education to the extent that those services are appropriate; or

2. Other services that may be available, if appropriate.

"**Transition services**" if used with reference to secondary transition means a coordinated set of

activities for a student with a disability that is designed within a results-oriented process that: (34

CFR 300.43)

1. Is focused on improving the academic and functional achievement of the child with a

disability to facilitate the child's movement from school to post-school activities, including

postsecondary education, vocational education, integrated employment (including supported

employment), continuing and adult education, adult services, independent living, or

community participation.

2. Is based on the individual child's needs, taking into account the child's strengths,

preferences, and interests and includes instruction, related services, community experiences,

the development of employment and other post-school adult living objectives and, if

appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as

specially designed instruction, or related services, if they are required to assist a student with

a disability to benefit from special education.

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

1. Travel to and from school and between schools;

2. Travel in and around school buildings; and

3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to

provide special transportation for a child with a disability.

"**Traumatic brain injury**" means an acquired injury to the brain caused by an external physical

force, resulting in total or partial functional disability or psychosocial impairment, or both, that

adversely affects a child's educational performance. Traumatic brain injury applies to open or

closed head injuries resulting in impairments in one or more areas, such as cognition; language;

memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory,

perceptual, and motor abilities; psychosocial behavior; physical functions; information

processing; and speech. Traumatic brain injury does not apply to brain injuries that are

congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"**Travel training**" means providing instruction, as appropriate, to children with significant

cognitive disabilities, and any other children with disabilities who require this instruction, to

enable them to: (34 CFR 300.39(b)(4))

1. Develop an awareness of the environment in which they live; and

2. Learn the skills necessary to move effectively and safely from place to place within that

environment (e.g., in school, in the home, at work, and in the community).

"**Universal design**" has the meaning given the term in § 3 of the Assistive Technology Act of

1998, as amended, 29 USC § 3002. The term "universal design" means a concept or

philosophy for designing and delivering products and services that are usable by people with the

widest possible range of functional capabilities, which include products and services that are

directly usable (without requiring assistive technologies) and products and services that are

made usable with assistive technologies. (34 CFR 300.44)

"**Virginia School for the Deaf and the Blind at Staunton**" means the Virginia school under the

operational control of the Virginia Board of Education. The Superintendent of Public Instruction

shall approve the education programs of this school. (§ 22.1-346 of the Code of Virginia)

"**Visual impairment including blindness**" means an impairment in vision that, even with

correction, adversely affects a child's educational performance. The term includes both partial

sight and blindness. (34 CFR 300.8(c)(13))

"**Vocational education**," for the purposes of special education, means organized educational

programs that are directly related to the preparation of individuals for paid or unpaid

employment or for additional preparation for a career not requiring a baccalaureate or advanced

degree, and includes career and technical education. (34 CFR 300.39(b)(5))

"**Ward of the state**" means a child who, as determined by the state where the child resides is:

(34 CFR 300.45)

1. A foster child;

2. A ward of the state; or

3. In the custody of a public child welfare agency.

"Ward of the state" does not include a foster child who has a foster parent who meets

the definition of a "parent."

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

**SE.140 – BUENA VISTA CITY SCHOOLS**

**REGULATIONS GOVERNING SPECIAL EDUCATION PROGRAMS FOR**

**CHILDREN WITH DISABILITIES IN VIRGINIA**

It is the policy of Buena Vista City Schools to adhere to federal and state regulations as they have been promulgated by the United States Department of Education and the Virginia Board of Education to implement special education programs for children with disabilities, consistent with the Individuals with Disabilities Education Act (IDEA). Specifically, these mandates are detailed in the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (Virginia Regulations) and any additional documents that the Virginia Department of Education publishes to address federal and state statutes and regulations for delivering special education and related services to children.

Buena Vista City Schools prohibits the harassment of children with disabilities in academic and non-academic settings during the school day and for school-sponsored extracurricular activities.

**8VAC20-81-30. Responsibility of local school divisions and state-operated programs.**

A. The requirements set forth in this chapter are applicable to Buena Vista City Schools providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

B. Buena Vista City Schools shall ensure that all children with disabilities aged two to 21,

inclusive, residing in Buena Vista City School division have a right to a free appropriate public education. (§22.1-214 of the Code of Virginia; 34 CFR 300.2, 34 CFR 300.101, 34 CFR 300.124 and 34 CFR 300.209) The children include:

1. Children with disabilities who are migrant;

2. Children with disabilities who are homeless, in accordance with the provisions of the

McKinney-Vento Homeless Assistance Act (42 USC § 11431 et seq.);

3. Children with disabilities who are in need of special education and related services, even

though the child has not failed or been retained in a course or grade, and is advancing from grade to grade;

4. Children with disabilities who are served in a public nonprofit charter school;

5. Children with disabilities who have been suspended or expelled from school;

6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction, with the exception of those additional provisions identified in 8VAC20-81-110 I;

7. Children with disabilities who are residents of Buena Vista City Schools and who are on house arrest, as ordered by a court of competent jurisdiction;

8. Children with disabilities who are in foster care and residents of Virginia;

9. Children with disabilities who are placed for non-educational reasons; and

10. Children with disabilities regardless of citizenship or immigration status.

11. Children with disabilities who do not reside within its jurisdiction but reside in the

Commonwealth and are enrolled in a full-time virtual school program provided by the school division, in accordance with regulations of the Board of Education. A school division that is required to provide a free appropriate public education, including special education, for a nonresident student who is enrolled in its full-time virtual school program pursuant to this section shall be entitled to any federal and state funds applicable to the education of such student. In the case of a student who is a resident of the Commonwealth but does not reside in the school division in which he is enrolled in a full-time virtual school program, the school division in which the student resides shall be released from the obligation to provide a free appropriate public education, including special education, for such student.

C. Every child with a disability is deemed to reside in a school division when (§ 22.1-3 of the

Code of Virginia):

1. The child is living with a biological parent whose parental rights have not been terminated.

2. The child is living with an adoptive parent.

3. The child is living with an individual:

a. Other than the custodial parent but who is defined as a parent in § 22.1-1 of Code of Virginia, not solely for school purposes; and

b. Pursuant to a special power of attorney executed under 10 USC § 1044b by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces.

4. The parent(s) of the child is deceased and the child is living with a person in loco parentis who resides within the school division.

5. The parents of the child are unable to care for him and he is living, not solely for school

purposes, with another person who resides in the school division and is either:

a. The court-appointed guardian, or has legal custody; or

b. Acting in loco parentis pursuant to placement of the child by a person or entity authorized to do so under § 63.2-900 of the Code of Virginia.

6. The child is living in the school division not solely for school purposes, as an emancipated minor pursuant to the provisions of the § 16.1-334 of the Code of Virginia.

7. The child is living in the school division not solely for school purposes, as a validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.

8. The child is in foster care and a resident of Virginia, but not a resident of the school

division, under the following conditions: (§ 22.1-215 of the Code of Virginia)

a. The child has been placed in foster care or other custodial care within the geographical boundaries of the school division, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children; or

b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia that is located within the geographical boundaries of the school division.

9. The child is in foster care and a resident of Virginia, and a resident of the school division, under the provisions of subdivision 8 of this subsection.

D. If a child with a disability is living with the parent in a residence of the Buena Vista City school division, Buena Vista City Schools is responsible for ensuring that the child receives a free appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents' request to enroll the child. (34 CFR 300.101)

E. Requirements for children with disabilities who are placed for non-educational reasons:

1. The local school division that is part of the Comprehensive Services Act team that places the child in a private residential placement for non-educational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement.

2. If a child in foster care is placed in a local school division of non-residence and the IEP team of the local school division of non-residence where the child is placed determines that the child needs to be placed in a private day or residential special education facility for educational reasons, the responsibility for a free appropriate public education transfers to the local school division where the Virginia placing agency is located and is a participant in the community policy and management team of that local school division that has responsibility for the child under the Comprehensive Services Act (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia).

3. If placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides.

4. If placed in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent(s) resides.

5. If the child is aged 18 or older and placed in a nursing facility, a long stay hospital, or an intermediate care facility for people with intellectual disabilities under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.

6. If the child is aged 18 or older and placed in a group home by a community services board and has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.

7. If the child is aged 18 or older, who has not been declared legally incompetent or legally

incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.

8. If the child is aged 18 or older, who has been declared legally incompetent or legally

incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides.

9. If placed in a sponsored residential home, licensed in accordance with 12VAC35-105, the child is a resident of the division where the parent(s) resides.

F. If there is a dispute between local school divisions regarding the parent's or legal guardian's

residence, the local school division of the parent's or legal guardian's last known place of

residence is responsible until such dispute is resolved or the parent's or legal guardian's residence is established in another local school division.

G. If there is dispute between the parent or legal guardian of a child with a disability and the

local school division regarding residency, the local school division of where the child is last

enrolled remains responsible for providing the child with a free appropriate public education until resolution of the dispute.

H. Each state-operated program shall ensure that the requirements in this chapter are applied

to children with disabilities, aged two to 21, inclusive, in that institution. (§ 22.1-7 of the Code of

Virginia)

1. For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.

2. The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.

I. Children with disabilities who are not residents of Virginia but are living temporarily with adults

who do not otherwise meet the definition of parent(s) residing within the Buena Vista City school division may, in the discretion of the Buena Vista City School Board's policies and procedures, be admitted to the public schools of Buena Vista City Schools for special education and related services. Tuition charges associated with this admittance are subject to the provisions of § 22.1-5 of the Code of Virginia

**8VAC20-81-40. Special education staffing requirements.**

A. School age programs. The following specifies the staffing patterns for special education

services for school age (five to 21, inclusive) children, in addition to the Standards of Quality

(§ 22.1.253.13:2 of the Code of Virginia) and Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131-240).

1. Staffing shall be in accordance with the requirements of 8VAC20-81-340 in the following settings.

a. Students with disabilities shall be instructed with students without disabilities in general education settings and classrooms, as appropriate, and in accordance with the Individualized Education Program (IEP). The service level, Level I or II, is based on the amount of time the student receives special education.

b. When children with disabilities are removed from the general education setting and classroom to provide instruction, special education and related services, they may receive services with children with the same disability or with children with different disabilities.

2. Personnel assignment.

a. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).

b. Special education teachers who are the teachers of record shall be highly qualified.

c. General education qualified personnel who are knowledgeable about the students and their special education, may implement special education services in collaboration with special education personnel.

d. Special education services include those services provided directly to the student and those provided directly.

3. Caseload standards.

a. The maximum instructional caseloads for special education teachers and speech/language pathologists, for which public schools receive state funds in accordance with the Virginia Appropriation Act are listed in 8VAC20-81-340. Special education services for children with visual impairment are established, maintained, and operated jointly by Buena Vista City Schools and the Virginia Department for the Blind and Vision Impaired.

b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

(1) A building average is computed by dividing the total weights (found in 8VAC20-81-340) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.

(2) The building average shall not exceed 20 points if services are provided to students receiving Level I services and to children receiving Level II services. The building average shall not exceed 24 points if services are provided only to children receiving Level I services.

(3) No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students shall be assigned to a single class period when there are varying achievement levels.

c. Special education personnel may also be assigned to serve children who are not eligible for special education and related services under this chapter, as long as special education personnel hold appropriate licenses and endorsements for such assignments.

d. When special education personnel are assigned to provide services for children who do not have a disability under this chapter or are assigned to administrative duties, a reduction in the caseload specified in the Virginia Appropriation Act shall be made in proportion to the percentage of school time on such assignment.

(1) This provision does not apply when special education and related services are provided in a general education class, based on the goals of the IEP of at least one child in that classroom, and children without disabilities incidentally benefit from such services.

(2) When special education personnel provide services in a general education classroom based on the IEP goals of at least one child in that classroom, the special education caseloads do not include children with disabilities who incidentally benefit from such services.

B. Staffing for early childhood special education.

1. Children of preschool ages (two to five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's individualized education program (IEP) team. A schedule comparable in length to school age students shall be made available if determined appropriate by the IEP team.

2. Staffing requirements.

a. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.

b. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).

c. The maximum special education caseloads, with and without paraprofessionals, set and funded in the Virginia Appropriation Act. See 8VAC20-81-340 for the funded caseloads. Special education services for children with visual impairment are established, maintained, and operated jointly by Buena Vista City schools and the Virginia Department for the Blind and Vision Impaired.

C. Staffing for education programs in regional and local jails. Special education personnel with

any special education endorsement, except early childhood special education, may provide

instructional services to eligible students with disabilities incarcerated in a regional or local jail.

D. Alternative special education staffing plan. Buena Vista City Schools may offer for consideration of approval, an alternative staffing plan in accordance with Virginia Department of Education procedures. The Virginia Department of Education may grant approval for alternative staffing levels upon request from local school divisions and private special education schools seeking to implement innovative programs that are not consistent with these staffing levels.

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services for children who are deaf or hard of hearing are as follows:

a. Personnel providing educational interpreting services for children using sign language shall:

(1) Have a valid Virginia Quality Assurance Screening (VQAS) Level III; or

(2) Have a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as

equivalent to or exceeding the VQAS Level III.

b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.

c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening written assessment of the Code of Ethics.

2. Personnel who provide interpreting services for children who use sign language or cued

speech/language and who do not hold the required qualifications may be employed in

accordance with the following criteria:

a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its

equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or

b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.

3. The following qualification requirements for personnel providing interpreting services for

students who are deaf or hard of hearing will become effective in 2010:

a. Personnel providing educational interpreting services for children using sign language shall hold:

(1) A valid Virginia Quality Assurance Screening (VQAS) Level III; or

(2) A passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.

(3) Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.

(4) Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.

b. Personnel providing educational interpreting services for children using cued

speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.

(1) Under no circumstances shall Buena Vista City Schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.

(2) Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.

c. Personnel providing educational interpreting services for children requiring oral

interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.

4. For a child who is not deaf or hard of hearing but for whom sign language services are

specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by Buena Vista City Schools.

**Figure A. Special education personnel assignment requirements for school-aged children, ages five to 21, inclusive, in BUENA VISTA CITY SCHOOLS.**

|  |  |
| --- | --- |
| **Disability Category** | **Endorsement** |
| Autism | any special education endorsement, as appropriate to student needs |
| Deaf-blindness | severe disabilities K-12 or any other special education  endorsement, as appropriate to student needs |
| Developmental Delay: ages 5-6, inclusive | any special education endorsement, as appropriate to student needs |
| Emotional Disability | emotional disability K-12 |
| Hearing Impairment/Deaf | hearing impairments preK-12 |
| Learning Disabilities | learning disabilities K-12 |
| Intellectual Disability | Intellectual disability K-12 |
| Multiple Disabilities | severe disabilities or any other special education endorsement, as appropriate to student needs |
| Orthopedic Impairment | any special education endorsement, as appropriate to student needs |
| Other Health Impairment | any special education endorsement, as appropriate to student needs |
| Speech or Language Impairment | speech or language disorders preK-12 |
| Traumatic Brain Injury | any special education endorsement, as appropriate to student needs |
| Visual Impairment | visual impairments preK-12 |

**Figure B. Special education personnel assignment requirements for preschool children, ages two to five, inclusive, in BUENA VISTA CITY SCHOOLS.**

|  |  |
| --- | --- |
| **Disability Category** | **Endorsement** |
| Developmental Delay: ages 2-6, inclusive | early childhood special education |
| Hearing Impairment/Deaf | hearing impairments preK-12 |
| Speech or language impairment | speech or language disorders preK-12 |
| Visual Impairment | visual impairments preK-12 |
| All other disability categories | early childhood special education |

*Licensure Regulations for School Personnel (8 VAC 20-21-10 et seq.)*

**8 VAC 20-81-50. Child Find**

A. Child Find

1. Buena Vista City Schools will implement on-going and continuous strategies to identify, locate, and evaluate children residing or parentally placed in private schools (including those that are home-schooled or home-tutored) within its jurisdiction who are birth to age 21 and need special education and related service as defined in the Virginia Regulations. Strategies will focus on: children in typical homes; children who are mobile, including those who are homeless or migrant, and who are wards of the state; children who are under 18, who are suspected of having a disability who need special education and related services, and who are incarcerated in a regional or local jail for 10 or more days; and children who are suspected of being children with disabilities, even though they are advancing from grade to grade.

2. Strategies and procedures to inform the community for the purpose of identifying children in need of special education and related service shall include: contacts with community groups, public and private agencies, and organizations. Contacts include print materials such as brochures, signs and pamphlets and public service announcements on radio and television stations. Informational materials are distributed to religious institutions as well as clinics and doctors offices. Material is at least annually. Local agencies, including Social Services, Mental Health and Mental Retardation, Health and Court Services units are contacted annually. Civic and community associations are informed of the right to a free appropriate public education and the availability of special education programs and services.

3. Buena Vista City Schools shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council.

4. The child find process shall be designed to ensure:

(1) the equitable participation of parentally placed private school children; and

(2) an accurate count of those children

5. Child Find efforts will ensure that the cost associated with carrying out these requirements for parentally-placed private school children, including individual evaluation, will not be considered in determining if Buena Vista City Schools has met its obligations for calculation of its expenditures under federal and state regulations governing special education.

B. Public Awareness: Each local school division shall, at least annually, conduct a public

awareness campaign to:

1. Inform the community of a person's, ages two to 21, inclusive, statutory right to a free

appropriate public education and the availability of special education programs and services;

2. Generate referrals; and

3. Explain the nature of disabilities, the early warning signs of disabilities, and the need for

services to begin early.

C. Screening

1. Buena Vista City Schools will assign responsibility for each area of screening to qualified professionals who will assume responsibility for conducting the screening in assigned schools, including recruitment and training of appropriate volunteers and other staff to ensure that the screenings are conducted within the required timelines, for children enrolled in Buena Vista City Schools, including transfers. A student’s pre-school physical examination required under the Code of Virginia will be accepted for the screening if the area(s) of screening to be conducted were included and documented on the physical examination form.

2. Those conducting each area of screening will document results on a screening form and ensure that it is filed in a confidential manner in the student’s scholastic record. After the screening is conducted, the assigned professional will inform parents of the results of the screening. In addition, those responsible for the screening will follow-up on failed screenings by scheduling re-screenings or making referrals for special education evaluations as appropriate.

3. Screening timelines and additional procedures will be implemented as follows:

a. Hearing and vision screenings will be conducted within 60 administrative days of the opening of the school year for all children in grades K, 3, 7, and 10

b. Speech, voice, language, and fine and gross motor will be screened within 60 administrative days of the opening of school for all new enrollees including those in Kindergarten and those who transfer into the school division for the first time

c. Scoliosis screening\* will be conducted twice during the six year period in which students are in grades 5 through 10. For students in the school division at grade 5, the screening will be conducted in grade 5 and again at grade 10. Students who enter Buena Vista City Schools for the first time after grade 5 will be screened during the year they

enter and while in grade 10. If they enter the (name of local educational agency) for the first time during grade 10, they will only be screened once during that year.

\*As an alternative to these procedures for scoliosis, Buena Vista City Schools may choose to provide parents with education information. (reference: Virginia Department of Education’s “Guidance Document for Local Screening Requirements in Virginia’s Public Schools, August 2009)

d. Buena Vista City Schools will provide written notice to parents of the scheduled screening within a reasonable period of time not to exceed ten (10) days. The notice shall include the purpose of the screening, when it will occur, and if the child fails the screening, the results of the screening.

e. For scoliosis screening, the notice shall include the following additional information:

(a) a definition of scoliosis,

(b) a description of how scoliosis is identified,

(c) a statement describing why it is important to screen for scoliosis,

(d) a description of the procedures used to screen for scoliosis,

(e) a description of potential treatments for scoliosis, and

(f) information on where screenings may be obtained, including the school.

Parents will also be provided an opt-out form if they wish to exclude their child from the school’s scoliosis screening.

f. Specific measures or instruments will be employed which use:

(1) Both observational and performance techniques; and

(2) Techniques which guarantee nondiscrimination.

4. Buena Vista City Schools will designate persons responsible for ensuring that children are referred to the special education administrator or designee if results from the screening suggest that a referral for evaluation for special education and related services is indicated. The designated persons will ensure that the referral includes the screening results.

D. Referral Procedures

1. Referrals will be accepted in written, electronic, or oral form by the child study chair for children aged 2-21, suspected of having a disability, regardless of whether the child is enrolled in public school. Referrals will be received from any source including parents, school staff, the school-based team, the Virginia Department of Education, any other state agency, or other individuals regarding children who are residents of the locality or who attend a private school that is located within the locality. Once a referral is received, the child study chair will ensure that the referral is documented on a referral form which includes the child’s name, the reason for the referral and efforts made to address the concerns, the date the referral was received, the name of the person or agency making the referral, the parent’s name, and contact information for the parent.

