
TABLE OF CONTENTS

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

Cumulative Table.....669

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

State Board of Education675

TITLE 9. ENVIRONMENT

State Air Pollution Control Board675

State Water Control Board679

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Board of Medicine.....682

Board of Physical Therapy683

Board of Counseling683

TITLE 22. SOCIAL SERVICES

State Board of Social Services683

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS

TITLE 9. ENVIRONMENT

Virginia Waste Management Board684

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Board of Psychology.....684

TITLE 22. SOCIAL SERVICES

State Board of Social Services684

PROPOSED REGULATIONS

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes (amending 9 VAC 20-140-20, 9 VAC 20-140-40, 9 VAC 20-140-60 through 9 VAC 20-140-110, 9 VAC 20-140-130, 9 VAC 20-140-160, and 9 VAC 20-140-170; repealing 9 VAC 20-140-150).686

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Regulations Governing the Practice of Psychology (adding 18 VAC 125-20-85).694

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Agency Placement Adoptions - Preplacement Services (REPEALING). (22 VAC 40-230-10 et seq.)695

Relocation Assistance General Relief Program (REPEALING). (22 VAC 40-480-10 et seq.)696

FINAL REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Pertaining to Lobsters (amending 4 VAC 20-110-10 through 4 VAC 20-110-60; adding 4 VAC 20-110-15, 4 VAC 20-110-55, and 4 VAC 20-110-65).698

Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-30).699

Submerged Aquatic Vegetation (SAV) Transplantation Guidelines. (4 VAC 20-337-10 et seq.)700

Pertaining to Spanish and King Mackerel (amending 4 VAC 20-540-30 and 4 VAC 20-540-40).702

Pertaining to Summer Flounder (amending 4 VAC 20-620-40).702

Pertaining to Artificial Reefs (amending 4 VAC 20-755-10, 4 VAC 20-755-20 and 4 VAC 20-755-30).704

Pertaining to Commercial Hook-and-Line Fishing (amending 4 VAC 20-995-20 and 4 VAC 20-995-30).705

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Regulations Governing Special Education Programs for Children with Disabilities in Virginia (amending 8 VAC 20-80-10, 8 VAC 20-80-30 through 8 VAC 20-80-160 and 8 VAC 20-80-190; adding 8 VAC 20-80-45, 8 VAC 20-80-52, 8 VAC 20-80-54, 8 VAC 20-80-56, 8 VAC 20-80-58, 8 VAC 20-80-62, 8 VAC 20-80-64, 8 VAC 20-80-65, 8 VAC 20-80-66, 8 VAC 20-80-68, 8 VAC 20-80-72, 8 VAC 20-80-74, 8 VAC 20-80-76, 8 VAC 20-80-78, 8 VAC 20-80-152, and 8 VAC 20-80-155; repealing 8 VAC 20-80-20, 8 VAC 20-80-170, 8 VAC 20-80-180, and 8 VAC 20-80-200).706

Special Education Program Standards (REPEALED). (8 VAC 20-570-10 et seq.)706

Table of Contents

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Residential and Psychiatric Treatment for Children and Adolescents. 791

State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12 VAC 30-10-150)..... 791

Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-30, 12 VAC 30-50-70, 12 VAC 30-50-130, and 12 VAC 30-50-250). 791

Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12 VAC 30-80-21)..... 791

Amount, Duration and Scope of Selected Services (adding 12 VAC 30-130-850 through 12 VAC 30-130-890). 791

Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-229.1). 798

Case Management for Treatment Foster Care..... 800

Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-480). 800

Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-170). 800

Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12 VAC 30-80-111)..... 800

Amount, Duration and Scope of Selected Services (adding 12 VAC 30-130-900 through 12 VAC 30-130-950). 801

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Regulations Governing the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act (PUA000029). (20 VAC 5-202-10 et seq.) 809

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Virginia Independence Program (amending 22 VAC 40-35-10 and 22 VAC 40-35-125; adding 22 VAC 40-35-126, 22 VAC 40-35-127, and 22 VAC 40-35-128). 824

Minimum Standards for Licensed Child-Placing Agencies (Notice of Delay in Effective Date). (22 VAC 40-130-10 et seq.) 830

Virginia Energy Assistance Program (amending 22 VAC 40-680-10 and 22 VAC 40-680-20). 830

EMERGENCY REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Pertaining to Horseshoe Crab (amending 4 VAC 20-900-25). 832

FORMS

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Voluntary Registration of Family Day Homes-Requirements for Contracting Organizations. (22 VAC 40-170-10 et seq.) 833

GOVERNOR

EXECUTIVE ORDER

Establishing the Virginia Wetlands Restoration Coordinating Committee. (72-00)..... 835

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Public Meeting and Public Comment – Blackwater Creek and Maggoodee Creek TMDL for Fecal Coliform Bacteria..... 837

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDERS

Virginia's Instant Game Lottery 191; "Deuces Wild," Final Rules for Game Operation. (39-00)..... 837

Virginia's Instant Game Lottery 193; "Halloween Cash," Final Rules for Game Operation. (40-00)..... 837

Virginia's Instant Game Lottery 460; "Jumbo Bucks," Final Rules for Game Operation. (41-00)..... 837

Virginia's Instant Game Lottery 461; "Cash Carnival," Final Rules for Game Operation. (42-00)..... 838

Virginia's Instant Game Lottery 463; "Show Me the Money," Final Rules for Game Operation. (43-00) 838

Virginia's Instant Game Lottery 195; "Rake It in," Final Rules for Game Operation. (44-00) 838

Virginia's Instant Game Lottery 314; "High Stakes Bingo," Final Rules for Game Operation. (45-00) 838

Virginia's Instant Game Lottery 462; "Club Casino," Final Rules for Game Operation. (46-00)..... 838

Table of Contents

Virginia's Instant Game Lottery 464; "Fortune Hunt," Final Rules for Game Operation. (47-00).....	839
Certain Virginia Instant Game Lotteries; End of Games. (48-00)	839
Certain Virginia Instant Game Lotteries; End of Games. (49-00)	839
"On-Counter Dispenser Challenge" Virginia Lottery Retailer Incentive Program Rules. (50-00)	840
"Lotto Virginia" Virginia Lottery Retailer Incentive Program Rules. (51-00).....	840
Virginia's Instant Game Lottery 465; "Reindeer Games," Final Rules for Game Operation. (52-00).....	840
Virginia's Instant Game Lottery 466; "Treasure Tree," Final Rules for Game Operation. (53-00).....	840
Virginia's Instant Game Lottery 196; "Holiday Cash," Final Rules for Game Operation. (54-00).....	840
Virginia's Instant Game Lottery 197; "Let the Good Times Roll," Final Rules for Game Operation. (55-00)	841
Virginia's Instant Game Lottery 199; "Lucky Duck," Final Rules for Game Operation. (56-00).....	841
Virginia's Instant Game Lottery 315; "Bingo Blizzard," Final Rules for Game Operation. (57-00).....	841
Virginia's Instant Game Lottery 468; "Pinball Wizard," Final Rules for Game Operation. (58-00).....	841
Virginia's Instant Game Lottery 469; "High Stakes," Final Rules for Game Operation. (59-00).....	842

BOARD OF OPTOMETRY

Notice of Periodic Review of Regulations.....	842
---	-----

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Periodic Review of Regulations.....	842
---	-----

VIRGINIA CODE COMMISSION

Change in Subscription Rate for the Virginia Register of Regulations	842
Notice to State Agencies	843
Forms for Filing Material for Publication in <i>The Virginia Register of Regulations</i>	843

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings.....	844
--	-----

INDEPENDENT

Open Meetings and Public Hearings.....	863
--	-----

LEGISLATIVE

Open Meetings and Public Hearings	863
---	-----

CHRONOLOGICAL LIST

Open Meetings.....	867
Public Hearings.....	869

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2000 VAC Supplement includes final regulations published through *Virginia Register* Volume 16, Issue 24, dated August 14, 2000). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 4. Conservation and Natural Resources			
4 VAC 20-490-20	Amended	17:3 VA.R. 386	10/15/00
4 VAC 20-490-40	Amended	17:3 VA.R. 387	10/15/00
4 VAC 20-490-60	Amended	17:3 VA.R. 387	10/15/00
4 VAC 20-720-20	Amended	17:3 VA.R. 387	10/1/00
4 VAC 20-720-40	Amended	17:3 VA.R. 388	10/1/00
4 VAC 20-720-50	Amended	17:3 VA.R. 388	10/1/00
4 VAC 20-720-60	Amended	17:3 VA.R. 389	10/1/00
4 VAC 20-720-70	Amended	17:3 VA.R. 389	10/1/00
4 VAC 20-720-80	Amended	17:3 VA.R. 390	10/1/00
4 VAC 20-754-30	Amended	17:3 VA.R. 393	10/1/00
4 VAC 20-890-20	Amended	16:25 VA.R. 3227	10/1/00
4 VAC 20-890-25	Amended	17:1 VA.R. 62	9/21/00
4 VAC 20-890-30	Amended	17:1 VA.R. 62	9/21/00
4 VAC 20-890-40	Amended	16:25 VA.R. 3227	10/1/00
4 VAC 20-900-10 emer	Amended	16:25 VA.R. 3330	7/28/00-8/24/00
4 VAC 20-900-25	Amended	17:1 VA.R. 63	9/1/00
4 VAC 20-900-25 emer	Amended	16:25 VA.R. 3330	7/28/00-8/24/00
4 VAC 20-910-45	Amended	17:3 VA.R. 393	11/1/00
4 VAC 20-950-10	Amended	17:3 VA.R. 394	10/1/00
4 VAC 20-950-45	Amended	17:3 VA.R. 394	10/1/00
4 VAC 25-30 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-40 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-90 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-100 (Forms)	Amended	17:4 VA.R. 613	--
4 VAC 25-130 (Forms)	Amended	17:4 VA.R. 614	--
Title 6. Criminal Justice and Corrections			
6 VAC 20-190-10 through 6 VAC 20-190-200	Amended	17:3 VA.R. 395-398	11/23/00
Title 8. Education			
8 VAC 20-131-10 through 8 VAC 20-131-150	Amended	16:25 VA.R. 3228-3237	9/28/00
8 VAC 20-131-170	Amended	16:25 VA.R. 3237	9/28/00
8 VAC 20-131-180	Amended	16:25 VA.R. 3237	9/28/00
8 VAC 20-131-210	Amended	16:25 VA.R. 3238	9/28/00
8 VAC 20-131-220	Amended	16:25 VA.R. 3239	9/28/00
8 VAC 20-131-240	Amended	16:25 VA.R. 3239	9/28/00
8 VAC 20-131-250	Repealed	16:25 VA.R. 3240	9/28/00
8 VAC 20-131-260 through 8 VAC 20-131-320	Amended	16:25 VA.R. 3240-3249	9/28/00
8 VAC 20-131-325	Added	16:25 VA.R. 3249	9/28/00
8 VAC 20-131-340	Amended	16:25 VA.R. 3250	9/28/00
Title 9. Environment			
9 VAC 5-10-20*	Amended	16:17 VA.R. 2135	*
9 VAC 5-20-180*	Amended	16:17 VA.R. 2142	*

* Effective date suspended.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-40-10*	Amended	16:17 VA.R. 2144	*
9 VAC 5-40-20*	Amended	16:17 VA.R. 2145	*
9 VAC 5-40-30*	Amended	16:17 VA.R. 2149	*
9 VAC 5-40-40*	Amended	16:17 VA.R. 2150	*
9 VAC 5-40-50*	Amended	16:17 VA.R. 2151	*
9 VAC 5-50-10*	Amended	16:17 VA.R. 2152	*
9 VAC 5-50-20*	Amended	16:17 VA.R. 2152	*
9 VAC 5-50-30*	Amended	16:17 VA.R. 2155	*
9 VAC 5-50-40*	Amended	16:17 VA.R. 2156	*
9 VAC 5-50-50*	Amended	16:17 VA.R. 2157	*
9 VAC 5-60-10*	Amended	16:17 VA.R. 2158	*
9 VAC 5-60-20*	Amended	16:17 VA.R. 2158	*
9 VAC 5-60-30*	Amended	16:17 VA.R. 2159	*
9 VAC 5-60-120 through 9 VAC 5-60-180	Added	17:4 VA.R. 585	1/1/01
9 VAC 5-60-150	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-50 through 9 VAC 5-80-120	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-180 through 9 VAC 5-80-300	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-305	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 5-80-310 through 9 VAC 5-80-350	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-355	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 5-80-360 through 9 VAC 5-80-380	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-400 through 9 VAC 5-80-460	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-480	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-490	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-510	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-540 through 9 VAC 5-80-570	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-610	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-620	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-650	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-660	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-680	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-700	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-80-705	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 5-80-720	Amended	17:4 VA.R. 585	1/1/01
9 VAC 5-90-10 et seq.	Repealed	17:1 VA.R. 63	10/25/00
9 VAC 5-100-10 et seq.	Repealed	17:1 VA.R. 63	10/25/00
9 VAC 5-121-10 et seq.	Repealed	17:4 VA.R. 585	1/1/01
9 VAC 20-60-18	Amended	17:2 VA.R. 220	11/8/00
9 VAC 25-31-10	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-30	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-40	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-100	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-120	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-121 (renumbered from 9 VAC 25-31-125)	Added	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-170	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-190	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-200	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-230	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-280	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-340	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-390	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-500	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-570	Amended	16:25 VA.R. 3252	9/27/00

* Effective date suspended.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-31-580	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-590	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-620	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-660	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-670	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-710	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-720	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-750	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-770	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-780	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-800	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-810	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-31-840	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-210-10	Amended	16:25 VA.R. 3252	9/27/00
9 VAC 25-210-50	Amended	16:25 VA.R. 3254	9/27/00
9 VAC 25-210-110	Amended	16:25 VA.R. 3254	9/27/00
9 VAC 25-210-110	Erratum	17:3 VA.R. 433	--
9 VAC 25-400-10	Amended	16:25 VA.R. 3255	9/27/00
9 VAC 25-630-10 through 9 VAC 25-630-60	Amended	17:3 VA.R. 399-409	12/1/00
Title 11. Gaming			
11 VAC 10-100-30	Amended	16:25 VA.R. 3261	8/8/00
11 VAC 10-100-110	Amended	16:25 VA.R. 3261	8/8/00
11 VAC 10-100-170	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-100-210	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-30	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-90	Amended	16:25 VA.R. 3262	8/8/00
11 VAC 10-110-230	Added	16:25 VA.R. 3263	8/8/00
11 VAC 10-120-50	Amended	16:26 VA.R. 3507	8/14/00
11 VAC 10-120-80	Amended	16:26 VA.R. 3508	8/14/00
11 VAC 10-120-90	Amended	16:26 VA.R. 3508	8/14/00
11 VAC 10-130-10	Amended	17:4 VA.R. 586	10/16/00
11 VAC 10-130-20	Amended	17:4 VA.R. 587	10/16/00
11 VAC 10-130-40	Amended	17:4 VA.R. 588	10/16/00
11 VAC 10-130-60	Amended	17:4 VA.R. 588	10/16/00
11 VAC 10-130-70	Amended	17:4 VA.R. 589	10/16/00
11 VAC 10-130-76	Amended	17:4 VA.R. 589	10/16/00
11 VAC 10-130-77	Amended	17:4 VA.R. 589	10/16/00
11 VAC 10-130-80	Amended	17:4 VA.R. 590	10/16/00
11 VAC 10-150-10	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-20	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-30	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-40	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-80	Amended	16:26 VA.R. 3510	8/14/00
11 VAC 10-150-90	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-120	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-130	Amended	16:26 VA.R. 3511	8/14/00
11 VAC 10-150-170	Amended	16:26 VA.R. 3511	8/14/00
Title 12. Health			
12 VAC 5-371-150	Amended	17:1 VA.R. 64	10/27/00
12 VAC 5-371-260	Amended	17:1 VA.R. 64	10/27/00
12 VAC 5-410-220	Amended	17:1 VA.R. 65	10/27/00
12 VAC 30-40-345	Amended	17:3 VA.R. 410	11/22/00
Title 13. Housing			
13 VAC 10-160-10	Amended	16:26 VA.R. 3512	9/1/00
13 VAC 10-160-30	Amended	16:26 VA.R. 3513	9/1/00
13 VAC 10-160-41	Repealed	16:26 VA.R. 3514	9/1/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 10-160-51	Repealed	16:26 VA.R. 3514	9/1/00
13 VAC 10-160-55 through 13 VAC 10-160-90	Amended	16:26 VA.R. 3515-3518	9/1/00
Title 14. Insurance			
14 VAC 5-200-20 through 14 VAC 5-200-60	Amended	17:4 VA.R. 594-597	12/1/00
14 VAC 5-200-65	Added	17:4 VA.R. 597	12/1/00
14 VAC 5-200-70	Amended	17:4 VA.R. 598	12/1/00
14 VAC 5-200-90	Amended	17:4 VA.R. 598	12/1/00
14 VAC 5-200-110	Amended	17:4 VA.R. 599	12/1/00
14 VAC 5-200-120	Amended	17:4 VA.R. 601	12/1/00
14 VAC 5-200-150	Amended	17:4 VA.R. 601	12/1/00
14 VAC 5-200-155	Added	17:4 VA.R. 602	12/1/00
14 VAC 5-200-170	Amended	17:4 VA.R. 602	12/1/00
14 VAC 5-200-175	Added	17:4 VA.R. 603	12/1/00
14 VAC 5-200-180	Repealed	17:4 VA.R. 603	12/1/00
14 VAC 5-200-185	Added	17:4 VA.R. 603	12/1/00
14 VAC 5-200-187	Added	17:4 VA.R. 605	12/1/00
14 VAC 5-200-200	Amended	17:4 VA.R. 606	12/1/00
14 VAC 5-370-20	Amended	16:25 VA.R. 3264	9/30/00
14 VAC 5-370-100	Amended	16:25 VA.R. 3264	9/30/00
Title 16. Labor and Employment			
16 VAC 15-30-20	Amended	17:1 VA.R. 66	10/25/00
16 VAC 15-30-200	Amended	17:1 VA.R. 66	10/25/00
16 VAC 15-30-210	Added	17:1 VA.R. 68	10/25/00
16 VAC 15-30-220	Added	17:1 VA.R. 68	10/25/00
16 VAC 15-30-230	Added	17:1 VA.R. 69	10/25/00
16 VAC 25-120-1917.1	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.2	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.3	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.23	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.25	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.26	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.27	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.30	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.42 through 16 VAC 25-120-1917.45	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.50	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.71	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.73	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.92	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.95	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.112	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.117 through 16 VAC 25-120-1917.122	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.124	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.151	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.152	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.153	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120-1917.156	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-120 Appendix I	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.1	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.2	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.24	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.25	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.37	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.41	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.42	Amended	16:25 VA.R. 3265	10/1/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-130-1918.43	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.51	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.52	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.54	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.61	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.62	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.65	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.66	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.69	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.85	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.86	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.94	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.97	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.98	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.100	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.102	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130-1918.105	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130 Appendix II	Amended	16:25 VA.R. 3265	10/1/00
16 VAC 25-130 Appendix IV	Amended	16:25 VA.R. 3265	10/1/00
Title 18. Professional and Occupational Licensing			
18 VAC 85-20-131 emer	Amended	17:4 VA.R. 610	10/13/00-10/12/01
18 VAC 85-31-10 through 18 VAC 85-31-160	Repealed	16:25 VA.R. 3266-3270	9/27/00
18 VAC 90-20-36 emer	Added	17:2 VA.R. 221	9/19/00-9/18/01
18 VAC 112-10-10 through 18 VAC 112-10-120 emer	Added	17:4 VA.R. 611-612	10/17/00-10/16/01
18 VAC 112-20-10 through 18 VAC 112-20-150	Added	16:25 VA.R. 3266-3270	9/27/00
Title 20. Public Utilities and Telecommunications			
20 VAC 5-200-21	Amended	16:25 VA.R. 3274	7/28/00
20 VAC 5-200-30	Amended	16:25 VA.R. 3296	7/28/00
20 VAC 5-200 Appendix	Amended	16:25 VA.R. 3298	7/28/00
Title 22. Social Services			
22 VAC 40-60 (Forms)	Amended	17:1 VA.R. 72	--
22 VAC 40-130-10**	Amended	16:22 VA.R. 2745	7/1/01
22 VAC 40-130-25**	Added	16:22 VA.R. 2748	7/1/01
22 VAC 40-130-30 through 22 VAC 40-130-140**	Amended	16:22 VA.R. 2749-2751	7/1/01
22 VAC 40-130-155**	Added	16:22 VA.R. 2751	7/1/01
22 VAC 40-130-160**	Repealed	16:22 VA.R. 2751	7/1/01
22 VAC 40-130-170 through 22 VAC 40-130-190**	Amended	16:22 VA.R. 2751-2752	7/1/01
22 VAC 40-130-195**	Added	16:22 VA.R. 2753	7/1/01
22 VAC 40-130-198**	Added	16:22 VA.R. 2754	7/1/01
22 VAC 40-130-200**	Amended	16:22 VA.R. 2754	7/1/01
22 VAC 40-130-202**	Added	16:22 VA.R. 2754	7/1/01
22 VAC 40-130-210**	Amended	16:22 VA.R. 2754	7/1/01
22 VAC 40-130-211**	Added	16:22 VA.R. 2756	7/1/01
22 VAC 40-130-212**	Added	16:22 VA.R. 2757	7/1/01
22 VAC 40-130-213**	Added	16:22 VA.R. 2758	7/1/01
22 VAC 40-130-220**	Amended	16:22 VA.R. 2758	7/1/01
22 VAC 40-130-221**	Added	16:22 VA.R. 2759	7/1/01
22 VAC 40-130-223**	Added	16:22 VA.R. 2759	7/1/01
22 VAC 40-130-230 through 22 VAC 40-130-250**	Amended	16:22 VA.R. 2760	7/1/01
22 VAC 40-130-251**	Added	16:22 VA.R. 2760	7/1/01
22 VAC 40-130-260**	Amended	16:22 VA.R. 2760	7/1/01
22 VAC 40-130-261**	Added	16:22 VA.R. 2760	7/1/01
22 VAC 40-130-270**	Amended	16:22 VA.R. 2761	7/1/01

** Effective date delayed. See 17:5 VA.R. Final Regulations section.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-130-271**	Added	16:22 VA.R. 2765	7/1/01
22 VAC 40-130-272**	Added	16:22 VA.R. 2765	7/1/01
22 VAC 40-130-280**	Amended	16:22 VA.R. 2766	7/1/01
22 VAC 40-130-289**	Added	16:22 VA.R. 2767	7/1/01
22 VAC 40-130-290**	Amended	16:22 VA.R. 2767	7/1/01
22 VAC 40-130-300**	Amended	16:22 VA.R. 2768	7/1/01
22 VAC 40-130-301**	Added	16:22 VA.R. 2768	7/1/01
22 VAC 40-130-310**	Amended	16:22 VA.R. 2769	7/1/01
22 VAC 40-130-312**	Added	16:22 VA.R. 2770	7/1/01
22 VAC 40-130-314**	Added	16:22 VA.R. 2771	7/1/01
22 VAC 40-130-320 through 22 VAC 40-130-360**	Amended	16:22 VA.R. 2771-2772	7/1/01
22 VAC 40-130-365**	Added	16:22 VA.R. 2773	7/1/01
22 VAC 40-130-370 through 22 VAC 40-130-400**	Amended	16:22 VA.R. 2773-2776	7/1/01
22 VAC 40-130-401**	Added	16:22 VA.R. 2776	7/1/01
22 VAC 40-130-402**	Added	16:22 VA.R. 2777	7/1/01
22 VAC 40-130-403**	Added	16:22 VA.R. 2778	7/1/01
22 VAC 40-130-404**	Added	16:22 VA.R. 2778	7/1/01
22 VAC 40-130-406**	Added	16:22 VA.R. 2778	7/1/01
22 VAC 40-130-410**	Amended	16:22 VA.R. 2778	7/1/01
22 VAC 40-130-420**	Amended	16:22 VA.R. 2779	7/1/01
22 VAC 40-130-424**	Added	16:22 VA.R. 2779	7/1/01
22 VAC 40-130-430 through 22 VAC 40-130-450**	Amended	16:22 VA.R. 2779-2780	7/1/01
22 VAC 40-130-452 through 22 VAC 40-130-459**	Added	16:22 VA.R. 2780-2784	7/1/01
22 VAC 40-130-470 through 22 VAC 40-130-550**	Amended	16:22 VA.R. 2784-2785	7/1/01
22 VAC 40-130-600 through 22 VAC 40-130-820**	Added	16:22 VA.R. 2785-2796	7/1/01
22 VAC 40-180 (Forms)	Amended	16:25 VA.R. 3331-3332	--
22 VAC 40-600-10	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-50	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-70	Amended	17:1 VA.R. 70	10/25/00
22 VAC 40-600-90	Repealed	17:1 VA.R. 71	10/25/00
22 VAC 40-600-130	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-140	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-170	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-200	Amended	17:1 VA.R. 71	10/25/00
22 VAC 40-600-210	Amended	17:1 VA.R. 71	10/25/00
Title 24. Transportation and Motor Vehicles			
24 VAC 30-380-10	Amended	16:26 VA.R. 3518	8/23/00

** Effective date delayed. See 17:5 VA.R. Final Regulations section.

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled: **8 VAC 20-21-10 et seq. Licensure Regulations for School Personnel**. The purpose of the proposed action is to increase opportunities for school divisions to employ career switchers with rich experiences. An alternative route for career switchers is proposed. This route to licensure will allow career switchers with experience to apply directly to the Department of Education for a license. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 22.1-16 and 22.1-298 of the Code of Virginia.

Public comments may be submitted until December 7, 2000.

Contact: Dr. Thomas Elliott, Assistant Superintendent for Teacher Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23219, telephone (804) 371-2522 or FAX (804) 225-2524.

VA.R. Doc. No. R01-36; Filed October 17, 2000, 11:53 a.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40-10 et seq. Existing Stationary Sources and 9 VAC 5-50-10 et seq. New and Modified Stationary Sources (Rev. G00)**. The purpose of the proposed action is to render the state toxic pollutant program consistent with the federal Clean Air Act, according to a determination made pursuant to the review of existing regulations mandated by Executive Order 15 (94).

Need: Analysis reveals that the regulations are consistent with applicable state, statutory provisions, and judicial decisions. However, factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology), which justified the initial issuance of the regulations have changed to a

degree that justify a change to the basic requirements of the regulations.

Rules 4-3 and 5-3 were promulgated in 1985 to protect public health by setting significant ambient air concentration guidelines for all existing facilities emitting air toxic substances. At the time, the Clean Air Act authorized EPA to promulgate health-based emission standards for hazardous air pollutants (HAPs). However, due to the long-term nature of the decision-making process for this federal program, only a limited number of National Emissions Standards for Hazardous Air Pollutants (NESHAPs) were promulgated. The process to establish a NESHAP was lengthy, involving a determination of a critical level that triggered significant health effects, followed by a determination of those industry categories that contributed the highest emission level of the HAP under review. Concurrent with the slow progression of federal assessment of HAPs, a series of significant chemical accidents occurred worldwide, including one in Virginia (the kepone incident in Hopewell). These circumstances led the State Air Pollution Control Board and policy-making groups in many other states to develop state-specific answers to the public health problems of HAPs. The states learned from federal experience that they needed a more expeditious process to assess and regulate HAPs than that used at the federal level. Many states, including Virginia, used occupational standards and extrapolated them for use in the ambient air.

By the late 1980s, the federal government realized that its approach to the evaluation and regulation of HAPs was not addressing the problem quickly enough. Instead of taking the same health effects-based approach, the 1990 Clean Air Act (the Act) attempted to address the problem more quickly. First, it established a list of 188 critical HAPs. Then, emission standards establishing maximum acceptable control technology (MACT) were developed for source categories that emit these HAPs. After the development of each MACT standard, the federal government will assess what risk to human health remains from sources subject to the MACT standards and will establish further standards for those source categories causing significant public health concerns.

During the development and evaluation of the MACT standards, the state program will remain essential to protect the health of the citizens of the Commonwealth. Depending on the pollutant, health risks even from a small exposure to a HAP can be high. In addition, public concern about HAPs has remained high since multiple accidental releases occurred in the U.S. and abroad in the 1970s and early 1980s. Data reported for certain industries under the requirements established by the Emergency Planning and Community Right to Know Act, or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) has heightened public awareness and concern about public health and exposure to HAPs emissions in Virginia by alerting its citizens to the quantity of these emissions released in the state. The data reported under this program indicates that Virginia has

Notices of Intended Regulatory Action

significant air emissions of SARA Title III chemicals. In 1992, Virginia was ranked 16th in the nation for total releases of these chemicals; 94% of those releases were into the air. Despite improvements since then, public concern about the release of toxic air pollutants remains high.

This regulatory action replaces a previous regulatory action (Rev. G97), serving essentially the same purpose, which was withdrawn by the board on July 11, 2000.