2. Within 10 business days, the referral will be reviewed by a school team, the child study committee, which includes the referring source, as appropriate, the principal or designee\*, at least one teacher, at least one specialist, and one member who is knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children’s educational needs. Additional professionals may be included as appropriate and based on the reason for the referral.

3. This child study committee will review the reason for the referral and review the child’s record and any other performance evidence or data that will be used to make recommendations for educational and/or behavioral needs. The team may determine that:

(a) the referral for special education evaluation is not needed for the student, noting that the child is performing adequately;

(b) recommend interventions with prescribed review dates; or

(c) refer the child for a special education evaluation.

All decisions of this committee shall be documented in writing and include information upon which a decision was based. Such documentation shall be maintained in the student’s scholastic record.

4. Buena Vista City Schools uses a variety of sources of evidence, including response to scientifically-based interventions, to determine the need for a referral for a special education evaluation and as a part of the evaluation information to determine eligibility. Buena Vista City Schools, however, will not delay the evaluation of a student who is suspected of having a disability while these interventions are being implemented. Referrals from the committee for a special education evaluation will be forwarded to the special education administrator or designee within 3 days of their decision.

5. If the committee decides not to refer the student for a special education evaluation, the parent will be provided with prior written notice indicating that the request for a special education evaluation was refused, the reasons for the decision, a description of other options the team considered and reasons why they were not accepted, a description of the evaluation information (each evaluation procedure, assessment, record or report) used to make the decision, and any other factors that were relevant to the team’s decision, and their right to appeal the decision through a due process hearing. The parents will be given a copy of the procedural safeguards.

6. If the referral is made to the special education administrator or designee, within three business days, the special education administrator or designee will initiate the evaluation-eligibility process, forward the referral to the child study committee to review and respond to the request, or deny the request. If the referral is made by a parent, the parent will be notified of the decision. If the request is denied, the parent will be provided prior written notice as already described and as is required at 8 VAC 20-81-170 of the Virginia Regulations.

**8 VAC 20-81-60. Referral for initial evaluation for special education**

A. Buena Vista City Schools will ensure that these referral procedures apply to all children, aged two to 21, inclusive, who are residents in accordance with the Virginia Regulations, whether enrolled in public school or not, who are suspected of having a disability.

B. All referrals for initial special education evaluations will be processed using the referral procedures detailed above. Referrals from a school-based team or referrals accepted and initiated by the special education administrator/designee will result in the start of the process of determining eligibility for special education and related services. The special education administrator/designee will ensure to record the date the referral was received, reason for referral, and names of the person or agency making the referral.

C. Once the referral for a special education evaluation is made by the school-based team or accepted by the special education administrator/designee, prior written notice indicating that the child has been referred for an evaluation and the purpose of the evaluation along with the procedural safeguards notice will be provided to the parents in their native language or primary mode of communication. Parents will also be informed of the procedures used to determine what evaluation data is needed and request any evaluation information that the parent may have on the child.

D. Evaluations to be administered will be identified and will be included to enable the school division to gather relevant functional, developmental, or academic information about the child so the eligibility team will be able to determine if the child is a child with a disability in need of special education and related services. The evaluation process will be sufficiently comprehensive to enable the school division to determine, if the child is eligible, the child’s special education and related services needs, as well as educational needs. The principal/designee or special education administrator/designee will secure informed consent for the evaluation process prior to initiating the evaluations.

E. Professionals will be assigned to complete evaluations consistent with their expertise, and will be provided with a deadline for completion to ensure that eligibility decisions are made within 65 business days from the receipt of the referral for the special education evaluation. The 65 business day timeline may be extended if the parent and eligibility team agree in writing that additional time is needed to obtain data. This timeline does not apply in the following circumstances:

1. for those students whose parents repeatedly fail to produce the child for the evaluation;

2. or a child that enrolls in Buena Vista City Schools after the 65 business days has begun in a previous school division, but prior to a determination by the child's previous school and/or school division as to whether the child is a child with a disability, Buena Vista City Schools will work to complete the evaluation expediently. This exception only applies if Buena Vista City Schools is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and Buena Vista City Schools agree to a specific time when the evaluation will be completed.

F. The staff will comply with all requirements related to confidentiality of student records throughout the evaluation and eligibility process.

G. Buena Vista City Schools acknowledges the following parent consent requirements:

1. parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.

2 parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

3. Buena Vista City Schools shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.

4. for initial evaluations only, if the child is a ward of the state and is not residing with the child’s parent, Buena Vista City Schools is not required to obtain parental consent to determine whether the child is a child with a disability if:

(a) despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child;

(b) the rights of the parents of the child have been terminated in accordance with Virginia law; or

(c) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

Buena Vista City Schools shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.

5. if the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, Buena Vista City Schools may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. Buena Vista City Schools does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.

6. if a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent’s own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, Buena Vista City Schools may not use mediation or due process to pursue the initial evaluation.

**8 VAC 20-81-70. Evaluation and Re-Evaluation**

A. The school-based team, consistent with the make-up of an IEP team, will determine which evaluation components are needed to provide data required for the eligibility team to make a decision. In order to make this determination, the team will meet to review existing evaluation data, including evaluations and information provided by the parents and current classroom-based, local, and/or state assessments and classroom-based observations, and observations by teachers and related services providers. The parent will be provided written notice of the meeting at least five business days prior to the meeting to ensure that the parent will have an opportunity to participate in the review. The notice will include the purpose, date, time, and location of the meeting and who will be in attendance, and it will inform the parent that both Buena Vista City Schools and the parent may invite to the meeting other individuals, including related services personnel, who have knowledge or expertise about their child, if appropriate.

B. Based on the information available, the team including the parent(s) will identify what additional data is needed, if any, to determine the following:

1. whether the child is (or continues to be) a child with a disability,

2. the present educational needs of the child,

3. the child’s present level of academic achievement and related developmental needs,

a. whether the child needs (or continues to need) special education and related services, and

b. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals included in the child’s IEP and to participate, as appropriate, in the general education curriculum.

C. If it is determined that additional data is needed, school personnel will ensure that tests and

other evaluation materials will be completed, as necessary, to obtain the data to address issues B. 1-3, above.

D. If no additional data is needed to address the issues above, the school-based team will provide the parent(s) with prior written notice of the decision. The prior written notice will meet all requirements detailed in the Virginia Regulations at 8 VAC 20-81-170. The notice will include information regarding the determination and the reasons for it, and the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child’s educational needs. In addition, the school-based team will document that the parent was informed of the following:

1. Buena Vista City Schools is not required to conduct an evaluation if the team has determined that it has enough information to determine whether the child is or continues to be a child with a disability and to determine the child’s educational needs, unless the parent(s) request an evaluation for these specific purposes;

2. a review of the information that conforms with the required process will be considered the evaluation if no additional data are needed;

3. the parent has the right to appeal the decision through the use of mediation or due process proceedings.

E. If the school-based team determines not to evaluate a child suspected of a disability, it must provide the parent with a prior written notice that meets all requirements detailed in the Virginia Regulations, at 8 VAC 20-81-170, including the parent's rights to appeal the decision through due process proceedings.

F. School personnel will obtain informed parental consent before conducting any evaluations or reevaluations. For a reevaluation, if Buena Vista City Schools can demonstrate reasonable measures to obtain consent and that the child’s parent failed to respond, Buena Vista City Schools will proceed with the evaluation as if consent has been received. To demonstrate reasonable measures, Buena Vista City Schools will have provided notice to the parent in writing at least twice and will have contacted the parent by phone if the parent has a phone.

1. If the parent refuses consent, Buena Vista City Schools may pursue those evaluations by using due process hearing procedures or mediation, but the school division is not required to do so.

2. Consent will not be required for any of the following: If the team decides that a review of existing data is sufficient; for a teacher or related service provider to report their observations of the child or ongoing classroom evaluations; or before administering a test or evaluation that is administered to all children, unless parental consent is required from all parents prior to the administration of the test.

G. A variety of evaluation or assessment tools and strategies, sufficiently comprehensive to identify all of the child’s special education and related services needs (whether or not commonly linked to the disability category used for the child’s classification), will be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities).

1. This information will be used to determine whether the child is a child with a disability, the child’s educational needs, and the content of the child's IEP. No single measure will be used as a sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.

H. Initial evaluations and reevaluations other than the triennial shall be completed so that the eligibility decision can be made within 65 business days from the receipt of the referral by the Eligibility Coordinator, who serves as the designee for the Buena Vista City Schools’ Special Education Director. If the parent and Buena Vista City Schools agree, the 65 business day timeline may be extended in order to obtain information that could not be obtained during the 65 business day timeline. This agreement must be in writing. Triennial reevaluations will be initiated in sufficient time to ensure that an eligibility determination can be completed within three years of the anniversary date of the previous eligibility decision.

I. All evaluation assessments and materials will be selected and administered to ensure no racial or cultural bias. In addition, evaluations will be provided and administered in the child’s native language and in ways that are most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

1. All assessments will be used for the purposes for which they are valid and reliable and will be administered by personnel that are trained and knowledgeable regarding the instructions provided by the producer of the assessments.

2. Assessment tools will be selected to assess specific areas of educational need rather than produce a single general intelligence quotient.

3. If the child has impaired sensory, motor, or communication skills, assessments will be used that take that into consideration so as to measure accurately the child’s aptitude or achievement or whatever the test is designed to assess, rather than reflecting the impairment in the child’s sensory, motor, or communication skills.

4. Assessments that are used to assess the relative contribution of cognitive, behavior, physical or developmental factors will be technically sound.

5. f the child being assessed is limited in English proficiency, assessments will be selected and administered to ensure that they measure the extent that the child has a disability and needs special education, rather than measuring the child’s English skills.

J. If assessments are conducted under non-standard conditions, those conditions, including the extent to which the assessment varied from the standard conditions, will be included in the evaluation report and whether the non-standardized assessment administered by a qualified professional is useful in the determination of whether the child is a child with a disability and is useful in contributing to the contents of the child’s IEP.

K. If the evaluation requires assessments in more than one area relating to the suspected disability, a team of professionals, including at least one teacher or other specialist with knowledge in the areas of the suspected disability, will complete the assessments. A part of the evaluation process will include an observation focused on academic performance in the general education classroom that will be made by at least one professional on the evaluation team other than the child’s teacher. If the child is not school-age, the observation will be conducted in an environment appropriate for a child of that age which may include the home or a preschool setting.

L. All areas related to the suspected disability will be assessed by qualified professionals which may include, as appropriate, health, vision, hearing, social and emotional development, general intelligence, academic performance, communication skills, motor skills, and adaptive behavior. Evaluation components may include educational, medical, sociocultural, psychological, or developmental assessments. Hearing, however, will be screened for all children during an initial eligibility evaluation. If the child is hearing impaired or deaf, or if the child fails two hearing screening tests, a complete audiological evaluation, including tests to assess inner and middle ear functioning will be conducted.

M. The evaluation reports will be available to parents at the student’s school at least two business days prior to the meeting to determine eligibility. A written copy of the reports will be provided to parents prior to or at the meeting where the eligibility team reviews the reports, or immediately following the meeting, but no later than 10 days after the meeting. Copies of the evaluation reports will be provided at no cost to parents.

N. If a child transfers to Buena Vista City Schools during the evaluation process, Buena Vista City Schools will work with the child’s previous school and/or school division to ensure that the child’s evaluation and eligibility determination process is promptly completed. In this instance, the 65 business timeline for the completion of the evaluation and eligibility process may be extended if the following requirements are met:

1. the parent and the school-based team agree to extend the timeline and set a mutually-agreeable date upon which the evaluation and eligibility process will be completed, and

2. sufficient progress is being made to ensure a prompt completion of the evaluation.

O. Reevaluations will be conducted at least every three years, unless Buena Vista City Schools and the parent agree that a reevaluation is not necessary.

P. Reevaluations may be conducted more frequently if Buena Vista City Schools determines that it needs new information to determine child's educational or related services needs, including improved academic achievement and functional performance, or if the parent(s) or teacher(s) request a reevaluation. Upon the request from a parent or teacher, the child’s school-based team, consistent with the make-up of the IEP team, will convene to discuss the request and determine what, if any, evaluation components will be conducted. Evaluations will not be conducted more than once per year unless the parent and Buena Vista City Schools agree otherwise. Prior written notice that meets the requirements in the Virginia Regulations, at 8 VAC 20-81-170 C., will be provided the parent of the decision regarding the reevaluation request.

Q. For a child who is home-schooled, home-tutored, or who is parentally-placed in a private school at the parent’s expense, Buena Vista City Schools is not permitted to use mediation or due process to pursue consent from a parent who refuses to provide consent for an evaluation or reevaluation, or who fails to respond to a request for consent. In this instance, the child will not be evaluated, and will not be eligible for equitable services as a parentally placed student under 8 VAC 20-81-150 of Virginia Regulations.

R. Buena Vista City Schools will not be required to evaluate a student solely because the student is graduating with a standard or advanced diploma, even though this will be considered a change in placement. Prior written notice, however, will be provided to parent(s) informing them that upon graduation the child will no longer be eligible for special education and related services. In addition, Buena Vista City Schools will ensure that all other requirements of the Virginia Regulations, at 8 VAC 20-81-170, regarding prior written notice, will be met.

**8 VAC 20-81-80. Eligibility.**

A. Following the completion of the administration of the assessments and other evaluation materials, or after a determination by the school-based team that additional data was not needed, the eligibility team will determine if the child is or continues to be a child with a disability and the child’s educational needs. The eligibility decision must be made on an individual basis.

B. The eligibility team will, at a minimum, meet the team composition of the IEP team. This team must include personnel representing the disciplines providing the assessments, the school principal or assistant principal (serving as the special education administrator’s designee), the parent(s); a special education teacher; at least one general education teacher of the child (or someone qualified to teach the child of that age if the child does not have a teacher or if the child is a preschooler); at least one person qualified to conduct individual diagnostic examination (such as a school psychologist, speech pathologist, or remedial reading teacher). This team will be qualified to conduct individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development, as appropriate, interpret the assessment and intervention data, apply critical analysis to the data, and develop appropriate educational and transitional recommendations based on the assessment data. The eligibility team will provide the parent with procedural safeguards in accordance with the Virginia Regulations, at 8 VAC 20-81-170, including the notice requirements, when determining eligibility and in ensuring the confidentiality of records.

C. When interpreting data to determine whether or not a child is a child with a disability and to determine the child’s educational needs, the team will carefully consider, and document its use of information from a variety of sources, including all of the assessments prescribed by the school-based team for the evaluation, aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior. The team may also use information obtained as a result of the child’s participation in the school division’s response to intervention process. (For additional information regarding Buena Vista City Schools’ response to intervention procedures, please see Buena Vista City Schools’ “Response to Intervention Handbook”.) The team will also consider any evaluation information provided by the parent(s).

D. Prior to determining a child’s eligibility, the eligibility team must also review information from an observation of the child. The observation must have occurred in the child’s learning environment (including the general education classroom setting), and it must have documented the child’s academic performance and behavior in the area of difficulty. The observation may have occurred in routine classroom instruction and monitoring of the child’s performance before the child was referred for an evaluation. In the alternative, at least one member of the eligibility team must conduct an observation of the child’s academic performance in the general education classroom after the child was referred for an evaluation and parental consent was obtained. (For preschool children, or a student out of school, the team member shall observe the child in an environment appropriate for a child of that age.)

E. The team will analyze the data against the eligibility criteria. (Please see “Figure 3: Eligibility Criteria” at the end of this section) The team will only find a child eligible for special education and related services if the child meets the eligibility criteria to be a child with a disability, and if the team finds that there is documented evidence that as a result of the child’s disability, the child needs special education and related services. Lack of appropriate instruction in the essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies), a lack of appropriate instruction in math, or a child’s limited English proficiency will be considered and, if these are determining factors, the child will not be found eligible.

F. The eligibility team will consider, as part of the evaluation, data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with the requirements of the No Child Left Behind Act, at §1111(b)(8)(D) and (E), including that the instruction was delivered by qualified personnel. There must be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction was provided to the child's parents.

G. The team will work toward consensus in reaching its decision. If the team does not reach consensus and if the decision does not reflect a member’s conclusion, then the team member will be required to submit a written statement indicating the member’s conclusion. Written parental consent will be secured for the initial eligibility determination and any change in categorical identification.

H. A child, aged two, who was previously served by Part C, must meet the criteria of Part B in order to be provided special education and related services. For a child served by Part C after age two, and whose third birthday occurs during the summer, the IEP team for an eligible child will determine when the child will begin to receive Part B services, thus transitioning from Part C to Part B.

I. A child will only be provided related services when found eligible for special education. Once a child is found eligible for special education, the IEP team will make decisions about the child’s need for related services, and may request an evaluation, if determined necessary. All information presented will be documented and summarized during the meeting. A summary of deliberations will include the basis for the determination of eligibility and a written statement from any member who disagrees with the team’s conclusion. The summary may include other recommendations, will be maintained in the child’s scholastic record, and will be forwarded to the IEP team, including the parent, following the eligibility determination.

J. For a child found not eligible, information relevant to instruction will be provided to the child’s teachers or any appropriate committee. In addition, prior written notice, in accordance with 8 VAC 20-81-170, will be given to the parent(s) including the parent(s)’ right to appeal the decision through the due process hearing procedures. If the child is parentally-placed in a private school within the (name of local educational agency), but the parent resides in a different locality, parent consent will be secured before sharing the information with another local educational agency.

K. The eligibility team must provide the parent at no cost a copy of all of the documentation regarding the eligibility determination. This documentation must include a statement of:

1. Whether the child has a specific disability.

2. The basis for making the determination including an assurance that the eligibility determination was made in accordance with the Virginia Regulations regarding determining eligibility and educational need.

3. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.

4. The educationally relevant medical findings, if any.

5. If the child participated in the division’s response to intervention process, a statement of the instructional strategies used and the student-centered data collected during that process. This document must also include:

(a) Information regarding the school division’s notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(b) The strategies that were used to increase the child's rate of learning; and

(c) The parent's right to request an evaluation.

(For additional information regarding Buena Vista City Schools’ response to intervention procedures, please see Buena Vista City Schools’ “Response to Intervention Handbook”.)

6. If a child is determined eligible as a child with a specific learning disability, document that the eligibility team’s determination was consistent with each of the requirements of 8 VAC 20-81-80 T. 2.

L. Within 30 days of an initial determination of eligibility, an IEP must be developed for the child in accordance with the requirements in the Virginia Regulations, at 8 VAC 20-81-110. Following a reevaluation, unless there is a change in the child’s eligibility for special education and related services or a change in the child’s educational needs, or unless the parent requests a meeting to review and revise the child’s IEP, the IEP team is not required to convene.

**FIGURE 3: ELIGIBILITY CRITERIA**

For all children suspected of having a disability, Buena Vista City Schools shall:

1. Use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and

2. Have documented evidence that, by reason of the disability, the child needs special education and related services. (34 CFR 300.307(b))

**AUTISM**

The group may determine that a child has autism if:

1. There is an adverse effect on the child's educational performance due to documented

characteristics of autism, as outlined in this section; and

2. The child has any of the Pervasive Developmental Disorders, also referenced as autism

spectrum disorder, such as Autistic Disorder, Asperger's Disorder, Rhett's Disorder,

Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise

Specified including Atypical Autism as indicated in diagnostic references.

a. Children with Asperger's Disorder demonstrate the following characteristics:

(1) Impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction; failure to develop peer relationships appropriate to developmental level; a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest); or lack of social or emotional reciprocity are noted; and

(2) Restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects.

b. Children with autistic disorder, in addition to the characteristics listed in subdivisions 2 a

(1) and 2 a (2) of this subsection, also demonstrate impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or

idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.

c. Children with Pervasive Developmental Disorder - Not Otherwise Specified or Atypical

Autism may display any of the characteristics listed in subdivisions 2 a (1), 2 a (2) and 2 b of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.

**DEAF-BLINDNESS**

The group may determine that a child has deaf-blindness if the definition of "deaf-blindness" as outlined in 8VAC20-81-10 is met: **“deaf-blindness”** means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(2))

**DEAFNESS**

The group may determine that a child has deafness if:

1. The definition of "deafness" is met in accordance with 8VAC20-81-10: **“deafness”** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3)); and

2. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of a deafness, as outlined in subdivision 3 of this subsection; and

3. The child has a bilateral hearing loss (sensorineural, or mixed conductive and

sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony

(auditory neuropathy), and/or cortical deafness.