Potential Issues: There are two main issues that must be addressed during the regulation development: (i) exempting from applicability those sources subject to a federal hazardous air pollutant standard and (ii) limiting the state program's applicability to the pollutants regulated under § 112 of the federal Clean Air Act as amended in 1990. These actions will be consistent with Recommendation 22 of the Governor's Commission on Government Reform to limit the applicability of the state program as the federal program reaches maturity. These actions will assure the regulated community that the federal and state programs will not overlap while assuring the environmental community that the state program will continue to provide adequate protection for public health while the federal program is being developed. Cost should not be an issue: there should be no increase in costs for either affected entities or the agency because the board's policy has been to focus on the federal hazardous air pollutant list in its implementation of the regulations. In fact, as more federal MACT standards are developed and fewer sources are subject to the state regulations, the overall cost of this program to the regulated community will decrease.

Alternatives: Alternatives to the proposed regulation amendments are being considered by the department. The department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to render the state toxic pollutant program consistent with the federal Clean Air Act. This option is being selected because it reduces the regulatory burden on sources while protecting public health and welfare.
2. Repeal the regulations. This option is not being selected because the regulations are necessary to protect public health while the federal standards are being developed and evaluated.
3. Take no action to amend the regulations. This option is not being selected because the current regulations are unnecessarily burdensome to the regulated community and to department staff without any commensurate advantage to the public.

Public Participation: The department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the department in the development of the proposal, and (ii) the costs and benefits of the alternatives stated in this notice or other alternatives. All comments must be received by the department by 4:30 p.m. within 30 days of the appearance of

this notice in the Virginia Register in order to be considered. It is preferred that all comments be provided in writing to the department, along with any supporting documents or exhibits. Comments may be submitted by mail, facsimile transmission, or e-mail, but must be submitted to Dr. Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia, 23240 (e-mail krsands@deq.state.va.us; FAX 804-698-4510). Comments by facsimile transmission will be accepted only if followed by receipt of the signed original within one week. Comments by e-mail will be accepted only if the name, address, and phone number of the commenter are included. All testimony, exhibits, and documents received are a matter of public record. Only comments (i) related to the potential issues, alternatives, and costs and benefits (see supporting information above) as specified in this notice and (ii) provided in accordance with the procedures specified in this notice will be given consideration in the development of the proposed regulation amendments.

A public meeting will not be held by the department because the board has authorized the department to proceed without holding a meeting.

After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Ad Hoc Advisory Group: The department will not form an ad hoc advisory group to assist in the development of the regulation because the board has authorized the department to proceed without the use of the participatory approach.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., December 11, 2000, to the Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

VA.R. Doc. No. R01-37; Filed October 18, 2000, 11:30 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in Northern Virginia.** The purpose of the proposed action is to develop regulation amendments that conform to state law and federal Clean Air Act requirements for the testing of emissions from motor vehicles located or primarily operated in Northern Virginia.

Need: One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, of which ozone is the primary focus of this proposed action. Ozone is formed when volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in the air react together in the presence of sunlight. VOCs are chemicals contained in gasoline, polishes, paints, varnishes, cleaning fluids, inks, and other household and industrial products. NO_x emissions are a by-product from the combustion of fuels and industrial processes.

The National Ambient Air Quality Standard for ozone is currently 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. When concentrations of ozone in the ambient air exceed the federal standard, the area is considered to be out of compliance and is classified as "nonattainment." Several counties and cities within the Northern Virginia area have been identified as ozone nonattainment areas according to provisions of the Act.

States are required to develop plans to ensure that areas will come into compliance with the federal health standard. Failure to develop adequate programs to meet the ozone air quality standard: (i) may result in the continued violations of the standard and subsequent negative affects on human health, (ii) may result in assumption of the program by EPA at which time the Commonwealth would lose authority over matters affecting its citizens, and (iii) may result in the implementation of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent control requirements.

Motor vehicle emissions inspection programs, known as inspection and maintenance (I/M) programs, are an integral part of the effort to reduce mobile source air pollution. Cars and trucks create about half of the ozone air pollution. Of all highway vehicles, passenger cars and light trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. Tremendous progress has been made in reducing these pollutants; however, total vehicle emissions remain high. This is because the number of vehicle miles traveled on our highways has doubled in the last 20 years, offsetting much of the technological progress in vehicle emission control over the same two decades. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

I/M programs achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions and requiring them to be repaired. Minor malfunctions in the emissions control system can increase emissions significantly. The average car on the road can emit three to four times the carbon monoxide and hydrocarbons allowed by new car standards if emission control systems are

malfunctioning. Unfortunately, rarely is it obvious which cars have malfunctions as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability.

I/M programs provide a way to check whether the emission control systems on a vehicle are working correctly. All new passenger cars and trucks sold in the United States today must meet stringent air pollution standards and those standards became more stringent in model year 1994 and again in 1998, but they can only retain this low-polluting profile if the emission controls and engine are functioning properly. An I/M program is designed to ensure that vehicles stay clean in actual use. This, in turn, can substantially reduce the amount of volatile organic compounds, carbon monoxide, and nitrogen oxides emitted to the ambient air, thereby reducing the formation of ozone, lowering ozone concentrations, and contributing toward attainment of the NAAQS.

Potential Issues:

1. Changes in the wording of some definitions. This is being done as a result of technical changes in program operation.
2. Changes in the order and some elements of the testing procedure. This is being done as a result of technical changes in program operation.
3. Changes in the timing and flexibility of some test standards. This is being done as a result of technical changes in program operation and changes to the state implementation schedule.
4. Changes in some permitting and licensing procedures. This is being done as a result of technical changes in program operation.
5. Deletion of special treatment of federally owned or controlled vehicles. This is being done to conform to federal requirements.
6. Changes in some enforcement procedures. This is being done to reduce redundancy and overlap, as a result of technical changes in program operation and to conform to federal requirements.

Alternatives: Alternatives to the proposed regulation amendments are being considered by the department. The department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action, develop a regulation revision that conforms to state law and federal Clean Air Act requirements for the testing of emissions from motor vehicles located or primarily operated in Northern Virginia.

Notices of Intended Regulatory Action

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it does not provide for implementation of a motor vehicle emissions testing program that meets the provisions, or meets alternative provisions, of the state code, federal Clean Air Act and associated EPA regulations and policies. No regulatory alternatives to an enhanced I/M program have been promulgated by EPA as meeting the requirements of the Act. Adopting an unapprovable program will result in sanctions being imposed by EPA.

3. Take no action to amend the regulations and continue to operate under the existing regulation. This option is not being selected because it risks sanctions by the EPA.

As provided in the public participation procedures of the State Air Pollution Control Board, the department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments (see section below on public participation) on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

Public Participation: The department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the department in the development of the proposal, and (ii) the costs and benefits of the alternatives stated in this notice or other alternatives.

A public meeting will be held by the department to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue must be submitted to the agency contact in writing by 4:30 p.m. the last day of the comment period.

Legal Requirements:

Federal Requirements

Federal Clean Air Act (CAA):
<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):
<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):
http://www.gpo.gov/su_docs/aces/aces140.html

The 1990 Amendments to the Clean Air Act established a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of its own class.

The Northern Virginia area has an ozone air pollution problem classified by the EPA as "serious." The problem is a result of emissions from both industrial sources and motor vehicles. The Act requires that all areas classified as serious must implement an enhanced vehicle emissions inspection and maintenance program, commonly referred to as I/M.

Section 182(c)(3) of the Clean Air Act requires that the state submit revisions to the state implementation plan to "provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in-use motor vehicles...." The program "shall comply in all respects with guidance...by the Administrator..." The Act requires that enhanced I/M Programs be implemented within two years of enactment (11/16/90) of the Clean Air Act Amendments of 1990. The program implemented by the state must achieve a performance standard equal to:

- (i) "...a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under § 202; and
- (ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard."

The compliance method is to be established, per the Act, by EPA. The state program, per the Act, must include, at a minimum:

1. Computerized emission analyzers, including on-road testing devices.
2. No waivers for vehicles and parts covered by an emission control performance warranty.
3. For nonwarranty situations, waivers only after \$450 (in 1990 dollars) has been spent for emissions-related repairs.
4. Enforcement through registration denial.
5. Annual testing unless biennial testing, in combination with other features, will equal or exceed emissions reductions obtainable through annual inspections.
6. Operation on a centralized basis unless the state demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective.

Notices of Intended Regulatory Action

This law is implemented by EPA through 40 CFR Part 51, subpart S. The performance standard for the program is contained in § 51.351, "Enhanced I/M Performance Standard." It includes:

Centralized testing.

Annual testing.

Testing of 1968 and later model year vehicles.

Transient, mass emissions testing on 1986 and later model year vehicles, two-speed idle testing of 1981-1985 vehicles, and single-speed idle testing of pre-1981 vehicles.

Testing of light duty vehicles and trucks.

Emissions standards according to model year and weight class as enumerated in § 51.351(a)(7).

Visual inspection of the catalyst and fuel inlet restrictor on all 1984 and later model year vehicles.

Evaporative system integrity (pressure) test on 1983 and later vehicles and an evaporative system transient purge test on 1986 and later vehicles.

Twenty percent emission test failure rate among pre-1981 model year vehicles.

Three percent (3.0%) waiver rate.

Ninety-six percent (96%) compliance rate.

On-road testing of at least 0.5% of the subject vehicle population.

Under the current rule, the state has considerable flexibility to design its own program and demonstrate that it is as effective as the EPA model program in reducing emissions.

State Requirements

Code of Virginia:

<http://leg1.state.va.us/000/cod/codec.htm>

Virginia Administrative Code (VAC):

<http://leg1.state.va.us/000/reg/toc.htm>

Section 46.2-1176 through Section 46.2-1187.3 of the Virginia Motor Vehicle Emissions Control Law (Title 46.2, Chapter 10, Article 22 of the Code of Virginia) requires a "test and repair enhanced emissions inspection program" for vehicles that have actual gross weights of 10,000 pounds or less and are registered in the Counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Key provisions of the legislation include:

A biennial inspection;

An inspection fee cap of \$20;

A minimum repair cost of \$450 (in 1990 dollars) in order to qualify for a waiver, and requirement that repairs to qualify for a waiver be done by a certified repair technician;

Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection;

An exemption for any of the following vehicles: (i) vehicles powered by a clean special fuel as defined in § 58.1-2101, (ii) motorcycles, (iii) vehicles which, at the time of manufacture were not designed to meet emission standards set or approved by the federal government, (iv) any antique motor vehicle as defined in § 46.2-100 and licensed pursuant to § 46.2-730, or (v) vehicles for which no testing standards have been adopted by the board;

The requirement for the inspection to apply to all vehicles registered and/or operated in the affected area including (i) vehicles owned by government entities, (ii) vehicles owned by military personnel residing in the affected areas, and (iii) vehicles owned by leasing or rental companies;

The certification of motor vehicle emissions repair technicians and emissions repair facilities, including the suspension or revocation of such certification;

In addition to biennial testing of all subject vehicles, the requirement for on-road testing of motor vehicles in use and for follow-up testing of those vehicles that exceed emissions standards; and

The requirement for the State Air Pollution Control Board to adopt regulations to implement the program.

Family Impact Statement: It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in fertility disorders, fetal mutation and deformity, chronic and acute illness, premature death, and property damage.

Statutory Authority: §§ 46.2-1176 through 46.2-1187.3 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. on November 30, 2000.

Contact: Beth Major, Environmental Program Manager, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

VA.R. Doc. No. R01-20; Filed September 29, 2000, 1:56 p.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-260-5 et seq. Water Quality Standards**. The purpose of the rulemaking will be to amend the Water Quality Standards regulation to update certain criteria and use designations.

Notices of Intended Regulatory Action

Subject areas needing revision include updated surface water criteria for ammonia in freshwater, new alternative indicators for assessing bacterial water quality, updated contact recreational use designations for primary and secondary and/or seasonal uses, and updated use designations for intermittent, ephemeral and/or effluent dependent streams. DEQ also wants to review the existing shellfish classification in tidal waters to determine whether separate classifications/designations and criteria are needed for permanently restricted or prohibited shellfishing areas versus open shellfishing areas.

The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting regulations that are technically correct, necessary and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act § 305(b) report and on the § 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load under the Clean Water Act at § 303(d).

The scope of the federal regulations at 40 CFR 131 is to describe the requirements and procedures for developing, reviewing, revising and approving water quality standards by the states as authorized by § 303(c) of the Clean Water Act. 40 CFR 131 specifically requires the states to adopt criteria to protect designated uses.

The scope and objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The Clean Water Act at § 303(c)(1) requires that the states hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law at § 62.1-44.15(3a) of the Code of Virginia requires the board to establish standards of quality and to modify, amend or cancel any such standards or policies. It also requires the board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying or canceling such standards.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are discretionary to the EPA and the state.

Federal Regulation web site:
<http://www.epa.gov/epahome/cfr40.htm>

Clean Water Act web site:
<http://www4.law.cornell.edu/uscode/33/1313.html>

State Water Control Law (Code of Virginia) web site:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.2>
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15>

Need: This rulemaking is needed because new scientific information is available to update the water quality standards.

Changes to the regulation are also needed to improve permitting, monitoring and assessment programs. Subject areas needing revision include updated surface water criteria for ammonia in freshwater, new alternative indicators for assessing bacterial water quality, updated contact recreational use designations for primary and secondary and/or seasonal uses, and updated use designations for intermittent, ephemeral and/or effluent dependent streams. DEQ also wants to consider revising the existing DEQ shellfish classification in tidal waters to determine whether separate classifications/designations and criteria are needed for permanently restricted or prohibited shellfishing areas.

The rulemaking is essential to the protection of health, safety or welfare of the citizens of the Commonwealth. Proper water quality standards protect water quality and living resources of Virginia's waters for consumption of fish and shellfish, recreational uses and conservation in general.

Potential issues that may need to be addressed are listed in the alternatives section. Another issue that may need to be addressed is how these water quality standards changes will effect the § 303(d) listing of state waters and subsequent TMDL development.

Substance: The amendments would change the existing numerical criteria for ammonia and bacteria in certain waters of the state. The existing regulation may also be changed to reflect more accurate designated or beneficial uses of state waters to ensure the correct application of the new criteria. The regulation may also be changed to recognize that intermittent, ephemeral and/or effluent dependent waters do not support all designated uses, particularly aquatic life uses. Also, the regulation may be changed to recognize restricted or prohibited shellfishing areas and define alternate criteria for these waters.

Alternatives: Many alternatives in the subject areas listed will become available as DEQ staff and the public begin to review scientific data, permitting and monitoring needs. DEQ will work in conjunction with other state and federal agencies to consider various alternatives. Alternatives provided by the public will also be considered.

The department has neither accepted nor rejected any alternatives at this point. Some alternatives being considered by the agency now include, but are not limited to, the following:

1. Whether to use enterococci, *E. coli*, and/or fecal coliforms as a bacterial indicator of pollution, what these numerical values should be, and how and where we should apply these criteria;
2. Whether we should recognize primary and secondary contact and/or seasonal recreational uses, how these uses should be defined and what criteria would apply;
3. Whether we should recognize the limited aquatic life and recreational uses of intermittent streams, ephemeral streams and dry ditches, how these types of streams would be defined, what criteria should apply here, and/or whether any temporary variances that have been approved by DEQ in intermittent streams should be adopted as permanent use changes;

4. Whether effluent dependent streams should be protected as fully supporting aquatic life uses or be protected as intermittent streams, ephemeral streams or dry ditches (see above);

5. Whether information contained in EPA's 1998 Update of Ambient Water Quality Criteria for Ammonia (EPA 822-R-98-008) should be used to recalculate the freshwater ammonia criteria; and

6. Whether we should divide shellfish waters into two classifications (open shellfishing areas versus prohibited areas) and whether alternate criteria should apply here.

The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations.

The board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.

The direct impact resulting from the development of water quality standards is for the protection of public health and safety and has an indirect impact on families.

Statutory Authority: §§ 62.1-44.15(3a) and 62.1-44.15(10) of the Code of Virginia.

Public comments may be submitted until January 8, 2001.

Contact: Elleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111.

VA.R. Doc. No. R01-13; Filed September 14, 2000, 8:25 a.m.

† Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Water Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **9 VAC 25-560-10 et seq., Potomac-Shenandoah River Basin Water Quality Management Plan**, which was published in 17:1 VA.R. 25 September 25, 2000.

Contact: Cindy M. Berndt, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4378, FAX (804) 698-4500 or (804) 698-4021/TTY ☎

VA.R. Doc. No. R01-10; Filed November 2, 2000, 2:05 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-720-10 et seq. Virginia Total Maximum Daily Load Regulation for Water Quality Management Planning**. The proposed primary action is to adopt a Virginia TMDL regulation for Water Quality Management Planning. A TMDL is the total amount of pollutant load that can be discharged into a stream

segment without violating state water quality standards. TMDL is the sum of waste load allocation (WLA) from point sources, pollutant load allocation (LA) from nonpoint sources, and a margin of safety (MOS), or the amount of pollutant that is not allocated to account for estimation errors during derivation of WLA and LA. TMDLs are used to direct efforts at restoring and protecting water quality.

It is envisioned that the proposed TMDL planning regulation will include, among other possible planning items, the public participation process for TMDL development, procedures for submittal of proposed TMDLs to the Environmental Protection Agency (EPA) for approval, subsequent adoption of the TMDL by the State Water Control Board (board), and inclusion of TMDLs and TMDL implementation plans into the WQMPs.

The secondary proposed action is the repeal of the existing WQMPs. These plans are basin-wide or area-wide waste treatment or pollution control management plans developed in accordance with §§ 208 and 303(e) of the Clean Water Act (CWA), as implemented by 40 CFR 130. These plans identify water quality problems, consider alternative solutions and recommend pollution control measures needed to attain or maintain water quality standards. The control measures are implemented through the issuance of Virginia Pollutant Discharge Elimination System (VPDES) permits for point source discharges and through regulatory or voluntary measures for nonpoint source pollution control. The majority of the existing regulatory plans are obsolete because plan recommendations have been implemented. They continue to be carried on the books of the Virginia Registrar of Regulations. The repeal of these plans will clear the Registrar's books of unnecessary and outdated regulations and will eliminate the potential for inconsistencies with TMDLs as they are developed from more current information and collaborative input from stakeholders.

Need: Planning for the management of the quality of the waters of the Commonwealth is essential to protect the health, safety, and welfare of the citizens of Virginia. Water quality management plans identify water quality problems and propose alternative solutions and recommendations for pollution control measures needed to attain or maintain water quality standards.

Federal and state regulations require that VPDES permits be consistent with the applicable WQMPs. The plans, however, also allow for revisions in permit requirements as a result of availability of more data and more sophisticated methods of analyses. Application of newer methods, coupled with more data, usually result in permit limitations that are different from those listed in the plans. Consequently, any changes in a VPDES permit that will cause it to be inconsistent with the plan will require amendment of the plan. Separating the regulatory TMDL from the WQMP will allow processing of plan amendments in the same time frame as permit amendment or issuance, resulting in administrative and cost efficiencies.

Substance: There are currently 18 WQMPs that have been adopted as regulations by the board during the 1970's through the early 1990's. The plans identify water quality problems, consider alternative solutions and recommend

Notices of Intended Regulatory Action

pollution control measures needed to attain or maintain water quality standards.

Most of these existing WQMPs no longer reflect current conditions and need to be updated. The office of the Attorney General has ruled that because the plans contain TMDLs and their associated waste load allocations were incorporated into the VPDES permits, the plans were regulations.

Federal and state laws and regulations require the development of WQMPs; however, there is no requirement that they be regulatory. The proposal to adopt a TMDL regulation and repeal the regulatory WQMPs will provide efficiencies in the management of water quality programs in Virginia.

The existing WQMPs that will be repealed as regulations will continue to guide the board's water quality management planning activities until updated plans are completed and approved by the board. The board staff will solicit public input as the replacement plans are developed.

Alternatives: The total maximum daily load is considered to be the regulatory component of the existing WQMPs. The preferred alternative to meet the need of bringing impaired waters up to water quality standards is to (i) adopt a TMDL regulation for Water Quality Management Planning and (ii) repeal and update the existing WQMPs. The waste load allocation component of the TMDL, which controls the discharge of pollutants from point sources, will continue to be implemented through the VPDES permit program. Where applicable, regulatory load allocations will be implemented through existing state regulations (e.g., erosion control regulations). Nonregulatory load allocation will continue to be implemented through best management practices and other management strategies for controlling nonpoint sources of pollution.

One alternative that had been considered was the development of a Water Quality Management Plan Framework Regulation that will govern the development and update of WQMPs. This alternative was rejected because federal regulation already exists on specific requirements on how to develop and update WQMPs. It is thought that this is duplicative and could complicate the process of water quality management in Virginia.

Another alternative to repealing the water quality management plans is to do nothing and amend the plans as needed (through the APA process) to accommodate changes in the VPDES permits. Still another alternative is to update each individual plan and maintain them as regulations.

Public Participation: The board is seeking comments on the intended regulatory action, including ideas on how to effectively simplify the process of water quality management planning that meet both federal and state requirements, and the costs and benefits of the alternatives stated in this notice or other alternatives. A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations.

A public meeting will be held on December 6, 2000, at 2 p.m. in Glen Allen, Virginia and on December 21, 2000, at 2 p.m.

on Roanoke, Virginia. Notice of the meetings can be found in the Calendar of Events section of the Virginia Register of Regulations.

Participatory Approach: The board is using the participatory approach to develop the TMDL proposal. The board has formed an ad hoc advisory group to provide input regarding the proposed TMDL regulation and the proposal to repeal the existing WQMPs. The ad hoc advisory group is composed of representatives from state, federal and local agencies, environmental groups, manufacturing and industrial facilities and the academic community. Anyone interested in joining the existing advisory group should submit a request for the board's consideration during the Notice of Intended Regulatory Action comment period.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public comments may be submitted until January 1, 2001.

Contact: Charles Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4462 or FAX (804) 698-4136.

VA.R. Doc. No. R01-27; Filed October 11, 2000, 1:29 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic.** The purpose of the proposed action is to replace emergency regulations establishing the qualifications of 200 hours of acupuncture training including 50 hours of clinical practice for doctors of medicine, osteopathy, podiatry and chiropractic to practice acupuncture. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and Chapter 29 (54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until December 6, 2000, to Elaine J. Yeatts, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

VA.R. Doc. No. R01-28; Filed October 13, 2000, 11:21 a.m.

BOARD OF PHYSICAL THERAPY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Physical Therapy intends to consider promulgating regulations entitled: **18 VAC 112-10-10 et seq. Regulations for Public Participation Guidelines.** The purpose of the proposed action is to replace emergency regulations establishing the guidelines for public participation in the promulgation of regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1. and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until December 6, 2000, to Elaine J. Yeatts, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Physical Therapy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9924 or FAX (804) 662-9943.

VA.R. Doc. No. R01-35; Filed October 17, 2000, 11:11 a.m.

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled: **18 VAC 115-60-10 et seq. Regulations Governing the Licensure of Substance Abuse Treatment Professionals.** The purpose of the proposed action is to comply with a legislative mandate to develop a provision for licensure of individuals who meet requirements which are "substantially equivalent" to those in regulation. The board is considering three time-limited options for individuals with various combinations of substance abuse education and experience. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until December 6, 2000, to Janet Delorme, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912 or FAX (804) 662-9943.

VA.R. Doc. No. R01-34; Filed October 17, 2000, 11:09 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled: **22 VAC 40-305-10 et seq. Cash Assistance for Two-Parent Families.** The purpose of the proposed regulation is to establish a separate state program, as that term is defined by federal regulations governing the Temporary Assistance for Needy Families (TANF) Program, 45 CFR 260.30, for the purpose of providing cash assistance payments to two-parent families. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Public comments may be submitted until December 20, 2000.

Contact: Stephanie Napper, Human Services Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1736 or FAX (804) 692-1704.

VA.R. Doc. No. R01-42; Filed October 27, 2000, 2 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

This section gives notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

December 19, 2000 - 10 a.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

January 9, 2001 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia.

January 11, 2001 - 1 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 2019 Peters Creek Road, Roanoke, Virginia.

February 2, 2001 - Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-140-10 et seq. Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes.** The proposed amendments remove requirements for submittal of proof of purchase price and for equipment to be in a fixed location to qualify for state income tax credit and clarify what is not covered by the regulation.

Statutory Authority: §§ 58.1-338, 58.1-439.7, 58.1-439.8 and 58.1-3661 of the Code of Virginia.

Contact: Daniel S. Gwinner, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

November 29, 2000 - 12:30 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

January 19, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed amendment is to establish a temporary license with an 18-month term limit for residents in clinical psychology and residents in school psychology who have achieved a passing score on the Examination for Professional Practice in Psychology. Upon passing the state examinations and successful completion of the residency requirements, the temporary license will be replaced with a permanent license.

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Contact: Janet Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575 or FAX (804) 662-9943.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

January 19, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 63.1-25 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-230-10 et seq. Agency Placement Adoptions - Preplacement Services.** The purpose of the proposed action is to repeal this regulation. The requirement for development of an adoptive placement plan will be incorporated into foster care policies and procedures to be implemented at the point in time that adoption is selected as the goal for the child.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Contact: Brenda Kerr, Adoption Policy Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1290.

Public Comment Periods - Proposed Regulations

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January 19, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 63.1-25 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-480-10 et seq. Relocation Assistance General Relief Program.** This regulation provides information to local departments of social services on relocation assistance for general relief recipients. This assistance has not been used in at least five years and is unnecessary and recommended for repeal.

Statutory Authority: §§ 63.1-25 and 63.1-106 of the Code of Virginia.

Contact: Joy Duke, Adult Protective Services Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1260.

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PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.
Language which has been stricken indicates proposed text for deletion.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **9 VAC 20-140-10 et seq. Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes (amending 9 VAC 20-140-20, 9 VAC 20-140-40, 9 VAC 20-140-60 through 9 VAC 20-140-110, 9 VAC 20-140-130, 9 VAC 20-140-160, and 9 VAC 20-140-170; repealing 9 VAC 20-140-150).**

Statutory Authority: §§ 58.1-338, 58.1-439.7, 58.1-439.8, and 58.1-3661 of the Code of Virginia.

Public Hearing Date: December 19, 2000 (Richmond)
January 9, 2001 (Woodbridge)
January 11, 2001 (Roanoke)

Public comments may be submitted until February 2, 2001.

(See Calendar of Events section
for additional information)

Basis: Sections 58.1-338, 58.1-439.7, and 58.1-439.8 of the Code of Virginia specify that individuals and corporations within the Commonwealth that operate machinery and equipment that is used to process recyclable waste material may apply for a state income tax credit based on the cost of such equipment. The Department of Environmental Quality is charged with certifying that the equipment meets the criteria for recycling. These statutes also specify the amount of the tax credit and how it can be carried over.

Section 58.1-3661 of the Code of Virginia specifies that recycling equipment certified by the Department of Environmental Quality may be eligible for a local property tax exemption. This section allows the governing body of any county, city or town to exempt or partially exempt this equipment from local taxation.

Purpose: The Department of Environmental Quality has undertaken to amend the Regulations for the Certification of Recycling and Machinery for Tax Exemption Purposes (9 VAC 20-140-10 et seq.) because nine years have passed since the adoption of the regulations, and it is necessary to consider what changes are appropriate. The proposed regulatory amendments are necessary to protect the health, safety or welfare of citizens because the tax exemption promotes recycling and thereby the abatement and prevention of pollution and the conservation of natural resources.

Substance: The new substantive provisions of this amendment to the regulations are:

1. The requirement that the applicant supply proof of the purchase price has been removed. All that is required is a proof of purchase.

2. The requirement that the machinery and equipment be in a fixed location in order to qualify for a state income tax credit has been eliminated. The requirement now is that the machinery and equipment remain in the Commonwealth.

3. A requirement was added that in order to qualify for a local tax exemption, the machinery and equipment must be operated at a fixed location.

4. Clarification of what is not covered by the regulations. Not covered are:

- a. Machinery and equipment that incorporates a finished product that is made from a recyclable waste. This is one step removed from recycling;
- b. Nonprocessing or nonmanufacturing machinery and equipment;
- c. Machinery and equipment used exclusively to handle finished products;
- d. Buildings or other structures; and
- e. Repair and maintenance items.

5. Modifications to the application form.

Issues: The primary advantage to the public is clarification of what qualifies as machinery and equipment that is used to process recyclable waste material into a usable product. There are no known disadvantages to the public.

The primary advantage to the agency is that the amendment should reduce the errors in the applications for equipment certification and therefore make it easier and faster to process them. There are no known disadvantages to the agency or the Commonwealth.

A matter of interest to the regulated community is that it will no longer be necessary to document the purchase price when applying for equipment certification. Only proof of purchase will be required. However, in order to document the amount of tax credit proof of equipment cost will be required by the taxing authority.

Locality Particularly Affected: These regulations apply equally to all localities.

Public Participation: In addition to any other comments, the Virginia Waste Management Board and the Department of Environmental Quality are seeking comments on the costs and benefits of the proposal.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments must include the name, address and phone number of the commenter. In order to be considered, the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation modifies the certification process of recycling machinery and equipment for tax exemption purposes. The modifications include the removal of the certification of the purchase price requirement and clarification of what qualifies as recycling machinery and equipment.