**DEVELOPMENTAL DELAY**

(34 CFR 300.111(b))

The group may determine whether a preschool child, aged two by September 30 to six, inclusive, has a

developmental delay if:

1. The definition of "developmental delay" is met in accordance with 8VAC20-81-10: **“developmental delay”** means a disability affecting a child ages two by September 30 through six, inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

a. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic

instruments and procedures, in one or more of the following areas: physical

development, cognitive development, communication development, social or

emotional development, or adaptive development, or

(ii) Who has an established physical or mental condition that has a high probability of

resulting in developmental delay;

b. the delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and

c. the presence of one or more documented characteristics of the delay has an adverse

affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group or;

2. The child has a physical or mental condition that has a high probability of resulting in a

developmental delay.

\*Eligibility as a child with a disability for children ages two through six shall not be limited to

developmental delay if eligibility can be determined under another disability category.

**EMOTIONAL DISABILITY**.

The group may determine that a child has an emotional disability if:

1. The definition of "emotional disability" is met in accordance with 8VAC20-81-10: "**Emotional disability**" means a condition exhibiting one or more of the following characteristics

over a long period of time and to a marked degree that adversely affects a child's educational

performance: (34 CFR 300.8(c)(4))

a. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

c. Inappropriate types of behavior or feelings under normal circumstances;

d. A general pervasive mood of unhappiness or depression; or

e. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability includes schizophrenia. The term does not apply to children who are

socially maladjusted, unless it is determined that they have an emotional disability as defined in this section and;

2. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of an emotional disability.

**HEARING IMPAIRMENT**

The group may determine that a child has a hearing impairment if:

1. The definition of "hearing impairment" is met in accordance with 8VAC20-81-10: "**hearing impairment**" means an impairment in hearing in one or both ears, with or without

amplification, whether permanent or fluctuating, that adversely affects a child's educational

performance but that is not included under the definition of deafness in this section. (34 CFR

300.8(c)(5)); and

2. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of a hearing impairment, as outlined in subdivision 2 of this

subsection.

Characteristics of children with a hearing impairment include unilateral hearing loss

(conductive, sensorineural, or mixed), bilateral hearing loss (conductive, sensorineural, or

mixed), a fluctuating or permanent hearing loss, and/or auditory dyssynchrony (auditory

neuropathy). The hearing loss results in qualitative impairments in communication/educational

performance.

The term "hard of hearing" may be used in this capacity.

**INTELLECTUAL DISABILITY**

The group may determine that a child has an intellectual disability if:

1. The definition of "intellectual disability" is met in accordance with 8VAC20-81-10: "**intellectual disability**" means the definition formerly known as "mental retardation" and means

significantly subaverage general intellectual functioning, existing concurrently with deficits in

adaptive behavior and manifested during the developmental period that adversely affects a

child's educational performance. (34 CFR 300.8(c)(6)); and

2. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of an intellectual disability, as outlined in subdivision 3 of this

subsection; and

3. The child has:

a. Significantly impaired intellectual functioning, which is two or more standard deviations

below the mean, with consideration given to the standard error of measurement for the

assessment, on an individually administered, standardized measure of intellectual

functioning;

b. Concurrently, significantly impaired adaptive behavior as determined by a composite

score on an individual standardized instrument of adaptive behavior that measures two

standard deviations or more below the mean; and

c. Developmental history that indicates significant impairment in intellectual functioning and a current demonstration of significant impairment is present.

**MULTIPLE DISABILITIES**

The group may determine that a child has multiple disabilities if the definition of "multiple disabilities" is met in accordance with 8VAC20-81-10: "**multiple disabilities**" means simultaneous impairments (such as intellectual disability with blindness, intellectual disability with orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

**orthopedic impairment**

The group may determine that a child has an orthopedic impairment if:

1. The definition of "orthopedic impairment" is met in accordance with 8VAC20-81-10: "**orthopedic impairment**" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8)); and

2. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of an orthopedic impairment.

**OTHER HEALTH IMPAIRMENT**

The group may determine that a child has an other health impairment if:

1. The definition of "other health impairment" is met in accordance with 8VAC20-81-10: "**other health impairment**" means having limited strength, vitality or alertness, including a

heightened alertness to environmental stimuli, that results in limited alertness with respect to the

educational environment, that is due to chronic or acute health problems such as asthma,

attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart

condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell

anemia and Tourettes syndrome that adversely affects a child's educational performance. (34

300.8(c)(9)); and

2. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of the other health impairment.

**SPECIFIC LEARNING DISABILITY**

(34 CFR 300.307 and 34 CFR 300.309)

1. The group may determine that a child has a specific learning disability if:

a. The definition of "specific learning disability" is met in accordance with 8VAC20-81-10: "**specific learning disability**" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the

result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10)). Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the

provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge; and;

b. The criteria for determining the existence of a specific learning disability are met.

2. The criteria for determining the existence of a specific learning disability are met if:

a. The child does not achieve adequately for the child's age or to meet Virginia-approved

grade-level standards in one or more of the following areas when provided with learning

experiences and instruction appropriate for the child's age or Virginia-approved grade-level standards:

(1) Oral expression;

(2) Listening comprehension;

(3) Written expression;

(4) Basic reading skills;

(5) Reading fluency skills;

(6) Reading comprehension;

(7) Mathematical calculations; or

(8) Mathematical problem solving.

b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision 2 a of this subsection when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 8VAC20-81-70.

c. The group determines that its findings under subdivisions 2 a and b of this subsection are not primarily the result of:

(1) A visual, hearing, or motor impairment;

(2) Intellectual disability;

(3) Emotional disability;

(4) Environmental, cultural, or economic disadvantage; or

(5) Limited English proficiency.

3. The Virginia Department of Education does not require the use of a severe discrepancy

between intellectual ability and achievement for determining whether a child has a specific

learning disability. (34 CFR 300.307(a))

**SPEECH OR LANGUAGE IMPAIRMENT**

1. The group may determine that a child has a speech or language impairment if:

a. The definition of "speech or language impairment" is met in accordance with 8VAC20-81-10: "**speech or language impairment**" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11));

b. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of speech or language impairment;

c. The child has a significant discrepancy from typical communication skills in one or more of the following areas: fluency, impaired articulation, expressive or receptive language

impairment, or voice impairment; and

d. Information from instruments that are culturally and linguistically appropriate, including

standardized and criterion-referenced measures, shall be used in conjunction with

information from classroom observations to determine the severity of the communication

impairment.

2. Children shall not be identified as children having a speech or language impairment if the

area of concern is primarily the result of sociocultural dialect, delays/differences associated

with acquisition of English as a second language, or within the purview of established norms

for articulation and language development.

3. Speech language pathology services may be special education or a related service.

**TRAUMATIC BRAIN INJURY**

The group may determine that a child has a traumatic brain injury if:

1. The definition of "traumatic brain injury" is met in accordance with 8VAC20-81-10: "**traumatic brain injury**" means an acquired injury to the brain caused by an external physical

force, resulting in total or partial functional disability or psychosocial impairment, or both, that

adversely affects a child's educational performance. Traumatic brain injury applies to open or

closed head injuries resulting in impairments in one or more areas, such as cognition; language;

memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory,

perceptual, and motor abilities; psychosocial behavior; physical functions; information

processing; and speech. Traumatic brain injury does not apply to brain injuries that are

congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12)); and

2. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of traumatic brain injury.

**VISUAL IMPAIRMENT**

1. The group may determine that a child has a visual impairment if:

a. The definition of "visual impairment" is met in accordance with 8VAC20-81-10: "**visual impairment including blindness**" means an impairment in vision that, even with

correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13));

b. There is an adverse effect on the child's educational performance due to one or more

documented characteristics of visual impairment; and

c. The child:

(1) Demonstrates the characteristics of blindness or visual impairment, as outlined in

subdivisions 2 and 3 of this subsection; or

(2) Has any of the conditions including, but not limited to oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision, which may in the future, have an adverse effect on educational performance, or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.

2. A child with blindness demonstrates the following:

a. Visual acuity in the better eye with best possible correction of 20/200 or less at distance

or near; or

b. Visual field restriction in the better eye of remaining visual field of 20 degrees or less.

3. A child with a visual impairment demonstrates the following:

a. Visual acuity better than 20/200 but worse than 20/70 at distance and/or near; or

b. Visual field restriction in the better eye of remaining visual field of 70 degrees or less but

better than 20 degrees.

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

A. Termination of a child's eligibility for special education and related services shall be

determined by an eligibility group.

1. Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.

2. Buena Vista City Schools shall evaluate a child with a disability in accordance with

8VAC20-81-70 before determining that the child is no longer a child with a disability under this chapter.

3. Evaluation is not required before the termination of eligibility due to graduation with a

standard or advanced studies high school diploma or reaching the age of 22. (34 CFR

300.305(e))

B. The IEP team shall terminate the child's eligibility for a related service without determining

that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team shall make this determination based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.

C. Written parental consent shall be required prior to any partial or complete termination of

services.

D. Prior to any partial or complete termination of special education and related services, Buena Vista City Schools shall comply with the prior written notice requirements of 8VAC20-81-

170 C.

E. If the parent(s) revokes consent in writing for the child to continue to receive special

education and related services, Buena Vista City Schools shall follow the procedures in

8VAC20-81-170 E.3.a. to terminate the child's receipt of special education and related services.

(34 CFR 300.9 and 34 CFR 300.300(b)(4))

F. Summary of academic achievement and functional performance. (34 CFR 300.305(e)(3))

1. For a student whose eligibility terminates due to graduation with a standard or advanced

studies high school diploma or reaching the age of 22, the student shall be provided with

with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting

the student's postsecondary goals.

2. If a child exits school without graduating with a standard or advanced studies high school diploma or reaching the age of 22, including if the child receives a general educational development (GED) credential or an alternative diploma option, the child may be provided with a summary of academic achievement and functional performance

when the child exits school. However, if the child resumes receipt of educational services prior to exceeding the age of eligibility, the child shall be provided with an updated summary when the child exits, or when the child's eligibility terminates due to

graduation with a standard or advanced studies high school diploma or reaching the age of 22.

**8VAC20-81-100. Free appropriate public education**

A. Age of eligibility.

1. A free appropriate public education shall be available to all children with disabilities who

need special education and related services, aged two to 21, inclusive, who meet the

definition of "age of eligibility" as outlined in 8VAC20-81-10 and who reside within the

jurisdiction of Buena Vista City Schools. The student who turns 22 years of age after September 30 of the student’s current school year remains eligible for the remainder of the school year.This includes children with disabilities who are in need of special education and related services even though they have not failed or been retained in a course or grade and are advancing from grade to grade, and students who have been suspended or expelled from school in accordance with the provisions of 8VAC20-81-160. Buena Vista City Schools has established a goal of providing a full educational opportunity for all children with disabilities from birth to 21, inclusive, residing within its jurisdiction **(attachment at end of document)** (§ 22.1-213 of the Code of Virginia; 34 CFR 300.101 and 34 CFR 300.109)

a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.

b. The services and placement needed by each child with a disability to receive a free appropriate public education shall be based on the child's unique needs and not on the child's disability.

2. Exceptions. The obligation to make a free appropriate public education to all children with disabilities does not apply to: (34 CFR 300.102(a))

a. Children with disabilities who have graduated from high school with a standard or

advanced studies high school diploma. This exception does not apply to age-eligible students who have graduated but have not been awarded a standard or advanced studies high school diploma, or to those students who have been awarded a general educational development (GED) credential.

b. Children with disabilities aged 18 to 21, inclusive, who, if in their last educational

placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.

c. Children with disabilities who are eligible under IDEA Part B, Subpart H, but who receive early intervention services under IDEA Part C.

B. A free appropriate public education shall be available to children with disabilities who reside

within a school division but do not hold a valid U.S. citizenship or a student visa.

C. Program options. Buena Vista City Schools shall take steps to ensure that its children with

disabilities have available to them the variety of educational programs and services available to

children without disabilities in the area served by Buena Vista City Schools, including art,

music, industrial arts, consumer and homemaking education, and vocational education. (34

CFR 300.110)

D. Residential placement. If placement in a public or private residential program is necessary to

provide special education and related services to a child with a disability, the program, including

nonmedical care and room and board, shall be at no cost to the parents of the child. (34 CFR

300.104)

E. Assistive technology devices. (34 CFR 300.34(b) and 34 CFR 300.113)

1. Buena Vista City Schools shall ensure that the following are functioning properly,

including completing routine checks:

a. Hearing aids worn in school by children with hearing impairments, including deafness;

and

b. The external components of surgically implanted devices.

2. Buena Vista City Schools is not responsible for the postsurgical maintenance,

programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

F. Availability of assistive technology. (34 CFR 300.105)

1. Buena Vista City Schools shall ensure that assistive technology devices or assistive

technology services, or both, as those terms are defined in 8VAC20-81-10, are made

available to a child with a disability if required as part of the child's:

a. Special education;

b. Related services; or

c. Supplementary aids and services.

2. On a case-by-case basis, the use of school-purchased or leased assistive technology

devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

3. Buena Vista City Schools is not required to provide personal devices, including

eyeglasses or hearing aids that the child requires, regardless of whether the child is attending school, unless the IEP team determines that the device is necessary for the child to receive FAPE.

G. Transportation. (§§ 22.1-221 and 22.1-347 of the Code of Virginia; 34 CFR 300.107)

1. Each child with a disability, aged two to 21, inclusive, placed in an education program,

including private special education day or residential placements, by Buena Vista City Schools shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the same transportation unless a child's IEP requires specialized transportation.

2. If the IEP team determines that a child with a disability requires accommodations or

modifications to participate in transportation, the accommodations or modifications shall be provided in the least restrictive environment. Transportation personnel may be on the IEP team or be consulted before any modifications or accommodations are written into the student's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.

3. Buena Vista City Schools shall ensure that a child with a disability is provided a commute to and from an education program that is comparable in length to the commute provided to children without disabilities, unless the child's IEP team determines that a longer or shorter commute is necessary to ensure the child receives a free appropriate public education.

4. If Buena Vista City Schools enters an agreement with another local educational agency

for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent(s).

5. If a child with a disability is placed in the Virginia School for the Deaf and the Blind at

Staunton, the Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, Buena Vista City Schools shall be responsible for the provision of transportation services to and from school.

H. Nonacademic and extracurricular services and activities. (34 CFR 300.107 and 34 CFR 300.117)

1. Buena Vista City Schools shall take steps, including the provision of supplementary

aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. (See also 8VAC20-81-130 A 2)

2. Nonacademic and extracurricular services and activities may include but not be limited to counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by Buena Vista City Schools, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by Buena Vista City Schools and assistance in making outside employment available.

I. Physical education. (34 CFR 300.108

1. General. Physical education services, specially designed if necessary, shall be made

available to every child with a disability receiving a free appropriate public education, unless Buena Vista City Schools enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade.

2. Regular physical education. Each child with a disability shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:

a. The child is enrolled full time in a separate facility; or

b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.

3. Special physical education. If specially designed physical education is prescribed in a

child's IEP, Buena Vista City Schools shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

4. Education in separate facilities. Buena Vista City Schools shall ensure that the child receives appropriate physical education services in compliance with this subsection.

J. Extended school year services. (34 CFR 300.106)

1. Buena Vista City Schools shall ensure that extended school year services, including transportation to and from such services, are available as necessary to provide a free appropriate public education consistent with subdivision 2 of this subsection.

2. Extended school year services shall be provided only if a child's IEP team determines on

an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child, because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if extended school year services are not provided.

3. In implementing the requirements of this section, Buena Vista City Schools may not:

a. Limit extended school year services to particular categories of disability;

b. Unilaterally limit the type, amount, or duration of those services; or

c. Limit the provision of extended school year services to only the summer.

K. Children with disabilities in public charter schools. (34 CFR 300.209)

1. Children with disabilities who attend charter schools shall be served by Buena Vista City Schools in the same manner as children with disabilities in its other schools, including the provision of supplementary and related services on site at the charter school to the same extent to which the local educational agency provides such services on the site to its other public schools.

2. Buena Vista City Schools shall ensure that all requirements of this chapter are met.

L. Length of school day. School-aged students with disabilities shall be provided a school day

comparable in length to the day provided to school-aged students without disabilities unless

their IEP specifies otherwise. For preschool-aged children with disabilities, the IEP team

determines the length of the school day.

M. Methods and payments. (34 CFR 300.103)

1. The Virginia Department of Education may use whatever state, local, federal, and private

sources of support that are available to meet the requirements of this part.

2. Nothing in this part relieves an insurer or similar third party from an otherwise valid

obligation to provide or to pay for services provided to a child with a disability.

3. The Virginia Department of Education will ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

N. Disability harassment. Buena Vista City Schools shall have in effect policies that prohibit

harassment to children with disabilities. (28 CFR 35.149 and 34 CFR 104.4)

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

A. Responsibility. Buena Vista City Schools shall ensure that an IEP is developed and

implemented for each child with a disability served by Buena Vista City Schools, including a

child placed in a private special education school by: (34 CFR 300.112)

1. Buena Vista City Schools; or

2. A non-educational placement by a Comprehensive Services Act team that includes the

school division. Buena Vista City Schools’ responsibility is limited to special education and related services.

B. Accountability.

1. At the beginning of each school year, Buena Vista City Schools shall have an IEP in

effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue. (34 CFR 300.323(a))

2. Buena Vista City Schools shall ensure that an IEP: (34 CFR 300.323(c))

a. Is in effect before special education and related services are provided to an eligible child;

b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;

c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and

d. Is implemented as soon as possible following parental consent to the IEP.

3. Buena Vista City Schools shall ensure that: (34 CFR 300.323(d))

a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

b. Teachers and providers are informed of:

(1) Their specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

4. Buena Vista City Schools is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability.

5. Buena Vista City Schools shall ensure that the IEP team reviews the child's IEP

periodically, but not less than annually, to determine whether the annual goals are being

achieved and to revise its provisions, as appropriate, to address: (34 CFR 300.324(b))

a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

b. The results of any reevaluation conducted under this chapter;

c. Information about the child provided to or by the parent(s);

d. The child's anticipated needs; or

e. Other matters.

6. Buena Vista City Schools shall provide special education and related services to a child with a disability in accordance with the child's IEP. (34 CFR300.323 (c)(2))

7. Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the

parent feels that the efforts required by this chapter are not being met.

8. To the extent possible, Buena Vista City Schools shall encourage the consolidation of

reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))

9. In making changes to a child's IEP after the annual IEP team meeting for the school year, the parent(s) and Buena Vista City Schools may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))

a. If changes are made to the child's IEP, Buena Vista City Schools shall ensure that the child's IEP team is informed of those changes.

b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

c. This meeting is not a substitute for the required annual IEP meeting.

C. IEP team.

1. General. Buena Vista City Schools shall ensure that the IEP team for each child with a disability includes: (34 CFR 300.321(a), (c) and (d))

a. The parent(s) of the child;

b Not less than one regular education teacher of the child (if the child is or may be

participating in the regular educational environment);

c. Not less than one special education teacher of the child or, if appropriate, not less than one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provider shall be the speech-language pathologist;

d. A representative of Buena Vista City Schools who is:

(1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;

(2) Knowledgeable about the general education curriculum; and

(3) Knowledgeable about the availability of resources of the local education agency. Buena Vista City Schools may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria;

e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent of the child;

f. At the discretion of the parent(s) or Buena Vista City Schools, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (parent(s) or Buena Vista City Schools) who invited the individual to be a member of the team; and

g. Whenever appropriate, the child.

2. Buena Vista City Schools determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection.

3. Secondary transition service participants. (34 CFR 300.321(b))

a. Buena Vista City Schools shall invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:

(1) The student's postsecondary goals;

(2) The needed transition services for the student; or

(3) Both.

b. If the student does not attend the IEP meeting, Buena Vista City Schools shall take other steps to ensure that the student's preferences and interests are considered.

c. To the extent appropriate and with the consent of the parent(s) or a child who has reached the age of majority, Buena Vista City Schools shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, Buena Vista City Schools shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. Part C transition participants. In the case of a child who was previously served under Part C of the Act, Buena Vista City Schools shall, at the parent's(s') request, invite the Part C service coordinator or other representatives of the Part C system to the initial IEP meeting to assist with the smooth transition of services. (34 CFR 300.321(f))

D. IEP team attendance. (34 CFR 300.321(e))

1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of this

section is not required to attend an IEP team meeting, in whole or in part, if the parent and Buena Vista City Schools agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

a. The parent and Buena Vista City schools consent in writing to the excusal; and

b. The member submits, in writing, to the parent and the IEP team input into the

development of the IEP prior to the meeting.