Estimated economic impact. Under the current statutes, the Department of Environmental Quality (DEQ) is charged with the certification of recycling machinery and equipment for tax exemption purposes and is not required to certify the purchase price of these recycling tools. The current regulation, however, requires that DEQ certify the purchase price as well. The proposed regulation will remove the certification of purchase price requirement. Instead, only proof of purchase will be required.

Under the current regulations, DEQ approved 64 applications in 1997, 59 applications in 1998, 70 applications in 1999, and 23 applications in 2000 as of 09/01/2000. The sum of the purchase prices of the certified machinery amounted to \$11,882,601 in 1997, \$90,091,548 in 1998, and \$83,831,500 in 1999.¹ The total amount of the state tax credit in 1998 tax-year was \$346,031 and issued to 70 individuals or corporations.² However, the amount of personal property tax credits is not available at this time.

DEQ is not required to certify the purchase price under the current statutes, only the certification of purchase is required. Thus, the proposed changes will produce consistency between the regulations and the statutes. The removal of the proof of purchase price requirement reduces costs in three ways. First, the burden on the applicant will be reduced. The applicant will not be required to supply the proof of purchase price to DEQ. The proof of purchase price will be required only by the taxing authority to determine the exact amount of the tax credit. Second, the burden on DEQ will be reduced. The certification of the proof of purchase price by DEQ serves no practical purpose, as this issue is already being independently assessed by local taxing authorities. So, requiring DEQ staff to certify the purchase price is a waste of time and resources. The proposed amendments will eliminate this waste of time and resources. Third, the

proposed changes will reduce the processing time of the certification process. Saving time due to increased speed of the process will be beneficial for both the applicant and DEQ.

In addition, the clarification of the recycling machinery and equipment definitions is expected to produce economic benefits. DEQ indicated that there were a number of instances where the applicants were not clear about what would qualify as recycling machinery and equipment. Applicants will benefit from the change since they will have a better knowledge of what qualifies as recycling machinery and equipment. With the proposed clarifications, some resources could be saved in cases where the applicants may have doubts if a certain type of equipment or machinery qualifies for tax exemption. These resources may include the time saved by the applicant and required expenses during the certification process. Also, DEQ staff time will not be wasted on applications that have no chance of being approved.

Finally, the incentives to purchase recycling machinery and equipment for tax credit purposes will be increased. This increased incentive to purchase recycling machinery is the result of a more convenient certification process designed by the proposed changes. The expected increase in the incentives to purchase recycling machinery and equipment will benefit Virginians as the amount of recycling in the state may increase. This may lead to a small reduction in waste sent to landfills.

In conclusion, the proposed changes are expected to produce net benefits. The changes are not expected to introduce any new costs. The benefits will come from the reduction of the burden on the applicant and DEQ, increased speed of the certification process, increased precision on the definition of machinery and equipment that would qualify for tax exemption purposes, and increased incentives to purchase recycling machinery and equipment.

Businesses and entities affected. The proposed changes will directly affect about 64 applicants (average number of applications in previous three years) for the certification of recycling machinery and equipment in a year.

Localities particularly affected. The proposed changes to the regulation affect localities throughout the Commonwealth.

Projected impact on employment. The proposed changes may slightly reduce the demand for the services of accountants because of the clarification of what qualify as recycling machinery.

Effects on the use and value of private property. There could be a slight increase in the value of firms that sell recycling machinery and equipment as the demand for recycling machinery and equipment may increase as a result of increased incentives to purchase these types of goods.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comments on the analysis.

¹ Source: Department of Environmental Quality.

² Source: Department of Taxation.

Proposed Regulations

Summary:

This regulation provides for a state income tax credit for machinery and equipment that is used to process recyclable waste material into a usable product, and if the governing body of any county, city or town passes the applicable ordinance, an exemption or partial exemption from local property taxes. Substantive changes proposed in this amendment include:

1. Removing the requirement that the applicant provide proof of the purchase price. Only proof of purchase would be required.
2. Removing the requirement that the machinery and equipment be in a fixed location to qualify for a state income tax credit. However, the machinery and equipment must remain in the Commonwealth.
3. To qualify for a local tax exemption, the machinery and equipment must be operated at a fixed location.
4. Clarification of what is not covered by the regulations. These are:

- a. Machinery and equipment that incorporates a finished product that is made from a recyclable waste. This is one step removed from recycling;
- b. Nonprocessing or nonmanufacturing machinery and equipment;
- c. Machinery and equipment used exclusively to handle finished products;
- d. Buildings or other structures; and
- e. Repair and maintenance items.

5. Minor revisions to the application form.

9 VAC 20-140-20. Definitions.

The following terms have, for the purpose of this chapter, the following meaning:

"Act" means the Virginia Waste Management Act.

"Applicant" means any and all persons seeking certification of recycling machinery and equipment for tax exemption purposes.

"Certification" means a signed statement by the director of the Department of Environmental Quality that the identified machinery and equipment qualify as integral to the recycling process.

"Department" means the Department of Environmental Quality.

"Director" means the director of the Department of Environmental Quality.

"Finished product" means material that has been completely processed and is ready for sale except for packaging.

"Fixed location" means a site at which the processing or manufacturing is accomplished on a continuing basis.

"Integral to the recycling process" means that the machinery and equipment or system of machinery and equipment is used primarily to process recyclable material to meet a manufacturer's material input specifications or to incorporate recyclable material into a manufacturing process.

"Machinery and equipment" means a mechanical unit or system ~~which~~ that processes material.

"Person" means an individual, corporation, partnership, association, or any other legal entity.

"Primarily" means ~~over~~ 50% or greater of time, of usage, or of other appropriate measure.

"Process" or "processing" means preparation, treatment, or conversion of a product or material by an action, change or function or a series of actions, changes or functions that bring about a desired end result.

~~"Purchase price" means the amount for which the machinery and equipment is purchased, excluding (i) any cash discount allowed and taken, (ii) installation charges or the cost of installation, (iii) transportation charges, or (iv) charges for maintenance agreements or contracts.~~

"Recyclable" means capable of being diverted or reclaimed from the waste stream and prepared for further beneficial use through the recycling process.

"Recycled" means having reached the end of one useful life or one intended purpose, and then being converted and utilized as a raw material in the production of another product ~~which~~ that may or may not be similar to the original product. The resultant manufactured product is said to have recycled content.

"Recycling" means the process of separating a given product or material from the waste stream and processing it so that it is used again as material input for a product ~~which~~ that may or may not be similar to the original product.

9 VAC 20-140-40. Purpose of regulation.

The purpose of this regulation is to establish the procedure for certification of recycling machinery and equipment as integral to the recycling process and for use primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth, and used in manufacturing facilities or plant units ~~which~~ that manufacture, process, compound, or produce for sale recyclable items of tangible personal property at ~~fixed~~ business locations in the Commonwealth. Such certification would *also* allow the purchaser of such machinery and equipment to apply for an exemption from personal property taxes as authorized by the local taxing authority.

9 VAC 20-140-60. Applicability of regulation.

This chapter will be applicable to any applicant to the department for machinery and equipment certification, ~~providing provided~~ that this ~~person~~ applicant has incurred or will incur a tax liability to which the tax exemption can be applied.

9 VAC 20-140-70. Machinery and equipment.

A. Qualifying recycling machinery and equipment including any piece or system of machinery or equipment used at a fixed location *in the Commonwealth* primarily to process recyclable materials into a product suitable for sale. Such processing may include, but is not limited to, flattening, shredding, melting, pulping, compaction, granulation, ~~liquefaction~~ *liquefaction* or classification.

B. Qualifying recycling machinery and equipment also include any piece or system of machinery or equipment in a manufacturing facility primarily used to incorporate recycled material into a manufacturing process.

C. The following shall not qualify as recycling machinery and equipment:

1. Machinery and equipment used in the preparation of all or any part of the municipal solid waste (MSW) stream for the purpose of combustion, unless otherwise determined by the director to ~~have~~ *be a process with a significant recycling intent value.*
2. *Machinery and equipment used to incorporate a finished product with recycled content that is no longer considered to be a solid waste unless otherwise determined by the director.*
3. *Machinery and equipment used exclusively to handle finished products unless otherwise determined by the director.*
- ~~2-~~ 4. Nonprocessing or nonmanufacturing machinery and equipment.
- ~~3-~~ 5. Buildings or other structures.
6. *Repairs and maintenance items.*

9 VAC 20-140-80. Location.

In order to qualify *for state tax credit*, recycling machinery or equipment must be operated at a facility located in Virginia. *To qualify for local tax exemption, recycling machinery or equipment must be operated at a fixed location in Virginia.*

9 VAC 20-140-90. Pollution abatement.

Recycling includes the ~~exclusion and redirection~~ *diversion* of material from the waste stream, thereby reducing the amount of material that ultimately has to be deposited in a solid waste management disposal facility *or discharged into the environment*. Therefore, recycling can reduce the potential for pollution, and a facility (and the related machinery and equipment) ~~which that~~ processes recyclables to a manufacturer's specifications or utilizes recycled materials in production shall qualify as a pollution abatement system.

9 VAC 20-140-100. Equipment documentation.

In order to be considered for a certificate, the purchaser of the recycling machinery and equipment must ~~file Form DWM50-11 with~~ *apply* to the department, providing at a minimum:

1. The purchaser's name and address;

2. The name and location of the facility in which the machinery and equipment will be used;

3. A *complete* description of the machinery and equipment and a *complete description* of its intended use in the facility;

4. A statement by the purchaser of the machinery and equipment that would qualify the purchase for tax consideration; *and*

~~5. The purchase price of the machinery and equipment, i.e., the base amount on which the current value is to be computed for the purpose of the tax exemption; and~~

~~6-~~ 5. Documentation of ownership (copies of receipts, vouchers, or paid invoices) appropriate for filing with the local taxing authority.

9 VAC 20-140-110. Department certification.

The department will review the information provided ~~on Form DWM50-11~~ to determine if the machinery or equipment meets the criteria specified in the Code of Virginia. This application review will follow the process established by 9 VAC 20-140-170 B.

9 VAC 20-140-130. Certification period.

Machinery and equipment certified through this process shall retain certification status until its operation no longer complies with the standards established in ~~Part III of this chapter~~ 9 VAC 20-140-70.

9 VAC 20-140-150. Severability. (Repealed.)

~~A. If any provision or part of this chapter is held invalid, unconstitutional or inapplicable to any person, or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of these regulations and their application.~~

~~B. This chapter supersedes and replaces all previous regulations of the department to the extent that those prior regulations conflict with the regulations presented here. Prior regulations remain in effect where no conflict exists.~~

~~C. This chapter shall remain in effect until the Virginia Waste Management Board, in subsequent formal action, shall amend, rescind or otherwise alter it. Such an action will be specific in its detail and cite these regulations by their title. Where there appears to be a conflict with these regulations and regulations adopted at a future date, and such future regulations do not specifically clarify this chapter, this chapter shall be superior.~~

~~D. These regulations are completely separate from all federal regulations.~~

9 VAC 20-140-160. General.

The applicant affected by this chapter may petition the director to grant a variance or an exemption from any of this chapter, subject to the provisions of this part. ~~Any petition submitted to the director is also subject to the provisions of the Administrative Process Act.~~

Proposed Regulations

9 VAC 20-140-170. Administrative procedures.

A. General petitioning requirements. The petition shall be submitted to the director by certified mail and shall include:

1. The petitioner's name and address;
2. A statement of petitioner's interest in the proposed action;
3. A description of desired action and a citation of the regulation from which a variance is requested;
4. A description of need and justification for the proposed action;
5. The duration of the variance, if applicable;
6. The potential impact of the variance on public health or the environment;
7. Other information believed by the applicant to be pertinent; and
8. The following statement signed by the petitioner or authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

B. Petition processing.

1. After receiving a petition that includes the information required in ~~9 VAC 20-140-170 A subsection A of this section~~, the director will determine whether the information received is sufficient to render the decision. If the information is deemed insufficient, the director will specify additional information needed and request that it be furnished.
2. The petitioner may submit the additional information requested, or may attempt to show that no reasonable basis exists for additional information. If the director agrees that no reasonable basis exists for the request for additional information, he will act in accordance with ~~9 VAC 20-140-170 B 3 subdivision 3 of this subsection~~. If the director continues to believe that a reasonable basis exists to require the submission of such information, he will proceed with the denial action in accordance with the Administrative Process Act.
3. ~~After the petition is deemed complete: Decisions to grant or deny a petition are subject to the provisions of Article 3 of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~
 - a. ~~The director will make a tentative decision to grant or deny the petition.~~
 - b. ~~Where the petition is tentatively denied, the director will offer the petitioner the opportunity to withdraw the~~

~~petition, submit additional information, or request the director to proceed with the evaluation.~~

~~e. Upon a written request of the applicant, the director may, at his discretion, hold an informal fact-finding meeting described in § 9-6.14:11 of the Administrative Process Act. The person requesting a hearing shall state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The director may in any case decide on his own motion to hold such a meeting.~~

~~d. After evaluating all comments, the director will within 15 days after the expiration of the comment period, notify the applicant of the final decision.~~

C. Petition resolution. If the director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the director that the petitioner has failed to comply with any ~~variance~~ requirements *of the variance*.

NOTICE: The forms used in administering 9 VAC 20-140-10 et seq., Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Form DEQ 50-11, Recycling Machinery Equipment Certification (eff. 5/30/00).

FORM DEQ 50-11
RECYCLING MACHINERY EQUIPMENT CERTIFICATION
(SEE REGULATIONS FOR ELIGIBILITY)

Application for _____ State Tax Credit _____ Local Tax Exemption

Part I

Name(s) as shown on Virginia Tax return

Telephone Number () -

Account number

Street

City, State, and Zip Code

Part II
EQUIPMENT INFORMATION

Name of facility where equipment will be used (include all)

Street

City, State, and ZIP code

Provide description of equipment, its intended use, year paid for equipment (attach proof of purchase, drawings, etc., as appropriate). Submit one application form for all the equipment to be certified. Please attach a description of recycling activities pertaining to this application.

If the facility has received any DEQ certifications in the past, please list the DEQ Application Numbers and the year for which the equipment was certified. (This is optional and not required for certification).

List the number of Attachments:

Proposed Regulations

I certify that the above information is true, correct and complete, and that the above machinery and equipment identified is to be used primarily for the processing of recyclable materials as defined in §§ 58.1-338, 58.1-439.7 or 58.1-439.8 of the Code of Virginia.

Signature of taxpayer /Title

Date

Print or type the name of taxpayer signing:

Department of Environmental Quality Certification. Based on the above information and the statement of the applicant, I hereby certify that the identified machinery and equipment qualifies as integral to the recycling process as defined in §§58.1-338, 58.1-439.7 or 58.1-439.8 of the Code of Virginia.

Comments:

Signature

Director, Department of Environmental Quality

Date

Revised 5/30/00

INSTRUCTIONS FORM DEQ 50-11

GENERAL

~~For tax years beginning on and after January 1, 1993 but before January 1, 2001, individuals and corporations may receive an income tax credit for the purchase of machinery and equipment used exclusively in or on the premises of manufacturing facilities or in plant units which manufacture, process, compound or produce items of tangible personal property from recyclable materials (Code of Virginia §§ 58.1-338, 58.1-439.7 and 58.1-439.8). The credit is an amount equal to ten percent of the purchase price paid during the taxable year, but shall not exceed forty percent of the Virginia income tax liability of such taxpayer, or sixty percent of the Virginia income tax liability for those corporations qualifying under § 58.1-439.8 of the Code of Virginia. This is a nonrefundable credit, however, if the allowable credit exceeds the Virginia tax liability for the taxable year in which the purchase price on recycling machinery and equipment was paid, it may be carried over for credit against the individual's or corporation's income taxes in the ten succeeding taxable years until the total credit is used, or in the case of those corporations qualifying under § 58.1-439.8 of the Code of Virginia, twenty succeeding years.~~

For tax years beginning on and after January 1, 1993 but before January 1, 2001, those individuals and corporations which qualify under Code of Virginia §§ 58.1-338, and 58.1-439.7 may receive an income tax credit for the purchase of machinery and equipment used primarily in or on the premises of manufacturing facilities or in plant units which manufacture, process, compound or produce items of tangible personal property from recyclable materials. For those corporations qualifying under § 58.1-439.8 of the Code of Virginia, the tax years are on and after January 1, 1998 but before January 1, 2003. The credit is an amount equal to ten percent of the purchase price paid during the taxable year, but shall not exceed forty percent of the Virginia income tax liability of such taxpayer (Code of Virginia §§ 58.1-338 and 58.1-439.7), or sixty percent of the Virginia income tax liability for those corporations qualifying under § 58.1-439.8 of the Code of Virginia. This is a nonrefundable credit, however, if the allowable credit exceeds the Virginia tax liability for the taxable year in which the purchase price on recycling machinery and equipment was paid, it may be carried over for credit against the individual's or corporation's income taxes in the ten succeeding taxable years until the total credit is used (Code of Virginia §§ 58.1-338 and 58.1-439.7), or in the case of those corporations qualifying under § 58.1-439.8 of the Code of Virginia, twenty succeeding years.

The machinery and equipment must be certified by the Department of Environmental Quality as integral to the recycling process as defined in §§ 58.1-338, 58.1-439.7 and 58.1-439.8 of the Code of Virginia.

The Department of Environmental Quality has developed this form to assist persons applying for the machinery and equipment certification, and to expedite the certification process. However, you are not required to use this form to apply for certification.

LOCAL TAX OPTION

Once certified, the machinery and equipment may also qualify for a local tax exemption based on current value assessment by taxing authority. Please indicate (by checking the appropriate box at the top of the form) if you would like the form used for local tax exemption. Contact your local governing body for information.

PART I

Enter the name, address, phone number, and account number, of the individual or corporation as it appears on the Virginia income tax return.

PART II

Enter the name and physical address of the facility where the machinery and equipment are located. Provide a detailed description of the machinery and equipment and its intended use in the facility with drawings, specifications and operating parameters.

Attach any necessary descriptions or documents which demonstrate the use of the machinery and equipment. Mail the completed form and attachments to the address below:

Department of Environmental Quality
Attention: Machinery and Equipment Certification Officer ~~7th Floor~~
~~629 East Main Street~~
PO Box 10009
Richmond, VA 23240-0009

For assistance call:

(804) 698-4145 Department of Environmental Quality
(804) 698-4021 TDD

Upon certification, the form and attachments will be returned to you. In order to qualify for a state income tax credit, the form (or other certification document) along with documentary proof of the purchase price paid (original cost plus other capitalized costs incurred to put the machinery or equipment in service, but not including capitalized interest), will need to be attached to your Virginia income tax return when filed with the Department of Taxation.

For assistance call: (804) 367-~~8036~~8104 Department of Taxation

VA.R. Doc. No. R00-59; Filed October 27, 2000, 12:46 p.m.

Proposed Regulations

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Title of Regulation: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology (adding 18 VAC 125-20-85).**

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Public Hearing Date: November 29, 2000 - 12:30 p.m.

Public comments may be submitted until January 19, 2001.

(See Calendar of Events section for additional information)

Basis: Section 54.1-2400 of the Code of Virginia establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure; ensure the competence and integrity of regulated practitioners; examine applicants; establish renewal schedules; administer fees to cover the administrative expenses of the regulatory program; and take disciplinary action for violations of law and regulations.

The board is authorized under § 54.1-3605 to issue temporary licenses to individuals engaged in a residency.

Purpose: Over the past few years, the board has been petitioned on several occasions by the Directors of the Division of Medical Psychology and the Residency in Clinical Psychology at the University of Virginia's Department of Psychiatric Medicine to establish a provision in regulations for temporary licensure of residents in clinical psychology. The problem identified in the letters was the threat to the continued existence of the residency program resulting from the refusal of third party payers and Medicaid to reimburse for services provided by clinical psychology residents. The resulting limitation on postdoctoral training opportunities for psychologists has been recognized as a problem at the national level by the Association of State and Provincial Psychology Boards and the Association of Medical School Psychologists.

The board considers Virginia's medical school residencies valuable training facilities for clinical psychology residents in Virginia. A difficult part of the licensure process is for applicants to be accepted into a residency position, which are limited and very competitive. The board recognizes that the loss of the medical school residency programs will eliminate valuable training opportunities. This would increase the burden on applicants to compete for increasingly limited residency opportunities.

The board is responding to these concerns by exercising its statutory authority to establish provisions for temporary licensure for clinical and school psychology residents. This action will benefit the health and welfare of populations

served by psychology residents who otherwise could not afford these services.

Substance: The amendment adds a new section that establishes the titles "Licensed Resident in Clinical Psychology" and "Licensed Resident in School Psychology" for individuals who have registered a residency with the board and documented passing scores on the Examination for Professional Practice in Psychology. The temporary license will be replaced with a permanent license after successful completion of the residency, but will not extend beyond 18 months without good cause demonstrated by the resident.

Issues: Advantages and disadvantages to the public. If third party payers will reimburse for the services of residents holding the temporary license, more practitioners will be able to serve patients.

If residents are able to obtain reimbursement for their services, the availability of residency opportunities will increase.

Advantages and disadvantages to the Commonwealth. If third party payers will reimburse for the services of residents holding the temporary license, it will alleviate funding difficulties for Virginia's state hospitals and medical schools that provide services to poor and indigent populations.

The cost to the board to administer the temporary license will be minimal since no additional review time will be required beyond the initial review of the residency contract and education documentation. The cost of mailing the license is estimated at \$5.00 per resident.

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Psychology proposes establishing a temporary license with an 18-month term limit for postdoctoral residents in clinical psychology or school psychology who have achieved a passing score on the Examination for Professional Practice in Psychology. Upon passing the state examinations and successful completion of the residency requirements, the temporary license will be replaced with a permanent license.

Estimated economic impact. The proposed temporary licensure provision addresses petitions received by the Directors of the Division of Medical Psychology and the Residency in Clinical Psychology at the University of Virginia's Department of Psychiatric Medicine. The problem identified by these individuals is the threat to the continued

existence of residency programs resulting from the refusal of third party payers to reimburse for services provided by clinical psychology residents. However, the board had no information on whether third party payers would recognize the proposed temporary license.

There will be no additional cost for applicants to obtain the temporary license since no additional review is required after the passing examination score is received in the board office. There is also not expected to be any change in the quality of services received by patients since the resident would continue to practice only under the supervision of a fully licensed clinical psychologist. While there are no anticipated costs associated with the proposed temporary license, there is also no evidence of any benefits.

Businesses and entities affected. According to the Department of Health Professions, approximately 100 individuals register residencies with the Board of Psychology each year.

Localities particularly affected. No localities are particularly affected by the proposed regulation.

Projected impact on employment. The proposed regulation is not anticipated to have a significant effect on employment.

Effects on the use and value of private property. The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget on proposed regulations for 18 VAC 125-20-10 et seq. (Regulations Governing the Practice of Psychology).

Summary:

The proposed amendment establishes a temporary license with an 18-month term limit for residents in clinical psychology and residents in school psychology who have achieved a passing score on the Examination for Professional Practice in Psychology. Upon passing the state examinations and successful completion of the residency requirements, the temporary license will be replaced with a permanent license.

18 VAC 125-20-85. Temporary licensure.

Upon receipt of official documentation of passing scores on the Examination for Professional Practice in Psychology and a notarized affidavit attesting to having read and understood the laws and regulations governing psychology in Virginia, the board may issue a resident license in clinical psychology or a resident license in school psychology for a period of 18 months to candidates who have completed all of the requirements for licensure except for a board-approved residency, the state practice examination and the state jurisprudence examination. The temporary license shall expire upon the holder's termination or completion of the residency. Violating or aiding and abetting another to violate any statute applicable to the practice of psychology or any provision in this chapter may result in the revocation of the temporary license. The board may renew a resident's license

only for good cause and only once. Persons licensed under this section shall use the title Licensed Resident in Clinical Psychology or Licensed Resident in School Psychology.

VA.R. Doc. No. R00-52; Filed November 1, 2000, 11:15 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-230-10 et seq. Agency Placement Adoptions - Preplacement Services (REPEALING).**

Statutory Authority: § 63.1-25 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until January 19, 2001.

(See Calendar of Events section for additional information)

Basis: Section 63.1-25 of the Code of Virginia requires the board to make regulations as may be necessary to carry out the provisions of Title 63.1 of the Code of Virginia. Section 63.1-56 of the Code of Virginia grants authority to the State Board of Social Services to promulgate regulations for the provision of foster care services that shall be directed toward the prevention of unnecessary foster care placements and toward the permanent planning for children in the custody of or placed by local boards of social services.

Purpose: The department is seeking to repeal this regulation. The requirement for development of an adoptive placement plan will be incorporated into foster care policies and procedures to be implemented at the point in time that adoption is selected as the goal for the child.

Substance: This regulation requires development of a foster care service plan that identifies the specific services that will be provided to achieve the goal of adoption for the child.

Issues: The responsibility for developing an Adoptive Placement Plan has been transferred to the foster care section and replaced by a filing of an Adoption Progress Report to the juvenile court within six months of a termination of parental rights and every six months thereafter. Thus, children will be more closely monitored by the court to ensure that progress is being made to find adoptive homes for children in foster care who cannot return to their birth families.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with

Proposed Regulations

the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Department of Social Services (DSS) proposes to repeal this regulation, which requires the development of an adoption placement plan when adoption is selected as the goal for a child in foster care. DSS proposes to repeal this regulation since it is unnecessary and redundant with existing state and federal law.

Estimated economic impact. This regulation requires local social service agencies to reassess the needs of children in foster care after 12 months. If that assessment, or any other, results in a decision to change the child's goal to adoption, the agency must file a petition with the juvenile court to terminate parental rights and develop an adoption placement plan to ensure that adoptions for children in foster care are facilitated in a timely manner.

Existing state and federal law requires that a foster care service plan be developed within six months of placing a child in foster care and that the child's situation and goals be reassessed every six months following. A new service plan must be submitted to the court if the child's goal is changed. According to DSS staff, the adoption placement plan required by this regulation is simply a foster care service plan when the goal is adoption.

In addition, state legislation passed in 1998 requires agencies to submit adoption progress reports to the juvenile court six months following termination of parental rights and every six months thereafter until finalization of the adoption. This allows children to be closely monitored by the court to ensure that progress is being made to find adoptive homes for children in foster care who cannot return to their birth parents.

Repeal of this regulation will not change any of the planning or reassessment requirements for children in foster care or reduce the efforts made to find permanent homes for children whose goal is adoption. Therefore, no economic impact from this repeal is expected.

Businesses and entities affected. No businesses or other entities will be affected by the repeal of this regulation.

Localities particularly affected. No localities are uniquely affected by the repeal of this regulation.

Projected impact on employment. The repeal of this regulation is not anticipated to have any effect on employment.

Effects on the use and value of private property. The repeal of this regulation is not anticipated to have any effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the assessment by the Department of Planning and Budget.

Summary:

This regulation requires the development of an adoption placement plan when adoption is selected as the goal for a child in foster care. The regulation is redundant with existing state and federal law and, therefore, is proposed for repeal.

VA.R. Doc. No. R99-234; Filed October 27, 2000, 2:00 p.m.

* * * * *

Title of Regulation: **22 VAC 40-480-10 et seq. Relocation Assistance General Relief Program (REPEALING).**

Statutory Authority: §§ 63.1-25 and 63.1-106 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until January 19, 2001.

(See Calendar of Events section for additional information)

Basis: The state's authority to promulgate this regulation is found in §§ 63.1-25 and 63.1-106 of the Code of Virginia. Section 63.1-25 mandates the State Board of Social Services to make such rules and regulations as necessary or desirable to carry out the true purpose and intent of Title 63.1 of the Code of Virginia. Section 63.1-106 sets forth certain mandates if a local board has exercised its option to establish a general relief program.

Purpose: The purpose of this regulation is to specify eligibility requirements for relocation assistance and to indicate what items may be covered by the assistance, to address maximum payments, and to describe the types of family units that may be eligible.

As a result of the periodic review process, it was determined that this regulation is no longer necessary to protect the health, safety, or welfare of citizens or for the efficient and economical performance of an important governmental function. A review of the use history of this general relief component indicated that it has not been used by the local department of social services in at least five years.

Substance: This regulation is recommended for repeal as it is no longer necessary. Relocation assistance is currently not offered by any local department of social services and has not been offered for at least the past five years.

Issues: Elimination of this regulation will contribute to the Governor's Executive Order 25 (98), which requires that unnecessary and burdensome regulations be repealed. A use history of the relocation assistance component of the general relief program indicates that this component has not been utilized in at least five years.

The repeal of this regulation is an administrative matter concerned with efficient and economical performance of state government. It is an unused, defunct regulation. It will not have an impact on the institution of the family or family stability.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in

accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Social Services has determined that this regulation is no longer needed and proposes to repeal the relocation assistance component of the general relief program since a use history indicated that only one local agency had used the component in the last five years.

Estimated economic impact. The general relief program is an optional program funded by state and local funds with the primary purpose of assisting individuals who do not qualify for aid in a federal category. The program is supervised by the state Department of Social Services and administered by local agencies. Each agency chooses the components and subcomponents to be included in its general relief program. This regulation specifies eligibility requirements, covered items, and maximum payment (\$500) for the relocation assistance component of the general relief program.