E. Parent participation.

1. Buena Vista City Schools shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including: (34 CFR 300.322(a))

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

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

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

a. General notice. The notice given to the parent(s):

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

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

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

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

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

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

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

(b) Indicate that Buena Vista City Schools will invite the student; and

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

3. If neither parent can attend, Buena Vista City Schools shall use other methods to

ensure parent participation, including individual or conference telephone calls and audio

conferences. If Buena Vista City Schools uses an alternative means of meeting

participation that results in additional costs, Buena Vista City Schools is responsible for those costs. (34 CFR 300.322(c))

4. A meeting may be conducted without a parent(s) in attendance if Buena Vista City Schools is unable to convince the parent(s) that they should attend. In this case, Buena Vista City Schools shall have a record of the attempts to arrange a mutually agreed on time and place, such as: (34 CFR 300.322(d))

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

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

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

5. Buena Vista City Schools shall take whatever action is necessary to ensure that the

parent(s) understand the proceedings at the IEP meeting, including arranging for an

interpreter for parents with deafness or whose native language is other than English. (34 CFR 300.322(e))

6. At the IEP meeting, the IEP team shall provide the parent(s) of a child with a disability with a written description of the factors in subdivisions F 1 and F 2 of this section that will be considered during the IEP meeting. The description shall be written in language

understandable by the general public and provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.

7. Buena Vista City Schools shall give the parent(s) a copy of the child's IEP at no cost to

the parent(s) at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days. (34 CFR 300.322(f))

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

1. In developing each child's IEP, the IEP team shall consider:

a. The strengths of the child;

b. The concerns of the parent(s) for enhancing the education of their child;

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

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

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

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

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

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

d. Consider the communication needs of the child;

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

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

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

3. If, in considering the special factors, the IEP team determines that a child needs a

particular device or service, including an intervention, accommodation, or other program

modification in order for the child to receive a free appropriate public education, the IEP team shall include a statement to that effect in the child's IEP. (34 CFR 300.324(b)(2))

4. The regular education teacher of a child with a disability, as a member of the IEP team,

shall participate, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of: (34 CFR 300.324(a)(3))

a. Appropriate positive behavioral interventions and supports and other strategies for the child; and

b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.

5. Nothing in this section shall be construed to require: (34 CFR 300.320(d))

a. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP; or

b. That additional information be included in the child's IEP beyond what is explicitly required in this chapter.

6. The IEP team shall consider all factors identified under a free appropriate public education in 8VAC20-81-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, Buena Vista City Schools shall provide the parent(s) with prior written notice of Buena Vista City Schools’ proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8VAC20-81- 170 C.

G. Content of the individualized education program. The IEP for each child with a disability shall

include:

1. A statement of the child's present levels of academic achievement and functional

performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. (34 CFR 300.320(a)(1))

a. The statement shall be written in objective measurable terms, to the extent possible. Test scores, if appropriate, shall be self-explanatory or an explanation shall be included.

b. The present level of performance shall directly relate to the other components of the IEP.

2. A statement of measurable annual goals, including academic and functional goals

designed to: (34 CFR 300.320(a)(2))

a. Meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and

b. Meet each of the child's other educational needs that result from the child's disability.

3. If determined appropriate by the IEP team, as outlined in subdivision F 2 of this section, a description of benchmarks or short-term objectives. For children with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall include a description of benchmarks or short-term objectives. The IEP team shall document its consideration of the inclusion in the child's IEP of benchmarks or short-term objectives. (34 CFR 300.320(a)(2))

4. A statement of the special education and related services and supplementary aids and

services, based on peer-reviewed research to the extent practicable, to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (34 CFR 300.320(a)(4))

a. To advance appropriately toward attaining the annual goals;

b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.

5. An explanation of the extent, if any, to which the child will not participate with children

without disabilities in the regular class and in the activities described in this section. (34 CFR 300.320(a)(5))

6. The following information concerning state and division-wide assessments shall be

included: (34 CFR 300.320(a)(6))

a. A statement of any individual appropriate accommodations or modifications that are necessary to measure the child's academic achievement and functional performance, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;

b. If the IEP team determines that the child must take an alternate assessment instead of a particular state assessment of student achievement (or part of an assessment), a statement of:

(1) Why the child cannot participate in the regular assessment;

(2) Why the particular assessment selected is appropriate for the child, including that the child meets the criteria for the alternate assessment; and

(3) How the child's non-participation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

c. A statement that the child shall participate in either a state assessment for all children that is part of the state assessment program or the state's alternate assessment;

d. A statement of any individual appropriate accommodations or modifications approved for use in the administration of division-wide assessments of student achievement that are needed in order for the child to participate in the assessment;

e. If the IEP team determines that the child must take an alternate assessment instead of a particular division-wide assessment of student achievement (or part of an assessment), a statement of:

(1) Why the child cannot participate in the regular assessment;

(2) Why the particular alternate assessment selected is appropriate for the child; and

(3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

7. The projected dates (month, day, and year) for the beginning of the services and

modifications and the anticipated frequency, location, and duration of those services and

modifications. (34 CFR 300.320(a)(7))

8. A statement of: (34 CFR 300.320(a)(3))

a. How the child's progress toward the annual goals will be measured; and

b. When periodic reports on the progress the child is making toward meeting the

annual goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, and at least as often as parents are informed of the progress of their children without disabilities.

9. Initial transition services (34 CFR 300.101(b) and 34 CFR 300.323(b))

a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent(s) elect to receive services under Part B of the Act, Buena Vista City Schools shall develop an IEP.

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

(1) A statement regarding natural environments, and

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

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

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

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

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

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

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

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

11. Beginning at least one year before a student reaches the age of majority, the student's

IEP shall include a statement that the student and parent(s) have been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. (34 CFR 300.320(c))

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

1. If a participating agency, other than Buena Vista City Schools, fails to provide the

transition services described in the IEP of a student with a disability, Buena Vista City schools shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Nothing in this part relieves any participating agency, including a state vocational

rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

I. Additional requirements for eligible students with disabilities in state, regional, or local adult or

juvenile correctional facilities. (34 CFR 300.324(d) and 34 CFR 300.102(a)(2); Regulations

Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

1. A representative of the state from a state, regional, or local adult or juvenile correctional

facility may participate as a member of the IEP team.

2. All requirements regarding IEP development, review, and revision in this section apply to

students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment requirements to graduate with a modified standard, standard, or advanced studies diploma. The requirements related to least restrictive environment in 8VAC20-81-130 do not apply.

3. The following additional exceptions to subdivision 2 of this subsection apply only to

students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:

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

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

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

**8VAC20-81-120. Children who transfer.**

A. Children with disabilities who transfer between local educational agencies in Virginia or

transfer from a local educational agency outside of Virginia to a local educational agency in

Virginia within the same school year are subject to the following provisions. (34 CFR

300.323(e), (f), and (g))

1. The new local educational agency shall take reasonable steps to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous local educational agency in which the child was enrolled. The previous local educational agency shall take reasonable steps to promptly respond to the request from the new local educational agency.

a. If the previous local educational agency is not forthcoming in providing the records for the child, the new local educational agency should contact the Virginia Department of Education for assistance in resolving the matter.

b. If the new local educational agency is unable to obtain the IEP from the previous local educational agency or from the parent, the new local educational agency is not required to provide special education and related services to the child. The new local educational agency shall place the student in a general educational program and conduct an evaluation if the new local educational agency determines that an evaluation is necessary.

2. The new local educational agency shall provide a free appropriate public education to the child, including ensuring that the child has available special education and related services, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:

a. Adopts and implements the child's IEP from the previous local educational agency with the parent's consent; or

b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP with the parent's consent that meets the requirements in this chapter.

3. The new local educational agency may develop and implement an interim IEP with the

parent's consent while obtaining and reviewing whatever information is needed to develop a new IEP.

4. If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, the parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.

B. The new local educational agency shall provide the parent(s) with proper notice regarding

actions taken to provide the child with a free appropriate public education.

C. If the local educational agency determines it necessary to conduct an evaluation of the child,

the local educational agency shall provide proper notice, initiate evaluation procedures, conduct

the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.

1. During the evaluation period, the child shall receive services in accordance with the

existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.

2. The local educational agency shall inform the parent(s) of the sections of the existing IEP that are not in accordance with this chapter.

D. When a child with a disability who was placed in a private residential school under the

Comprehensive Services Act transfers to a new local educational agency, the new local

educational agency shall review the current placements and adopt or revise and implement the

IEP within 30 calendar days of receipt of written notification of the child's transfer. The former

Comprehensive Services Act team is responsible for paying for services until 30 calendar days

after the new Comprehensive Services Act team receives written notification of the child's

residence in the new local educational agency from the former Comprehensive Services Act

team. (The CSA Implementation Manual)

**8VAC20-81-130. Least restrictive environment and placements**

A. General least restrictive environment requirements.

1. Buena Vista City Schools shall ensure: (34 CFR 300.114)

a. That to the maximum extent appropriate, children with disabilities, aged two to 21, inclusive, including those in public or private institutions or other care facilities, are educated with children without disabilities; and

b. That special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic and extracurricular services and activities provided for children without disabilities, Buena Vista City Schools shall ensure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability. Buena Vista City Schools shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings. (See also 8VAC20-81-100 H.) (34 CFR 300.117)

3. For children placed by Buena Vista City Schools in public or private institutions or other care facilities, Buena Vista City Schools shall, if necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8VAC20-81-150.) (34 CFR 300.114 and 34 CFR 300.118)

B. Continuum of alternative placements. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.115)

1. Buena Vista City Schools shall ensure that a continuum of alternative placements is

available to meet the needs of children with disabilities, aged two to 21, inclusive, for special education and related services.

2. The continuum shall:

a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and

b. Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular education class placement. The continuum includes integrated service delivery, which occurs when some or all goals, including benchmarks and objectives if required, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of

children with disabilities is acceptable for meeting the requirement for a continuum of

alternative placements. All placement decisions shall be based on the individual needs of each child.

4. Buena Vista City Schools shall document all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities shall be served in a program with age-appropriate peers unless it can be shown that for a particular child with a disability, the alternative placement is

appropriate as documented by the IEP.

C. Placements. (Regulations Establishing Standards for Accrediting Public Schools in Virginia

(8VAC20-131); 34 CFR 300.116)

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, Buena Vista City Schools shall ensure that:

a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter.

b. The child's placement is:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Home-based instruction shall be made available to children whose IEPs require the

delivery of services in the home or other agreed-upon setting.

3. Homebound instruction shall be made available to children who are confined for periods

that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team shall revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

**8VAC20-81-140. Placement of children at the Virginia School for the Deaf and the Blind in Staunton.**

A. Placements are made by Buena Vista City Schools, in accordance with the administrative

policies and procedures of the Virginia School for the Deaf and the Blind in Staunton (Virginia

school). The Virginia school shall determine if the student meets the admission criteria of the

Virginia school. (§ 22.1-348 of the Code of Virginia)

B. When an eligible child is placed in the Virginia school, Buena Vista City Schools is responsible

for ensuring compliance with the requirements of this chapter.

C. For students who are residential students, the Virginia school is responsible for

transportation. For students who are day students, the placing local school division is

responsible for transportation to and from the school. (§ 22.1-347 C of the Code of Virginia)

**8VAC20-81-150. Private school placement.**

A. Private school placement by Buena Vista City Schools or Comprehensive Services Act team.

1. When a child with a disability is placed by Buena Vista City Schools or is placed for

non-educational reasons by a Comprehensive Services Act team that includes the school division in a private special education school or facility that is licensed or has a certificate to operate, Buena Vista City Schools is responsible for ensuring compliance with the requirements of this chapter, including participation in state and division-wide assessments. Buena Vista City Schools shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in a private school or facility. (34 CFR 300.325(c))

2. Before Buena Vista City Schools places a child with a disability in a private school or facility that is licensed or has a certificate to operate, Buena Vista City Schools shall initiate and conduct a meeting in accordance with 8VAC20-81-110 to develop an IEP for the child. Buena Vista City Schools shall ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by a private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a))

3. When a child is presently receiving the services of a private school or facility that is

licensed or has a certificate to operate, Buena Vista City Schools shall ensure that a

representative of the private school or facility attends the IEP meeting. If the representative cannot attend, Buena Vista City Schools shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a)(2))

4. After a child with a disability enters a private school or facility that is licensed or has a

certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of Buena Vista City Schools. (34 CFR 300.325(b)(1))

5. If the private school or facility initiates and conducts these meetings, Buena Vista City Schools shall ensure that the parent(s) and a Buena Vista City Schools’ representative: (34 CFR 300.325(b)(2))

a. Are involved in any decision affecting the child's IEP;

b. Agree to any proposed changes in the program before those changes are implemented; and

c. Are involved in any meetings that are held regarding reevaluation.

6. If the private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with Buena Vista City Schools. (34 CFR 300.325(c))

7. When a child with a disability is placed by Buena Vista City Schools or a Comprehensive

Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this chapter are extended to the child. (34 CFR 300.101)

8. If the parent(s) requests a due process hearing to challenge the child's removal from a

placement that was made for non-educational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent(s) and Buena Vista City Schools prior to placement by the Comprehensive Services Act team. (34 CFR 300.2(c))

9. When a child with a disability is placed in a private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children in accordance with the Code of Virginia. (§ 22.1-218.1 of the Code of Virginia)

B. Placement of children by parents if a free appropriate public education is at issue.

1. Buena Vista City Schools is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if Buena Vista City Schools made a free appropriate public education available to the child and the parent(s) elected to place the child in a private school or facility. (34 CFR 300.148(a))

2. Disagreements between a parent(s) and Buena Vista City Schools regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of 8VAC20-81-210. (34 CFR 300.148(b))

3. If the parent(s) of a child with a disability, who previously received special education and

related services under the authority of Buena Vista City Schools, enrolls the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by Buena Vista City Schools, a court or a special education hearing officer may require Buena Vista City Schools to reimburse the parent(s) for the cost of that enrollment if the court or the special education hearing officer finds that Buena Vista City Schools had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a special education hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by Buena Vista City Schools. (34 CFR 300.148(c))

4. The cost of reimbursement described in this section may be reduced or denied: (34 CFR

300.148(d))

a. If:

(1) At the most recent IEP meeting that the parent(s) attended prior to removal of the child from the public school, the parent(s) did not inform the IEP team that they were rejecting the placement proposed by Buena Vista City Schools to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(2) At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent(s) did not give written notice to Buena Vista City Schools of the information described above;

b. If, prior to the parent's(s') removal of the child from the public school, Buena Vista City Schools informed the parent(s), through proper notice of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent(s) did not make the child available for the evaluation; or

c. Upon a judicial finding of unreasonableness with respect to actions taken by the parent(s).

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be

reduced or denied for the parent's(s') failure to provide the notice to Buena Vista City Schools if: (34 CFR 300.148(e))

a. The parent is illiterate or cannot write in English;

b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent(s) from providing the notice; or

d. The parent(s) had not received notice of the notice requirement in this section.

C. Parentally placed private school children with disabilities. The provisions of this section apply

to children with disabilities who are enrolled by their parent(s) in private schools.

1. The following definitions are applicable for purposes of this subsection.

a. The term "private school" includes:

(1) Private, denominational, or parochial schools in accordance with § 22.1-254 of the Code of Virginia that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;

(2) Preschool facilities that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;

(3) Students who are home-tutored in accordance with § 22.1-254 of the Code of Virginia; or

(4) Students who receive home instruction in accordance with § 22.1-254.1 of the Code of Virginia.

b. The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. (34 CFR 300.13)

c. The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12. (34 CFR 300.36)

2. Child find. (§ 22.1-254.1 of the Code of Virginia; 34 CFR 300.130, 34 CFR 300.131(a) and (b), 34 CFR 300.132(a) and 34 CFR 300.134(a))

a. Buena Vista City Schools shall locate, identify, and evaluate all children with disabilities who are parentally placed in private schools located in the Buena Vista City Schools division. The activities undertaken to carry out this responsibility for these children shall be comparable to activities undertaken for children with disabilities in public schools.

b. Buena Vista City Schools shall consult with appropriate representatives of the private schools and representatives of parents of parentally placed private school children with disabilities on how to carry out the child find activities in order to conduct thorough and complete child find activities, including:

(1) How parentally placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

c. The child find process shall be designed to ensure:

(1) The equitable participation of parentally placed private school children; and

(2) An accurate count of these children.

3. Services plan. Buena Vista City Schools shall ensure that a services plan is developed and implemented for each parentally placed private school child with a disability who has been designated to receive special education and related services under this part. (34 CFR 300.132(b))

4. Expenditures. (34 CFR 300.133)

a. To meet the requirement of the Act, Buena Vista City Schools shall spend the following on providing special education and related services to private school children with disabilities:

(1) For children, aged three to 21, inclusive, an amount that is the same proportion of Buena Vista City Schools’ total subgrant under § 1411 of the Act as the number of private school children with disabilities, aged three to 21, who are enrolled by their parents in private schools located in the school division served by the school division, is to the total children

with disabilities in its jurisdiction, aged three to 21; and

(2) For children, aged three to five, inclusive, an amount that is the same proportion of Buena Vista City Schools’ total subgrant under § 1419 of the Act as the number of privately placed school children with disabilities, aged three to five, who are enrolled by their parents in a private school located in the school division served by the school division, is to the total

number of children with disabilities in its jurisdiction, aged three to five.

(3) If Buena Vista City Schools has not expended for equitable services all of the funds by the end of the fiscal year for which Congress appropriated the funds, Buena Vista City Schools shall obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.

(4) Buena Vista City Schools may supplement, but not supplant, the proportionate share amount of federal funds required to be expended in accordance with this subdivision.

b. In calculating the proportionate amount of federal funds to be provided for parentally placed private school children with disabilities, Buena Vista City Schools, after timely and meaningful consultation with representatives of private schools under this section, shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in Buena Vista City Schools division.

c. After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, Buena Vista City Schools shall determine the number of parentally placed private school children with disabilities attending private schools located in Buena Vista City Schools division, and ensure that the count is conducted on a date between October 1 and December 1 of each year as determined by the Superintendent of Public Instruction or designee. The child count shall be used to determine the amount that Buena Vista City Schools shall spend on providing special education and related services to parentally placed

private school children with disabilities in the next subsequent fiscal year.

d. Expenditures for child find activities, including evaluation and eligibility, described in 8VAC20-81-50 through 8VAC20-81-80, may not be considered in determining whether Buena Vista City Schools has met the expenditure requirements of the Act.

e. Buena Vista City Schools is not prohibited from providing services to parentally placed private school children with disabilities in excess of those required by this section.

5. Consultation.

a. Buena Vista City Schools shall consult with private school representatives and

representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children. This includes: (34 CFR 300.134(a), (c), and (d))

(1) How the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(2) How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities;

(3) The types of services, including direct services and alternate service delivery mechanisms;

(4) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and

(5) How and when those decisions will be made, including how parents, teachers and private school officials will be informed of the process.

b. If Buena Vista City Schools disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, Buena Vista City Schools shall provide to the private school officials a written explanation of the reasons why the local school division chose not to provide services directly or through a contract. (34 CFR 300.134(e))

c. Following consultation, Buena Vista City Schools shall obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, Buena Vista City Schools shall forward the documentation of the consultation to the Virginia Department of Education. (34 CFR 300.135)

d. A private school official has the right to submit a complaint to the Virginia Department of Education that Buena Vista City Schools: (34 CFR 300.136)

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

e. The private school official shall provide to the Virginia Department of Education the basis of the noncompliance by the local school division and the appropriate documentation. (34 CFR 300.136)

(1) If the private school official is dissatisfied with the decision of the Virginia Department of Education, the official may submit a complaint to the Secretary of Education, United States Department of Education by providing the information related to the noncompliance.

(2) The Virginia Department of Education shall forward the appropriate documentation to the U.S. Secretary of Education.

6. Equitable services determined. (34 CFR 300.137)

a. No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

b. Decisions about the services that will be provided to the parentally placed private school children with disabilities are made in accordance with the consultation process under subdivision 5 of this subsection and a services plan.

c. Buena Vista City Schools shall make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

d. Buena Vista City Schools shall:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, Buena Vista City Schools shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

7. Services provided. (34 CFR 300.138 and 34 CFR 300.132(b))

a. The services provided to parentally placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to these children do not have to meet the requirements for highly qualified special education teachers.

b. Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

c. No parentally placed private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

d. Services provided in accordance with a services plan.