According to the Department of Social Services (DSS), this component is currently included in the general relief plans of 10 localities but has only been used by one of the 10 in the last five years. The repeal of this regulation will prevent localities from offering state and local funded relocation assistance in the future, but will not preclude a local department from using local funds to assist an individual with relocation expenses. During the development of the NOIRA, DSS conducted a survey of local departments that offered relocation assistance, including the one department that had used the component, and found no objections to its elimination.

Since this service is not currently being utilized and is not expected to be used in the future, eliminating this program will not have any economic impact.

Businesses and entities affected. The repeal of this regulation will affect the 10 local departments of social service that currently include relocation assistance in their general relief plans that will be required to submit new plans removing the component

Localities particularly affected. No localities will be particularly affected by the proposed repeal since the service is not currently being utilized.

Projected impact on employment. The proposed repeal is not anticipated to have a significant effect on employment.

Effects on the use and value of private property. The proposed repeal is not anticipated to have a significant effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The Board of Social Services has determined that this regulation is no longer needed and proposes to repeal the relocation assistance component of the general relief program since a use history indicated that only one local agency had used the component in the last five years.

VA.R. Doc. No. R99-237; Filed October 27, 2000, 2:00 p.m.



FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 F of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-110-10 et seq. **Pertaining to Lobsters (amending 4 VAC 20-110-10 through 4 VAC 20-110-60; adding 4 VAC 20-110-15, 4 VAC 20-110-55, and 4 VAC 20-110-65).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 30, 2000.

Summary:

The amendments establish prohibitions on the possession of V-notched female lobsters, lobsters that have been speared, and while on board a vessel, the possession of parts of lobsters that have been separated from the lobster. Further, lobster traps are required to contain a ghost panel, the construction of which is specified. Landing limits are established for nontrap fishermen at 100 lobsters per day up to a maximum of 500 lobsters per trip, for trips five days or longer.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-110-10. Purpose.

The purpose of this chapter is to conserve and protect the lobster ~~Homarus americanus~~ from overfishing and to provide consistency among federal and interstate laws and regulations.

4 VAC 20-110-15. Definitions.

"Carapace" means the unsegmented body shell of the American lobster.

"Carapace length" means the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace.

"Ghost panel" means a panel, or other mechanism, designed to allow for the escapement of lobster after a period of time if the trap has been abandoned or lost.

"Lobster" means any crustacean of the species *Homarus americanus*.

"V-notched female lobster" means any female lobster bearing a V-shaped notch (i.e., a straight-sided triangular cut without setal hairs, at least 1/4 inch in depth and tapering to a sharp point) in the flipper next to the right of the center flipper as viewed from the rear of the female lobster. V-notched female lobster also means any female that is mutilated in a manner that could hide, obscure or obliterate such a mark.

4 VAC 20-110-20. Minimum size.

It shall be unlawful for any person to possess for a period longer than is necessary for immediate measurement a lobster of the species ~~Homarus Americanus~~ of less than 3-1/4 inches in carapace length, ~~measured from the rear of eye socket along a line parallel to the center line of body shell to the rear end of the body shell,~~ except for scientific purposes and with the express written consent of the Commissioner of Marine Resources.

4 VAC 20-110-30. ~~Egg-bearing females Possession prohibitions.~~

A. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of the presence of eggs, any female egg-bearing lobster of ~~the species Homarus americanus~~, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources.

B. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of unnatural removal of eggs, a lobster of ~~the species Homarus americanus~~ that has been scrubbed or has in any manner other than natural hatching had the eggs removed therefrom.

C. *It shall be unlawful to possess a V-notched female lobster. The prohibition on possession of a V-notched female lobster applies to all persons, including but not limited to fishermen, dealers, shippers, and restaurants.*

D. *It shall be unlawful to possess a lobster that has an outer shell that has been speared.*

4 VAC 20-110-40. Marking of lobsters.

It shall be unlawful for any person to notch, cut, scrape, pierce, or in any like manner provide for the marking of lobster of ~~the species Homarus Americanus~~, except for scientific purposes and with the express written consent of the Commissioner of Marine Resources.

4 VAC 20-110-50. ~~Picked or cooked Lobster parts.~~

It shall be unlawful for any person to possess aboard any vessel or to land picked or cooked meat of the lobster of ~~the species Homarus Americanus~~, lobster meats, detached tails or claws, or any other part of a lobster that has been separated from the lobster.

4 VAC 20-110-55. Gear requirements.

All lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) shall contain a ghost panel. The opening in a trap to be covered by the ghost panel shall be rectangular and shall not be less than 3-3/4 inches (9.53) by 3-3/4 inches (9.53cm). The panel shall be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath; cotton; hemp; sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter; or nonstainless, uncoated ferrous metal not greater than 3/32 inch (0.24cm) in diameter. The door of the trap may serve as the ghost panel if fastened with a material specified in this section. The ghost panel shall be located in the outer parlor(s) of the trap and not the bottom of the trap.

4 VAC 20-110-60. License required.

In accordance with the provisions of § 28.2-201 of the Code of Virginia, the Marine Resources Commission does hereby establish a Lobster Boat License to be valid for one calendar year and does hereby require that each such vessel engaged in the fishing for or landing of lobster of the species *Homarus Americanus* within or upon the waters within the jurisdiction of the Commonwealth procure and display such license provided that such vessel be not otherwise licensed for fishing by the Marine Resources Commission or engaged in the use of fishing gear that is not otherwise licensed by the Marine Resources Commission. The fee for such Lobster Boat License shall be \$100, except that any boat using less than 200 pots shall pay \$25.

4 VAC 20-110-65. Landing limit.

Landings by fishermen using gear or methods other than traps (nontrap fishermen) shall be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips five days or longer. Possession by any nontrap fishermen aboard any vessel on Virginia waters or the landing by any nontrap fishermen of quantities greater than those specified shall constitute a violation of this chapter.

VA.R. Doc. No. R01-48; Filed October 30, 2000, 10:30 a.m.

Title of Regulation: 4 VAC 20-252-10 et seq. Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-30).

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: October 30, 2000.

Summary:

The amendment extends the legal hours for commercial hook-and-line fishing within 300 feet of bridges, bridge-tunnels, jetties, and piers during the open recreational fishing season from midnight Sunday through 6 a.m. Friday.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission,

P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-252-30. General prohibitions and requirements.

A. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, except in accord with the provisions of Title 28.2 of the Code of Virginia and in accord with the provisions of this chapter.

B. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, during a time, from an area, and with a gear type when there is no open season set forth in this chapter for such time, area, and gear type.

C. Except for those persons permitted in accordance with 4 VAC 20-252-170, it shall be unlawful for any person to possess any striped bass less than 18 inches total length at any time.

D. It shall be unlawful for any person to possess any striped bass that measures less than the minimum size or more than the maximum size applicable to the open season when fishing occurs.

E. Total length measurement of striped bass shall be in a straight line from tip of nose to tip of tail.

F. It shall be unlawful for any person while aboard any boat or vessel or while fishing from shore or pier to alter any striped bass or to possess any altered striped bass such that its total length cannot be determined.

G. It shall be unlawful for any person to spear or gaff, or attempt to spear or gaff any striped bass at any time.

H. It shall be unlawful for any person to use a commercial hook and line within 300 feet of any bridge, bridge-tunnel, jetty, or pier during *Thanksgiving Day and the following day or during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through midnight Wednesday 6 a.m. Friday.*

I. Unless specified differently in other regulations, it shall be unlawful to place, set, or fish any gill net within 300 feet of any bridge, bridge-tunnel, jetty, or pier during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through midnight Wednesday.

J. During the period April 1 through May 31, inclusive, it shall be unlawful for any person to set or fish any anchored gill net or staked gill net, for any purpose, within the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers. Drift or float gill nets may be set and fished within the spawning reaches of these rivers during this period, provided that the person setting and fishing the net remains with the net during the time it is fishing and all striped bass that are caught shall be returned to the water immediately.

K. Holding any permit issued by the commission to fish for striped bass, recreationally or commercially, shall authorize any commission personnel or their designees to inspect,

Final Regulations

measure, weigh, or take biological samples from any striped bass in possession of the permit holder.

VA.R. Doc. No. R01-43; Filed October 30, 2000, 10:28 a.m.

* * * * *

Title of Regulation: 4 VAC 20-337-10 et seq. Submerged Aquatic Vegetation (SAV) Transplantation Guidelines.

Statutory Authority: § 28.2-203 of the Code of Virginia.

Effective Date: November 1, 2000.

Summary:

This regulation offers technical assistance and guidance to applicants interested in transplanting submerged aquatic vegetation (SAV) in Virginia waters for restoration, mitigation or other purposes. This regulation also establishes a permitting process that provides the Marine Resources Commission with an additional management tool for evaluating SAV transplantation requests to ensure that these projects have the highest likelihood of success while minimizing impacts to this important resource and reducing potential use conflicts associated with the transplantation activities.

Agency Contact: Copies of the regulation may be obtained from Jay M. Woodward, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-8032.

CHAPTER 337. SUBMERGED AQUATIC VEGETATION (SAV) TRANSPLANTATION GUIDELINES.

4 VAC 20-337-10. Definitions.

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

"Commission" means the Virginia Marine Resources Commission.

"Donor bed" means a naturally-occurring area of SAV growing on state-owned subaqueous bottom.

"Enhancement" means the increase in areal coverage or improvement in habitat quality of existing SAV beds.

"Mitigation" means activities such as enhancement and restoration that are undertaken to reduce or eliminate the adverse effects on SAV by permitted projects.

"Restoration" means the return of SAV to unvegetated bottom that historically supported SAV.

*"Submerged aquatic vegetation" or "SAV" means any of a diverse assemblage of underwater plants found in the shoal areas of Chesapeake Bay, Virginia, coastal bays and river tributaries, primarily eelgrass (*Zostera marina*) and widgeon grass (*Ruppia maritima*), and including but not limited to Eurasian watermilfoil (*Myriophyllum spicatum*), redhead grass (*Potamogeton perfoliatus*), wild celery (*Vallisneria americana*), common elodea (*Elodea canadensis*), water stargrass (*Heteranthera dubia*), coontail (*Ceratophyllum**

demersum), water-weed (*Egeria densa*), muskgrass (*Najas minor*), pondweeds (*Potamogeton sp.*), and naiads (*Najas sp.*).

"Test plot" means a small area where transplanted SAV can be monitored to demonstrate the likelihood of success of large-scale planting efforts.

"Transplantation" means the removal of SAV from a donor bed or nursery-grown location in order to relocate the plants to other areas that historically supported, or have the potential to support, SAV populations for enhancement or restoration purposes.

4 VAC 20-337-20. Background.

A. Submerged aquatic vegetation (SAV) is an important natural resource that provides a variety of ecological functions, including stabilizing sediments, physically baffling wave energy, reducing water column turbidity, recycling water column nutrients, and providing high levels of primary and secondary production. SAV is considered to be of extremely high habitat value to commercially and recreationally important species of fish and shellfish, and is considered to be the primary settling habitat for young blue crabs in the Chesapeake Bay. SAV is estimated to have historically covered approximately 600,000 acres of the entire Bay. However, severe declines were noted in the 1960s and 1970s, likely due to increasing nutrient and sediment inputs from development within the watershed. Natural revegetation has occurred in some areas, yet many areas remain either completely unvegetated, sparsely vegetated, or contain lower diversity of species than what occurred historically. As of 1998, SAV covered only about 63,000 acres of the Bay.

B. The commission's Subaqueous Guidelines, in effect since 1976, stress the need to avoid impacts to SAV when permitting projects over state-owned bottom. In addition, since 1987, various governmental agencies around the Bay have adopted policies and laws to help protect and restore SAV from further loss. In an effort to mitigate the unavoidable impacts of permitted projects on SAV and assist interested parties in designing SAV restoration projects, the Virginia Institute of Marine Science (VIMS) has developed general and specific criteria for transplantation activities designed to enhance or restore the Bay's SAV resources. These guidelines are designed to ensure that any such proposed activities have the highest likelihood of success while minimizing the potential for adversely impacting this sensitive and valuable marine resource.

4 VAC 20-337-30. Permitting.

A. Any removal of naturally-occurring SAV from state bottom or planting of nursery stock SAV for any purpose, except as part of a prior-approved research or scientific investigation, shall require prior approval by the commission. In determining whether to grant approval for SAV removal or planting, the commission shall be guided by § 28.2-1205 of the Code of Virginia and this chapter, or any new and improved methodologies as approved by the commission. Permits will be valid for a period of three years, but may be revoked upon a finding by the commission that the permittee failed to meet the monitoring and/or reporting requirements, or deviated from the specific activities authorized by permit.

Permit fees and royalties shall be assessed in accordance with § 28.2-1206 of the Code of Virginia. Extraction of plants for commercial resale purposes is prohibited. Out-of-state and out-of-watershed transfers will be critically evaluated.

B. Any request to remove SAV from or plant SAV upon state bottom shall be accompanied by a completed Joint Permit Application (JPA), submitted to the Commission, that must include specific information that is critical to properly evaluate the probabilities of transplantation success while minimizing impacts to established donor bed populations. This information also allows scientists and regulators to track the progress of various projects and learn from previous projects which methods and sites are promising for further restoration or enhancement efforts. The specific information required will include the following:

1. *Project specifics.* Applicants for collections of wild stock SAV for transplanting should include a description of the purpose of the activity. This includes a classification of the activity as a research project, educational or environmental organization restoration project, or mitigation project for permitted SAV impacts. The exact location of the donor and transplant site(s) should be indicated on a chart or map, including latitude and longitude. The species and quantities of plants to be collected and/or transplanted should be reported, as well as the methods planned for collection, transport and transplanting. Detailed criteria for each of these issues are included in the next sections.

2. *Site selection.* To evaluate the suitability of the proposed site, factors should be considered as follows:

- a. Site should be within salinity range for the species to be transplanted.

- b. Site should historically have supported SAV as evidence through historical photographs, surveys, or other sources of information.

- c. Planting depths should be limited to shallow waters. A depth range of 0.75 meters to one meter (MLW) is recommended for eelgrass and shallower for other species. No plantings will be authorized in the intertidal zone.

- d. Sediments should be sandy with a lower silt/clay content (less than 5.0% organics). Resuspension resulting in reduced light levels is less likely with sandy sediments. However, in protected areas SAV has been found to survive well in muddier substrates.

- e. Currents should be less than 30 cm/sec, as transplants are vulnerable to being uprooted for several days until roots and rhizomes begin to grow and anchor the plant. Sites that are protected from large waves are more likely to become established.

- f. Any enclosure or other protective structure proposed must be described in detail with accompanying sketches and notes.

- g. Applicants should be able to demonstrate that a site is likely to succeed. This can be done through the reporting of the success of past plantings at the area,

by the presence of natural grassbeds within 500 meters of the site, or by test plot survival for one year. If the proposed site has never been planted and is far from existing beds, collections and transplantings may be limited to small scale test plots until success can be demonstrated. If plants survive beyond one year, larger transplanting efforts could be considered by the commission. It is important to note that the purpose of requiring test plots for transplant projects is to protect natural beds from net losses in case the transplant site is unsuitable for SAV survival. However, if the source material for a project is from a nursery or a source other than natural donor bed collections, the risk to existing beds is removed and restoration may be considered for larger scale projects even if initial test plots survival is poor (i.e., less than 50%).

- h. Removal of SAV from, or planting or transplanting of SAV to, areas of privately leased oyster planting ground will not be authorized without the express written consent of the leaseholder.

3. *Transplanting: source, technique and timing.* To reduce the impacts on natural beds of SAV, plants for restoration projects should be obtained from aquatic nursery or greenhouse stock if at all possible. Currently, there are several nursery-grown sources of freshwater species in the Chesapeake region. However, if wild stock collections from natural donor beds are required (such as with eelgrass), criteria should be met as follows:

- a. The donor beds should be a density class of "3" or "4" according to latest VIMS aerial survey, and should be from larger beds so that the amount of grass removed from a bed relative to total bed size is minimized. Care should be taken to minimize secondary effects of removal (e.g., trampling, propeller scarring).

- b. Donor beds should be of similar salinity to the transplant site.

- c. Plants should be removed by hand. However, excavation by shovel is permissible provided each hole is separated by at least one meter. By counting the number of plants/shovel, an estimate can be obtained of the effort required to collect the number of plants needed for the project. Plant collections should try to minimize the amount of material removed from a bed while still ensuring that enough plants are collected to complete the project.

- d. Plantings should occur within 48 hours of collection, but preferably within 24 hours as plants lose vigor quickly.

- e. For eelgrass (*Zostera marina*) and widgeon grass (*Ruppia maritima*), collections should be conducted between September 15 and November 30, but preferably between October 1 and October 30.

- f. For freshwater SAV species, collections should occur between mid to late April and late June.

- g. Until a transplant site has been demonstrated to be successful, plantings should be restricted during the

Final Regulations

first year to small-scale test plots. Test plots should be approximately two meters by two meters in size and shall be based on the scope of the individual project with a minimum number of three test plots per site. The methods, number of plants/plot, and spacing used in the test plots will vary depending on species but should be the same methods and spacings used for larger transplant efforts.

4. **Monitoring.** Monitoring of the plot(s) will enable the success of the transplanted test plot(s) and long-term adequacy of the site(s) for additional future restoration efforts to be evaluated. At a minimum, monitoring shall occur and include the information as follows:

a. An initial site visit should be conducted between one week to one month following transplanting to evaluate the success of the planting process. For eelgrass plantings, additional site visits should occur in April, May, or early June, and again in September or October of the following year to assess survival and growth. For freshwater SAV, additional monitoring should occur in mid to late summer.

b. Monitoring information required includes: the number of planting units present, shoot density counts, percent cover and aerial extent, or other appropriate relative measure of abundance, of each plot, and should be recorded during each site visit during the monitoring period. Additional information should include whether new shoots or flowers have been produced, and any other relevant field observations that may help explain any potential failures (grazing by rays, waterfowl, severe storm events, etc.).

c. If after one full year plants persist (i.e. greater than 50% of the initial plantings have survived and grown), the site can be considered acceptable for a second year application of transplanting on a larger scale. If few plants survive the first year, larger scale transplantings should be discouraged. However, additional test plots may be permitted.

d. For successful sites, additional monitoring will be required once during the growing season for a minimum of two years past the time of initial planting.

e. Monitoring reports must be submitted to the commission annually by December 31 so that the monitoring information may be disseminated to and reviewed by VIMS and all other interested parties. Failure to report as required may result in permit revocation by the commission.

VA.R. Doc. No. R01-49; Filed November 1, 2000, 11:20 a.m.

Title of Regulation: 4 VAC 20-540-10 et seq. Pertaining to Spanish and King Mackerel (amending 4 VAC 20-540-30 and 4 VAC 20-540-40).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: January 1, 2001.

Summary:

The amendments increase the legal possession limit to 15 Spanish mackerel and decrease the legal possession limit to three king mackerel. The minimum size limit for king mackerel is increased from 14 inches to 27 inches.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-540-30. Possession limits established.

A. It shall be unlawful for any person fishing with hook and line, hand line, rod and reel, spear or gig or other recreational gear to possess more than ~~40~~ 15 Spanish mackerel or more than ~~five~~ three king mackerel.

B. When fishing from a boat or vessel, where the entire catch is held in a common hold or container, the possession limits shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by ~~40~~ 15 for Spanish mackerel or multiplied by ~~five~~ three for king mackerel. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

C. The possession limit provisions established in this section shall not apply to persons harvesting Spanish mackerel or king mackerel with licensed commercial gear.

4 VAC 20-540-40. Minimum size limits established.

A. Minimum size ~~limits~~ limit for Spanish mackerel ~~and king mackerel~~ is established at 14 inches in total length.

B. Minimum size limit for king mackerel is established at 27 inches in total length.

~~B-~~ C. It shall be unlawful for any person to take, catch or possess any Spanish mackerel less than 14 inches in total length.

~~G-~~ D. Except as provided in subsection ~~E~~ F of this section it shall be unlawful for any person to take, catch or possess any king mackerel less than ~~14~~ 27 inches in total length.

~~D-~~ E. Total length shall be measured in a straight line from the tip of the nose to the tip of the tail for the purposes of this chapter.

~~E-~~ F. Nothing in this section shall prohibit the taking, catching, or possession of any king mackerel, less than 14 27 inches in total length, by a licensed pound net.

VA.R. Doc. No. R01-44; Filed October 30, 2000, 10:37 a.m.

Title of Regulation: 4 VAC 20-620-10 et seq. Pertaining to Summer Flounder (amending 4 VAC 20-620-40).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 30, 2000.

Summary:

This amendment increases the commercial flounder harvest trip limit for the November 1 through December 31 fishing period from 5,000 pounds to 7,500 pounds.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-620-40. Commercial vessel possession limitations.

A. During the period of January 4 through March 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 5,000 pounds except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.

B. During the period of April 1 through June 30 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 2,500 pounds, except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.

C. During the period of April 26, 2000, through June 30, 2000, a bycatch-only quota of 90,912 pounds shall be established from a transfer of quota allocated to the November 1, 2000, through December 31, 2000, period. During the April 26, 2000, through June 30, 2000, period, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other species on board the vessel.

D. During the period of July 1 through October 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.

E. During the period November 1 through December 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of ~~5,000~~ 7,500 pounds, except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer

Flounder in excess of 10% by weight of all other landed species on board the vessel.

F. For each of the time periods set forth in subsections A, B, C and E of this section, the Marine Resources Commission will give timely notice of any changes in possession limits.

G. Each possession limit described in subsections A, B, C and E of this section shall be determined by the net weight of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The net weight of any Summer Flounder found in excess of this possession limit described in subsections A, B, C and E of this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder, aboard any vessel, in excess of the possession limit shall be in violation of this chapter. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter.

H. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine patrol officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

I. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the commission the name of the vessel and its captain and the anticipated or approximate offloading time. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 10 p.m. to 7 a.m.

J. Any boat or vessel possessing more than the lawful limit of Summer Flounder ~~which~~ that has entered Virginia waters for safe harbor shall not offload any Summer Flounder.

K. After any commercial harvest or landing quota as described in 4 VAC 20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

VA.R. Doc. No. R01-47; Filed October 30, 2000, 10:31 a.m.

Final Regulations

Title of Regulation: **4 VAC 20-755-10 et seq. Pertaining to Artificial Reefs (amending 4 VAC 20-755-10, 4 VAC 20-755-20 and 4 VAC 20-755-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 30, 2000.

Summary:

The amendments prohibit all commercial fishing on 11 artificial fishing reefs in the Chesapeake Bay and its tributaries.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-755-10. Purpose.

The purpose of this chapter is to reduce gear conflicts on ~~parts of~~ certain artificial reefs.

4 VAC 20-755-20. Definitions.

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

"Anglers Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately 2.8 nautical miles west-northwest of the mouth of Onancock Creek, Accomack County; ~~such site being more specifically located by U.S. Army Corps of Engineers' permit as the area bound by LORAN lines 41852 on the north, 41842 on the south, 27240 on the east, and 27243 on the west, delineated by the below listed coordinates:~~

*NW corner 37° 44' 36" N - 75° 53' 09" W
NE corner 37° 44' 30" N - 75° 52' 33" W
SE corner 37° 43' 42" N - 75° 52' 54" W
SW corner 37° 43' 48" N - 75° 53' 33" W*

"Back River Reef" means that permitted artificial reef site located in the Chesapeake Bay off the mouth of Back River, Hampton, circular in configuration with a radius of 2,000 feet, centered at 37° 08' 12" N - 76° 13' 54" W.

"Cabbage Patch Reef" means that permitted artificial reef site located in the Chesapeake Bay, 5.5 nautical miles south-southwest of the entrance to Cape Charles Harbor, Northampton County, delineated by the below listed coordinates:

*NW corner 37° 10' 36" N - 76° 03' 27" W
NE corner 37° 10' 36" N - 76° 02' 30" W
SE corner 37° 09' 54" N - 76° 02' 30" W
SW corner 37° 09' 54" N - 76° 03' 27" W*

"Cell Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately 3.6 nautical miles west of the mouth of Hungars Creek, Northampton County; ~~such site being more specifically located by U.S. Army Corps of Engineers' permit as a circle centered at 37° 24' 06" north latitude and 76° 03' 25" west longitude with a radius of 2,000~~

feet circular in configuration with a radius of 2,000 feet, centered at 37° 24' 06" N - 76° 03' 25" W.

"Cherrystone Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately 2.2 nautical miles west of Savage Neck, Northampton County, circular in configuration with a radius of 2,000 feet, centered at 37° 24' 19" N - 76° 02' 33" W.

"East Ocean View Reef" means that permitted artificial reef site located in Chesapeake Bay off East Ocean View, Norfolk, circular in configuration with a radius of 250 yards, centered at 36° 56' 32.5" N - 76° 12' 11.5" W.

"Gwynn's Island Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately 1.2 nautical miles east of the southern end of Gwynn's Island, Mathews County; ~~such site being more specifically located by U.S. Army Corps of Engineers' permit as a circle centered at 37° 28' 51" north latitude and 76° 14' 19" west longitude with a radius of 2,000 feet, circular in configuration with a radius of 2,000 feet centered at 37° 28' 51" N - 76° 14' 19" W.~~

"Middle Ground Reef" means that permitted artificial reef site located in Hampton Roads, off Newport News, circular in configuration with a radius of 1,000 feet, centered at Middle Ground Light at 36° 56' 42" N - 76° 23' 30" W.

"Nassawadox Reef" means that permitted artificial reef located in Chesapeake Bay 2.8 nautical miles NW of the mouth of Nassawadox Creek, Accomack County, delineated by the below listed coordinates:

*NW corner 37° 29' 54" N - 76° 01' 24" W
NE corner 37° 29' 54" N - 76° 00' 30" W
SE corner 37° 29' 12" N - 76° 00' 30" W
SW corner 37° 29' 12" N - 76° 01' 24" W*

"Northern Neck Reef" means that permitted artificial reef site located in the Chesapeake Bay approximately seven nautical miles east of the Great Wicomico River Light, Northumberland County; ~~such site being more specifically located by U.S. Army Corps of Engineers' permit as the area bound by LORAN lines 41877 on the north, 41867 on the south, 27320 on the east, and 27323 on the west, delineated by the below listed coordinates:~~

*NW corner 37° 48' 30" N - 76° 09' 12" W
NE corner 37° 48' 24" N - 76° 08' 33" W
SE corner 37° 47' 39" N - 76° 08' 58" W
SW corner 37° 47' 42" N - 76° 09' 40" W*

"Ocohanock Reef" means that permitted artificial reef site located in the Chesapeake Bay five nautical miles west-northwest of the mouth of Ocohanock Creek, Accomack County, delineated by the below listed coordinates:

*NW corner 37° 34' 40" N - 76° 01' 05" W
NE corner 37° 34' 31" N - 76° 00' 05" W
SE corner 37° 34' 02" N - 76° 00' 18" W
SW corner 37° 34' 10" N - 76° 01' 21" W*

4 VAC 20-755-30. Gear restrictions.

A. It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line,

spear, or gig licensed for recreational use, ~~closer than 200 yards to the buoy marking the Anglers Reef. This buoy is a yellow special purpose buoy marked "VMRC Anglers Reef." on Angles Reef.~~

B. It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, ~~closer than 200 yards to the buoy marking the Cell Reef. This buoy is a yellow special purpose buoy marked "VMRC Cell Reef." on Back River Reef.~~

C. It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, ~~closer than 200 yards to the buoy marking the Gwynn Island Reef. This buoy is a yellow special purpose buoy marked "VMRC Gwynn Island Reef." on Cabbage Patch Reef.~~

D. It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, ~~closer than 200 yards to the buoy marking the Northern Neck Reef. This buoy is a yellow special purpose buoy marked "VMRC Northern Neck Reef." on Cell Reef.~~

E. *It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Cherrystone Reef.*

F. *It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Gwynn's Island Reef.*

G. *It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on East Ocean View Reef.*

H. *It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Middle Ground Reef.*

I. *It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Nassawadox Reef.*

J. *It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Northern Neck Reef.*

K. *It shall be unlawful for any person to set, fish, or have in the water, any fishing gear, other than rod and reel, hand line, spear, or gig licensed for recreational use, on Occohannock Reef.*

VA.R. Doc. No. R01-45; Filed October 30, 2000, 10:28 a.m.

* * * * *

Title of Regulation: 4 VAC 20-995-10 et seq. **Pertaining to Commercial Hook-and-Line Fishing (amending 4 VAC 20-995-20 and 4 VAC 20-995-30).**

Statutory Authority: §§ 28.2-201 and 28.2-204 of the Code of Virginia.

Effective Date: October 30, 2000.

Summary:

The amendments establish additional requirements for commercial hook-and-line fishermen to maintain eligibility for the commercial hook-and-line fishing license. Registration of crew members is required; fishing for black drum within 300 yards of the Chesapeake Bay-Bridge Tunnel is prohibited; and recreational fishing on a commercial fishing trip is prohibited. Additionally, the legal hours for hook-and-line fishing near bridges, bridge-tunnels, jetties and piers is extended from midnight Sunday through 6 a.m. Friday during the recreational striped bass fishing season.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-995-20. Entry limitation; catch restrictions; transfers.

A. The sale of commercial hook-and-line licenses shall be limited to registered commercial fishermen meeting either of the following two requirements:

1. The fisherman shall have held a 1996 commercial hook-and-line license or a 1997 commercial hook-and-line license ~~which~~ that was purchased prior to August 26, 1997, *provided the fisherman has reported sales of at least 1,000 pounds of seafood during the course of the previous two years as documented by the commission's mandatory harvest reporting program.*

2. The fisherman shall hold a valid and current striped bass permit issued by the Marine Resources Commission.

B. *The maximum number of general hook-and-line licenses is established as 200 and includes those fishermen who either satisfy the provisions of subdivision A 1 of this section or are chosen by random drawing, to be held annually, should the number of licensees at the start of any year be less than 200.*

~~B.~~ C. Persons who are eligible to purchase a commercial hook-and-line license by meeting the provisions of subdivision A 2 of this section may take only striped bass by commercial hook and line.

~~C.~~ D. Any person licensed for commercial hook and line under the provisions of subdivision A 1 of this section may transfer such license to any registered commercial fisherman ~~when said transfer is~~, *provided that the transferee shall have documented, through the commission's mandatory harvest reporting program, the sale of at least 1,000 pounds of*

Final Regulations

seafood during the course of the previous two years. Transfer of licenses between family members shall be exempt from this requirement. All transfers shall be documented on the form provided by the Marine Resources Commission and approved by the Marine Resources Commissioner. Upon approval, the person entering the commercial hook-and-line fishery shall purchase a commercial hook-and-line license in his own name. No commercial hook-and-line license shall be transferred more than once per calendar year.

4 VAC 20-995-30. Prohibitions.

A. It shall be unlawful for any person licensed under the provisions of 4 VAC 20-995-20 A 1 or 2 as a commercial hook-and-line fisherman to do any of the following unless otherwise specified:

1. Fail to be on board the vessel when that vessel is operating in a commercial hook-and-line fishing capacity.
2. Have more than three crew members, who need not be registered commercial fishermen, on board: *provided that:*
 - a. Crew members shall be registered with the commission on an annual basis and in advance of any fishing in any year; except that one crew member per vessel need not be registered; and
 - b. Any crew registration list submitted by any commercial hook-and-line fishermen may be revised twice per year.
3. Fail to display prominently the commercial hook-and-line license ~~plate plates~~, as provided by the commission, on the starboard ~~side~~ and port sides of the vessel.
4. Fish within 300 yards of any bridge, bridge-tunnel, jetty or pier from 6 p.m. Friday through 6 p.m. Sunday.
5. Fish within 300 yards of any fixed fishing device.
6. Harvest black drum within 300 yards of the Chesapeake Bay-Bridge-Tunnel at any time.
7. Fish recreationally on any commercial hook and line vessel during a commercial fishing trip.
- ~~6-~~ 8. Use any hydraulic fishing gear or deck-mounted fishing equipment.
- ~~7-~~ 9. Use any fishing rod and reel or hand line equipped with more than six hooks.
- ~~8-~~ 10. Fish commercially with hook and line aboard any vessel licensed as a charter boat or head boat while carrying customers for recreational fishing.

B. It shall be unlawful for ~~commercial hook-and-line fishermen licensed under the provisions of 4 VAC 20-995-20 A-2~~ any person to use a commercial hook and line within 300 feet of any bridge, bridge-tunnel, jetty, or pier during Thanksgiving Day and the following day or during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through ~~midnight Wednesday~~ 6 a.m. Friday.

VA.R. Doc. No. R01-46; Filed October 30, 2000, 10:33 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Title of Regulation: 8 VAC 20-80-10 et seq. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (amending 8 VAC 20-80-10, 8 VAC 20-80-30 through 8 VAC 20-80-160 and 8 VAC 20-80-190; adding 8 VAC 20-80-45, 8 VAC 20-80-52, 8 VAC 20-80-54, 8 VAC 20-80-56, 8 VAC 20-80-58, 8 VAC 20-80-62, 8 VAC 20-80-64, [8 VAC 20-80-65], 8 VAC 20-80-66, 8 VAC 20-80-68, 8 VAC 20-80-72, 8 VAC 20-80-74, 8 VAC 20-80-76, 8 VAC 20-80-78, 8 VAC 20-80-152, and 8 VAC 20-80-155; repealing 8 VAC 20-80-20, 8 VAC 20-80-170, 8 VAC 20-80-180, and 8 VAC 20-80-200). 8 VAC 20-570-10 et seq. Special Education Program Standards (REPEALED).

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia and the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

Effective Date: January 1, 2001.

Summary:

The purpose of the proposed amendments is to align Virginia's special education regulations with the federal Individuals with Disabilities Education Act (IDEA) regulations that were issued on March 12, 1999. The revision incorporates provisions of the Code of Virginia and other regulations that apply to the provision of special education programs, and clarifies areas of ambiguity. Because the requirements contained in the Special Education Program Standards (8 VAC 20-570-10 et seq.) are being incorporated into this regulation, the Special Education Program Standards are being repealed concurrently with the promulgation of these amendments. The regulations contain provisions governing (i) the responsibilities of the Virginia Department of Education; (ii) the responsibilities of local school divisions and state-operated programs; (iii) the requirements associated with child find, evaluation, eligibility and the provision of services to children with disabilities; (iv) the requirements associated with the provision of procedural safeguards, including notice and consent, and the opportunity to file complaints, request mediation or request a due process hearing; and (v) the requirements associated with funding.

The revisions to the proposed regulations reflect (i) public comments; (ii) directions from the United States Department of Education that were received after the proposed regulations were approved for comment by the Board of Education in July 1999; and (iii) actions of the 2000 Virginia General Assembly. Many of the changes were made in response to public comments that suggested different interpretations of the regulatory language. Other changes include:

1. Insertion of a child study committee during the referral process;
2. Creation of a "departmentalized" staffing plan;
3. Creation of a mechanism to appeal a decision on a complaint;
4. Availability of evaluation reports for parents two business days before the eligibility meeting; and
5. Permission for parents to audio record IEP meetings.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from H. Douglas Cox, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2402.

PART I. DEFINITIONS.

8 VAC 20-80-10. Definitions.

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

"Age of eligibility" means all eligible children with disabilities who have not graduated from a secondary school or completed a program approved by the Board of Education and who are identified as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a serious emotional disturbance, a severe and profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, a visual impairment which may include blindness or who have other disabilities as defined by the Board of Education, with a standard or advanced studies high school diploma who, because of such impairments 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 August 1] (two to 21, inclusive) [in accordance with the Code of Virginia] .

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent or parents of a student with a disability transfer to the student. In Virginia, the age of majority is 18.

"Alternate assessment" means [testing assessment] for [students children with disabilities] who cannot participate in the [state-wide state] or division-wide [testing assessment] programs even with appropriate accommodations and modifications.

"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 children a child with disabilities a disability.

"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:

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, ~~retaining~~ 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 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 function functions of children with disabilities 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 [nondisabled] students [without disabilities] or their parent or parents as part of the regular education program.

"Audiology" means services provided by a qualified audiologist [licensed by the Board of Audiology and Speech-Language Pathology] and includes:

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 rehabilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech [conversation conservation] ;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of pupils children, parents [,] and teachers regarding hearing loss; and
6. Determination of the child's need 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

Final Regulations

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. *The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in this chapter. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied.*

~~["Braille user" means a child who is using or learning to use Braille as either a primary or secondary medium for literacy (reading, writing and printing raised dots that represent letters and numerals).]~~

"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~~ days] " 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 8 VAC 20-80-66 B 4 a.

"Calendar days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or school holiday.

"Caseload" means the number of students assigned to special education personnel.

"Change in identification" means a change in the ~~eligibility committee's~~ determination of the child's disability by the team that determines eligibility.

"Change in placement" means:

- ~~1. The change in a child's academic offerings from general to special education and from special education to child's initial placement [in from general education to] special education and related services [from general education] ;~~
2. The expulsion or long-term suspension of a student with a disability;
3. The placement change which 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
- ~~5- 6.~~ 6. Graduation with a standard or advanced studies high school diploma.

~~"Change in placement procedures" means:~~

- ~~1. Written notice to the parent;~~
- ~~2. IEP committee meeting;~~
- ~~3. Parent consent to change the placement.~~

"Change in placement," for the purposes of discipline, means:

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 total amount of time the student is removed; or
 - c. The proximity of the removals to one another.

["Chapter" means these regulations, 8 VAC 20-80-10 et seq.]

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia.

"Child" means any person who shall not have reached his 22nd birthday by [September 30 ~~August 4~~] of the current year.

["Child study committee" means a committee that enables school personnel, and nonschool personnel, as appropriate, to meet the needs of individual children who are having difficulty in the educational setting. The committee reviews existing data to make recommendations to meet children's needs and reviews the results of implementation of the recommendations. The child study committee may refer children for evaluation for special education and related services.]

~~"Children~~ Child with [~~disabilities~~ a disability] " means ~~those children a child~~ evaluated, in accordance with this chapter, as having and determined, as a result of this evaluation, to have autism, deaf-blindness, a developmental delay, a hearing impairment ~~which may include~~ including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, ~~a serious~~ an emotional disturbance, a severe or profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment ~~which may include~~ including blindness, who ~~because of these impairments, need by reason thereof, needs~~ special education and related services. The term "student" may also be used to refer to a child with a disability.

~~"Comprehensive programs and services" means educational programs and support services which are required to provide a free appropriate educational program in the least restrictive environment to every child with a disability ages two to 21, inclusive, in each local school division or other public agencies responsible for providing educational services to children with disabilities.~~

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local [~~school division~~ educational agency] of a right of a parent or [parents of a] child who is eligible or believed 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] .

"Comprehensive Services Act" (CSA) means the [Comprehensive Services] Act [for At-Risk Youth and Families (§ 2.1-745 et seq. of the Code of Virginia)] that [~~established~~ establishes] the collaborative administration and funding system that addresses and funds services for certain at-risk youths and their families.

"Consent" means:

1. The parent [or parents] or eligible student has been fully informed of all information relevant to the activity for which consent is sought in ~~his~~ the parent's, parents', or eligible student's native language, or other mode of communication;
2. The parent [or parents] 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) ~~which~~ that will be released and to whom; and
3. The parent [or parents] or eligible student understands that the granting of consent is voluntary on the part of the parent [or parents] or eligible student and may be revoked any time ~~prior to the time limits set forth in 8 VAC 20-80-70.~~

"Correctional facility" means any state facility of the Department of Corrections or the Department of Juvenile Justice, any regional or local detention home, or any regional or local jail.

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.

~~"Current evaluation" means one that has been completed within 365 calendar days or less.~~

~~"Days" are specified as either "calendar days" or "administrative working days." "Administrative working days" means days exclusive of Saturdays, Sundays, and officially designated holidays for all local school division personnel. "Calendar days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this procedure shall be extended to the next day not a Saturday, Sunday, or school holiday.~~

"Day" means calendar day unless otherwise indicated as business day or school day.

"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.

"Deaf-blindness" means ~~concomitant~~ [~~having~~] hearing and visual impairments [occurring] at the same time, the combination of which causes such severe communication and other developmental and educational ~~problems~~ needs that they cannot be accommodated in special education programs solely for ~~deaf or blind~~ children with deafness or children with blindness.

~~"Developmental delay" means a significant delay in one or more of the following areas of development for a child below age eight:~~

- ~~1. Cognitive ability;~~
- ~~2. Motor skills;~~
- ~~3. Social/adaptive behavior;~~
- ~~4. Perceptual skills; and~~
- ~~5. Communication skills.~~

~~"Developmental delay" means a disability affecting a child ages two through eight [who] :~~

- ~~1. [Who] is experiencing developmental delays, [as defined by the Virginia Department of Education and] 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; and~~
- ~~2. Who, by reason thereof, needs special education and related services.~~

"Direct services" means services provided to a child with a disability directly by the ~~state directly~~ Virginia Department of Education, by contract, or through other arrangements.

"Due process hearing" means an [~~impartial~~ administrative] procedure [~~used~~ conducted by an impartial hearing officer] to resolve disagreements [~~over issues related to~~ regarding the identification, evaluation, educational placement and services, and the] provision of a free appropriate public education that arise between a parent or parents and a local [~~school division~~ educational agency. A due process hearing involves the appointment of an impartial hearing officer who conducts the hearing, reviews evidence and determines what is educationally appropriate for the child with a disability] .

"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.

["Education records" means the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act (20 USC § 1232 g).]

~~"Emotional disturbance": see "Serious emotional disturbance."~~ means a condition exhibiting one or more of the following characteristics over a long period of time and to a

Final Regulations

marked degree that adversely affects a child's educational performance:

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.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

"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 [as described in 8 VAC 20-80-54]. ~~The term means procedures used selectively with an individual child and does not include basic tests administered or procedures used with all children in a school, grade, or class.~~

"Extended school year services" [for the purposes of this chapter] means special education and related services that:

1. Are provided to a child with a disability:
 - a. Beyond the normal school year [~~in the number of days and hours~~] of the local educational agency;
 - b. In accordance with the child's individualized education program;
 - c. At no cost to the [parent or] parents of the child; and
2. Meet [~~any~~ the] standards established by the Virginia Department of Education.

"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.

"Free appropriate public education" (FAPE) means special education and related services ~~which that~~:

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 preschool, elementary school, middle school or secondary school, ~~or vocational education in the state;~~ and
4. Are provided in conformity with an individualized education program *that meets the requirements of this chapter.*

~~FAPE is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP).~~

["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.]

"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, whether permanent or fluctuating, that adversely affects a child's educational performance but ~~which that~~ is not included under the definition of "deafness" in this section.

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the [~~student's~~ 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 must determine the delivery of services, including the number of hours of services.]

"Home instruction" means instruction of a child or children by a parent [or parents], 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.

"Home tutoring" means instruction by a tutor or teacher [~~of~~ with] qualifications prescribed by the Virginia Board of Education and approved by the division superintendent [in accordance with the provisions of the Code of Virginia. This tutoring is often used as an alternative form of home schooling but is not home instruction as defined in the Code of Virginia].

"Impartial 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.* ~~A hearing may not be conducted:~~

1. ~~By a person employed by a public agency involved with the care or education of the child; or~~
2. ~~By a person having a personal or professional interest which would conflict with his objectivity in the hearing.~~

~~A hearing officer is not an employee of the local education agency (LEA) or state education agency (SEA) solely because he is paid by the agency to serve as a hearing officer.~~

"Implementation plan" means the plan developed by the LEA local [~~school division educational agency~~] designed to operationalize the decision of the hearing officer, ~~the reviewing officer,~~ or agreement between the parties. The implementation plan shall include the name and position of the individual in the local [~~school division educational agency~~] charged with the implementation of the decision (case manager) as well as the date for effecting such plan.

"Independent educational evaluation" (IEE) means an evaluation conducted by [a] qualified [~~examiner or~~] examiners who are not employed by the public local educational agency responsible for the education of the child in question. Whenever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and the qualifications of the examiners, must be the same as the criteria the public agency uses when it initiates an evaluation.

"Individualized education program" (IEP) means a written statement for each child with a disability developed in any meeting by a representative of the LEA who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents of such child, and whenever appropriate, such child. An IEP shall include:

1. A statement of the present levels of educational performance;
 - a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and nonacademic areas.
 - b. The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.
 - c. There should be a direct relationship between the present level of performance and the other components of the IEP.
2. A statement of annual goals, including short-term instructional objectives;
3. A statement of the specific education and related services to be provided, and the extent to which such child will be able to participate in regular educational programs;
4. The projected date for initiation and anticipated duration of the services (month, day, and year);
5. Appropriate objective criteria and evaluation procedures and schedules for determining, at least on an annual basis, whether instructional objectives are being achieved;
6. Necessary information regarding the Literacy Testing Program (LTP) (see 8 VAC 20-80-70-B 5 f);
7. A statement of the needed transition services for each student beginning no later than age 16 (and at a younger age, if determined appropriate) including, if appropriate, a statement of each public agency's and each participating

agency's responsibilities or linkages, or both, before the student leaves the school setting. The transition services must address each of the following areas: (i) the development of employment and other post-school adult living objectives; (ii) instruction; (iii) community experiences; and (iv) if appropriate, acquisition of daily living skills and functional vocational evaluation, unless the IEP committee determines that services are not needed in one or more of these areas. The IEP committee must then include in the IEP a statement to that effect and the basis for that determination in the IEP; and

8. A statement as to whether or not the student will participate in Family Life Education.

"Individualized education program" (IEP) means a written statement [~~of services~~] 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 needs.]

"Individualized family service plan" (IFSP) under Part C 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.

"Infant and toddler with a disability" means a child, ages birth [~~through~~ 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] :

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 public local educational agency placement in either a public school, state-operated program, or private school program for the purpose of providing special education or related services.

"In-service training" means training other than that received by an individual in a full-time program which leads to a degree.

"Interpreting" means translating from one language to another (e.g., sign language to spoken English); for the purposes of this chapter, this includes [oral interpreting and] transliterating for signed English systems [~~and~~ or] for cued speech [/cued language] .

"Interpreting personnel" means personnel individuals providing educational interpreting services [~~for children with hearing impairments, deafness or both meeting who meet~~]

Final Regulations

~~the~~] qualifications set forth under ~~the section on Qualified Professionals 8 VAC 20-80-45 E.~~

"Itinerant" means a qualified professional employed by the local school division who provides services [in various locations] to [~~students~~ children] with disabilities [~~in various locations~~] .

"Learning disability" [:] see "Specific learning disability."

~~"Local educational agency" (LEA) means the local school division or other public agencies responsible for providing educational services to children with disabilities.~~

"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.

"Level I services" means the provision of special education and related services to [~~students~~ children with disabilities] for less than 50% of their instructional school day (excluding intermission for meals). [The] time [~~in 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 and related services to [~~students~~ children with disabilities] for 50% or more of the instructional school day (excluding intermission for meals). [The] time [~~in 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.

"Local educational agency" means a local school division governed by a local school board [~~or~~,] 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 and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton] .

["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 ~~which~~ that results in the child's need for special education and related services.

"Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, ~~which~~ that adversely affects a child's educational performance.

"Multiple disabilities" means ~~concomitant~~ two or more impairments at the same time (such as for example, mental

retardation - blindness, ~~mental retardation~~ learning disability - orthopedic impairment, etc.), the combination of which causes such severe educational ~~problems~~ needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include children with deaf-blindness.

~~"Native language" as defined by § 3283(a)(2) of the Bilingual Education Act, (20 USC § 3283), when if used with reference to a person an individual of limited English-speaking ability proficiency, means the language normally used by that person individual, or, in the case of a child, the language normally used by the parent or parents of the child, except [: 1.] in all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two in the home or learning environment. [2.] If a person is deaf or blind For an individual with deafness or blindness, or has for an individual with no written language, the mode of communication would be is that normally used by the person individual (such as sign language, Braille, or oral communication).~~

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the [~~public~~ local educational] agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the ~~public~~ local educational agency and assistance in making outside employment available.

~~"Notification"~~ "Notice" means written statements in English [and or] in the primary language of the ~~parent's~~ home of the parent or parents, [and or, if the language or other mode of communication of the parent or parents is not a written language,] oral communication in the primary language of the ~~parent's~~ home of the parent or parents. If [~~a person an individual~~] is deaf or blind, or has no written language, the mode of communication would be that normally used by the [~~person individual~~] (such as sign language, Braille, or oral communication).

"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:

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning ~~when~~ 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 [~~students~~ children] by qualified personnel to enable those [~~students~~ children] to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching [~~students~~ children] the following, as appropriate:

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 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 (e.g., club foot, absence of some member, ~~etc.~~), 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 ~~contracture~~ contractures).

"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 [(i)] is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder/ or attention deficit hyperactivity disorder, ~~or and~~ diabetes that are chronic or acute; and that [(ii)] adversely ~~affect~~ affects a child's educational performance.

"Paraprofessional" means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter.

"Parent [or parents] " means a natural or adoptive parent [or parents] of a child, a guardian, a person acting ~~as~~ in the place of a parent ~~of a child~~, (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), a foster parent under the circumstances described below [,] or a surrogate parent who has been appointed pursuant to 8 VAC 20-80-80 in accordance with this chapter. ~~The term does not include the state if the child is a ward of the state. The term means either parent, unless the LEA local educational agency has been provided with evidence that there is a legally binding instrument or, [a] state law [,] or court order to the contrary. The term also includes persons acting in the place of a parent such as a grandparent or stepparent with whom the child lives. A child 18 years or older may assert any rights under this chapter in his own name. that has terminated the parent's or parents' rights. A foster parent may also serve as a parent:~~

1. If the natural [parent's or] parents' authority to make educational decisions on the child's behalf has been extinguished under § 16.1-283, § 16.1-277.01 or § 16.1-277.02 of the Code of Virginia [or a comparable law in another state] ; [and]

2. The child is in permanent foster care pursuant to § 63.1-206.1 of the Code of Virginia [- or comparable law in another state; and]

3. The foster parent [or parents] (i) [~~has have~~] an ongoing, long-term parental relationship with the child; (ii) [~~is are~~] willing to make the educational decisions required of [the parent or] parents under this chapter; and (iii) [~~has have~~] no interest that would conflict with the interests of the child.

The term "parent [or parents] " does not include [local or state agencies or their agents, including] local departments of social services [~~or their agents,~~] if the child is in the custody of [~~a local department of social services such an agency~~] .

"Parent counseling and training" means (i) assisting parents in understanding the special needs of their child ~~and~~ [, ;] (ii) providing parents with information about child development; and (iii) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

"Participating agency" means ~~any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained 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.~~

"Physical education" means the development of:

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, ~~adaptive~~ 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.

"Private school children with disabilities" means children with disabilities enrolled by their [parent or] parents in private schools [~~rather than placed in private schools by local educational agencies,~~ other than children with disabilities who are placed in a private school by a local school division or Comprehensive Services Act team in accordance with 8 VAC 20-80-66 A] .

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized [~~educational~~ education] program.

"Psychological services" ~~includes~~ means those services provided by a qualified psychologist or [~~services provided~~] under the direction or supervision of a qualified psychologist [, including] :

Final Regulations

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, and behavioral evaluations; ~~and~~
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 agency" means the state educational agency] (SEA) [, local educational agencies, intermediate educational units, and any other public agencies that are responsible for providing education to children with disabilities.]~~

"Public expense" means that the LEA 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 [or parents] .

"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 ~~announcement~~ *announcements*, handbills, brochures, [~~by~~] *electronic means*, and other methods which 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 and its amendments (29 USC § 701 et seq.).]

~~"Qualified personnel" means that a person has met the state board educational agency approved or recognized certification, licensing, registration or other comparable requirements which personnel who have met Virginia Department of Education approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which ~~he~~ the individual is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service [;] and Virginia licensure requirements as designated by state Virginia law [or regulations] .~~

~~"Recipient" means any state or other political subdivision, any public or private agency, institution, organization, or other entity, or any person to which public financial assistance is extended directly or through another recipient.~~

"Recreation" includes:

1. Assessment of leisure function;
2. Therapeutic recreation services;

3. Recreation program in schools and community agencies; and
4. [~~Licensure~~ *Leisure*] education.

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

"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.

~~"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 and transliterating; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation and psychological counseling; ~~and~~ orientation and mobility services; medical services for diagnostic or evaluation purposes. The term also includes; school health services [;] social work services in schools [;] and parent counseling and training. Senate Report No. 94-168 provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of disabilities and the provision of services to minimize the effects of such conditions. 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.~~

~~Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation. [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.]~~

~~["School-based committee" means a committee that enables school personnel, and nonschool personnel, as appropriate, to meet the needs of individual children who are having difficulty in the educational setting. The committee reviews existing data and informal measures to make recommendations to meet children's needs and review the results of the recommendations.]~~

"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.

"School health services" means services provided by a qualified school nurse or other qualified person.

"Screening" means those processes [~~which that~~] are used routinely with all children to [~~help determine educational strengths and weaknesses 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 (29 USC § 701 et seq.), which is designed to eliminate discrimination on the basis of ~~handicap~~ disability in any program or activity receiving federal financial assistance.

~~"Serious emotional disturbance" 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:~~

- ~~1. An inability to learn which 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.~~

The term includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined that they are seriously emotionally disturbed.

"Severe and profound disability" means individuals who [a primary disability that] :

1. Have [~~Primary disabilities that~~] Severely [~~impair~~] cognitive abilities, adaptive skills, and life functioning;
2. [May have] associated severe behavior problems;
3. [~~May have~~ Has] the high probability of additional physical or sensory disabilities; and
- [4. ~~that require~~ Requires] significantly more educational resources than are provided for the children with mild and moderate disabilities in special education programs.

"Social work services in schools" ~~includes means~~ those services provided by a school social worker or qualified visiting teacher or social worker [,] including:

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; ~~and~~

4. Mobilizing school and community resources to enable the child to learn as effectively as possible in ~~his the~~ child's educational program; and

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

"Special education" means specially designed instruction, at no cost to the parent or parents, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, ~~and 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:

1. The term includes Speech-language pathology ~~or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability , and is considered "special education" rather than a "related service" under state standards. services;~~

2. The term also includes Vocational education if it consists of specially designed instruction at no cost to the parent, to meet the unique needs of a child with a disability; and

3. Travel training.

3. The terms in this definition are defined as follows:

a. "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nondisabled students or their parents as a part of the regular education program.

b. "Physical education" means the development of (i) physical and motor fitness; (ii) fundamental motor skills and patterns; and (iii) skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adaptive physical education, movement education, and motor development.

c. "Vocational 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 requiring other than a baccalaureate or advanced degree.

4. The definition of "special education" is a particularly important one. While a child may be considered to have a disability under other laws, he does not have a disability under this chapter unless he needs special education. If a child does not need special education, there can be no related services since the provision of a related service must be necessary for a child to benefit from special education.

"Specially-designed instruction" means adapting, as appropriate [,] to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

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

Final Regulations

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 [~~that apply to all children~~].

"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, ~~which that~~ may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or [to] do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children ~~who have~~ learning problems ~~which that~~ are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, ~~which that~~ adversely affects a child's educational performance.

"Speech-language pathology services" ~~includes means the following~~ [services] :

1. Identification of children with speech or language ~~disorders~~ impairments;
2. Diagnosis and appraisal of specific speech or language ~~disorders~~ impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language ~~disorders~~ impairments;
4. [Provisions Provision] of speech and language services for the habilitation or prevention of communicative ~~disorders~~ impairments; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language ~~disorders~~ impairments.

["State assessment program" means the state assessment program in Virginia under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) that is the component of the state assessment system used for accountability.]

"State educational agency" (SEA) means the Virginia Department of Education.

~~"Support services" means implementing the comprehensive system of personnel development; recruitment and training of hearing officers in conjunction with the Supreme Court of Virginia; and recruitment and training of surrogate parents; and public information and parent training activities relating to a free appropriate public education for children with disabilities.~~

"State-operated programs" means programs which 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, [and or] institutions. [~~The educational services provided in a state-operated program must be comparable to~~

~~services that a child or youth would receive in a local school division. This does not include the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton.]~~

"Supplementary aids and services" means aids, services, and other supports that are provided in regular 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.

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ~~provide ensure that~~ children ~~who are in legal or physical custody of the state, or whose parents are not known or are unavailable,~~ with are afforded the protection of procedural safeguards [and the provision of a free appropriate public education] .

~~"Testing" means individual evaluation procedures (formal testing and assessment) to determine initial or continued eligibility for special education services.~~

"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:

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" means a coordinated set of activities for a student; ~~with a disability that is~~ designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. ~~The coordinated set of activities described must:~~

1. ~~Be based on the individual student's needs, taking into account the student's preferences and interests; and~~
2. ~~Include:~~
 - a. ~~The development of employment and other post-school adult living objectives;~~
 - b. ~~Instruction;~~
 - c. ~~Community experiences; and~~
 - d. ~~If appropriate, acquisition of daily living skills and functional vocational evaluation.~~

Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. ~~The list of activities above is not intended to be exhaustive.~~

"Transportation" includes:

1. Travel to and from school and between schools;
2. Travel in and around school ~~building 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. The term 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. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

"*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:

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).

["*Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton*" or "*Virginia schools*" means the Virginia schools authorized by the Virginia Board of Education and administered and supervised by the Superintendent of Public Instruction.]

"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.

"Vocational education," for the purposes of special education, means organized educational programs or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations or for additional preparation for a career requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

"*Ward of the state*" means all parental rights and responsibilities for the care and custody of a child have been terminated by court order or applicable law, and the child has been placed in the care and custody of the state.

PART II. RESPONSIBILITIES OF THE STATE DEPARTMENT OF EDUCATION.