(1) Each parentally placed private school child with a disability who has been designated to receive services under this subsection shall have a services plan that describes the specific special education and related services that Buena Vista City Schools will provide to the child in light of the services that Buena Vista City Schools has determined it will make available to private school children with disabilities.

(2) The services plan, to the extent appropriate, shall meet the requirements for the content of the IEP with respect to the services provided, and be developed, reviewed, and revised consistent with the requirements of this chapter for IEPs.

e. The services shall be provided:

(1) By employees of Buena Vista City Schools; or

(2) Through contract by Buena Vista City Schools with an individual, association, agency, organization, or other entity.

f. Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and non-ideological.

8. Location of services. Services provided to a private school child with a disability may be

provided on site at the child's private school, including a religious school, to the extent

consistent with law. (34 CFR 300.139(a))

9. Transportation. (34 CFR 300.139(b))

a. If necessary for the child to benefit from or participate in the services provided under this part, a parentally placed private school child with a disability shall be provided transportation:

(1) From the child's school or the child's home to a site other than the private school; and

(2) From the service site to the private school or to the child's home depending on the timing of the services.

b. Buena Vista City Schools is not required to provide transportation from the child's home to the private school.

c. The cost of the transportation described in this subsection may be included in calculating whether Buena Vista City Schools has met the requirement of this section.

10. Procedural safeguards, due process, and complaints. (34 CFR 300.140)

a. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that Buena Vista City Schools has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.

b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that Buena Vista City Schools has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for parentally placed private school children with disabilities.

c. State complaints. Complaints that the Virginia Department of Education or Buena Vista City Schools has failed to meet the requirements of this section may be filed under the procedures in 8VAC20-81-200.

d. The dispute resolution options described in subdivisions 10 b and 10 c of this subsection apply to the local educational agency in which the private school is located. (34 CFR 300.140(b)(2))

11. Separate classes prohibited. Buena Vista City Schools may not use funds available under the Act for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools. (34 CFR 300.143)

12. Requirement that funds not benefit a private school. Buena Vista City Schools may not

use funds provided under the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. Buena Vista City Schools shall use funds provided under the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school. (34 CFR 300.141)

13. Use of public school personnel. Buena Vista City Schools may use funds available under the Act to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for parentally placed private school children with disabilities and if those services are not normally provided by the private school. (34 CFR 300.142(a))

14. Use of private school personnel. Buena Vista City Schools may use funds available under the Act to pay for the services of an employee of a private school to provide services to a

parentally placed private school child, if the employee performs the services outside of the employee's regular hours of duty and the employee performs the services under public supervision and control. (34 CFR 300.142(b))

15. Requirements concerning property, equipment, and supplies for the benefit of private

school children with disabilities. (34 CFR 300.144)

a. Buena Vista City Schools shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the local school division acquires with funds under the Act for the benefit of parentally placed private school children with disabilities.

b. Buena Vista City Schools may place equipment and supplies in a private school for the period of time needed for the program.

c. Buena Vista City Schools shall ensure that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.

d. Buena Vista City Schools shall remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.

e. No funds under the Act may be used for repairs, minor remodeling, or construction of private school facilities.

16. Reporting requirements. Buena Vista City Schools shall maintain in its records, and

provide to the Virginia Department of Education, the following information related to parentally placed private school children: (34 CFR 300.132(c))

a. The number of children evaluated;

b. The number of children determined to be children with disabilities; and

c. The number of children served.

**8VAC20-81-160. Discipline procedures.**

A. General. (§ 22.1-277 of the Code of Virginia; 34 CFR 300.530(a); 34 CFR 300.324

1. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and Buena Vista City Schools’ disciplinary policies and procedures.

2. In the event that the child's behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:

a. Developing goals and services specific to the child's behavioral needs; or

b. Conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child's behavioral needs.

3. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.

a. In reviewing the disciplinary incident, school personnel may review the child's IEP and any behavioral intervention plan, or consult with the child's teacher(s) to provide further guidance in considering any unique circumstances related to the incident.

b. School personnel may convene an IEP team for this purpose.

B. Short-term removals.

1. A short-term removal is for a period of time of up to 10 consecutive school days or 10

cumulative school days in a school year. (34 CFR 300.530(b))

a. School personnel may short-term remove a child with a disability from the child's current educational setting to an appropriate interim alternative educational setting, another setting, or suspension, to the extent those alternatives are applied to a child without disabilities.

b. Additional short-term removals may apply to a child with a disability in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the short-term removals constitute a pattern, the requirements of subsection C of this section apply.

(1) Buena Vista City Schools determines when isolated, short-term removals for unrelated instances of misconduct are considered a pattern.

(2) These removals only constitute a change in placement if the local educational agency determines there is a pattern.

2. Services during short-term removals.

a. Buena Vista City Schools is not required to provide services during the first 10 school days in a school year that a child with a disability is short-term removed if services are not provided to a child without a disability who has been similarly removed. (34 CFR 300.530(b)(2))

b. For additional short-term removals, which do not constitute a pattern, the local

educational agency shall provide services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals of the student's IEP. School personnel, in consultation with the student's special education teacher, make the service determinations. (34 CFR 300.530(b)(2))

c. For additional short-term removals that do not constitute a pattern, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and division-wide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC § 1412(a)(16)(A))

C. Long-term removals.

1. A long-term removal is for more than 10 consecutive school days; or (34 CFR 300.530; 34 CFR 300.536)

2. The child has received a series of short-term removals that constitutes a pattern:

a. Because the removals cumulate to more than 10 school days in a school year;

b. Because the child's behavior is substantially similar to the child's behavior in previous incidents that results in a series of removals; and

c. Because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

3. Buena Vista City Schools determines on a case-by-case basis whether a pattern of

removals constitutes a change in placement. This determination is subject to review through due process and judicial proceedings. (34 CFR 300.530(a) and (b) and 34 CFR 300.536)

4. On the date on which the decision is made to long-term remove the student because of a violation of a code of student conduct, Buena Vista City Schools shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards. (34 CFR 300.530(h))

5. Special circumstances. (34 CFR 300.530(g))

a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if:

(1) The child carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

(3) The child inflicts serious bodily injury upon another person at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.

b. For purposes of this part, "weapon," "controlled substance," and "serious bodily injury" have the meaning given the terms under 8VAC20-81-10.

6. Services during long-term removals.

a. A child with a disability who is long-term removed receives services during the disciplinary removal so as to enable the student to: (34 CFR 300.530(d))

(1) Continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting;

(2) Continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and (3) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

b. For long-term removals, Buena Vista City Schools shall ensure that children with disabilities are included in the Virginia Department of Education and division-wide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC § 1412(a)(16)(A))

c. The IEP team determines the services needed for the child with a disability who has been long-term removed. (34 CFR 300.530(d)(5) and 34 CFR 300.531)

D. Manifestation determination. (34 CFR 300.530(c), (e), (f), and (g))

1. Manifestation determination is required if Buena Vista City Schools is contemplating a

removal that constitutes a change in placement for a child with a disability who has violated a code of student conduct of the local educational agency that applies to all students.

2. Buena Vista City Schools, the parent(s), and relevant members of the child's IEP team,

as determined by the parent and Buena Vista City Schools, constitute the IEP team that shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made.

3. The IEP team shall review all relevant information in the child's file, including the child's

IEP, any teacher observations, and any relevant information provided by the parent(s).

4. The IEP team then shall determine the conduct to be a manifestation of the child's

disability:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(2) If the conduct in question was the direct result of Buena Vista City Schools’ failure to implement the child's IEP.

5. If the IEP team determines that Buena Vista City Schools failed to implement the child's IEP, Buena Vista City Schools shall take immediate steps to remedy those deficiencies.

6. If the IEP team determines that the child's behavior was a manifestation of the child's

disability:

a. The IEP team shall return the child to the placement from which the child was removed unless the parent and Buena Vista City Schools agree to a change in placement as part of the modification of the behavioral intervention plan. The exception to this provision is when the child has been removed for not more than 45 school days to an interim alternative educational setting for matters described in subdivision C 5 a of this section. In that case, school personnel may keep the student in the interim alternative educational setting until the expiration of the 45-day period.

(1) Conduct a functional behavioral assessment, unless Buena Vista City Schools had conducted this assessment before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan for the child.

(a) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.

(b) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B if the parent disagrees with the evaluation or a component of the evaluation obtained by Buena Vista City Schools; or

(2) If a behavioral intervention plan already has been developed, review this plan, and modify it, as necessary, to address the behavior.

7. If the IEP team determines that the child's behavior was not a manifestation of the child's

disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that services shall be provided in accordance with subdivision C 6 a of this section.

E. Appeal. (34 CFR 300.532(a) and (c))

1. If the child's parent(s) disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent(s) may request an expedited due process hearing.

2. Buena Vista City Schools believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request an expedited due

process hearing.

3. Buena Vista City Schools is responsible for arranging the expedited due process in

accordance with the Virginia Department of Education's hearing procedures at 8VAC20-81-210.

a. The hearing shall occur within 20 school days of the date the request for the hearing is filed.

b. The special education hearing officer shall make a determination within 10 school days after the hearing.

c. Unless the parent(s) and Buena Vista City Schools agree in writing to waive the resolution meeting, or agree to use the mediation process,

(1) A resolution meeting shall occur within 7 calendar days of receiving the request for a hearing.

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing.

d. The decisions on expedited due process hearings are appealable consistent with

8VAC20-81-210.

F. Authority of the special education hearing officer. (34 CFR 300.532(a) and (b))

1. Buena Vista City Schools may request an expedited due process hearing under the

Virginia Department of Education's due process hearing procedures to effect a change in

placement of a child with a disability for not more than 45 school days without regard to

whether the behavior is determined to be a manifestation of the child's disability, if the local educational agency believes that the child's behavior is substantially likely to result in injury to self or others.

2. The special education hearing officer under 8VAC20-81-210 may:

a. Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of subsections C and D of this section, or that the child's behavior was a manifestation of the child's disability; or

b. Order a change in the placement to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or others.

3. Buena Vista City Schools may ask the special education hearing officer for an extension of 45 school days for the interim alternative educational setting of a child with a disability when school personnel believe that the child's return to the regular placement would result in injury to the student or others.

G. Placement during appeals. (34 CFR 300.533)

1. The child shall remain in the interim alternative educational setting pending the decision of the special education hearing officer, or

2. Until the expiration of the time for the disciplinary period set forth in this section, whichever comes first, unless the parent and Buena Vista City Schools agree otherwise.

* Protection for children not yet eligible for special education and related services. (34 CFR 300.534)

1. A child who has not been determined to be eligible for special education and related

services and who has engaged in behavior that violates a code of student conduct of Buena Vista City Schools may assert any of the protections provided in this chapter if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

2. Buena Vista City Schools shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

(a) The parent(s) of the child expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;

(b) The parent(s) of the child requested an evaluation of the child to be determined eligible for special education and related services; or

(c) A teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of Buena Vista City Schools or to other supervisory personnel of Buena Vista City Schools.

3. Buena Vista City Schools would not be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has not allowed a previous evaluation of the child or has refused services; or

(b) The child has been evaluated in accordance with 8VAC20-81-70 and 8VAC20-81-80 and determined ineligible for special education and related services.

4. If Buena Vista City Schools does not have knowledge that a child is a child with a

disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.

5. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this section, the evaluation shall be conducted in an expedited manner.

a. Until the evaluation is completed, the child remains in the educational placement

determined by the school personnel, which can include suspension or expulsion without educational services.

b. If the child is determined to be a child with a disability, taking into consideration

information from the evaluations conducted by Buena Vista City Schools and information provided by the parent(s), Buena Vista City Schools shall provide special education and related services as required for a child with a disability who is disciplined.

I. Referral to and action by law enforcement and judicial authorities. (34 CFR 300.535)

1. Nothing in this chapter prohibits Buena Vista City Schools from reporting a crime by a

child with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability to the extent such action applies to a student without a disability.

2. In reporting the crime, Buena Vista City Schools shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such

records shall be in accordance with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150).

J. Information on disciplinary actions. (34 CFR 300.229)

1. The Virginia Department of Education requires that local educational agencies include in

the records of a child with a disability a statement of any current or previous disciplinary

action that has been taken against the child.

2. Local educational agencies are responsible for transmitting the statement to the Virginia

Department of Education upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students.

3. The statement may include:

a. A description of any behavior engaged in by the child who required disciplinary action;

b. A description of the disciplinary action; and

c. Any other information that is relevant to the safety of the child and other individuals involved with the child.

4. If the child transfers from one school to another, the transmission of any of the child's

records shall include the child's current IEP and any statement of current or previous

disciplinary action that has been taken against the child.

**8VAC20-81-170. Procedural safeguards.**

A. Opportunity to examine records; parent participation. (34 CFR 300.322(e), 34 CFR 300.500

and 34 CFR 300.501; 8VAC20-150)

1. Procedural safeguards. Buena Vista City Schools shall establish, maintain, and

implement procedural safeguards as follows:

a. The parent(s) of a child with a disability shall be afforded an opportunity to:

(1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.

(2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

b. Parent participation in meetings.

(1) Buena Vista City Schools shall provide notice to ensure that the parent(s) of a child with a disability has the opportunity to participate in meetings described in subdivision 1 a (2) of this subsection, including notifying the parent(s) of the meeting early enough to ensure that the parent has an opportunity to participate. The notice shall:

(a) Indicate the purpose, date, time, and location of the meeting and who will be in attendance;

(b) Inform the parent(s) that at their discretion or at the discretion of Buena Vista City Schools, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with

respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child;

(c) Inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and

(d) Inform the parent(s), in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the

Part C service coordinator or other representatives of Part C to assist with the smooth transition of services.

(2) A meeting does not include informal or unscheduled conversations involving Buena Vista City Schools’ personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that Buena Vista City Schools’ personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions.

(1) Buena Vista City Schools shall ensure that a parent(s) of each child with a disability is a member of the IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child.

(2) In implementing the requirements of subdivision 1 c (1) of this subsection, Buena Vista City Schools shall provide notice in accordance with the requirements of 8VAC20-81-110 E.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, Buena Vista City Schools shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent(s) if the local educational agency is unable to obtain the parents' participation in the decision. In this case, Buena Vista City Schools shall have a record of its attempt to ensure the parents' involvement.

(5) Buena Vista City Schools shall take whatever action is necessary to ensure that the parent(s) understand and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent(s) with deafness, or whose native language is other than English.

(6) The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45-day removals under 8VAC20-81-160 D 6 a. (34 CFR 300.530(f)(2) and (g))

B. Independent educational evaluation.

1. General. (34 CFR 300.502(a))

a. The parent(s) of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. Buena Vista City Schools shall provide to the parent(s) of a child with a disability, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

2. Parental right to evaluation at public expense. (34 CFR 300.502 (b) and (e))

a. The parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation component obtained by Buena Vista City Schools.

b. If the parent(s) requests an independent educational evaluation at public expense, Buena Vista City Schools shall, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent(s) does not meet the local educational agency's criteria.

c. If Buena Vista City Schools initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent(s) still has the right to an independent educational evaluation, but not at public expense.

d. If the parent(s) requests an independent educational evaluation, Buena Vista City Schools may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the parent(s) may not be required and Buena Vista City Schools may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation component with which the parent disagrees.

f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that Buena Vista City Schools uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, Buena Vista City Schools may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with Buena Vista City Schools an evaluation obtained at private expense, the results of the evaluation: (34 CFR 300.502(c))

a. Shall be considered by Buena Vista City Schools, if it meets Buena Vista City Schools criteria, in any decision regarding the provision of a free appropriate public education to the child; and

b. May be presented by any party as evidence at a hearing under 8VAC20-81-210.

4. Requests for evaluations by special education hearing officers. If a special education

hearing officer requests an independent educational evaluation for an evaluation component, as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (34 CFR 300.502(d))

C. Prior written notice by Buena Vista City Schools; content of notice.

1. Prior written notice shall be given to the parent(s) of a child with a disability within a

reasonable time before Buena Vista City Schools: (34 CFR 300.503(a))

a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.

2 The notice shall include: (34 CFR 300.503(b))

a. A description of the action proposed or refused by Buena Vista City Schools;

b. An explanation of why Buena Vista City Schools proposes or refuses to take the action;

c. A description of any other options the IEP team considered and the reasons for the rejection of those options;

d. A description of each evaluation procedure, assessment, record, or report Buena Vista City Schools used as a basis for the proposed or refused action;

e. A description of any other factors that are relevant to Buena Vista City Schools’ proposal or refusal;

f. A statement that the parent(s) of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

g. Sources for the parent(s) to contact in order to obtain assistance in understanding the provisions of this section.

3. a. The notice shall be: (i) written in language understandable to the general public;

and (ii) provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so. (34 CFR 300.503(c))

b. If the native language or other mode of communication of the parent(s) is not a written language, Buena Vista City Schools shall take steps to ensure that:

(1) The notice is translated orally or by other means to the parent(s) in their native language or other mode of communication;

(2) The parent(s) understand the content of the notice; and

(3) There is written evidence that the requirements of subdivisions (1) and (2) of this subdivision have been met.

D. Procedural safeguards notice. (34 CFR 300.504)

1. A copy of the procedural safeguards available to the parent(s) of a child with a disability

shall be given to the parent(s) by Buena Vista City Schools only one time a school year, except that a copy shall be given to the parent(s) upon:

a. Initial referral for or parent request for evaluation;

b. If the parent requests an additional copy;

c. Receipt of the first state complaint during a school year;

d. Receipt of the first request for a due process hearing during a school year; and

e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement because of a violation of a code of student conduct.

2. Buena Vista City Schools may place a current copy of the procedural safeguards notice on its Internet website if a website exists, but Buena Vista City Schools does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. Buena Vista City Schools shall offer the parent(s) a printed copy of the procedural safeguards notice in accordance with subdivision 1 of this subsection.

3. The procedural safeguards notice shall include a full explanation of all of the procedural

safeguards available relating to:

a. Independent educational evaluation;

b. Prior written notice;

c. Parental consent;

d. Access to educational records;

e. Opportunity to present and resolve complaints through the due process procedures;

f. The availability of mediation;

g. The child's placement during pendency of due process proceedings;

h. Procedures for students who are subject to placement in an interim alternative educational setting;

i. Requirements for unilateral placement by parents of children in private schools at public expense;

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;

k. Civil actions, including the time period in which to file those actions;

l. Attorneys' fees; and

m. The opportunity to present and resolve complaints through the state complaint

procedures, including:

(1) The time period in which to file a complaint;

(2) The opportunity for Buena Vista City Schools to resolve the complaint; and

(3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.

4. The notice required under this subsection shall meet the prior notice requirements

regarding understandable language in subdivision C 3 of this section.

E. Parental consent.

1. Required parental consent. Informed parental consent is required before:

a. Conducting an initial evaluation or reevaluation, including a functional behavioral

assessment if such assessment is not a review of existing data conducted at an IEP meeting; (34 CFR 300.300(a)(1)(i))

b. An initial eligibility determination or any change in categorical identification;

c. Initial provision of special education and related services to a child with a disability; (34 CFR 300.300(b)(1))

d. Any revision to the child's IEP services;

e. Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma;

f. The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120;

g. Accessing a child's public benefits or insurance or private insurance proceeds in

accordance with subsection F of this section; and (34 CFR 300.154)

h Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services. (34 CFR 300.321(b)(3))

2. Parental consent not required. Parental consent is not required before:

a. Review of existing data as part of an evaluation or a re-evaluation, including a functional behavioral assessment; (34 CFR 300.300(d)(1))

b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent(s) of all children; (34 CFR 300.300(d)(1))

c. The screening of a student by a teacher or specialist to determine appropriate

instructional strategies for curriculum implementation; (34 CFR 300.302)

d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals and is included in the child’s IEP;

e. A teacher's or related service provider's observations or ongoing classroom evaluations;

f. Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his parent(s) if: (34 CFR 300.300(a)(2)) cannot discover the whereabouts of the parent(s);

(1) Despite reasonable efforts, Buena Vista City Schools cannot discover the whereabouts of the parent(s);

(2) The parent's rights have been terminated; or

(3) The rights of the parent(s) to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has consented to the initial evaluation.

3. Revoking consent.

a. If, at any time subsequent to the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services: (34 CFR 300.300(b)(4))

(1) Buena Vista City Schools may not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 8VAC20-81-170 C. before ceasing the provision of special education and related services;

(2) Buena Vista City Schools may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(3) Buena Vista City Schools’ failure to provide the special education and related services to the child will not be considered a violation of the requirement to provide FAPE; and

(4) Buena Vista City Schools is not required to convene an IEP meeting or to develop an IEP for the child for the further provision of special education and related services.

b. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8VAC20-81-10.