8 VAC 20-80-20. ~~Right to a free appropriate public education. (Repealed.)~~

~~The Virginia Department of Education shall ensure that all persons with disabilities from two to 21, inclusive, residing in the Commonwealth of Virginia are identified, evaluated, and have available a free and appropriate public education. The provisions set forth in this chapter shall apply to all public and private schools and agencies in the Commonwealth which provide special education and related services to children with disabilities.~~

8 VAC 20-80-30. Functions of the Virginia Department of Education.

~~In keeping with its responsibilities in this regard, The Virginia Department of Education (SEA state educational agency) shall perform the [following] functions [which follow] :~~

1. ~~Ensure that all children with disabilities, aged two [through to] 21, inclusive, residing in Virginia have a right to a free appropriate public education [,] including, but not limited to [, children with disabilities who] :~~

~~a. [Children with disabilities who] Are migrant [and who;]~~

~~[b.] Are homeless;~~

~~[b. Children with disabilities who c.] Have been suspended or expelled from school, in accordance with this chapter; [and;]~~

~~[c. Children with disabilities who d.] Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8 VAC 20-80-62 [H] .~~

~~[e. Are in special education and related services, even though they are advancing from grade to grade;~~

~~f. Are in state-operated programs; or~~

~~g. Are in public charter schools in accordance with the Code of Virginia.]~~

- ~~[2. Except as provided in 8 VAC 20-80-56 D, ensure that each local school division develops an IEP for each child with a disability served by that local school division and that an IEP is developed for each child with a disability placed in a private school by a local school division or Comprehensive Services Act team.]~~

~~4. [2. 3.] Review and submit to the Virginia Board of Education for approval the Annual Special Education Plan/Report and Funding Applications a plan for the provision of special education [and related services] from each local school division or other public agencies educational agency responsible for providing educational services to children with disabilities.~~

~~2. [3. 4.] Prepare and submit for public hearing [, for; receive] comment from [the public,] members of the~~

Final Regulations

state special education advisory committee [7] and private special education schools [7 ;] and for approval by [10] place on file with the U.S. Department of Education, the State Plan for Education of Children with Disabilities [final] policies and procedures to ensure that the conditions of state eligibility for funding under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) are met. Such plan shall contain assurances of and procedures as prescribed by federal law.

3. [4. 5.] Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities.

4. [5. 6.] Assist LEAs local educational agencies and other participating state agencies in the implementation of state and federal laws and regulations pertaining to the education of children with disabilities by providing technical assistance and consultative services.

5. [6. 7.] Review and evaluate compliance of LEAs local educational agencies with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed.

a. Administer a special education due process hearing system that provides procedures for [the] training of hearing officers, requests for a hearing, appointment of hearing officers, [the] management and monitoring of hearings, and [the] administration of the hearing system.

b. Maintain and operate a complaint system that provides for the investigation and issuance of findings regarding [alleged] violations of the [educational] rights of parents or children with disabilities. Allegations may be made by public or private agencies, individuals or organizations.

6. [7. 8.] Review and evaluate compliance of approved private nonsectarian special education schools for children with disabilities with state and federal laws and regulations pertaining to the education of children with disabilities that are licensed or have a certificate to operate [in order] to ensure that each child with a disability placed in the school by a local [educational agency school division] or [CSA Comprehensive Services Act] team is provided special education and related services at no cost to the parent or parents in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies.

[9. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton to ensure that each child with a disability placed in the school by a local school division is provided special education and related services at no cost to the parent or parents in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies.]

7. [& 10.] Establish and maintain a state [special education] advisory committee composed of [persons individuals] involved in or concerned with the education of children with disabilities.

a. [Membership.] The membership must include, but need not be limited to, at least one representative from each of the groups as follows shall consist of individuals appointed by the [Superintendent of Public Instruction Board of Education] who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents of children with disabilities. Membership shall include [one or more of the following] :

(1) Parents of children with disabilities;

a. (2) Individuals with disabilities;

b. (3) Teachers of children with disabilities;

c. Parents of children with disabilities;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

d. (5) State and local education officials;

e. Special education program (6) Administrators of programs for children with disabilities;

f. Public and private institutions of higher education; and

g. Advocacy groups.

(7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(10) [A representative Representatives] from Virginia's juvenile and adult correctional educational agency.

b. Duties. The state special education advisory committee shall:

(1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;

(2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;

(3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Individuals

with Disabilities Education Act (20 USC § 1400 et seq.);

(4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.);

(5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; [and]

(6) Advise [the Virginia Department of Education] on eligible children with disabilities in state, regional, or local adult or juvenile correctional facilities [; and]

(7) Review the policies and procedures for the provision of special education and related services under 8 VAC 20-80-90 B 1 submitted by state-operated programs, the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.] .

c. Procedures.

(1) The state special education advisory committee shall meet as often as necessary to conduct its business.

(2) By July 1 of each year [,] the state special education advisory committee shall submit an annual report of committee activities and suggestions to the Virginia Board of Education. The report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

(3) Official minutes must be kept on all committee meetings and must be made available to the public on request.

(4) All meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(5) Interpreters and other necessary services shall be provided for advisory committee members or participants.

(6) The advisory committee shall serve without compensation, but the Virginia Department of Education shall reimburse the committee for reasonable and necessary expenses for attending meetings and performing duties.

8- [9- 11.] Provide at least annually to the state special education advisory committee all findings and decisions of due process hearings, with all personally identifiable information deleted, and in addition, a summary of the complaint findings.

[40- 12.] Establish goals for the performance of children with disabilities that [will promote the purposes of the Individuals with Disabilities Education Act as stated in

34 CFR § 300.1 and] are consistent, to the maximum extent appropriate, with other goals and standards [as established by the Virginia Board of Education and the Code of Virginia] for all children [~~established by the Virginia Board of Education and the Code of Virginia.~~ as follows:]

a. Establish performance indicators to assess progress toward achieving those goals that address, at a minimum, dropout rates, graduation rates, and performance of [~~students~~ children] with disabilities on assessments [; and]

b. Every two years, report to the public and the United States Secretary of Education on progress [of the state and children with disabilities in the state] toward meeting the goals.

9- [44- 13.] Develop and implement a comprehensive personnel development plan which ~~focuses on pre-service and in-service educational needs~~ is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel, including paraprofessionals, and meets the requirements for a state improvement plan relating to personnel development.

[42- 14.] Demonstrate that children with disabilities are included in [~~statewide~~ state] and local assessment programs, with accommodations and modifications, or in an alternate assessment. Report to the public, with the same frequency and in the same [~~details~~ detail] as reports on assessments are issued for children without disabilities, the number of children [with disabilities] participating in regular and alternate assessments, and performance results on regular and alternate assessments, including both aggregated and disaggregated data.

40- ~~Develop~~ [43- 15.] Establish procedures for disseminating significant information derived from research, demonstration programs [,] and projects involving children with disabilities.

44- [44- 16.] Secure agreements ~~from~~ with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure [that] a free appropriate public education is provided to all children with disabilities. The agreements shall address financial responsibility for each nonpublic [~~education~~ educational] agency for the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings.

42- [45- 17.] Disburse the appropriated funds for the education of children with disabilities in the Commonwealth to ~~LEAs~~ local school divisions and state-operated programs which are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities, including

Final Regulations

submission of revised policies and procedures for provision of special education and related services.

~~13. Establish procedures to [16. Ensure that the placements of children with disabilities by other public agencies are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities.]~~

~~14. Establish reasonable tuition costs and other reasonable charges for each approved private nonsectarian school for children with disabilities based on the special education and services provided. Charges for other services, in addition to room and board, will be established in cooperation with other state agencies having similar responsibilities. All such costs and charges shall be established in accordance with the process determined by the Interdepartmental Committee on Rate Setting for Children's Facilities.~~

~~15. [17. 18. Ensure that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services.] Report and certify [annually] to the appropriate federal agency [to the United States Department of Education] , no later than February 1 [of each year] , [to the United States Department of Education] the number of children with disabilities in local [school divisions and state operated programs educational agencies] who are receiving special education and related services on December 1.~~

~~16. Prepare an annual report which summarizes special education and related services provided children with disabilities.~~

~~17. Review, investigate, and act on any allegations of substance which may be made by public or private agencies, individuals, or organizations of actions taken by any public agency that are contrary to the requirements of laws and regulations affecting the education of children with disabilities.~~

~~[18. 19.] Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures.~~

~~[19. 20.] Provide private special education schools that are licensed or have a certificate to operate with copies of all state regulations and standards relating to the education of children with disabilities and revisions of this chapter and standards as they occur.~~

~~20. Afford private schools to which a public agency has referred or placed a child with a disability the opportunity to participate in the development and revision of regulations and standards which apply to them.~~

~~[20. 21.] Establish and implement a mediation process in accordance with [8-VAC-20-80-74 the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)] , including providing for the cost of mediators and support personnel.~~

~~[21. 22.] Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met.~~

~~[22. 23.] If the Virginia Department of Education provides direct services to children with disabilities, [it shall] comply with [the state and] federal requirements as if it is a local educational agency and use federal funds under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).~~

~~a. The Virginia Department of Education shall use payments that would otherwise have been available to a local [school division or state operated program educational agency] to provide special education services directly to children with disabilities residing in the [area served by that] local school division [;] or [for whom that served by a] state operated program [is responsible, if the Virginia Department of Education determines the local school division or state operated program meets criteria specified by] in accordance with the conditions of § 1413(h) of] the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).~~

~~b. The Virginia Department of Education may provide special education and related services in the manner and at the location it considers appropriate, consistent with least restrictive environment requirements.~~

~~[23. 24.] Ensure that children [participating who participate] in early intervention [programs services] assisted under Part C [; of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)] and who will participate in preschool programs assisted under Part B [; of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)] experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia [Part C] lead agency's [Part C] early intervention policies and procedures, as follows:~~

~~a. For those children who at age two (on or before September 30) are found eligible for Part B early childhood special education programs, [an IEP or, if consistent with Part B IEP requirements, an individualized family service plan is IEPs are] developed and [is] implemented for [the child, those children; and]~~

~~b. The local educational agency will participate in transition planning conferences arranged by the designated local Part C early intervention agency.~~

~~[25. Ensure the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.). This shall include notice to fully inform parents about the confidentiality of information and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records.]~~

PART III. RESPONSIBILITIES OF LEAS LOCAL SCHOOL DIVISIONS AND STATE AGENCIES-OPERATED PROGRAMS.

8 VAC 20-80-40. ~~Applicability of requirements.~~ **Responsibility of local school divisions and state-** **operated programs.**

A. The requirements set forth in this ~~part~~ chapter are applicable to local school divisions and ~~[state agencies state-operated programs]~~ providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

B. Each local school division shall ensure that all children with disabilities, aged two ~~[through to]~~ 21, inclusive, residing in that school division have a right to a free appropriate public education ~~[-This shall include, including]~~ :

1. Children with disabilities who are migrant ~~[or;~~
2. Children with disabilities] who are homeless;
- ~~[3. Children with disabilities who are in need of special education and related services, even though they are advancing from grade to grade;]~~
- ~~[2. 4.] Children with disabilities who are served in [public a] charter [schools authorized by school in accordance with] the Code of Virginia;~~
- ~~[3. 5.] Children with disabilities who have been suspended or expelled from school, in accordance with this chapter;~~
- ~~[4. 6.] Children with disabilities who are incarcerated [for 10 or more days] in a regional [;] or local jail [;] with the exception of those provisions identified in 8 VAC 20-80-62;~~
- ~~[5. 7.] Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction [; services shall be provided at a mutually agreed upon location] ;~~
- ~~[6. 8.] Children with disabilities who are in [a] foster [home or child caring institution in the school division's jurisdiction. care and residents of Virginia, but not residents of the school division, under the following conditions:~~
 - 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;
 - 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 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia that is located within the geographical boundaries of the school division; and]
 - ~~[However, c.] If the child's individualized education program prescribes placement in a private day or residential [special education] facility, the responsibility for a free and appropriate public~~

education shall transfer to the local school division ~~[in the same jurisdiction as the local social services agency that is providing foster care services to the child that is the participant in the Community Policy and Management Team of the locality that has responsibility for the child under the Comprehensive Services Act (§ 2.1-745 et seq. of the Code of Virginia)]~~ ;

~~[7. 9.] Children with disabilities who are placed in a private residential placement by a Comprehensive Services Act team. The local school division that is part of the Comprehensive [Service Services] Act team that places the child in the private residential placement [for noneducational reasons] shall [be responsible for ensuring ensure, to the extent reasonable,] a free appropriate public education;~~

~~[8. Children with disabilities who are placed in a nursing home with a pediatric unit, subject to the provisions of the Virginia Department of Medical Assistance Services, whose residence remains in the local school division; and~~

~~9. Students with disabilities age 18 or older whose parents have legal guardianship and who are residents of the local school division.]~~

~~[10. Children with disabilities who are placed for noneducational reasons and are not physically present in the school division, but whose parent or parents continue to reside in the local school division in accordance with § 22.1-3 of the Code of Virginia.~~

a. For the purpose of determining residency, the residence of the child with a disability shall be determined as follows:

(1) If placed for noneducational reasons in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent or parents reside, unless the child is in a state-operated program;

(2) If placed for noneducational reasons 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 or parents reside, unless the child is in a state-operated program;

(3) If aged 18 or older, placed for noneducational reasons in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded 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, unless the adult child with a disability is in a state-operated program; and

(4) If aged 18 or older, placed for noneducational reasons in a group home by a community services

Final Regulations

board 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, unless the adult child with a disability is in a state-operated program.

b. If there is a dispute between local school divisions regarding the parent's, parents', or legal guardian's residence, the local school division of the parent's, parents', or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's, parents', or legal guardian's residence is established in another local school division;

11. Children with disabilities, aged 18 or older, who have 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 and who reside in the school division, unless the adult child is in a state-operated program. The adult child's residence shall be the fixed home to which the adult child will return following a temporary absence and at which the adult child intends to stay. No adult child shall have more than one residence at a time; and

12. Children with disabilities, aged 18 or older, who have been declared incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions and guardian resides in the school division, unless the adult child with a disability is in a state-operated program. The adult child's residence shall be the fixed home to which the adult child will return following a temporary absence and at which the adult child with a disability intends to stay. No adult child with a disability shall have more than one residence at a time.]

C. Each state-operated program shall ensure that all children with disabilities [,] aged two [through to] 21, inclusive, in that institution have the right to a free appropriate public education.

8 VAC 20-80-45. Special education staffing requirements.

A. School age programs. The following specifies the staffing patterns for special education services for school age (five [through to] 21, inclusive) children. [~~Local educational agencies and private special education schools may offer an alternative staffing pattern which ensures the requirements of this chapter are met. Any alternative staffing plan shall be submitted to the Virginia Department of Education for approval. An alternative staffing plan that reduces the number of staff positions will not be acceptable.~~]

1. Grouping. When children with disabilities are removed from the general education classroom for special education and related services, they may [~~be grouped~~ receive services] with children with the same disability or with children with different disabilities. Each child must receive [~~the majority of~~] special education services from special education personnel assigned in accordance with the requirements of Figure A in this section. [Each child may receive some special education and related services

from personnel not endorsed in the child's disability area or areas, but holding a special education endorsement as specified in Figure A.]

2. Personnel assignment.

a. Personnel assignment requirements are [~~prescribed~~ listed] in Figure A.

b. Personnel not meeting the assignment requirements of Figure A may provide some services to children with disabilities if the children receive [~~the majority of~~] special education services from personnel assigned in accordance with Figure A.

c. Personnel providing services to [~~children~~ a child] who [~~have~~ has] more than one disability [~~do not need~~ are not required] to be endorsed in all areas of [~~a the~~] child's disabilities [~~, but shall be endorsed in one area of a child's disabilities.~~]. The child shall receive some services for each disability from appropriately endorsed personnel].

3. [~~Caseloads~~ Caseload] standards.

a. The maximum special education caseloads [, with and without paraprofessionals,] are [~~as set and~~ funded in the Virginia Appropriation Act [~~and presented in.~~ See] Appendix A [for the funded caseloads. Special education services for children with visual impairment shall be established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired].

b. [~~A teacher's caseload shall include all children to whom the teacher provides services. Children receiving special education services from more than one special education teacher must be counted on the caseload of each teacher. 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 Appendix A) 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 and more than one subject area and level are taught.]

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 [~~license~~ licenses] and [~~endorsement~~ endorsements] for such [~~assignment~~ 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 must 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 [~~regular~~ general education] class [, based on the goals and objectives 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 and objectives 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. Programs for early childhood special education.

1. Children of preschool [~~ages~~ aged] (two [~~through~~ 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 team. [~~There is no state minimum or maximum number of hours of services for preschool aged students with disabilities. Any alternative staffing plan shall be submitted to the Virginia Department of Education for approval. An alternative staffing plan that reduces the number of staff positions will not be acceptable. A full 5-1/2 hour day shall be provided if determined appropriate by the IEP team.~~]

2. Staffing requirements.

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

b. Personnel assignment standards are [~~prescribed~~ listed] in Figure B.

c. The maximum special education caseloads [, with and without paraprofessionals,] are [~~as set and~~ funded in the Virginia Appropriation Act [~~and as presented in~~ See] Appendix A [for the funded caseloads. Special education services for children with visual impairment shall be established, maintained, and operated jointly by the local school

board and the Virginia Department for the Blind and Vision Impaired].

C. Staffing for education programs in regional and local jails. [~~Persons~~ Special education personnel] with any special education endorsement, except early childhood special education [and speech-language impairment], may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.

D. Alternative special education staffing plan. [Local school divisions and private special education schools may offer an alternative staffing pattern that ensures the requirements of this chapter are met. An alternative staffing plan that reduces the number of staff positions will not be acceptable.] If the local school division or private special education director [~~wishes~~ plans] to implement a different staffing pattern from those specified in this chapter, the local school division superintendent, or private special education school director [,] shall [~~submit~~ receive approval to implement] an alternative staffing plan to the Virginia Department of Education [in accordance with the procedures established by the Virginia Department of Education. Information on alternative staffing plan requests and approvals shall be available to teachers and parents].

[~~1. Alternative staffing plans are considered on an individual teacher basis according to the description of the caseload. Plans shall be submitted on a form authorized by the Virginia Department of Education. Approval from the Virginia Department of Education is required to implement the plan. The teachers affected by the plan must be informed by the local school division or private special education school that a plan has been submitted, advised of its content, and of its approval status. Approval from the Virginia Department of Education must be secured if there are any modifications to the original plan.~~]

~~2. In the event that a change in an IEP requires submission of an alternative staffing plan, a request for a plan must be submitted to the Virginia Department of Education within 30 days of the IEP meeting. The IEP shall be implemented while awaiting approval from the Virginia Department of Education.~~

~~3. Requests for continuation of an alternative staffing plan approved in the previous school year shall be submitted before August 1.~~

Figure A. Special education [teacher personnel] assignment requirements for [school-age school-aged] children [, ,] ages five [~~through~~ to] 21, inclusive [,] in local school divisions].

Disability Category	Endorsement
Autism	any special education endorsement, as appropriate to student needs
[Deaf-blind Deaf-blindness]	severe disabilities K-12 or any other special education endorsement, as appropriate to student needs

Final Regulations

Developmental Delay: age 5- [9 8]	any special education endorsement, as appropriate to student needs
Emotional Disturbance	emotional disturbance K-12
Hearing Impairment/Deaf	hearing impairments preK-12
Learning Disabilities	learning disabilities K-12
Mental Retardation	mental retardation 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
Severe Disabilities	severe disabilities K-12
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 [~~teacher~~ personnel] assignment requirements for preschool children [~~4~~] ages two [~~through~~ to] five, inclusive [~~4~~], in local school divisions] .

Disability Category	Endorsement
Developmental Delay: ages 2 - 5	early childhood special education
Hearing Impairment[/Deaf]	hearing impairments preK-12
Speech or language impairment	speech or language disorders preK-12
[Vision Visual] Impairment	visual impairments preK-12
All other disability categories	early childhood special education

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services are as follows:

a. Personnel providing educational interpreting services for children using sign language shall have a Virginia Quality Assurance Screening (VQAS) Level III, any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation), or any other state or national certification 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 or cued language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit).

c. Personnel providing educational interpreting services for children requiring oral interpreting shall [~~have met~~ meet] minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics.

2. [~~An individual providing~~ Personnel who provide] interpreting services for children [~~using who use~~] sign language or cued speech or cued language [and] who [~~does do~~] not hold the required qualifications may be employed in accordance with all of the following criteria:

a. [~~The individual must~~ Personnel shall] have a Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard-of-Hearing, upon hiring date in any local educational agency in Virginia;

b. [~~Each individual must~~ Personnel shall] achieve the qualification requirements by the third anniversary [~~date~~] of [~~their~~] hiring [~~date~~] in any local educational agency in Virginia; and

c. The local educational agency shall [~~annually~~] inform the Virginia Department of Education of: (i) the person's name, social security number, and hiring date; (ii) the person's progress toward meeting the qualification requirements; and (iii) the person's development plan.

3. Waiver of qualification [~~for interpreters~~] requirements [~~for personnel providing interpreting services~~] .

a. Conditions for requesting a waiver.

(1) The local educational agency superintendent or director of a private special education school that is licensed or has a certificate to operate shall request a waiver of the qualification requirements for [~~any individual personnel~~] who [~~does do~~] not meet the qualification requirements for providing interpreting services. [The request shall include a statement certifying that the local educational agency or private special education school has recruited personnel who meet the qualification requirements and has not had three or more applicants who hold at least a VQAS Level I.]

(2) A waiver may be provided for [~~individuals personnel~~] who do not hold [~~at least a Virginia Quality Assurance Screening (VQAS) Level I upon date of hire~~ the qualifications in subdivision 2 a of this subsection,] and who hold interpreting credentials from another state or who have registered to take the VQAS [, and who take the assessment as scheduled] . The waiver shall be in place only until the [local educational agency receives the notice of equivalency of the out-of-state credential or of the attainment of the] VQAS level [~~or equivalency determination is received~~ . The waiver shall not be extended if a VQAS Level I, or higher, is not obtained] .

(3) A waiver may be provided for one year for individuals who have not attained the qualification requirements [~~by the third anniversary of their hiring~~] .

~~date in any local educational agency in Virginia in subdivision 2 b of this subsection] and who hold a VQAS Level II. This waiver may be provided for [a second one additional] year if the individual continues to hold a VQAS Level II and has shown improvement in percentage scores.~~

b. Timeline for requesting a waiver. A request to waive the [~~educational interpreter~~] qualification requirements [~~is to shall~~] be submitted to the Virginia Department of Education within 30 days of the person's initial or continuing assignment to provide interpreting services, using a form authorized by the Virginia Department of Education.

8 VAC 20-80-50. Identification, evaluation, and eligibility Child find.

A. Target ages and eligibility. ~~Each annual special education plan/report and funding application shall include procedures which ensure that all children residing within the jurisdiction of an LEA, birth to age 21, inclusive, who may have disabilities, and who may need special education and related services are identified, located, and evaluated. The plan also shall include a practical method for determining children who are receiving needed special education and related services and those who are not receiving such services.~~

[1.] ~~Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services [-The requirements apply to, including children who] :~~

[~~1. Children who~~ a.] Are highly mobile, such as migrant and homeless children;

[~~2. Children who are attending~~ b. Attend] private schools [, including children who are home-instructed or home-tutored] ;

[~~3. Children who~~ c.] Are suspected of being [~~a child children~~] with [~~a disability disabilities~~ under this chapter] and in need of special education, even though they are advancing from grade to grade; and

[~~4. Children~~ d. Are] under age 18 who are suspected of having a disability [~~and in who~~] need [~~of~~] special education and related services and [~~who~~] are incarcerated in a regional or local jail [in its jurisdiction] for 10 or more days.

[2. Each local school division shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council.

3. Each local school division shall locate, identify and evaluate all private school children with disabilities, including religious school children and home-instructed or home-tutored children residing in the jurisdiction of the local school division, in accordance with 8 VAC 20-80-66. The activities undertaken to carry out this responsibility for private school children with disabilities must be

comparable to the activities undertaken for children with disabilities in public schools. Each local school division shall consult with appropriate representatives of private school children with disabilities on how to carry out the child find and evaluation activities.]

B. Child find Public awareness.

1. Each local school division shall, at least annually, conduct a public awareness campaign to:

a. 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;

b. Generate referrals; and

c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for [*services to begin*] early [*intervention*] .

2. Procedures for informing the community shall show evidence of the use of a variety of materials and media [,] and shall:

a. Provide for personal contacts with community groups, public and private agencies [,] and organizations; and

b. Provide information in the person's native language or primary mode of communication.

3. [~~There shall be~~ *The local school division shall show*] evidence of involvement of parents and community members in the required child find and community awareness campaign.

4. ~~Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children from birth to 21, inclusive, who are in need of special education and related services. Written procedures shall be established for collecting, reviewing and maintaining such data.~~

5. ~~All children ages two to 21, inclusive, not enrolled in school and who are suspected of having a disability shall be referred to the division superintendent, or designee, who shall initiate the process of determining eligibility for special education services.~~

6. ~~Where such children are determined to be eligible for special education services, school divisions are required to offer appropriate programs and placements consistent with each child's IEP from ages two to 21 inclusive.~~

C. Screening.

1. ~~Each local school division shall establish and maintain screening procedures to assure the identification of children with disabilities residing within its jurisdiction and requiring special education. All procedural safeguards shall be maintained during the screening process. These include the following:~~

a. ~~Written notice when appropriate;~~

b. ~~Confidentiality; and~~

Final Regulations

~~c. Maintenance of student's scholastic record.~~

~~2- 1. The screening process for all children enrolled in the school division a [public local] school [division] in Virginia, including transfers from out of state, is as follows:~~

~~a. All children [(through grade three)], within 60 administrative working business days of initial enrollment in a public school, shall be screened in the following areas speech, voice, and language to determine if [formal assessment a referral for an evaluation for special education and related services] is indicated.~~

~~(1) Speech, voice, and language; and~~

~~(2) Vision and hearing.~~

~~b. All children, within 60 business days of initial enrollment, shall be screened in the areas of vision and hearing to determine if [formal assessment a referral for an evaluation for special education and related services] is indicated. In addition, the vision and hearing of all children in grades three, seven, and 10 shall be screened during the school year.~~

~~b- c. All children (through grade 3 three), within 60 administrative working business days of initial enrollment in public schools, shall be screened for fine and gross motor functions to determine if [formal assessment a referral for an evaluation for special education and related services] is indicated.~~

~~d. [For children entering a public kindergarten or elementary school in Virginia,] The screening may take place up to 60 business days prior to the start of school. The local school division may recognize screenings reported as part of the child's preschool physical examination required under the Code of Virginia if completed within the above prescribed time line.~~

~~e- e. Specific measures or instruments will be employed which use:~~

~~(1) Both observational and performance techniques; and~~

~~(2) Techniques which guarantee nondiscrimination.~~

~~f. Children who fail any of the above screenings may be rescreened after [the] 60 business days [specified in subdivision b above] if the original results are not considered valid.~~

~~g. Children shall be referred to the special education administrator or designee no more than [two five] business days after screening [or rescreening] if results suggest [the child may have a disability and may be in need of special education and related services that a referral for evaluation for special education and related services is indicated]. The referral shall include the screening results.~~

~~2. Each local school division shall establish and maintain screening procedures to assure the identification of~~

~~children with suspected disabilities residing within its jurisdiction and requiring special education. [All appropriate The local school division shall provide all applicable] procedural safeguards [shall be maintained during the screening process]. These include the following:~~

~~a. Written notice to parents of the scheduled screening and [, if the child fails the screening,] the results of the screening;~~

~~b. Confidentiality; and~~

~~c. Maintenance of the student's scholastic record.~~

~~[3.] There shall be established [A] formal [child study committee shall be established in each school to review records and other performance evidence of] these [the children referred through a screening process, or] referred by a source other than through screening; for example, when a parent or external service provider makes a referral [by school staff, the parent or parents, or other individuals] .~~

~~[a. All referrals] for [to the child study committee shall be made to the principal or designee. The committee shall include:]~~

~~a- [(1) The referring source, as appropriate (except] when [if inclusion of referring source would breach the confidentiality of the child);]~~

~~b- [(2) The principal or designee;]~~

~~c- Teachers [(3) At least one teacher; and]~~

~~d- Specialists [(4) At least one specialist.]~~

~~The committee must have at least three persons in attendance.~~

~~4- [b. The child study committee shall meet within 10] administrative working [business days following receipt of the referral. The purpose of the meeting is to identify and recommend strategies to address the child's learning, behavior, communication, or development. This does not preclude the child study committee from making a referral for evaluation for special education and related services prior to implementing strategies. The child study committee shall refer the child to the special education administrator or designee within five business days following the determination by the committee that the child should be referred for an evaluation for special education and related services.]~~

~~5- [c. Actions by the committee shall be documented in writing and shall include information upon which a decision was based.] The formal assessment components shall not be initiated (collected) before referral to the special education administrator and parental consent has been obtained.~~

~~D. Referral for evaluation. Children suspected of having a disability shall be referred by the child study committee or other referring source to the special education administrator for formal assessment. If referral to the special education~~

administrator is from the child study committee, it shall be made within five administrative working days following the determination by the child study committee that the child is suspected of having a disability.