4. Refusing consent.

a. If the parent(s) refuses consent for initial evaluation or a reevaluation, Buena Vista City Schools may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. Buena Vista City Schools does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. If the parent(s) refuses to consent to the initial provision of special education and related services: (34 CFR 300.300(b)(3))

(1) Buena Vista City Schools may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(2) Buena Vista City Schools’ failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and

(3) Buena Vista City Schools is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which Buena Vista City Schools requests consent. However, Buena Vista City Schools may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.

c. If the parent(s) of a parentally placed private school child refuses consent for an initial evaluation or a reevaluation, Buena Vista City Schools: (34 CFR 300.300(d)(4))

(1) May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and

(2) Is not required to consider the child as eligible for equitable provision of services in accordance with 8VAC20-81-150.

d. Buena Vista City Schools may not use a parent's refusal to consent to one service or activity to deny the parent(s) or child any other service, benefit, or activity of Buena Vista City Schools, except as provided by this chapter. (34 CFR 300.300(d)(3))

5. Withholding consent.

a. If the parent(s) fails to respond to a request to consent for an initial evaluation, Buena Vista City Schools may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. Buena Vista City Schools does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. Informed parental consent need not be obtained for reevaluation if Buena Vista City Schools can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent(s) has failed to respond. (34 CFR 300.300(c)(2))

c. If the parent(s) fails to respond to a request to provide consent for the initial provision of special education and related services, Buena Vista City Schools follows the provisions of subdivision 4 b of this subsection. (34 CFR 300.300(b)(3) and (4))

6. Consent for initial evaluation may not be construed as consent for initial provision of special education and related services. (34 CFR 300.300(a)(1)(ii))

7. Buena Vista City Schools shall make reasonable efforts to obtain informed parental

consent for an initial evaluation and the initial provision of special education and related

services. (34 CFR 300.300(a)(1)(iii) and (b)(2))

8. To meet the reasonable measures requirement of this section, Buena Vista City Schools shall have a record of its attempts to secure the consent, such as: (34 CFR 300.322(d) and 34 CFR 300.300(a), (b), (c) and (d)(5))

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

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

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

F. Parental rights regarding use of public or private insurance. Each local educational agency

using Medicaid or other public benefits or insurance programs to pay for services required under

this chapter, as permitted under the public insurance program, and each local educational

agency using private insurance to pay for services required under this chapter, shall provide

notice to the parent(s) and obtain informed parental consent in accordance with 8VAC20-81-

300. (34 CFR 300.154)

G. Confidentiality of information.

1. Access rights. (34 CFR 300.613)

a. Buena Vista City Schools shall permit the parent(s) to inspect and review any

education records relating to their children that are collected, maintained, or used by the local educational agency under this chapter. Buena Vista City Schools shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.

b. The right to inspect and review education records under this section includes:

(1) The right to a response from Buena Vista City Schools to reasonable requests for explanations and interpretations of the records;

(2) The right to request that Buena Vista City Schools provide copies of the records containing the information if failure to provide those copies would effectively prevent the using Medicaid or other public benefits or insurance programs to pay for services required under this chapter, as permitted under the public insurance program, and each local educational

agency using private insurance to pay for services required under this chapter, shall provide notice to the parent(s) and obtain informed parental consent in accordance with 8VAC20-81-300. (34 CFR 300.154)

G. Confidentiality of information.

1. Access rights. (34 CFR 300.613)

a. Buena Vista City Schools shall permit the parent(s) to inspect and review any

education records relating to their children that are collected, maintained, or used by Buena Vista City Schools under this chapter. Buena Vista City Schools shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.

b. The right to inspect and review education records under this section includes:

(1) The right to a response from Buena Vista City Schools to reasonable requests for explanations and interpretations of the records;

(2) The right to request that Buena Vista City Schools provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c. Buena Vista City Schools may presume that a parent has authority to inspect and review records relating to the parent's children unless Buena Vista City Schools has been provided a copy of a judicial order or decree, or other legally binding documentation, that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

2. Record of access. Buena Vista City Schools shall keep a record of parties, except

parents and authorized employees of Buena Vista City Schools, obtaining access to

education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records. (34 CFR 300.614)

3. Record on more than one child. If any education record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested. (34 CFR 300.615)

4. List of types and locations of information. Buena Vista City Schools shall provide a

parent(s) on request a list of the types and locations of education records collected,

maintained, or used by Buena Vista City Schools. (34 CFR 300.616)

5. Fees. (34 CFR 300.617)

a. Buena Vista City Schools may charge a fee for copies of records that are made for a parent(s) under this chapter if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

b. Buena Vista City Schools may not charge a fee to search for or to retrieve information under this section.

c. Buena Vista City Schools may not charge a fee for copying a child's IEP that is required to be provided to the parent(s) in accordance with 8VAC20-81-110 E 7.

6. Amendment of records at parent's request. (34 CFR 300.618)

a. A parent(s) who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the Buena Vista City Schools to amend the information.

b. Buena Vista City Schools shall decide whether to amend the information in

accordance with the request within a reasonable period of time of receipt of the request.

c. If Buena Vista City Schools decides to refuse to amend the information in accordance with the request, it shall inform the parent(s) of the refusal and advise the parent(s) of the right to a hearing under subdivision 7 of this subsection.

7. Opportunity for a hearing. Buena Vista City Schools shall provide on request an

opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 CFR 300.619)

8. Results of hearing. (34 CFR 300.620)

a. If, as a result of the hearing, Buena Vista City Schools decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

b. If, as a result of the hearing, Buena Vista City Schools decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c. Any explanation placed in the records of the child under this section shall:

(1) Be maintained by Buena Vista City Schools as part of the records of the child as long as the record or contested portion is maintained by Buena Vista City Schools; and

(2) If the records of the child or the contested portion is disclosed by Buena Vista City Schools to any party, the explanation shall also be disclosed to the party.

9. Hearing procedures. A hearing held under subdivision 7 of this subsection shall be

conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act. (20 USC § 1232g; 34 CFR 300.621)

a. Buena Vista City Schools may:

(1) Develop local procedures for such a hearing process; or

(2) Obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 H.

10. Consent. (34 CFR 300.32; 34 CFR 300.622)

a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of Buena Vista City Schools unless the information is contained in the education records, and the disclosure is authorized under the Family Education Rights and Privacy Act. (20 USC § 1232g).

b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:

(1) Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services.

(2) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the parent(s) resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located, and officials in the local educational agency where the parent(s) resides.

11. Safeguards. (34 CFR 300.623)

a. Buena Vista City Schools shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. Buena Vista City Schools shall ensure that electronic communications via emails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record.

c. One official at Buena Vista City Schools shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

d. All persons collecting, maintaining, or using personally identifiable information shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.

e. Buena Vista City Schools shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

12. Destruction of information. (34 CFR 300.624)

a. Buena Vista City Schools shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.

b. This information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.

c. Buena Vista City Schools shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

H. Electronic mail. If Buena Vista City Schools makes the option available, parent(s) of a

child with a disability may elect to receive prior written notice, the procedural safeguards notice,

and the notice of a request for due process, by electronic mail. (34 CFR 300.505)

I. Electronic signature. If an electronically filed document contains an electronic signature, the

electronic signature has the legal effect and enforceability of an original signature. An electronic

signature is an electronic sound, symbol, or process attached to or logically associated with a

record and executed or adopted by a person with the intent to sign the record. (Chapter 42.1 (§

59.1-479 et seq.) of Title 59.1 of the Code of Virginia)

J. Audio and video recording.

1. Buena Vista City Schools shall permit the use of audio recording devices at meetings

convened to determine a child's eligibility under 8VAC20-81-80; to develop, review, or

revise the child's IEP under 8VAC20-81-110 F; and to review discipline matters under

8VAC20-81-160 D. The parent(s) shall inform Buena Vista City Schools before the

meeting in writing, unless the parents cannot write in English, that they will be audio

recording the meeting. If the parent(s) does not inform Buena Vista City Schools, the

parent(s) shall provide Buena Vista City Schools with a copy of the audio recording.

The parent(s) shall provide their own audio equipment and materials for audio recording. If Buena Vista City Schools audio records meetings or receives a copy of an audio

recording from the parent(s), the audio recording becomes a part of the child's educational record.

2. Buena Vista City Schools may have policies that prohibit, limit, or otherwise regulate

the use of:

a. Video recording devices at meetings convened pursuant to this chapter; or

b. Audio or video recording devices at meetings other than those meetings identified in subdivision 1 of this subsection.

3. These policies shall:

a. Stipulate that the recordings become part of the child's educational record;

b. Ensure that the policy is uniformly applied; and

c. If the policy prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter.

**8VAC20-81-180. Transfer of rights to students who reach the age of majority.**

A. All rights accorded to the parent(s) under the Act transfer to the student upon the age of

majority (age 18), including those students who are incarcerated in an adult or juvenile federal,

state, regional, or local correctional institution. (34 CFR 300.520)

B. Notification.

1. Buena Vista City Schools shall notify the parent(s) and the student of the following: (34 CFR 300.520)

a. That educational rights under the Act will transfer from the parent(s) to the student upon the student reaching the age of majority; and

b. That procedures exist for appointing the parent(s) or, if the parent(s) are not available, another appropriate individual to represent the educational interests of the student throughout the student's eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in subsection C of this section.

2. Buena Vista City Schools shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student and parent(s) have been informed of the rights that will transfer to the student on reaching the age of 18. (34 CFR 300.320(c))

3. Buena Vista City Schools shall provide any further notices required under the Act to

both the student and the parent(s).

4. Buena Vista City Schools may continue to invite the parent(s), as appropriate, as bona

fide interested parties knowledgeable of the student's abilities, to participate in meetings

here decisions are being made regarding their adult student's educational program.

5. The adult student may invite the student's parent(s) to participate in meetings where

decisions are being made regarding the student's educational program.

C. A student who has reached the age of 18 years shall be presumed to be a competent adult,

and thus all rights under the Act shall transfer to the adult student, unless one of the following

actions has been taken:

1. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;

2. The adult student designates, in writing, by power of attorney or similar legal document,

another competent adult to be the student's agent to receive notices and to participate in

meetings and all other procedures related to the student's educational program. Buena Vista City Schools shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;

3. The adult student is certified, according to the following procedures, as unable to provide

informed consent. Any adult student who is found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures: (34 CFR 300.520(b))

a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:

(1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.

(2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Supreme Court of Virginia; or (v) a court-appointed special advocate for the adult student.

b. The individuals who provide the certification in subdivision 3 a of this subsection may not be employees of Buena Vista City Schools currently serving the adult student or be related by blood or marriage to the adult student.

c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:

(1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(2) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(3) Communicate such understanding in any meaningful way.

d. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.

e. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

f. The adult student's ability to provide informed consent shall be recertified at any time that the previous certifications are challenged. Challenges can be made by the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of Buena Vista City Schools. Challenges shall be provided in writing to Buena Vista City Schools’ administrator of special education who then shall notify the adult student and current appointed representative.

(1) Upon receipt of a written challenge to the certification by the adult student, Buena Vista City Schools may not rely on an educational representative, appointed pursuant to subsection D of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;

(2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, Buena Vista City Schools may not rely on an educational representative, appointed pursuant to subsection D of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The local educational agency shall not rely upon the designated educational representative until the representative is affirmed by the court; or 4. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training, treatment and habilitation of persons with intellectual disabilities in accordance with § 37.2-806 of the Code of Virginia. The state-operated program serving the adult student may rely on the judicial certification and appoint an educational representative to act on the student's behalf during the student's stay at the state-operated program.

D. If Buena Vista City Schools receives written notification of the action in subdivision C 3 of this section or if the state-operated program receives the judicial certification in subdivision C 4

of this section, Buena Vista City Schools shall designate the parent(s) of the adult student to

act as an educational representative of the adult student (unless the student is married, in which

event the student's adult spouse shall be designated as educational representative).

1. If the parent(s) or adult spouse is not available and competent to give informed consent,

the administrator of special education or designee shall designate a competent individual from among the following:

a. An adult brother or sister;

b. An adult aunt or uncle; or

c. A grandparent.

2. If no family member from the previous categories is available and competent to serve as

the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by Buena Vista City Schools.

**8VAC20-81-190. Mediation.**

A. Buena Vista City Schools shall ensure that the parent(s) of a child with a disability are

informed of the option of mediation to resolve disputes involving any matter arising under Part B

of the Act, including the identification, evaluation, or educational placement and services of the

child, the provision of a free appropriate public education to the child, and matters arising prior

to the filing of a state complaint or request for a due process hearing. Mediation is available to

resolve these issues at any time a joint request is made to the Virginia Department of Education

from a school representative and a parent. (§ 22.1-214 B of the Code of Virginia; 34 CFR

300.506(a))

B. Buena Vista City Schools shall use the Virginia Department of Education's mediation

process to resolve such disputes. The procedures shall ensure that the process is: (§ 22.1-214

B of the Code of Virginia; 34 CFR 300.506(b)(1))

1. Voluntary on the part of both Buena Vista City Schools and parent;

2. Not used to deny or delay a parent's(s') right to a due process hearing or to deny any other rights afforded under the Act; and

3. Conducted by a qualified and impartial mediator who is trained in effective mediation

techniques and who is knowledgeable in laws and regulations relating to the provision of

special education and related services.

C. Buena Vista City Schools or the Virginia Department of Education may establish

procedures to offer parents and schools who choose not to use the mediation process an

opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training and information center or community parent resource

center in Virginia established under § 1471 or 1472 of the Act; or an appropriate alternative

dispute resolution entity. The purpose of the meeting would be to explain the benefits of and

encourage the parent(s) to use the mediation process. (34 CFR 300.506(b)(2))

D. In accordance with the Virginia Department of Education's procedures: (34 CFR

300.506(b)(3) and (4))

1. The Virginia Department of Education maintains a list of individuals who are qualified

mediators, knowledgeable in laws and regulations relating to the provision of special

education and related services, and trained in effective mediation techniques;

2. The mediator is chosen on a rotation basis; and

3. The Virginia Department of Education bears the cost of the mediation process, including

costs in subsection C of this section.

E. The mediation process shall: (34 CFR 300.506(b)(5) through (b)(8))

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;

2. Conclude with a written legally binding agreement, if an agreement is reached by the

parties to the dispute, that:

a. States that all discussions that occurred during the mediation process will remain

confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

b. Is signed by both the parent and a representative of Buena Vista City Schools who has the authority to bind Buena Vista City Schools; and

c. Is enforceable in any state or federal court of competent jurisdiction.

3. Guarantee that discussions that occur during the mediation process are confidential and

may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court. Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge prior to the commencement of the mediation process.

F. An individual who serves as a mediator: (34 CFR 300.506(c))

1. May not be an employee of any local educational agency or the Virginia Department of

Education if it is providing direct services to a child who is the subject of the mediation

process;

2. Shall not have a personal or professional conflict of interest, including relationships or

contracts with schools or parents outside of mediations assigned by the Virginia Department of Education; and

* Is not an employee of Buena Vista City Schools or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

**8VAC20-81-200. Complaint resolution procedures.**

A. The Virginia Department of Education maintains and operates a complaint system that

provides for the investigation and issuance of findings regarding violations of the rights of

parents or children with disabilities. The Superintendent of Public Instruction or designee is

responsible for the operation of the complaint system. (34 CFR 300.151)

B. A complaint may be filed with the Virginia Department of Education by any individual,

organization, or an individual from another state and shall: (34 CFR 300.153)

1. Be in writing;

2. Include the signature and contact information for the complainant;

3. Contain a statement that a local educational agency has violated the Act or these special

education regulations;

4. Include the facts upon which the complaint is based;

5. If alleging violations with respect to a specific child, include:

a. The name and address of the residence of the child;

b. The name of the school the child is attending;

c. In the case of a homeless child or youth (within the meaning of § 725(2) of the McKinney-Vento Homeless Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;

d. A description of the nature of the problem of the child, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

6. Address an action that occurred not more than one year prior to the date the complaint is

received;

7. Contain all relevant documents; and

8. Be provided simultaneously to the local educational agency or public agency serving the

child.

C. Within seven days of a receipt of a complaint, the Virginia Department of Education

determines if the complaint is sufficient according to subsection B of this section. If it is

determined that the complaint is insufficient, the Virginia Department of Education notifies the

complainant and the local educational agency in writing. The complainant is given directions for

resubmission of the complaint to the Virginia Department of Education.

D. Upon receipt of a valid complaint, the Virginia Department of Education shall initiate an

investigation to determine whether the local educational agency is in compliance with applicable

law and regulations in accordance with the following procedures: (34 CFR 300.151 and 34 CFR 300.152)

1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and the local educational

agency against which the violation has been alleged, acknowledging receipt of a complaint.

a. The notification sent to the local educational agency shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance in resolving the complaint;

(3) A statement that the local educational agency has the opportunity to propose, at the local educational agency's discretion, a resolution of the complaint;

(4) Notification of the opportunity for the parties to engage voluntarily in mediation;

(5) A request that the local educational agency submit within 10 business days of receipt of the letter of notification either:

(a) Written documentation that the complaint has been resolved; or

(b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the local educational agency to the parents(s) of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, the local educational agency shall also simultaneously send the response and submitted documentation to that individual if a release signed by the parent(s) has been provided.

b. The notification sent to the complainant and the local educational agency shall provide the complainant and the local educational agency with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completion of the investigation within 60 calendar days.

c. If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of information.

2. If a reply from the local educational agency is not filed with the Virginia Department of

Education within 10 business days of the receipt of the notice, the Virginia Department of

Education shall send a second notice to the local educational agency advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.

3. The Virginia Department of Education shall review the complaint and reply filed by the local educational agency to determine if further investigation or corrective action needs to be taken.

a. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:

(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

b. If an issue raised in the complaint has previously been decided in a due process involving the same parties, the Virginia Department of Education shall inform the

complainant that the due process hearing decision is binding.

c. The Virginia Department of Education shall resolve a complaint alleging that the local educational agency has failed to implement a due process hearing decision.

4. During the course of the investigation, the Virginia Department of Education shall:

a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.

b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.

(1) The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.

(2) An extension of the 60-calendar-day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.

(3) Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.

d. Ensure that the Virginia Department of Education's final decision is effectively

implemented, if needed, through:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

f. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the local educational agency to bring it into compliance with applicable timelines.

5. In resolving a complaint in which a failure to provide appropriate services is found, the

Virginia Department of Education shall address:

a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and

b. Appropriate future provision of services for all children with disabilities.

E. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Department of Education.

F. When the local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.

G. If the local educational agency does not come into compliance within the period of time set

forth in the notification, the matter will be referred to the Superintendent of Public Instruction or

designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.

H. If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education,

under the provisions of 8VAC20-81-290, it is determined that the local educational agency has

failed to comply with applicable laws and regulations and determines that compliance cannot be

secured by voluntary means, then the Superintendent of Public Instruction shall issue a decision

in writing stating that state and federal funds for the education of children with disabilities shall

not be made available to that local educational agency until there is no longer any failure to

comply with the applicable law or regulation. (§ 22.1-214 E of the Code of Virginia)

I. The Virginia Department of Education's complaint procedures shall be widely disseminated to

parents and other interested individuals, including parent training and information centers,

protection and advocacy agencies, independent living centers, and other appropriate entities.

(34 CFR 300.151)

**8VAC20-81-210. Due process hearing.**

A. The Virginia Department of Education provides for an impartial special education due

process hearing system to resolve disputes between parents and local educational agencies

with respect to any matter relating to the: (§ 22.1-214 of the Code of Virginia; 34 CFR 300.121

and 34 CFR 300.507 through 34 CFR 300.518)

1. Identification of a child with a disability, including initial eligibility, any change in categorical identification, and any partial or complete termination of special education and related services;

2. Evaluation of a child with a disability (including disagreements regarding payment for an

independent educational evaluation);

3. Educational placement and services of the child; and

4. Provision of a free appropriate public education to the child.

B. The Virginia Department of Education uses the impartial hearing officer system that is

administered by the Supreme Court of Virginia.

C. The Virginia Department of Education uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.

D. The Virginia Department of Education establishes procedures for:

1. Providing special education hearing officers specialized training on the federal and state

special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.

2. Establishing the number of special education hearing officers who shall be certified to hear special education due process cases.

a. The Virginia Department of Education shall review annually its current list of special education hearing officers and determine the recertification status of each hearing officer.

b. Notwithstanding anything to the contrary in this subdivision, individuals on the special education hearing officers list on July 7, 2009 shall be subject to the Virginia Department of Education's review of recertification status based on past and current performance.

c. The ineligibility of a special education hearing officer continuing to serve in this capacity shall be based on the factors listed in subdivision 3 c of this subsection.