8 VAC 20-80-52. Referral for evaluation.

A. All children, [~~ages aged~~] two to 21, inclusive, whether enrolled in public school or not, [~~and~~] who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source, including a [~~school-based child study~~] committee, school staff, a parent or parents, or other individuals.
2. If the referral is from a [~~school-based child study~~] committee, it shall be made within [~~two~~ five] business days following the determination by the committee that the child should be referred for evaluation for special education and related services. In addition, the [~~school-based child study~~] committee shall report, in writing, on strategies implemented to address the child's learning, behavior, communication [,] or development.
3. If the referral is from any other source, the referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made [~~orally or in writing~~ in oral or written form] .

B. Procedures for referral for evaluation.

1. Upon receipt of the referral, the special education administrator, or designee, shall:
 - ~~1-~~ a. Record the date, reason for referral [,] and names of the person~~s~~ or agency making the referral;
 - ~~2-~~ b. Implement procedures for maintaining the confidentiality of all data [;] and [~~institute~~]
 - c. Provide] procedural safeguards to [÷] ~~a-~~ [(4)] inform the parent or parents [of the] referral [~~child~~] in the parent's or parents' native language or primary mode of communication, unless it is clearly not feasible to do so [÷, about:
 - (1) The referral for evaluation and its purpose; and
 - (2) Parental rights with respect to evaluation and other procedural safeguards.]
 - b- [(2) Advise the parent or parents of his ~~their~~ rights in the parent's or parents' native language or primary mode of communication; and
 - c- Inform, within five business days of receipt of the referral, the referring source and the parent or parents if an evaluation to determine eligibility for special education and related services will be conducted.
 - (1) The special education administrator or designee may refer the child to a school-based committee to

~~determine if an evaluation shall be completed. This shall occur within the five business day time period.~~

~~(2) If the decision is to not evaluate, prior written notice in accordance with 8 VAC 20-80-70 shall be given to the parent or parents, including their right to appeal this decision.~~

~~(3) If the decision not to evaluate is made by a sole individual, the parent or parents may request a school-based committee to meet and determine if an evaluation is necessary.~~

~~(4) The decision whether to evaluate or not shall be made within 10 business days of the parent's or parents' request.~~

~~(5) The meeting of the school-based committee shall not be used to deny or delay a parent's or parents' right to a due process hearing to contest the decision not to evaluate.~~

2. The special education director or designee may request a review by a child study committee to determine whether an evaluation will be completed if the referral comes from a source other than the child study committee. This request for review shall occur within five business days of the receipt of the referral for evaluation. The decision about whether to evaluate shall be made within 10 business days of the request for review.

3. If the child study committee is meeting following the request for review to determine if an evaluation will be completed, the committee shall include all members of the team that meets to determine needed evaluation data, including the parent or parents (e.g., the IEP team and other qualified professionals as appropriate).

4. The meeting of the child study committee shall not:

- a. Deny or delay the parent's or parents' right to a due process hearing to contest the decision not to evaluate;
- b. Deny or delay the parent's or parents' right to make another referral in the future; or
- c. Delay the evaluation of a child who is suspected of having a disability.

5. The child study committee may attempt classroom interventions during the evaluation process, but such interventions cannot delay the evaluation.

6. If the decision is to not evaluate, prior written notice, in accordance with 8 VAC 20-80-70 C, shall be given to the parent or parents, including their right to appeal the decision through due process hearing procedures.]

[~~2-~~ 7.] If the decision is to conduct an evaluation [,] the special education administrator or designee shall:

- e- a. Secure ~~written permission of informed consent~~ from the parent or parents for the ~~formal assessment~~; evaluation [÷.]

(1) Parental consent is not required before reviewing existing data as part of an evaluation or

Final Regulations

administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.

(2) If the parent or parents refuse consent for [an] initial evaluation, the local educational agency may continue to pursue [~~these~~ the] evaluations by using due process or mediation procedures.

b. Provide all notice and procedural safeguards required by 8 VAC 20-80-70.

c. Inform the parent or parents of the procedures for [the] determination of needed evaluation data and request any evaluation information the parent or parents may have.

d. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the referral for evaluation is received by the special education administrator or designee.

3. Initiate formal assessment procedures; and

4. ~~Notify the referral source, when appropriate, of the results of the decision regarding determination of eligibility.~~

E. 8 VAC 20-80-54. Evaluation.

A. Each local educational agency shall ensure that all children ~~residing~~ [, aged two to 21, inclusive, who reside] within its jurisdiction, [~~ages two to 21, inclusive,~~] who may have disabilities, and who may need special education and related services, are evaluated [~~-. The requirements apply to,~~ including children who] :

1. [~~Children who~~] Are highly mobile, such as migrant and homeless children;

2. [~~Children who are attending~~ Attend] private schools [, including children who are home instructed or home tutored] ;

3. [~~Children who~~] Are suspected of being [~~a child~~ children] with [~~a disability~~ disabilities] and [are] in need of special education, even though they are advancing from grade to grade; and

4. [~~Children, Are~~] under age 18, [~~who are~~] suspected of [~~being a child with~~ having] a disability and in need of special education [,] and [who] are incarcerated [for 10 or more days] in a regional or local jail [~~for 10 or more days in its jurisdiction~~] .

B. Each local educational agency shall conduct a full ~~and~~ [, and initial] evaluation [in accordance with subsections D and E of this section] before the initial provision of special education and related services to a child with a disability.

4. C. The LEA local educational agency shall establish procedures for the [initial] evaluation [and reevaluation] of referred children which include the following:

~~a.~~ 1. Written prior [~~notification~~ notice] (in the parent's or parents' native language or mode of communication [unless it is clearly not feasible to do so]);

[2. Notice of procedural safeguards;]

~~b.~~ [~~2.~~ 3.] Opportunity for independent [educational] evaluation;

~~c.~~ Written [~~3.~~ 4.] Informed parental consent;

~~d.~~ [~~4.~~ 5.] Assignment of surrogate parent when necessary;

~~e.~~ [~~5.~~ 6.] Opportunity for an impartial [due process] hearing;

~~f.~~ [~~6.~~ 7.] Confidentiality;

~~g.~~ [~~7.~~ 8.] Opportunity for examination of records; and

~~h.~~ [~~8.~~ 9.] Nondiscriminatory testing.

D. Determination of needed evaluation data.

1. Review of existing evaluation data. As part of an initial evaluation, if appropriate, [~~and as part of any reevaluation,~~] a group that [~~includes the individuals described in 8 VAC 20-80-62 C~~] is comprised of the same individuals as an IEP team [,] and other qualified professionals, as appropriate, shall:

a. Review existing evaluation data on the child, including:

(1) Evaluations and information provided by the parent or parents of the child;

(2) Current classroom-based assessments and observations;

(3) Observations by teachers and related services providers; and

b. On the basis of that review [,] and input from the child's parent or parents, [~~or the agency assigned legal custody of the child,~~] identify what additional data, if any, are needed to determine:

(1) Whether the child has a particular [~~category of~~] disability [or disabilities] ;

(2) The present levels of performance and educational needs of the child;

(3) Whether the child needs special education and related services; and

(4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

2. Conduct of review. The group completing the review may conduct its review without a meeting. The [~~parent's or parents' participation in the review shall be ensured according to the procedures set forth in 8 VAC 20-80-62~~] local educational agency shall provide notice to ensure that the parent or parents have the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the parent or parents will have an opportunity to participate. The notice must

indicate the purpose, date, time, and location of the meeting and who will be in attendance] .

3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

[4. Requirements if additional data are not needed:

~~a. If it is determined that no additional data are needed to determine whether the child is a child with a disability, the local educational agency shall notify the child's parent or parents of that determination and the reasons for it; and, of the right of the parent or parents to request an evaluation to determine whether, for purposes of services under this part, the child is a child with a disability.~~

~~b. The local educational agency is not required to conduct the evaluation to determine if the child is a child with a disability unless requested to do so by the child's parent or parents.~~

4. This process shall be considered the evaluation if no additional data are needed.]

2- E. The LEA local educational agency shall establish policies and procedures to ensure that ~~tests and other evaluation materials meet~~ the following: requirements are met.

~~a.~~ 1. Tests and other evaluation materials [used to assess a child under this chapter] :

~~(1) a. Are [neither culturally nor racially discriminatory selected and administered so as not to be discriminatory on a racial or cultural basis] ; [and]~~

~~(2) b. Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;~~

2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

3. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent or parents, 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), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.

4. [~~Evaluation~~ The assessment] tools and strategies [~~are~~] used [~~that~~] provide relevant information that directly assists persons in determining the educational needs of the child.

5. Any standardized tests that are given to a child:

~~(3) a. Have been validated for the specific purpose for which they are used; and~~

~~(4) b. Are administered by trained personnel in [conformance accordance] with the instructions provided by their producer [the test manufacturer the producer of the tests] .~~

6. If an [~~evaluation~~ assessment] is not conducted under standard conditions, a description of the extent to which it varied from standard conditions [(e.g., the qualifications of the person administering the test or the method of test administration)] must be included in the evaluation report.

7. Any nonstandardized test, administered by qualified personnel, may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.

~~b.~~ 8. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those [~~which that~~] are designed to provide a single general intelligence quotient;

~~c.~~ 9. Tests are selected and administered so as to best ensure that [~~when if~~] a test is administered to a child with impaired sensory, [~~manual motor~~], or [~~speaking communication~~] skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, [~~manual motor~~], or [~~speaking communication~~] skills (except where those skills are the factors [~~which that~~] the test purports to measure);

10. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

11. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

~~d.~~ 12. No single procedure [~~shall be is~~] used as the sole criterion for determining [~~whether a child is a child with a disability and for determining~~] an appropriate educational program for a child;

~~e.~~ 13. If the evaluation requires [~~more than one component, the evaluation components shall be~~] made [~~completed by~~] assessments in more than one area relating to the suspected disability,] a [~~multidisciplinary team~~] or [group of persons], including at least one teacher or other specialist with knowledge in the area of [~~the~~] suspected disability; [~~, shall complete the assessments~~] .

~~3. [14. For a child suspected of having a specific learning disability, the multidisciplinary team shall include:~~

~~a. The child's regular teacher or if the child does not have a regular teacher, a classroom teacher qualified to teach a child of that age, or if a child is below school age, a person qualified to teach that age; and~~

Final Regulations

~~b. At least one person qualified to conduct individual diagnostic examinations of children, such as a specific learning disabilities teacher, school psychologist, speech language pathologist, or remedial reading teacher.]~~

4. ~~[14.]~~ For a child suspected of having a [*specific*] learning disability, the evaluation must include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

5. The LEA shall establish procedures to ensure:

a. ~~That [15.] Each child [is assessed *shall be evaluated*] by a qualified professional in all areas [*related relating*] to the suspected disability, including, [*where if*] appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments. Reports from assessments must be provided in writing. However,~~

a. The hearing of each child [*with suspected of having*] a disability shall be [~~tested screened~~] during the eligibility process prior to [~~placement in a special education program~~ *initial determination of eligibility for special education and related services*] .

b. A complete audiological assessment, including tests which will assess inner and middle ear functioning, [~~must shall~~] be performed on each child *who is hearing impaired [or deaf]* or who fails two hearing screening tests. ~~The second hearing screening test shall be completed not less than 15 nor more than 45 calendar days after administration of the first screening test.~~

b. ~~Parents are provided an opportunity to participate, if they so request, in the consideration of the areas to be assessed. Parents must be provided written notification of this right.~~

6. ~~The LEA shall establish procedures to ensure that eligibility for special education and related services is determined within 65 administrative working days after request for evaluation is received by the special education administrator.~~

7. ~~A multidisciplinary team may determine that a child has a specific learning disability if:~~

a. ~~The child does not achieve commensurate with his age and ability levels in one or more of the areas listed in subdivision E 7 b of this section when provided with learning experiences appropriate for the child's age and ability levels; and~~

b. ~~The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:~~

- ~~(1) Oral expression;~~
- ~~(2) Listening comprehension;~~
- ~~(3) Written expression;~~
- ~~(4) Basic reading skill;~~
- ~~(5) Reading comprehension;~~
- ~~(6) Mathematical calculations; or~~
- ~~(7) Mathematical reasoning.~~

~~c. The multidisciplinary team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:~~

- ~~(1) A visual, hearing or motor disability;~~
- ~~(2) Mental retardation;~~
- ~~(3) Serious emotional disturbance; or~~
- ~~(4) Environmental, cultural, or economic disadvantages.~~

~~[17. Reports from evaluations must be provided in writing at 16. A written copy of the evaluation report shall be provided to the parent or parents. The report shall be available to the parent or parents no later than two business days before] the meeting to determine eligibility. [A copy of the evaluation report shall be provided to the parent.]~~

F. *Reevaluation.*

1. A reevaluation shall be conducted [:]

[~~(i)~~ a.] *If conditions warrant a reevaluation;*

[~~(ii)~~ b.] *If the child's parent [, parents,] or teacher requests a reevaluation; or*

[~~(iii)~~ c.] *At least once every three years.*

2. [*Review of existing evaluation data. As part of a reevaluation,] the local educational agency shall ensure that a group [~~of individuals, as described in 8 VAC 20-80-62-G~~ comprised of the same individuals as an IEP team] , and other qualified professionals, as appropriate:*

a. *Reviews the reason for the reevaluation request, if applicable, and existing evaluation data on the child, including:*

- (1) Evaluations and information provided by the [parent or] parents of the child;*
- (2) Current classroom-based assessments and observations; and*
- (3) Observations by teachers and related services providers [; and]*

b. [~~Identify~~ *Identifies*] , *on the basis of the above review, and input from the child's [parent or] parents, what additional data, if any [,] are needed to determine:*

(1) Whether the child continues to have a particular disability [or has any additional disabilities] ;

(2) The present levels of performance and educational needs of the child;

(3) Whether the child continues to need special education and related services; and

(4) Whether any modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

[~~6.~~ 3. Conduct of review.] The group may conduct its review without a meeting.

[~~3.~~ 4. Need for additional data.] The local educational agency [~~shall determine, based on the review in subdivisions 2 a and b of this subsection, if it~~] shall administer tests and other evaluation materials [, in accordance with subsection E of this section,] as may be needed to [~~make the determinations produce the data~~] identified in subdivision 2 b of this subsection.

[~~a. The local educational agency shall inform the parent and referring teacher, if applicable, of its determination.~~]

5. Requirements if additional data are not needed.

~~b. a.] If the determination identified in subdivision [(b) 2] of this subsection is that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall notify the child's [parent or] parents of (i) that determination and the reasons for it; and (ii) the right of the [parent or] parents to request an evaluation to determine whether, for purposes of services under this chapter, the child continues to be a child with a disability.~~

[~~e. b.] The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a particular disability, unless requested to do so by the child's [parent or] parents.~~

[~~d. The local educational agency is not required to conduct an evaluation to gather additional information if it determines that it does not need additional data to determine:~~

~~(1) The present levels of performance and educational needs of the child;~~

~~(2) Whether the child continues to need special education and related services; and~~

~~(3) Whether any modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.~~

c. This process shall be considered the evaluation if no additional data are needed.]

[4. G.] Notice and parental consent.

[~~a. 1.] The local educational agency shall provide notice in accordance with 8 VAC 20-80-70 C.~~

[~~b. 2.] Parental consent is required before gathering [additional new] evaluation data.~~

[~~(4) a.] If [for a reevaluation] the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent or parents have failed to respond, the local educational agency shall proceed as if consent has been given by the parent or parents. [The procedures in 8 VAC 20-80-62 D shall be used to meet the reasonable measures requirement. Reasonable measures include providing notice to the parent or parents in writing (or by telephone or in person with proper documentation).]~~

[~~(2) b.] If the parent or parents refuse consent for [an evaluation or] reevaluation, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures.~~

[~~e. 3.] Parental consent is not required before [reviewing:~~

a. Review of] existing data as part of [~~a~~ an evaluation or] reevaluation [~~;~~ or

b. A teacher's or related service provider's observations or ongoing classroom evaluations.]

[~~5. H.] Timelines.~~

[~~a. 1.] Evaluations shall be completed within 65 business days of the [provision of notice specified in subdivision 4 of this subsection receipt of the referral by the special education administrator or designee] .~~

[~~b. The determination of whether the child continues to be a child with a disability in need of special education and related services shall be completed within 65 business days of the notice specified in subdivision 4 of this subsection.]~~

[~~e. 2.] If the reevaluation is [~~a triennial~~ the] evaluation [required every three years] , the [~~notice~~ evaluation] shall be [~~sent~~ initiated] no less than 65 business days prior to the third anniversary of the date eligibility was last determined. [The evaluation shall be completed in 65 business days.]~~

[~~6. The review described in subdivision 2 of this subsection may be used to amend the child's IEP, even if no further evaluation data is gathered.]~~

F. 8 VAC 20-80-56. Eligibility. Eligibility of children for special education programs and related services shall be determined by an eligibility committee.

1. Membership of the eligibility committee shall include, but not be limited to, school division personnel representing the disciplines providing assessments and the special education administrator, or designee. At least one school division representative serving on the

Final Regulations

~~eligibility committee must have either assessed or observed the child.~~

~~2. The eligibility committee shall review the assessments, any pertinent information reported by an agency assigned legal custody of the child, and any other special reports to determine if the child has a disability which requires special education and related services. Once eligibility has been determined, adding a related service to an existing IEP is an IEP committee function. The assessments or other relevant data that are required or necessary for the proposed related service are forwarded to the IEP committee in order that appropriate goals and objectives can be developed.~~

A. The local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services is made [~~within 65 business days after~~] :

1. [Within 65 business days after] the referral for evaluation is received [for an initial evaluation] ; [~~or~~]

[2. No later than the third anniversary of the date the child was last found eligible for special education and related services; or]

[~~2.~~ 3. Within 65 business days after] the parent or parents are notified of [~~any local educational agency the~~] decision not to reevaluate [, made in accordance with 8 VAC 20-80-54 F] .

B. Upon completing the administration of tests and other evaluation materials or after [~~determination~~ determining] that additional data are not needed, in accordance with 8 VAC 20-80-54 D, a [~~team~~ group] of qualified professionals and the parent or parents of the child must determine whether the child is, or continues to be, a child with a disability.

1. The [~~team~~ group] shall include, but not be limited to, school division personnel representing the disciplines providing assessments, the special education administrator [~~;~~] or designee, and the parent or parents.

2. At least one school division representative [~~serving on in~~] the [~~team~~ group] must have either assessed or observed the child.

3. The [~~team~~ group] may be an IEP team, as defined in 8 VAC 20-80-62 C, as long as the above requirements and notice requirements of [~~section~~] 8 VAC 20-80-70 C [~~;~~] are met.

4. If determining whether a child suspected of having a specific learning disability [is a child with a disability] , as defined by this chapter, the [~~team~~ group] shall include:

a. The child's regular teacher:

(1) If the child does not have a regular teacher, a regular [classroom] teacher qualified to teach a child of that age; or

(2) For a child less than school age, an individual qualified to teach a child of [~~this~~ that] age; and

b. At least one person qualified to conduct diagnostic examinations of children, such as school psychologist,

speech-language pathologist, teacher of specific learning disabilities [,] or teacher of remedial reading.

C. Procedures for determining eligibility [~~and placement~~] .

1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall:

a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, adaptive behavior; and

b. Ensure that information from all these sources is documented and carefully considered.

~~3.~~ 2. The eligibility committee [~~team~~ group] shall [~~follow due process procedures provide procedural safeguards~~] in [~~the determination of~~ determining] eligibility and in ensuring the confidentiality of records.

[~~3. The local educational agency must provide a copy of the documentation of the determination of eligibility to the parent or parents.~~]

[~~4.~~ 3.] A child may not be determined to be eligible under this chapter if the determinant factor is lack of instruction in reading or math or limited English proficiency [~~;~~] and the child does not otherwise meet the eligibility criteria.

[~~4.~~ 5.] The [group making the] decision regarding the child's eligibility shall [~~be made by~~ work toward] consensus. [The local educational agency shall obtain parental consent for the initial eligibility determination. Thereafter, parental consent shall be secured for any change in identification.] The eligibility committee [~~team~~ group] shall have a written summary that consists of [~~essential deliberations supporting its findings the basis for making its determination~~] as to the eligibility of [~~each the~~] child for a special education program and related services. This summary shall be signed by each eligibility committee [~~team~~ group] member present. a. The written summary shall be maintained in the child's confidential files; scholastic record.

[5. The local educational agency shall provide a copy of the documentation of the determination of eligibility to the parent or parents.]

~~b.~~ 6. The summary statement of the eligibility committee's [~~team's~~ group's] essential deliberations shall be forwarded by the committee to the IEP committee team upon determination of eligibility. The summary statement may include other recommendations. [A statement by each] eligibility committee [~~team~~ member that the summary statement reflects] his [~~that member's~~ conclusions shall be included.]

[a. Each group member shall certify in writing whether the report reflects his conclusions.] If the [~~team~~ group] does not reach consensus and the report does not reflect a particular member's conclusion, then [a separate statement shall be submitted by] the [~~team~~

group] member [*must submit a separate statement*] presenting ~~his~~ *that member's* conclusions.

[*b. No changes shall be made to a child's eligibility for special education and related services without parental consent.*]

e. 7. ~~[The written summary concerning students identified as For a child suspected of]~~ having a specific learning disability ~~[shall, the documentation of the group's determination of eligibility must]~~ also include a statement of:

(1) ~~A statement indicating~~ a. Whether ~~[or not]~~ the child has a specific learning disability;

(2) ~~b.~~ The basis for making the determination;

(3) ~~c.~~ [*The*] relevant behavior noted during the observation ~~[and of the child;]~~

[*d.*] The relationship of the behavior to the child's academic functioning;

(4) ~~[e.~~ The] educationally relevant medical findings, if any;

(5) ~~Information indicating [e. f.]~~ Whether ~~[or not]~~ there is a severe discrepancy between the child's achievement and ability ~~which that [cannot be corrected is not correctable]~~ without special education and related services; *and*

(6) ~~[f. g.]~~ The determination of the ~~[team group]~~ concerning [*the*] effects of any environmental, cultural, or economic disadvantage, ~~as determined by the team; and.~~

(7) ~~A statement by each eligibility committee member that the report reflects his conclusions. If it does not reflect a particular member's conclusion, then the team member must submit a separate statement presenting his conclusions.~~

G. Termination of services.

1. Termination of one or more related services for a child is a function of the IEP committee. Termination of related services occurs when the IEP committee determines that the services are no longer required in order for the child to benefit from special education.

2. Termination of all special education services for a child (i.e., removal from special education) shall be the responsibility of the eligibility committee. The IEP committee shall refer a student to the eligibility committee when they believe the child is no longer eligible to receive special education. Termination of special education services occurs:

a. If the eligibility committee determines that the services are no longer required based on the fact that the child no longer meets the eligibility criteria for special education and related services and parental consent has been obtained; or

b. If the parent withdraws permission for the child to remain in special education, then the decision of the

parent to withdraw the child from special education must be reviewed by the LEA pursuant to the change in placement procedures. If the LEA disagrees with the withdrawal decision and attempts to resolve parental withdrawal of consent through informal methods and are unsuccessful, the LEA must use other measures as necessary to ensure that parental withdrawal of consent will not result in the withdrawal of a necessary free appropriate public education.

D. Eligibility for related services. A child with a disability must be found eligible for special education in order to receive related services. Related services are those supportive services that are required to assist a child with a disability to benefit from special education. [Once a child is found eligible for special education, decisions about the need for related services are made by and added to the IEP by the IEP team. An evaluation may be conducted, if needed.]

E. Eligibility of two-year-old children. A child, aged two, previously participating in early intervention ~~[programs services]~~ assisted under Part C ~~[, of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)]~~ shall [meet the requirements of this chapter to] be determined eligible under Part B ~~[, in accordance with the requirements of this chapter of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)]~~ .

F. Eligibility as a child with a developmental delay. ~~[If the local educational agency elects to use the term developmental delay for children aged two through eight:]~~

1. The local educational agency ~~[must conform to the definition and age range in]~~ shall include developmental delay as one of the disability categories when determining whether a preschool child, aged two to five, inclusive, is eligible under this chapter. The local educational agency may include developmental delay as one of the disability categories when determining whether a school-aged child, aged five to eight, inclusive, is eligible under] this chapter.

2. Other disability categories may be used for any child with a disability aged two ~~[through to]~~ eight [, inclusive] . However, teacher assignment requirements specified in 8 VAC 20-80-45 shall apply.

G. Criteria for determining the existence of a specific learning disability. The ~~[multidisciplinary team group]~~ may determine that a child has a specific learning disability if:

1. The child does not achieve commensurate with the child's age and ability levels in one or more of the areas listed in subdivision 2 of this subsection ~~[when if]~~ provided with learning experiences appropriate for the child's age and ability levels; and

2. The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

a. Oral expression;

b. Listening comprehension;

c. Written expression;

Final Regulations

- d. Basic reading skill;
- e. Reading comprehension;
- f. Mathematical calculations; or
- g. Mathematical reasoning.

3. The ~~[multidisciplinary team group]~~ may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

- a. A visual, hearing [,] or motor ~~[disability impairment]~~;
- b. Mental retardation;
- c. Emotional disturbance; or
- d. Environmental, cultural, or economic disadvantage.

[H. Nothing in this chapter requires that children be identified by their disability, as long as each child has a disability under this chapter and by reason of that disability needs special education and related services and is regarded as a child with a disability. Children with disabilities may be identified as having more than one disability.

~~H. I.] Children found not eligible for special education. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers [or any appropriate committee. Parental consent to release information shall be secured for children in private schools, as necessary] .~~

~~H. [I. Child's status pending determination of eligibility. The child shall remain in the current placement during determination of eligibility for special education and related services, with the exception of the provisions in 8 VAC 20-80-68.]~~

J. If the determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with this chapter.

~~K. Child's status; previous enrollment in special education. If a child enrolled in a special education program transfers from one LEA to another LEA or from out of state to an LEA, the child shall be placed with written consent of the parent in a special education program consistent with the current IEP. The IEP committee may decide to continue with the placement. If the IEP committee believes the transfer will necessitate a change in educational placement, then the eligibility committee shall review the existing evaluations and conduct new evaluations or update them as appropriate. Pending the eligibility committee's and IEP committee's determination, the child shall be placed with consent of the parent in a special education program consistent with the current IEP. In the case of a child placed in a private residential school, absent parental consent or absent an appropriate program within the LEA, the child will remain in the private residential school until the eligibility committee and IEP committee have made a decision.~~

- 1. If a child with a disability has been receiving special education from one local educational agency in Virginia

and transfers to another, the new local educational agency is responsible for ensuring that the child has available special education and related services in conformity with the ~~[former existing]~~ IEP.

a. The local educational agency shall adopt and implement the ~~[existing]~~ IEP of the former local educational agency ~~[with consent of the parent or parents]~~ or develop a new IEP for the child. The new local educational agency may provide interim services agreed to by both the parent or parents and the local educational agency.

b. If the parent or parents and the local educational agency are unable to agree on ~~[an]~~ interim ~~[placement services]~~, the local educational agency must implement the ~~[former existing]~~ IEP until a new IEP is developed and implemented.

2. When a child with a disability under the Individual with Disabilities Education Act (20 USC § 1400 et seq.) transfers ~~[to a local educational agency in Virginia]~~ from another state, the ~~[Virginia]~~ local educational agency must ~~[determine decide]~~ whether ~~[a disability exists and whether the evaluation and IEP comply with Virginia's statutes and regulations]~~ it will adopt the most recent evaluation and IEP developed for the child by the local educational agency in the previous state. The Virginia local educational agency must determine, as an initial matter, whether it believes that the child has a disability and whether the most recent evaluation of the child conducted by the local educational agency in the previous state and the IEP developed by that local educational agency meet the requirements of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and this chapter].

~~a. [The local educational agency may adopt and implement the former IEP without a meeting, if the IEP meets the requirements of this chapter and the parent or parents consent. If the local educational agency accepts the determination made by the local educational agency that the child has a disability in the previous state and adopts that local educational agency's evaluation, the Virginia local educational agency must provide notice to the child's parent or parents in accordance with 8 VAC 20-80-70].~~

~~b. [If the local educational agency determines that the former IEP does not meet the requirements of this chapter, an IEP meeting must be held within 10 business days to develop a new IEP, in accordance with this chapter. If the local educational agency determines that the IEP developed by the school division in the previous state meets the requirements of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and this chapter, the local educational agency shall:~~

- (1) Serve the child consistent with the IEP if a copy of the IEP is available, if the parent or parents consent to the implementation of the IEP, and if the local educational agency believes the IEP is appropriate for the child; or

(2) Conduct an IEP meeting without undue delay if the parent or parents and local educational agency are not satisfied with the IEP developed for the child in the previous state or a revision to the IEP is indicated for other reasons, in no case later than 30 calendar days after the date the local educational agency determined that it would accept the evaluation and eligibility determination from the previous state. The most recent IEP must be implemented until the new IEP is developed and agreed upon].

c. If the local educational agency ~~[determines that the former evaluation]~~ does not ~~[meet the requirements of this chapter]~~ adopt the previous state's evaluation of the transferring child or does not receive a copy of the evaluation], the local educational agency ~~[must shall]~~ provide proper notice, ~~[]~~ initiate evaluation procedures ~~[, and conduct the evaluation]~~ in accordance with this chapter ~~[and conduct the evaluation without undue delay]~~.