3. Evaluation, continued eligibility, and disqualification requirements of special education

hearing officers:

a. The Virginia Department of Education shall establish procedures for evaluating special education hearing officers.

b. The first review of the recertification status of each special education hearing officer will be conducted within a reasonable time following July 7, 2009.

c. In considering whether a special education hearing officer will be certified or recertified, the Virginia Department of Education shall determine the number of hearing officers needed to hear special education due process cases, and consider matters related to the special education hearing officer's adherence to the factors in subdivision H 5 of this section, as well as factors involving the special education hearing officer's:

(1) Issuing an untimely decision, or failing to render decision within regulatory time frames;

(2) Unprofessional demeanor;

(3) Inability to conduct an orderly hearing;

(4) Inability to conduct a hearing in conformity with the federal and state laws and regulations regarding special education;

(5) Improper ex parte contacts;

(6) Violations of due process requirements;

(7) Mental or physical incapacity;

(8) Unjustified refusal to accept assignments;

(9) Failure to complete training requirements as outlined by the Virginia Department of Education;

(10) Professional disciplinary action; or

(11) Issuing a decision that contains:

(a) Inaccurate appeal rights of the parents; or

(b) No controlling case or statutory authority to support the findings.

d. When a special education hearing officer has been denied certification or recertification based on the factors in subdivision 3 c of this section, the Virginia Department of Education shall notify the special education hearing officer and the Office of the Executive Secretary of the Supreme Court of Virginia that the hearing officer is no longer certified to serve as a special education hearing officer. Upon notification of denial of certification or recertification, the hearing officer ay, within 10 calendar days of the postmark of the letter of notification, request of the Superintendent of Public Instruction, or his designee, reconsideration of the decision. Such request shall be in writing and shall contain any additional information desired for consideration. The Superintendent of Public Instruction, or his designee, shall render a decision within 10 calendar days of receipt of the request for reconsideration. The Virginia Department of Education shall notify the hearing officer and the Office of the Executive Secretary of the Supreme Court of Virginia of its decision.

4. Reviewing and analyzing the decisions of special education hearing officers, and the

requirement for special education hearing officers to reissue decisions, relative to correct use of citations, readability, and other errors such as incorrect names or conflicting data, but not errors of law that are reserved for appellate review.

E. Filing the request for a due process hearing. If any of the following provisions are challenged

by one of the parties in a due process hearing, the special education hearing officer determines

the outcome of the case going forward.

1. The request for due process shall allege a violation that happened not more than two years before the parent(s) or the local educational agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because: (34 CFR 300.507 (a) and 34 CFR 300.511(e) and (f))

a. The local educational agency specifically misrepresented that it had resolved the issues identified in the request; or

b. The local educational agency withheld information that it was required to provide under the IDEA.

2. Buena Vista City Schools may initiate a due process hearing to resolve a disagreement

when the parent(s) withholds or refuses consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, Buena Vista City Schools may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child. (34 CFR 300.300(a)(3)(i) and 34 CFR 300.300(b)(3))

3. In circumstances involving disciplinary actions, the parent(s) of a student with a disability may request an expedited due process hearing if the parent(s) disagrees with: (34 CFR 300.532)

a. The manifestation determination regarding whether the child's behavior was a

manifestation of the child's disability; or

b. Any decision regarding placement under the disciplinary procedures.

4. In circumstances involving disciplinary actions, Buena Vista City Schools may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (34 CFR 300.532)

F. Procedure for requesting a due process hearing. (34 CFR 300.504(a)(2), 34 CFR 300.507,

34 CFR 300.508 and 34 CFR 300.511)

1. A request for a hearing shall be made in writing to the Virginia Department of Education. A copy of that request shall be delivered contemporaneously by the requesting party to the other party.

a. If Buena Vista City Schools initiates the due process hearing, Buena Vista City Schools shall advise the parent(s) and the Virginia Department of Education in writing of this action.

b. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify Buena Vista City Schools by telephone or by facsimile and forward a copy of the request to Buena Vista City Schools as soon as reasonably possible, including those cases where mediation is requested.

c. The request for a hearing shall be kept confidential by Buena Vista City Schools the Virginia Department of Education.

2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:

a. The name of the child;

b. The address of the residence of the child (or available contact information in the case of a homeless child);

c. The name of the school the child is attending;

d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the parent(s) at the time of the notice.

3. The due process notice shall be deemed sufficient unless the party receiving the notice

notifies the special education hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements listed in subdivision 2 of this subsection.

4. The party receiving the notice may challenge the sufficiency of the due process notice by

providing a notification of the challenge to the special education hearing officer within 15

calendar days of receipt the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department of Education.

5. Within five calendar days of receipt of the notification challenging the sufficiency of the due process notice, the special education hearing officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2 of this subsection.

6. The special education hearing officer has the discretionary authority to permit either party to raise issues at the hearing that were not raised in the notice by the party requesting the due process hearing in light of particular facts and circumstances of the case.

7. Buena Vista City Schools shall upon receipt of a request for a due process hearing,

inform the parent(s) of the availability of mediation described in 8VAC20-81-190 and of any free or low-cost legal and other relevant services available in the area. Buena Vista City Schools also shall provide the parent(s) with a copy of the procedural safeguards notice upon receipt of the parent's(s') first request for a due process hearing in a school year.

G. Amendment of due process notice. (34 CFR 300.508(d)(3))

1. A party may amend its due process notice only if:

a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or

b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.

2. The applicable timeline for a due process hearing under this part shall begin again at the

time the party files an amended notice, including the timeline for resolution sessions.

H. Assignment of the special education hearing officer. (34 CFR 300.511)

1. Within five business days of receipt of the request for a non-expedited hearing and three

business days of receipt of the request for an expedited hearing:

2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:

a. The name of the child;

b. The address of the residence of the child (or available contact information in the case of a homeless child);

c. The name of the school the child is attending;

d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the parent(s) at the time of the notice.

3. The due process notice shall be deemed sufficient unless the party receiving the notice

notifies the special education hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements listed in subdivision 2 of this subsection.

4. The party receiving the notice may challenge the sufficiency of the due process notice by

providing a notification of the challenge to the special education hearing officer within 15

calendar days of receipt the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department of Education.

5. Within five calendar days of receipt of the notification challenging the sufficiency of the due process notice, the special education hearing officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2 of this subsection.

6. The special education hearing officer has the discretionary authority to permit either party to raise issues at the hearing that were not raised in the notice by the party requesting the due process hearing in light of particular facts and circumstances of the case.

7. Buena Vista City Schools shall upon receipt of a request for a due process hearing,

inform the parent(s) of the availability of mediation described in 8VAC20-81-190 and of any free or low-cost legal and other relevant services available in the area. Buena Vista City Schools also shall provide the parent(s) with a copy of the procedural safeguards notice upon receipt of the parent's(s') first request for a due process hearing in a school year.

G. Amendment of due process notice. (34 CFR 300.508(d)(3))

1. A party may amend its due process notice only if:

a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or

b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.

2. The applicable timeline for a due process hearing under this part shall begin again at the

time the party files an amended notice, including the timeline for resolution sessions.

H. Assignment of the special education hearing officer. (34 CFR 300.511)

1. Within five business days of receipt of the request for a non-expedited hearing and three

business days of receipt of the request for an expedited hearing:

a. Buena Vista City Schools shall contact the Supreme Court of Virginia for the

appointment of the special education hearing officer.

b. Buena Vista City Schools contacts the special education hearing officer to confirm availability, and upon acceptance, notifies the special education hearing officer in writing, with a copy to the parent(s) and the Virginia Department of Education of the appointment.

2. Upon request, the Virginia Department of Education shall share information on the

qualifications of the special education hearing officer with the parent(s) and Buena Vista City Schools.

3. Either party has five business days after notice of the appointment is received or the basis for the objection becomes known to the party to object to the appointment by presenting a request for consideration of the objection to the special education hearing officer.

a. If the special education hearing officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an affidavit with the Executive Secretary of the Supreme Court of Virginia. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.

b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the Supreme Court of Virginia issues a decision on the request in accordance with its procedures.

c. If a special education hearing officer recuses himself or is otherwise disqualified, the Supreme Court of Virginia shall ensure that another special education hearing officer is promptly appointed.

4. A hearing shall not be conducted by a person who:

a. Has a personal or professional interest that would conflict with that person's objectivity in the hearing;

b. Is an employee of the Virginia Department of Education or Buena Vista City Schools that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a special education hearing officer; or

c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.

5. A special education hearing officer shall:

a. Possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

I. Duration of the special education hearing officer's authority.

1. The special education hearing officer's authority begins with acceptance of the case

assignment.

2. The special education hearing officer has authority over a due process proceeding until:

a. Issuance of the special education hearing officer's decision; or

b. The Supreme Court of Virginia revokes such authority by removing or disqualifying the special education hearing officer.

J. Child's status during administrative or judicial proceedings. (34 CFR 300.518; 34 CFR

300.533)

1. Except as provided in 8VAC20-81-160, during the pendency of any administrative or

judicial proceeding, the child shall remain in the current educational placement unless the parent(s) of the child and local educational agency agree otherwise;

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent(s), shall be placed in the public school until the completion of all the proceedings;

3. If the decision of a special education hearing officer agrees with the child's parent(s) that a change of placement is appropriate, that placement shall be treated as an agreement

between the local educational agency and the parent(s) for the purposes of subdivision 1 of this section;

4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8VAC20-81-160;

5. The child's placement during administrative or judicial proceedings regarding a placement for non-educational reasons by a Comprehensive Services Act team shall be in accordance with 8VAC20-81-150; or

6. If the proceeding involves an application for initial services under Part B of the Act from

Part C and the child is no longer eligible for Part C services because the child has turned

three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, the school division shall provide those special education and related services that are not in dispute between the agency and the school division.

K. Rights of parties in the hearing. (§ 22.1-214 C of the Code of Virginia; 34 CFR 300.512)

1. Any party to a hearing has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

b. Present evidence and confront, cross-examine, and request that the special education hearing officer compel the attendance of witnesses;

c. Move that the special education hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

d. Obtain a written or, at the option of the parent(s), electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the parent(s), electronic findings of fact and decisions.

2. Additional disclosure of information shall be given as follows:

a. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and

b. A special education hearing officer may bar any party that fails to comply with subdivision 2.a. of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Parental rights at hearings.

a. A parent(s) involved in a hearing shall be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), even though the applicable appeal period has expired.

L. Responsibilities of the Virginia Department of Education. The Virginia Department of

Education shall: (34 CFR 300.513(d), 34 CFR 300.509 and 34 CFR 300.511)

1. Maintain and monitor the due process hearing system and establish procedures for its

operation;

2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;

3. Develop and disseminate a model form to be used by the parent(s) to give notice in

accordance with the contents of the notice listed in subdivision F 2 of this section;

4. Maintain and ensure that each local educational agency maintains a list of persons who

serve as special education hearing officers. This list shall include a statement of the

qualifications of each special education hearing officer;

5. Provide findings and decisions of all due process hearings to the state special education

advisory committee and to the public after deleting any personally identifiable information;

6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated; and

7. Ensure that noncompliance findings identified through due process or court action are

corrected as soon as possible, but in no case later than one year from identification.

M. Responsibilities of the parent. In a due process hearing, the parent(s) shall: (34 CFR

300.512)

1. Decide whether the hearing will be open to the public;

2. Make timely and necessary responses to the special education hearing officer personally or through counsel or other authorized representatives;

3. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;

4. Provide information to the special education hearing officer to assist in the special

education hearing officer's administration of a fair and impartial hearing;

5. Provide documents and exhibits necessary for the hearing within required timelines; and

6. Comply with timelines, orders, and requests of the special education hearing officer.

N. Responsibilities of Buena Vista City Schools. Buena Vista City Schools shall: (34 CFR

300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511)

1. Maintain a list of the persons serving as special education hearing officers. This list shall

include a statement of the qualifications of each special education hearing officer;

2. Upon request, provide the parent(s) a form for use to provide notice that they are

requesting a due process hearing;

3. Provide the parent(s) a copy of their procedural safeguards upon receipt of the parent's(s') first request for a due process hearing in a school year;

4. Inform the parent(s) at the time the request is made of the availability of mediation;

5. Inform the parent(s) of any free or low-cost legal and other relevant services if the parent(s) requests it, or anytime the parent(s) or the local educational agency initiates a hearing;

6. Assist the special education hearing officer, upon request, in securing the location,

transcription, and recording equipment for the hearing;

7. Make timely and necessary responses to the special education hearing officer;

8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;

9. Upon request, provide information to the special education hearing officer to assist in the

special education hearing officer's administration of a fair and impartial hearing;

10. Provide documents and exhibits necessary for the hearing within required timelines;

11. Comply with timelines, orders, and requests of the special education hearing officer;

12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;

13. Forward all necessary communications to the Virginia Department of Education and

parties as required;

14. Notify the Virginia Department of Education when a special education hearing officer's

decision has been appealed to court by either the parent(s) or the local educational agency;

15. Forward the record of the due process proceeding to the appropriate court for any case

that is appealed;

16. Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s), within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.

a. If the decision is appealed or the school division is considering an appeal and the

decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.

b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by Buena Vista City Schools .

c. The implementation plan:

(1) Must be based upon the decision of the hearing officer;

(2) Shall include the revised IEP if the decision affects the child's educational program; and

(3) Shall contain the name and position of a case manager in Buena Vista City Schools charged with implementing the decision; and

17. Provide the Virginia Department of Education, upon request, with information and

documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the special education hearing officer's decision.

O. Responsibilities of the special education hearing officer. The special education hearing

officer shall: (34 CFR 300.511 through 34 CFR 300.513; and 34 CFR 300.532)

1. Within five business days of agreeing to serve as the special education hearing officer,

secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing.

2. Ascertain whether the parties will have attorneys or others assisting them at the hearing.

The special education hearing officer shall send copies of correspondence to the parties or their attorneys.

3. Conduct a prehearing conference via a telephone conference call or in person unless the special education hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the special education hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference.

4. Upon request by one of the parties to schedule a prehearing conference, determine the

scope of the conference and conduct the conference via telephone call or in person. If the special education hearing officer deems such conference unnecessary, the special education hearing officer shall document in writing to the parties, with copy to the Virginia Department of Education, the reason(s) for not holding the conference.

5. At the prehearing stage:

a. Discuss with the parties the possibility of pursuing mediation and review the options that may be available to settle the case;

b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute; and

c. Document in writing to the parties, with copy to the Virginia Department of Education, prehearing determinations including a description of the right to appeal the case directly to either a state or federal court.

6. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are

protected, and that the hearing is concluded within regulatory timelines.

7. Ascertain from the parent(s) whether the hearing will be open to the public.

8. Ensure that the parties have the right to a written or, at the option of the parent(s), an

electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision.

9. Receive a list of witnesses and documentary evidence for the hearing (including all

evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing.

10. Ensure that Buena Vista City Schools has appointed a surrogate parent in accordance with 8VAC20-81-220 when the parent(s) or guardian is not available or cannot be located.

11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing.

12. Not require the parties or their representatives to submit briefs as a condition of rendering a decision. The special education hearing officer may permit parties to submit briefs, upon the parties' request.

13. Base findings of fact and decisions solely upon the preponderance of the evidence

presented at the hearing and applicable state and federal law and regulations.

14. Report findings of fact and decisions in writing to the parties and their attorneys and the

Virginia Department of Education. If the hearing is an expedited hearing, the special

education hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held.

15. Include in the written findings:

a. Findings of fact relevant to the issues that are determinative of the case;

b. Legal principles upon which the decision is based, including references to controlling case law, statues, and regulations;

c. An explanation of the basis for the decision for each issue that is determinative of the case; and

d. If the special education hearing officer made findings that required relief to be granted, then an explanation of the relief granted may be included in the decision.

16. Subject to the procedural determinations described in subdivision 17 of this subsection,

the decision made by a special education hearing officer shall be made on substantive

grounds based on a determination of whether the child received a free appropriate public

education.

17. In matters alleging a procedural violation, a special education hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

a. Impeded the child's right to a free appropriate public education;

b. Significantly impeded the parent's(s') opportunity to participate in the decision m making process regarding the provision of a free appropriate public education to the parents' child; or

c. Caused a deprivation of educational benefits. Nothing in this subdivision shall be

construed to preclude a special education hearing officer from ordering a local educational agency to comply with procedural requirements under 34 CFR 300.500 through 34 CFR 300.536.

18. Maintain a well-documented record and return the official record to the local educational

agency upon conclusion of the case.

19. Determine in a hearing regarding a manifestation determination whether the local

educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements in 8VAC20-81-160.

P. Authority of the special education hearing officer. The special education hearing officer has

the authority to: (§ 22.1-214 B of the Code of Virginia; 34 CFR 300.515, 34 CFR 300.512 and 34 CFR 300.532)

1. Exclude any documentary evidence that was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing;

2. Bar any party from introducing evaluations or recommendations at the hearing that have

not been disclosed to all other parties at least five business days prior to the hearing without the consent of the other party;

3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence:

a. The special education hearing officer shall rule on any party's motion to quash or modify a subpoena. The special education hearing officer shall issue the ruling in writing to all parties with copy to the Virginia Department of Education.

b. The special education hearing officer or a party may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

c. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the special education hearing officer does not quash or modify the subpoena after objection;

4. Administer an oath to witnesses testifying at a hearing and require all witnesses to testify

under oath or affirmation when testifying at a hearing;

5. Stop hostile or irrelevant pursuits in questioning and require that the parties and their

attorneys, advocates, or advisors comply with the special education hearing officer's rules and with relevant laws and regulations;

6. Excuse witnesses after they testify to limit the number of witnesses present at the same

time or sequester witnesses during the hearing;

7. Refer the matter in dispute to a conference between the parties when informal resolution

and discussion appear to be desirable and constructive. This action shall not be used to

deprive the parties of their rights and shall be exercised only when the special education

hearing officer determines that the best interests of the child will be served;

8. Require an independent educational evaluation of the child. This evaluation shall be at

public expense and shall be conducted in accordance with 8VAC20-81-170;

9. a. At the request of either party for a non-expedited hearing, grant specific

extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and shall be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The special education hearing officer may grant such requests for cause, but not for personal attorney convenience. Changes in

hearing dates or timeline extensions shall be noted in writing and sent to all parties and to the Virginia Department of Education.

b. In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension;

10. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the special education hearing officer's orders;

11. Set guidelines regarding media coverage if the hearing is open to the public;

12. Enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided; and

13. Hold an expedited hearing when a parent of a child with a disability disagrees with any

decision regarding a change in placement for a child who violates a code of student conduct, or a manifestation determination, or Buena Vista City Schools believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

a. The hearing shall occur within 20 school days of the date the due process notice is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

b. Unless the parents and Buena Vista City Schools agree in writing to waive the resolution meeting or agree to use the mediation process:

(1) A resolution meeting shall occur within seven days of receiving notice of the due process notice; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process notice.

c. Once a determination is made, the special education hearing officer may:

(1) Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of special education disciplinary procedures or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Q. Timelines for non-expedited due process hearings. (34 CFR 300.510 and 34 CFR 300.515)

1. Resolution meeting.

a. Within 15 days of receiving notice of the parent's(s') due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process notice that:

(1) Includes a representative of Buena Vista City Schools who has decision making authority on behalf of the local educational agency; and

(2) May not include an attorney of Buena Vista City Schools unless the parent is

accompanied by an attorney.

b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that Buena Vista City Schools has the opportunity to resolve the dispute that is the basis for the due process request.

c. The meeting described in subdivisions 1 a and 1 b of this subsection need not be held if:

(1) The parent and Buena Vista City Schools agree in writing to waive the meeting; or

(2) The parent and Buena Vista City Schools agree to use the mediation process described in this chapter.

d. The parent and Buena Vista City Schools determine the relevant members of the IEP Team to attend the meeting.

e. The parties may enter into a confidentiality agreement as part of their resolution

agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents' participation in the resolution meeting.

2. Resolution period.

a. If Buena Vista City Schools has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.

b. Except as provided in subdivision 3 of this subsection, the timeline for issuing a final decision begins at the expiration of this 30-calendar-day period.

c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2 a and 2 b of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.

d. If Buena Vista City Schools is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the provision in 8VAC20-81-110 E.4.), the local educational agency may at the conclusion of the 30-calendar-day period, request that a special education hearing officer dismiss the parent's due process request.

e. If Buena Vista City Schools fails to hold the resolution meeting specified in subdivision 1 a of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a special education hearing officer to begin the due process hearing timeline.

3. Adjustments to 30-calendar-day resolution period. The 45-calendar-day timeline for the due process starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30-calendar-day period, the parties agree in writing that no agreement is possible; or

c. If both parties agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or Buena Vista City Schools withdraws from the mediation process.

4. Written settlement agreement. If a resolution to the dispute is reached at the meeting

described in subdivisions 1 a and 1 b of this subsection, the parties shall execute a legally binding agreement that is:

a. Signed by both the parent and a representative of Buena Vista City Schools who has the authority to bind the local educational agency; and

b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.

5. Agreement review period. If the parties execute an agreement pursuant to subdivision 4 of this subsection, a party may void the agreement within three business days of the

agreement's execution.

6. The special education hearing officer shall ensure that, not later than 45 calendar days

after the expiration of the 30-calendar-day period under subdivision 2 or the adjusted time periods described in subdivision 3 of this subsection:

a. A final decision is reached in the hearing; and

b. A copy of the decision is mailed to each of the parties.

7. The special education hearing officer shall document in writing, within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.

8. Each hearing involving oral arguments shall be conducted at a time and place that is

reasonably convenient to the parent(s) and child involved.

9. Buena Vista City Schools is not required to schedule a resolution session if the local

educational agency requests the due process hearing. The 45-day timeline for the special education hearing officer to issue the decision after Buena Vista City Schools’ request for a due process hearing is received by the parent(s) and the Virginia Department of Education. However, if the parties elect to use mediation, the 30-day resolution process is still applicable.

R. Timelines for expedited due process hearings. (34 CFR 300.532(c))

1. The expedited due process hearing shall occur within 20 school days of the date the due

process request is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

2. Unless the parents and Buena Vista City Schools agree in writing to waive the resolution

meeting or agree to use the mediation process described in 8VAC20-81-190:

a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint.

b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

c. The resolution period is part of, and not separate from, the expedited due process hearing timeline.

3. Document in writing within five business days any changes in hearing dates and send

documentation to all parties and the Virginia Department of Education.

S. Costs of due process hearing and attorneys' fees. (34 CFR 300.517)

1. The costs of an independent educational evaluation ordered by the special education

hearing officer, special education hearing officer, court reporters, and transcripts are shared equally by Buena Vista City Schools and the Virginia Department of Education.

2. Buena Vista City Schools is responsible for its own attorneys' fees.

3. The parent(s) are responsible for their attorneys' fees. If the parent(s) is the prevailing

party, the parent(s) has the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.

4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent(s) of a child with a disability who is the prevailing party.

5. The court may award reasonable attorneys' fees only if the award is consistent with the

limitations, exclusions, exceptions, and reductions in accordance with the Act and its

implementing regulations and 8VAC20-81-310.

T. Right of appeal. (34 CFR 300.516; § 22.1-214 D. of the Code of Virginia)

1. A decision by the special education hearing officer in any hearing, including an expedited hearing is final and binding unless the decision is appealed by a party in a state circuit court within 180 days of the issuance of the decision, or in a federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under § 1415 of the Act without regard to the amount in controversy.

2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.

3. If the special education hearing officer's decision is appealed in court, implementation of

the special education hearing officer's order is held in abeyance except in those cases where the special education hearing officer has agreed with the child's parent(s) that a change in placement is appropriate in accordance with subsection J of this section. In those cases, the special education hearing officer's order shall be implemented while the case is being appealed.

4. If the special education hearing officer's decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200.

U. Nothing in this chapter prohibits or limits rights under other federal laws or regulations. (34 CFR 300.516)

**8 VAC 20-81-220. Surrogate parent procedures.**

A. The special education administrator/designee for Buena Vista City Schools will be responsible for identifying those who are willing and qualified to serve as surrogate parents.

B. To be qualified as a surrogate parent, an individual must have no personal or professional interest that conflicts with the interest of the child, have knowledge and skills that will ensure adequate representation of the child, be of the age of majority, and not be an employee of the Virginia Department of Education, this school division, or any other agency that is involved in the education or care of the child. If otherwise qualified, a person will not be considered to be an “employee” solely because they are paid to serve as a surrogate parent.

C. If the child is an unaccompanied homeless youth, the special education administrator/

designee may permit appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program to be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate must meet the other qualifications for a surrogate parent, and may serve only until a surrogate parent meeting all of the qualifications for a surrogate parent can be assigned.

D. While every effort will be made to secure individuals willing to serve as surrogates from within the Buena Vista City Schools, individuals from outside Buena Vista City Schools may be secured if necessary to ensure that someone qualified is available to represent the needs of the students in meetings pertaining to special education eligibility and services. In addition, others may be eligible once a need is identified, such as a child’s relative, depending on the child’s needs, and the availability of qualified persons familiar with the child and who would otherwise qualify. The special education administrator/designee may involve the child in the selection, if appropriate.

E. When a school cannot identify or with reasonable efforts locate someone who qualifies as a “parent” in accordance with the Virginia Regulations, the school will contact the special education administrator/designee who will confirm the need for a surrogate and appoint a surrogate within 30 calendar days for the student, if one is needed. Once appointed, the child (as appropriate to the disability), the appointed surrogate parent, and the person charged with the responsibility for the child will be notified in writing that the appointment has been made. The surrogate parent will be assigned to serve for the duration of the school year unless a shorter period of time is appropriate given the content of the child’s IEP. At the end of each school year, following a review, a determination will be made regarding whether the appointment of a surrogate parent will be renewed or not. Appointments may also be extended as needed, if the child requires the services of a surrogate during the summer months.

F. Termination of a surrogate parent will occur when the child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed in accordance with the transfer of rights procedures; when the child is no longer eligible for special education services and the surrogate parent has consented to the termination of services; when legal guardianship has transferred to a person who can serve as the parent in special education matters; when the parent whose whereabouts previously were unknown is now known and the parent is available; or when the appointed surrogate is no longer qualified.

G. If a surrogate wants to challenge the surrogate qualifications, or if the surrogate is terminated prior to the end of the appointment and wishes to appeal the decision, a request for a hearing may be made to the division superintendent who will convene a panel which shall include a principal, a school board member, and the school board attorney who will hear evidence presented and make a decision.

**8VAC20-81-230. Local educational agency administration and governance.**

A. Buena Vista City Schools shall ensure that the rights and protections under this chapter

are given to children with disabilities for whom it is responsible, including children placed in

private schools.

B. Plans, applications, and reports. (§ 22.1-215 of the Code of Virginia; 34 CFR 300.200 and 34

CFR 300.212)

1. Buena Vista City Schools shall prepare annually and submit to the Virginia Department of Education an application for funding under Part B of the Act in accordance with the requirements outlined by the Virginia Department of Education. The annual plan shall include:

a. Assurances that Buena Vista City Schools has in effect policies and procedures for the provision of special education and related services in compliance with the requirements of the Act, the policies and procedures established by the Virginia Board of Education, and any other relevant federal and state laws and regulations;

b. A report indicating the extent to which the annual plan for the preceding period has been implemented;

c. Budgets outlining the use of the federal funds; and

d. Any revisions to Buena Vista City Schools’ interagency agreement regarding the provision of special education and related services in a regional or local jail, if applicable, in accordance with subdivision G.2. of this section.

2. Prior to submission to the Virginia Department of Education, the annual plan shall be

reviewed by Buena Vista City Schools local advisory committee, and approved by the local school board. State-operated programs and the Virginia School for the Deaf and the Blind at Staunton shall submit their annual plan to the state special education advisory committee for review prior to submission to the Virginia Department of Education.

3. Buena Vista City Schools shall ensure that the annual plan, and all required special

education policies and procedures, including the revisions to those policies and procedures, which are necessary for ensuring a free appropriate public education to a child, are available for public inspection.

C. Provision of or payment for special education and related services. (34 CFR 300.154(b))

1. If any public non-educational agency is otherwise obligated under federal or state law,

regulation, or policy to provide or pay for any services that are also considered special

education or related services that are necessary for ensuring a free appropriate public

education to children with disabilities, the public non-educational agency shall fulfill that

obligation or responsibility, either directly or through contract or other arrangement. A public non-educational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context.

2. If any public non-educational agency fails to provide or pay for the special education and

related services described in subdivision 1 of this subsection, the local educational agency shall provide or pay for the services to the child in a timely manner. The local educational agency may then claim reimbursement for the services from the public non-educational agency that failed to provide or pay for the services and that agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subdivision 21 of 8VAC20-81-20.

D. Local advisory committee. A local advisory committee for special education, appointed by

each local school board, shall advise the school board through the division superintendent.

1. Membership.

a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities.

b. The committee shall include one teacher.

c. Additional local school division personnel shall serve only as consultants to the

committee.

2. The functions of the local advisory committee shall be as follows:

a. Advise the local school division of needs in the education of children with disabilities;

b. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;

c. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;

d. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;

e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and

f. Participate in the review of the local school division's annual plan, as outlined in

subdivision B.2. of this section.

3. Public notice shall be published annually listing the names of committee members and

including a description of ways in which interested parties may express their views to the

committee.

4. Committee meetings shall be held at least four times in a school year and shall be open to the public.

E. Regional special education programs. (§ 22.1-218 of the Code of Virginia; Jointly Owned and

Operated Schools and Jointly Operated Programs (8VAC20-280))

1. If it becomes necessary for local school divisions to develop regional programs to serve

children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.

2. If local school divisions elect to participate in an approved regional program for the

provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.

3. Each joint board shall appoint a qualified director who shall be the administrative head of

the regional program. The director shall be responsible for the administration of programs and services that are approved by the joint board.

F. Transition from infant and toddler programs to early childhood special education programs.

(34 CFR 300.124)

1. Children who are participating in early intervention programs under Part C of the Act and

who will participate in preschool programs under Part B shall be afforded a smooth and

effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.

2. Buena Vista City Schools shall participate in transition planning conferences when notified by the designated local Part C early intervention agency (not less than 90 days and not more than nine months before the child is eligible for preschool services), in accordance with § 1437(a)(9) of the Act, and its federal implementing regulations.

3. A child with a disability whose second birthday falls on or before September 30 may begin attending Part B preschool programs at the start of the school year if:

a. The child meets the Part B eligibility criteria; and

b. An IEP has been developed and signed by the parent(s).

G. Programs for children with disabilities in regional or local jails. (34 CFR 300.101 and 34 CFR

300.102)

1. Each local school division with a regional or local jail in its jurisdiction shall be responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 calendar days.

2. Each local school division with a regional or local jail in its jurisdiction shall establish an

interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special education and related services in the jail. A copy of any revisions to this agreement shall be submitted with the annual plan specified in subsection B of this section.

H. Buena Vista City Schools shall cooperate with the U.S. Department of Education's efforts under § 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children. (34 CFR 300.213)

I. Early Intervening Services. Buena Vista City Schools shall implement early intervening

services in accordance with the provisions of 8VAC20-81-260 H. (34 CFR 300.226)

J. Access to instructional materials.

1. Buena Vista City Schools shall ensure that children with disabilities who need

instructional materials in accessible formats are provided those materials in a timely manner. (34 CFR 300.172(b) and (c))

2. To meet the requirements of subdivision 1 of this subsection for blind persons or other

persons with print disabilities, Buena Vista City Schools may coordinate with the National Instructional Materials Access Center (NIMAC). (34 CFR 300.172(a) and (c))

a. Buena Vista City Schools shall provide an assurance to the Virginia Department of Education that Buena Vista City Schools will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. This assurance shall be provided as part of the Annual Plan requirements outlined in subsection B of this section.

b. Buena Vista City Schools shall inform the Virginia Department of Education on an annual basis whether or not it chooses to coordinate with the NIMAC.

c. If Buena Vista City Schools coordinates with the NIMAC, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for the purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to do the following:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

d. The requirements of subdivision J.2.c. of this section shall apply to print instructional materials published after July 19, 2006.

3. Nothing in this subsection relieves Buena Vista City Schools of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (34 CFR 300.172(b))

4. Definitions applicable to this subsection.

a. The term "timely manner" has the same meaning as the defined in 8VAC20-81-10.

b. The term, "blind or other person with print disabilities" means children with disabilities who qualify to receive books and other publications produced in specialized formats. A child with a disability qualifies under this provision if the child meets one of the following criteria: (2USC § 135a; 36 CFR 701.6(b)(1) and 34 CFR 300.172(a) and (e))

(1) Blind person whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees;

(2) Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;

(3) Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or

(4) Person certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

c. The term "competent authority" is defined as follows: (2 USC § 135a; 36 CFR 701.6(b)(2))

(1) In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case

workers, counselors, rehabilitation teachers, and superintendents).

(2) In the case of a reading disability from organic dysfunction: doctors of medicine who may consult with colleagues in associated disciplines.

d. The term "print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by the Virginia Department of Education or Buena Vista City Schools for use by students in the classroom. (20 USC § 1474(e)(3)(C))

e. The term "specialized formats" has the meaning given the term in 17 USC § 121(d)(3), and means Braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities, and with respect to print instructional materials, include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities. (20 USC § 1474(e)(3)(D); 34 CFR 300.172(e))

**PART III**

**ATTACHMENTS**

Management of Student Records Notice

Notice of Directory Information and Opt-Out Form

Full Educational Opportunity Goal

Caseload Maximums

**BUENA VISTA CITY SCHOOLS**

**MANAGEMENT OF STUDENT RECORDS NOTICE**

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age (“eligible students”) certain rights with respect to the student’s evaluation records. They are:

(1) The right to inspect and review the student’s education records within 45 days of the

day the school division receives a request for access. Parents or eligible students

should submit to the principal a written request that identifies the record(s) they wish

to inspect. The principal will make arrangements for access and notify the parent or

eligible student of the time and place where the records may be inspected.

(2) The right to request the amendment of the student’s education records that the parent or eligible student believes are inaccurate or misleading. Parents or eligible students may ask Buena Vista City Public Schools to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the school division decides not to amend the record as requested by the parent or eligible student, the school division will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student’s education record, except to the extent that FERPA authorizes disclosure without consent. One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the division as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the division has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Upon request, the school division discloses education records without consent to officials of another school division in which a student seeks or intends to enroll. (Note: FERPA requires a school division to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request)

(4) The right to file a complaint with the U.S. Department of Education concerning

alleged failures by the school division to comply with the requirements of FERPA.

The name and address of the Office that administers FERPA is: Family Policy

Compliance Office , U.S. Department of Education, 400 Maryland Avenue, SW,

Washington, DC 20202-4605.

SE.44 4/02

**BUENA VISTA CITY SCHOOLS**

**NOTICE FOR DIRECTORY INFORMATION**

The Family Educational Rights and Privacy Act (FERPA), a Federal law, requires that Buena Vista City Schools, with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child’s education records. However, Buena Vista City Schools may disclose appropriately designated “directory information” without written consent, unless you have advised the District to the contrary in accordance with District procedures. The primary purpose of directory information is to allow Buena Vista City Schools to include this type of information from your child’s education records in certain school publications. Examples include:

* A playbill, showing your student’s role in a drama production;
* The annual yearbook;
* Honor roll or other recognition lists;
* Graduation programs; and
* Sports activity sheets, such as for wrestling, showing weight and height of team members.

In addition, there are times when the school division or the media may wish to use your child’s picture or interview your child in public media coverage of school events or activities. Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent’s prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require local educational agencies (LEAs) receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA) to provide military recruiters, upon request, with three directory information categories – names, addresses, and telephone listings – unless parents have advised the LEA that they do not want their student’s information disclosed without their prior written consent.

If you do not want Buena Vista City Schools to disclose directory information from your child’s education records without your prior written consent, you must notify the District in writing by September 1st. Buena Vista City Schools has designated the following information as directory information:

* Student’s name
* Participation in officially recognized activities and sports
* Address
* Telephone listing
* Weight and height of members of athletic teams
* Electronic mail address
* Photograph
* Degrees, honors, and awards received
* Date and place of birth
* Major field of study
* Dates of attendance
* Grade level
* The most recent educational agency or institution attended

**BUENA VISTA CITY SCHOOLS**

**REFUSAL OF PERMISSION FORM – DIRECTORY INFORMATION**

**School Year**

**TO: Principal of (Name of School)**

**RE: (Child’s Name)**

**I do not give permission for the release of Directory Information concerning my child.**

**(Date) (Parent’s Signature)**

**I do not give permission for my child’s photograph to be used in public media coverage of school events or activities, or for my child to be interviewed by the media.**

**(Date) (Parent’s Signature)**

**PARENT NAME:**

**PARENT ADDRESS:**

**PARENT TELEPHONE #:**

SE. 44 4/02

**BUENA VISTA CITY SCHOOLS**

**FULL EDUCATIONAL OPPORTUNITY GOAL**

BUENA VISTA CITY SCHOOLS have an ongoing goal for accomplishing full educational opportunity for all disabled students from birth through age 21 inclusive, which includes appropriate career education, pre-vocational education, and vocational education. Services are also available for all qualified private school students. A detailed timetable for accomplishing this goal is as follows:

Birth – 2 years

Children are evaluated and provided services by the RAISE Infant Program.

2 – 5 years

Children are provided with special education and related services through the Early Childhood Special Education Program. Many of these students are served in programs such as Head Start and in area preschools.

5 – 11 years

Children are served throughout various elementary school programs depending upon their disability. Character education, conflict resolution skills, personal safety skills, and self-awareness activities are provided by the guidance counselor.

12 – 13 years

The middle school offers exploratory classes such as Art and Media Skills as well as various transitional programs that prepare students for the high school level.

14 – 21 years

A career day is held at the high school and students’ schedules reflect future vocational goals. Many vocational classes are offered at the high school and students can attend a vocational school for part of the school day. Career counseling is used to gear students toward careers which are available in our area. Many students also participate in a Work/Study program where they are in the school setting half a day and the other half is spent on a job site. Transition services are stressed in each special education student’s IEP. Such planning has proven to be most beneficial to all special education students.

**ADDITIONAL FACILITIES, PERSONNEL AND SERVICES NEEDED**

To meet the goal of providing full educational opportunities to students, Buena Vista City Schools utilizes special education paraprofessionals, contracted service providers, and contracted therapists.

**Appendix A**

**Figure 1. Local school division caseload maximums as funded by the Virginia Appropriation Act.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Disability Category** | **Level II** | | **Level I** |
| **With Paraprofessional**  **100% of the time** | **Without Paraprofessional 100% of the time** |
| **Autism** | **8** | **6** | **24** |
| **Deaf-blindness** | **8** | **6** |  |
| **Developmental Delay: up to age 6, inclusive** | **10** | **8** |  |
| **Developmental Delay:**  **age 2-5** | **8 Center Based**  **10 Combined** | **12 Home Based and/or Itinerant** |  |
| **Emotional Disability** | **10** | **8** | **24** |
| **Hearing Impairment/Deaf** | **10** | **8** | **24** |
| **Learning Disability** | **10** | **8** | **24** |
| **Intellectual Disability** | **10** | **8** | **24** |
| **Multiple Disabilities** | **8** | **6** |  |
| **Orthopedic Impairment** | **10** | **8** | **24** |
| **Other Health Impairment** | **10** | **8** | **24** |
| **Speech or Language Impairment** |  |  | **68 (itinerant)** |
| **Traumatic Brain Injury** | **May be placed in any program, according to the IEP** | | |
| **Combined group of students needing Level I services with students needing Level II services** | **20 Points (see Figure 2)** | | |

**Figure 2. Values for students receiving Level I services when combined with students receiving Level II services.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Disability Category** | **Level II Values** | | | **Level I**  **Values** |
| **With Paraprofessional**  **100% of the time** | **Without Paraprofessional 100% of the time** | |
| **Autism** | **2.5** | **3.3** | | **1** |
| **Deaf-blindness** | **2.5** | **3.3** | | **1** |
| **Developmental Delay: up to age 6, inclusive** | **2.0** | **2.5** | | **1** |
| **Emotional Disability** | **2.0** | **2.5** | | **1** |
| **Hearing Impairment/Deaf** | **2.0** | **2.5** | | **1** |
| **Learning Disability** | **2.0** | **2.5** | | **1** |
| **Intellectual Disability** | **2.0** | **2.5** | | **1** |
| **Multiple Disabilities** | **2.5** | **3.3** | | **1** |
| **Orthopedic Impairment** | **2.0** | **2.5** | | **1** |
| **Other Health Impairment** | **2.0** | **2.5** | | **1** |
| **Traumatic Brain Injury** | **2.0** | **2.5** | | **1** |
|  | | |

**8 VAC 20-80-200. (Repealed.)**

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