~~[(1) During the evaluation, the child shall [be placed pursuant to an agreed-upon interim IEP or in regular education in absence of such agreement. If no mutually agreeable placement can be determined, the local educational agency is not obligated to adopt the former IEP and provide services according to the former IEP receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter. The local educational agency shall inform the parent or parents of the sections of the existing IEP that are not in accordance with this chapter.]~~

(2) Once the evaluation is completed and eligibility has been determined, an IEP meeting must be held without undue delay, but in no case later than 30 calendar days after the date the child is determined to be eligible, to develop an appropriate IEP for the child.

d. If the child's parent or parents disagree with the local educational agency's evaluation or proposed IEP, they may initiate a due process hearing. During the pendency of the hearing, the child may be placed as described in subdivision 2 c of this subsection in the program developed by the IEP team with consent of the parent or parents or in another placement agreeable to the parent or parents and local educational agency. If the parent or parents do not agree to place the child in the program proposed by the IEP team and no other interim placement can be agreed upon, the local educational agency is not required to implement the IEP developed by the school division in the previous state or to approximate the services in that IEP during the pendency of the due process proceedings].

3. When a child with a disability ~~[transfers from]~~ who was placed in] a private residential school ~~[where the child was placed and funded]~~ under the Comprehensive Services Act ~~[transfers to a new local school division],~~

the new ~~[local educational school division]~~ agency must review the current placement and adopt or revise and implement the IEP within 30 ~~[calendar]~~ days ~~[of receipt of written notification of the child's transfer]~~. The former ~~[local educational agency and CSA Comprehensive Services Act]~~ team shall be responsible for paying for services until 30 calendar days after the new ~~[CSA Comprehensive Services Act]~~ team receives written notification of the child's residence in the new locality from the former ~~[CSA Comprehensive Services Act]~~ team.

8 VAC 20-80-58. Termination of special education and related services.

A. A local educational agency must evaluate a child with a disability in accordance with 8 VAC 20-80-54 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or ~~[exceeding reaching]~~ the age of ~~[eligibility 22]~~ .

~~B. [Termination of special education services for a child with a disability shall be conducted by the team identified in 8 VAC 20-80-56-B The IEP team shall terminate the child's eligibility for special education and related services] .~~

1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services and ~~[if]~~ parental consent is secured.

2. A related service may be terminated during an IEP meeting without any determination that the child is no longer a child with a disability who is eligible for special education and related services. ~~[The IEP team making the determination shall include local educational agency personnel representing the related services disciplines in person, by telephone, or by other similar electronic means.]~~ Parental consent shall be secured ~~[prior to the termination of related services]~~ .

3. If the parent or parents revoke consent for the child to continue to receive special education and related services, ~~[then the decision of the parent or parents must be reviewed by the special education administrator or designee.]~~

~~a. If the special education administrator or designee agrees, services will be discontinued as a result of the revocation, but the child will continue to be a child eligible for special education and related services, unless termination of eligibility procedures are followed.~~

~~b. If the special education administrator or designee disagrees with the revocation of consent and attempts to resolve parental revocation through mediation or informal methods are unsuccessful, the special education administrator or designee must the local educational agency must follow the procedures in 8 VAC 20-80-56 to terminate the child's eligibility or] use other measures as necessary to ensure that parental revocation of consent~~

Final Regulations

will not result in the withdrawal of a necessary free appropriate public education for the child.

8 VAC 20-80-60. Service delivery. A. Free appropriate public education.

4. 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] , [ages aged] two to 21, inclusive, residing within the jurisdiction of each LEA local educational agency. This includes children with disabilities who [are in need of special education and related services even though they are advancing from grade to grade or who] have been suspended or expelled from school in accordance with the provisions of 8 VAC 20-80-68. Each LEA local educational agency shall [have established] the [establish] a goal of providing a full educational opportunity for all children with disabilities from birth two to 21, inclusive, residing within their its jurisdiction.

2. Continuum of alternative placements.

a. Each local school division shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities.

(1) The continuum must include the alternative placements listed in the definition of special education (i.e., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). The continuum must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, that is, where some or all goals and objectives of the student's individualized educational program are met in the general education setting with age-appropriate peers.

(2) No single model for the delivery of services to any specific population or category of children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements (e.g., resource classes as the only option for children who need a self-contained placement or a separate facility as the only alternative placement for students with disabilities). All placement decisions must be based on the individual needs of each child.

(3) LEAs shall document fully all alternatives considered and the rationale for choosing the selected placement.

(4) Children with disabilities must be served in a program with age-appropriate peers (e.g., secondary age children shall be placed in a secondary school and elementary age children shall be placed in an elementary school), unless it can be shown that for a particular child with a disability the alternative placement is appropriate as documented by the IEP.

b. If a local school division is unable to provide a free appropriate public education to a child with a disability and it is not appropriately available in a state facility, other than Woodrow Wilson Rehabilitation Center, the local school division shall offer to place the child in Woodrow Wilson Rehabilitation Center or a nonsectarian private school for children with disabilities approved by the Board of Education or such other licensing agency as may be designated by state law. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined under the rules of the Interdepartmental Council on Rate Setting as adopted by the Boards of Education, Social Services and Corrections. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate.

3. Least restrictive environment (LRE).

a. Each LEA shall establish and implement procedures which satisfy requirements as follows:

(1) To the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children who are not disabled; and

(2) Special class placement, 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.

b. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for nondisabled children, each LEA shall ensure that each child with a disability participates with nondisabled children in those services and activities, to the maximum extent appropriate to the needs of the child with a disability.

c. For children in public or private institutions, the LEA shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See Placements, 8 VAC 20-80-60 B 8.)

4. Safeguards in evaluation, eligibility and placement.

a. In interpreting evaluation data and in making eligibility and placement decisions, each LEA shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

~~(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and~~

~~(4) Ensure that the placement decision is made in conformity with the least restrictive environment (see Least Restrictive Environment, 8 VAC 20-80-60 A 3).~~

~~b. If it is determined that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with this chapter.~~

~~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 must 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:

~~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 students who have graduated but have not been awarded a standard or advanced studies high school diploma.~~

~~[b. A child who has been excused from compulsory school attendance in accordance with provisions of the Code of Virginia.~~

~~c. Students~~ b. Children with disabilities,] aged 18 [~~through~~ 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 [~~students~~ children] with disabilities, aged 18 [~~through~~ to] 21, [inclusive,] who had been identified as [~~a child~~ children] with [~~a disability~~ disabilities] and had received services in accordance with [~~an IEP~~ their IEPs], but who left school prior to their incarceration or did not have [~~an IEP~~ IEPs] in their last educational setting but who had actually been identified as [~~child~~ children] with [~~a disability~~ disabilities] under this chapter.

B. Program options. Each local [~~educational agency~~ school division] 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 the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

C. 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, must be at no cost to the parents of the child.

D. Proper functioning of hearing aids. Each local educational agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

E. Assistive technology.

1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in this chapter, 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.

~~5.~~ F. Transportation.

~~a.~~ 1. Each child with a disability placed in an education program, including private special education day or residential placements, by the local school division 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. [~~There is no prohibition against regular education and special education students sharing the same transportation.~~ 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 must 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.]

~~b.~~ [~~2.~~ 3.] If ~~an LEA~~ a local educational agency enters an agreement with another LEA 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 or parents.

~~c.~~ [~~3.~~ 4.] If a child with a disability is placed in a ~~state residential~~ [the] Virginia school for the Deaf and the Blind [at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton], the [~~responsibility~~ Virginia school shall be responsible] for [the provision of] transportation [~~resides with the respective~~] state [~~Virginia school for the deaf and the blind~~ services] . However, When such children in a state

Final Regulations

~~residential school~~ are educated as day students, the [~~responsibility for transportation remains with the placing~~] local school division [*shall be responsible for the provision of transportation services to and from school*] .

6. ~~Reevaluation.~~

a. ~~A reevaluation in all areas related to the suspected disability must be conducted (i) every three years; (ii) if conditions warrant a reevaluation at an earlier date; or (iii) if the child's parent or teacher requests a reevaluation.~~

b. ~~A reevaluation need not consist of all of the same assessments conducted during the initial evaluation as long as the reevaluation includes assessment in all areas related to the suspected disability. If three years have not elapsed and the parent or teacher requests that only specified areas be addressed by additional evaluation, and conditions do not warrant a reevaluation or an assessment which is more comprehensive than that requested by the parent or teacher, the LEA may limit the assessment to those areas which the parent or teacher requested.~~

c. ~~Notice is required for all reevaluations.~~

7. ~~G. Nonacademic and extracurricular services and activities.~~

1. Each ~~LEA~~ local educational agency shall take steps to provide nonacademic and extracurricular services and activities in ~~such~~ the manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

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 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.~~

8. ~~H. Physical education.~~

a- 1. General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving ~~FAPE~~ a free appropriate public education.

b- 2. Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to ~~nondisabled~~ children without disabilities, unless:

(4) a. The child is enrolled full time in a separate facility; or

(2) 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*] .

e- 3. Special physical education. If specially designed physical education is prescribed in a child's IEP, the ~~LEA~~ local educational agency responsible for the education of that child shall provide the services directly [;] or make arrangements for those services to be provided through other public or private programs.

d- 4. Education in separate facilities. The ~~LEA~~ local educational agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with subdivisions 8-a 1 and e 3 of this subsection.

I. ~~Extended school year services.~~

1. Each local educational agency shall ensure that extended school year services are available as necessary to provide a free appropriate public education, consistent with subdivision 2 of this subsection.

2. Extended school year services must 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.

3. In implementing the requirements of this section, a local educational agency may not:

a. Limit extended school year services to particular categories of disability; or

b. Unilaterally limit the type, amount, or duration of those services.

J. ~~Children with disabilities in public charter schools.~~

1. Children with disabilities who attend charter schools [~~that are public schools of the local educational agency~~] must be served by the local [~~educational agency~~ school division] in the same manner as children with disabilities in its other schools.

2. The local [~~educational agency~~ school division] must ensure that all requirements of this chapter are met.

[K. 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.]

~~B- 8 VAC 20-80-62. Individualized education program.~~

4- A. Responsibility. The ~~LEA~~ local educational agency shall ensure that an IEP is developed and implemented for each child with a disability [~~in its jurisdiction served by that local educational agency~~] , including [~~such children~~ a child] placed in [a] private special education [~~schools~~] or facilities [school] by [:

1.] A local [~~educational agency~~ school division;] or

[2. A noneducational placement by a] Comprehensive Services Act team that includes the school division. [The local school division's responsibility is limited to special education and related services.]

2. B. Accountability.

[1. At the beginning of each school year, each local educational agency 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.]

~~a. [1. An IEP must~~ 2. Each local educational agency shall ensure that an IEP] :

(1) a. [~~Be Is~~] in effect before special education and related services are provided to ~~a~~ an eligible child; and

(2) b. [~~Be Is~~] developed within 30 calendar days of a [the date of] the initial determination that the child needs special education and related services, and [~~be is~~] implemented as soon as possible following the IEP meeting.

[~~2. 3.] Each local educational agency shall ensure that:~~

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 must be provided for the child in accordance with the IEP.

~~b. [3. 4.] Each LEA local educational agency is responsible for initiating and conducting meetings to develop, review and revise a child with a disability's IEP the IEP [or IFSP] of a child with a disability.~~

[5. Each local educational agency shall ensure that, within a reasonable period of time following the receipt of parental consent to an initial evaluation, the evaluation of the child, and, if determined eligible, special education and related services are made available to the child in accordance with an IEP. Each local educational agency shall ensure that a meeting to develop an IEP for the child is conducted within 30 calendar days of the date of a determination that the child needs special education and related services.]

~~e. [4. 6.] Each LEA local educational agency shall [initiate and conduct meetings ensure that the IEP team reviews the child's IEP] periodically, but not less than annually, [to review each child's IEP] to determine whether the annual goals are being achieved and [where appropriate, to] revise its provisions [, as appropriate,] . A meeting must be held for this purpose at least once a year. to address:~~

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 or] parents;

d. The child's anticipated needs; or

e. Other matters.

~~d. [5. 7.] Each LEA local educational agency must provide special education and related services to a child with a disability in accordance with an the child's IEP.~~

[~~6. 8.] Each local educational agency must make a good faith effort to assist the child to achieve the goals [and, including benchmarks or] objectives [or benchmarks] listed in the IEP.~~

[~~7. 9.] This chapter does not require that any local education agency, teacher [,] or other person be held accountable if a child does not achieve the growth projected in the annual goals [and, including] benchmarks or objectives. However, the Virginia Department of Education and local educational agencies are not prohibited from establishing their own accountability systems regarding teacher, school, or agency performance.~~

[~~8. 10.] Nothing in this section limits a parent's or parents' right to ask for revisions of the child's IEP or to invoke due process procedures [under 8 VAC 20-80-76 and 8 VAC 20-80-78] if the parent or parents feel that the efforts required by this chapter are not being met.~~

3. Participants in meeting.

[11. All IEPs developed, reviewed, or revised on or after July 1, 1998, must meet the requirements of this section.]

C. IEP team.

~~a. 1. General. The LEA local educational agency shall ensure that each meeting includes participants as follows the IEP team for each child with a disability includes:~~

(1) ~~A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;~~

(2) ~~The child's teacher;~~

(3) ~~One or both of the child's parents (see parent participation, 8 VAC 20-80-60 B 4);~~

(4) ~~The child, if appropriate;~~

(5) ~~Other individuals, at the discretion of the parents or LEA.~~

~~b. For a child with a disability who has been evaluated for the first time, the LEA shall ensure that:~~

(1) ~~A member of the evaluation team participates in the meeting; or~~

(2) ~~The representative of the LEA, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.~~

Final Regulations

- a. The [parent or] parents of the child;
- b. At least one regular education teacher of the child (if the child is [] or may be [] participating in the regular education environment);
- c. At least one special education teacher of the child [] or [,] if appropriate, at least one special education provider of the child. For a child whose [primary only] disability is speech-language impairment, the special education provider [may shall] be the speech-language pathologist.
- d. A representative of the local educational agency 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 curriculum; and
 - (3) Knowledgeable about the availability of resources of the local educational agency.

A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if that 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 or the child.
- f. At the discretion of the parent, parents, or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the party (parent, parents, or local educational agency) who invited the individual to be a member of the IEP team.
- g. If appropriate, the child.
- h. For children who are in the custody of a local social services or other child welfare agency, the child's caseworker pursuant to the following conditions:

- (1) The caseworker may not assume the role of the parent at the meeting; and
- (2) If the caseworker is unable to attend the meeting as scheduled, the meeting may be held without [them the caseworker] .

2. Transition service participants.

~~e. If a purpose of the IEP meeting is the consideration of transition services for a student, the public a. The local educational agency shall invite: (i) the student; and (ii) a student [of any age] 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 transition services needs;

- (2) The needed transition services for the student; or
- (3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

c. In implementing the transition requirements for a student [with a disability, beginning at] age 16 or younger [{ } if determined appropriate by the IEP team [] with a disability] , the local educational agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. ~~If the student does not attend, the LEA shall take other steps to ensure that the student's preferences and interests are considered, and~~ If an agency invited to send a representative to a meeting does not do so, the ~~LEA~~ local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. D. Parent participation.

~~a.~~ 1. Each ~~LEA~~ local educational agency 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:

- ~~(1)~~ a. Notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- ~~(2)~~ b. Scheduling the meeting at a mutually agreed on time and place.

2. Notice.

~~b.~~ a. General notice. The notice given the parent or parents ~~must [should]~~ :

- (1) [Should] be in writing [~~—Notice, but~~] may be 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 or] parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child [as noted in subdivision C 1 f of this section] .

~~c. If a purpose of the meeting is the consideration of transition services for a student, b. Additional notice requirements [are provided] if transition services are under consideration.~~

- (1) For a student [with a disability beginning at] age 14 or younger, if appropriate, [~~with a disability~~] the notice must also:

- ~~(1)~~ (a) Indicate ~~this~~ that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and

(2) (b) Indicate that the LEA local educational agency will invite the student; and.

(2) For a student [with a disability beginning at] age 16 or younger, if appropriate, [with a disability] the notice must:

(a) Indicate that a purpose of the meeting [is will be] the consideration of needed transition services for the student;

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

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

[c. A copy of the procedural safeguards available to the parent or parents of a child with a disability must be given to the parent or parents upon each notification of an IEP meeting in accordance with 8 VAC 20-80-70.]

d. 3. If neither parent can attend, ~~then~~ the LEA local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

e. 4. A meeting may be conducted without ~~the child's parents attending~~ a parent or parents in attendance if the LEA local educational agency is unable to convince ~~them~~ the parent or parents that they should attend. In this case, the LEA local educational agency must have a record of the attempts to arrange a mutually agreed on time and place, such as:

(1) a. Detailed records of telephone calls made or attempted and the results of those calls;

(2) b. Copies of correspondence sent to the parent or parents and any responses received; [or]

(3) c. Detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.

f. 5. The LEA local educational agency shall take whatever action is necessary to ensure that the parent ~~understands~~ or parents understand the proceedings at a the IEP meeting, including arranging for an interpreter for parents ~~who are deaf with deafness~~ or whose native language is other than English.

[6. The local educational agency shall permit the use of audio recording devices at IEP meetings. The parent or parents shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent or parents do not inform the local educational agency, the parent or parents shall provide the local educational agency with a copy of the audio recording. The parent or parents shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records the meetings or receives a copy of an audio recording from the parent or parents, the audio recording becomes part of the child's educational record.]

[~~6. 7.] The local educational agency [has the option to require, may] prohibit, limit or otherwise regulate the use of [audio or] video recording devices at IEP meetings. [If the local educational agency video records the meetings, the video recording becomes part of the child's educational record.] If the local educational agency has a policy that prohibits or limits the use of [video] recording devices at IEP meetings:~~

a. That policy must provide for exceptions if they are necessary to ensure that the parent or parents understand the IEP or the IEP process or to implement other parental rights guaranteed under this chapter; and

b. [The local educational agency must] ensure that the policy is uniformly applied.

[8. At the IEP meeting, the IEP team shall provide the parent or parents of a child with a disability with a written description of the factors in subdivisions E 1 and E 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 or parents or other mode of communication used by the parent or parents, unless it is clearly not feasible to do so.]

~~g. [7. 9.]~~ The LEA local educational agency shall give the parent a copy of the child's IEP at no cost to the parent or parents.

E. Development, review [,] and revision of the IEP.

1. In developing each child's IEP, the IEP team shall [~~document consideration of~~ consider] :

a. The strengths of the child and the concerns of the parent or parents for enhancing the education of their child;

b. The results of the initial or most recent evaluation of the child; [and]

c. As appropriate, the results of the child's performance on any general state or division-wide assessment programs.

2. The IEP team also shall [~~document consideration~~] :

a. In the case of a child whose behavior impedes the child's learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that 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

Final Regulations

instruction in Braille or the use of Braille is not appropriate for the child;

d. Consider the communication needs of the child;

e. 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

f. Consider whether the child requires assistive technology devices and services.

~~[3. In conducting a meeting to review and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described above.]~~

~~[4. 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 must include a statement to that effect in the child's IEP.~~

~~[5. 4.] The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of:~~

a. Appropriate positive behavioral interventions and 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.

~~[6. 5.] Nothing in this section shall be construed to require 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.~~

~~[7. Consideration of a free appropriate public education. 6.] The IEP team shall consider all factors identified under a free appropriate public education in 8 VAC 20-80-60, as appropriate, and [make all decisions by work toward] consensus. If the IEP team cannot reach consensus [: a. The local educational agency determines the contents of the IEP; b. ,] the local educational agency shall [then] provide the parent or parents with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational [program placement or provision of a free appropriate public education in accordance with 8 VAC 20-80-70] .~~

~~[c. The parents have the right to challenge the new IEP by initiating an impartial due process hearing.~~

~~d. If the parent or parents initiate a due process hearing, the previous IEP becomes the stay put placement unless the parent or parents and the local educational agency agree to implement the new IEP~~

~~provisions which they can agree upon as an interim IEP.~~

~~e. If the parent or parents do not request a due process hearing and the above procedures are followed, the new IEP shall go into effect.]~~

~~5. F. Content of the individualized education program. The IEP for each child must with a disability shall include:~~

~~a. 1. A statement of the child's present level levels of educational performance, including [:]~~

~~(1) The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and nonacademic areas.~~

~~[a.] how the child's disability affects the child's involvement and progress in the general curriculum [:] or [b. ,] for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.~~

~~(2) [c. a.] The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.~~

~~(3) [d. There should be a direct relationship between b.] The present level of performance [and should directly relate to] the other components of the IEP.~~

~~[e. The child's other educational needs that result from the child's disability.]~~

~~b. 2. A statement of measurable annual goals, including benchmarks or short-term instructional objectives, related to:~~

a. Meeting 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. Meeting each of the child's other educational needs that result from the child's disability.

~~c. 3. A statement of the specific special education and related services and supplementary aids and services to be provided for the child, and the extent to which the child will be able to participate in regular educational programs, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:~~

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.

4. 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.

5. ~~[Assessments.]~~ The following information concerning ~~[state-wide state]~~ and division-wide assessments shall be included:

a. A statement of any individual accommodations or modifications, ~~[in accordance with the guidelines]~~ approved by the Virginia Board of Education, ~~[for use]~~ in the administration of ~~[state-wide state]~~ assessments of student achievement that are needed in order for the child to participate in the assessment;

~~[b. A statement of any individual 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;]~~

~~[c. b.]~~ If the IEP team determines that the child will not participate in a particular ~~[state-wide or division-wide state]~~ assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the child;

(2) How the child will be assessed, including ~~[participation in]~~ the alternate assessment ~~[which the student will participate in if they cannot participate in the state-wide or district-wide assessment program for those students who meet the criteria for the alternate assessment]~~; and

(3) ~~[Documentation of the discussion and the parent's or parents' understanding of the implications of nonparticipating on the student's course grade, How the child's nonparticipation 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 the 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 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 will not participate in a particular division-wide assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the child;

(2) How the child will be assessed;

(3) How the child's nonparticipation in the assessment will impact the child's course; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.]

~~[d. f.]~~ For students still participating in the Literacy Passport Testing Program, documentation that any decision to postpone or exempt the student from participation was reviewed during the annual IEP review or sooner.

d. 6. The projected dates (month, day, and year) for ~~initiation~~ the beginning of the services and modifications and the anticipated frequency, location, and duration of the those services (month, day, and year) and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-80-64 B.

7. A statement of:

a. How the child's progress toward the annual goals will be measured;

b. How the child's parent or parents will be regularly informed (through such means as periodic report cards), at least as often as ~~[the]~~ parent or parents are informed of ~~[the progress of]~~ their children ~~[without disabilities' progress, of disabilities, concerning]~~ :

(1) Their child's progress toward the annual goals; and

(2) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

e. ~~Appropriate objective criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term instructional objectives are being achieved.~~

~~f. For students beginning in the sixth grade, the following information concerning the Virginia Literacy Passport Testing Program must be included:~~

~~(1) Whether the student will participate in the Literacy Passport Testing Program (a decision to exempt the student from participating must be reviewed during the annual IEP review or sooner);~~

~~(2) Whether the student will postpone taking any of the literacy tests (a decision to postpone must be reviewed during the annual IEP review or sooner);~~

~~(3) Reasonable accommodations to take the literacy tests if the student needs them.~~

~~The school division shall document on the IEP that the Literacy Passport Testing Program and the requirement that the student pass all of the literacy tests to receive a regular diploma have been presented to the parent.~~

~~[8. 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 or parents elect to receive services under Part B of the Individuals~~

Final Regulations

with Disabilities Education Act (20 USC § 1400 et seq.), the local educational agency shall develop an IEP.]

[8. 9.] For each student with a disability [,] beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program) [. For a student pursuing a modified standard diploma, the IEP team shall consider the student's need for occupational readiness upon school completion, including consideration of courses to prepare the student as a career and technical education program completer] ; and

~~g. The IEP [9. 10.] For each student [with a disability] , [beginning] no later than at age 16 (and at a or younger age, if determined appropriate by the IEP team), must include a statement of the needed transition services for the student, including, if appropriate, a statement of each public agency's and each participating agency's interagency responsibilities or any needed linkages, or both, before the student leaves the school setting. The IEP must include the following areas Transition services shall be based on the individual student's needs, taking into account the student's preferences and interests, and include:~~

(i) a. Instruction;

b. Related services;

(iii) c. Community experiences;

and (iii) d. The development of employment and other post-school adult living objectives, unless the IEP committee determines that services are not needed in one or more of those areas. The IEP committee must then include a statement to that effect together with the basis for that determination in the IEP.; and

h. A statement as to whether or not the student will participate in family life education.

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

[40. 11.] Beginning at least one year before a student reaches the age of majority, the student's IEP must include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority.

[11. In the case of a child with a disability age two (on or before September 30) to age five (on or before September 30), an individualized family service plan may serve as and IEP if it meets the content and development requirements of an IEP. In implementing these requirements, the local educational agency shall:

a. Provide to the child's parent or parents a detailed explanation of the differences between an IFSP and an IEP; and

~~b. If the parent or parents choose an IFSP, obtain written informed consent from the parent or parents.]~~

6. G. Agency responsibilities for transition services.

a. 1. If a participating agency, other than the local educational agency, fails to provide [agreed upon the] transition services contained described in the IEP of a student with a disability, the public agency responsible for the student's education local educational agency shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

b. 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.

7. Placements. Each LEA placing the child shall ensure that:

~~a. The educational placement of each child with a disability:~~

(1) Is determined at least annually;

(2) Is based on his IEP; and

(3) Is as close as possible to the child's home.

~~b. The various alternative placements, discussed in 8 VAC 20-80-60 A 2 of this chapter, are available, to the extent necessary, to implement the IEP for each child with a disability.~~

~~c. Unless a child with a disability's IEP requires some other arrangement, the child is educated in the school which he would attend if nondisabled.~~

~~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 he needs.~~

~~e. The placement decision shall include consideration of the child's social and personal needs, as well as the child's level of educational functioning.~~

8. Private school placement.

a. Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA shall initiate and conduct a meeting, in accordance with the preceding requirements, to develop an IEP for the child.

b. Where a child is presently receiving the services of a private school or facility, or where the parents and the LEA agree, prior to the development of an IEP that a private school or facility may be required when the IEP is completed, the LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the

LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

c. After a child with a disability enters a private school or facility, 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 the LEA.

d. If the private school or facility initiates and conducts these meetings, the LEA shall ensure that the parents and an LEA representative:

(1) Are involved in any decision affecting the child's IEP; and

(2) Agree to any proposed changes in the program before those changes are implemented.

e. When a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the LEA.

f. Whenever an eligible child with a disability is placed in an approved private school or facility by an LEA, all rights extended to any child educated in public school programs shall be available to him.

9. Children with disabilities in private schools not placed or referred by public agencies.

a. If a child with a disability has available a free appropriate public education and the parents choose to place the child in a private school or facility, then the local school division is not required to pay for the child's education at the private school or facility. However, the local school division shall make services available to the child as follows:

(1) Each local school division shall provide special education and related services designed to meet the needs of private school children with disabilities residing in its jurisdiction;

(2) Each local school division shall provide private school children with disabilities with genuine opportunities to participate in special education and related services consistent with the number of children and their needs.

b. The needs of private school children with disabilities, the number who will participate, and the types of special education and related services which the local school division will provide for them must be determined after consultation with persons knowledgeable of the needs of these children on a basis comparable to that used in providing for the participation of children with disabilities enrolled in public schools.

c. A local school division may provide special education and related services to private school children with disabilities which are different from the special education and related services it provides to public school children, if:

(1) The differences are necessary to meet the special needs of the private school children with disabilities; and

(2) The special education and related services are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance.

d. Each LEA providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services.

10. Children with disabilities on homebound instruction. Homebound instruction shall be deemed appropriate for a child with a disability only when such placement is stipulated in the child's IEP and is in accordance with the requirements of the least restrictive environment.

11. Suspension or expulsion of children with disabilities.

a. Suspensions of 10 days or less. A short-term suspension is when the child is removed from class (i.e., an in-school suspension) or school for less than 10 school days. It does not constitute a change in placement. The child is subject to normal disciplinary procedures whether or not there is a causal connection between the child's disability and the misconduct.

b. Long-term suspensions greater than 10 days and expulsions.

(1) When the child is removed from class or school for more than 10 consecutive school days, a determination must be made as to whether or not there is a direct causal relationship between the child's disability and the misconduct.

(2) This determination must be made pursuant to the change in placement procedures by a committee with the following composition:

(a) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(b) The child's teacher;

(c) One or both of the child's parents;

(d) The child, if appropriate;

(e) Persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

(f) Other individuals, at the discretion of the parents or LEA.

(3) A series of suspensions which aggregate to more than 10 days may be considered a significant change in placement requiring reevaluation and procedural protections. Factors to consider in determining whether aggregate suspensions of greater than 10 days are long-term suspensions include length of each suspension, proximity of suspensions, and total amount of time suspended.

Final Regulations

~~(4) If there is a causal connection or if the child was inappropriately placed at the time of the misconduct, the child may not be expelled, nor may the LEA impose a long-term suspension. If there is no causal connection or if the child was appropriately placed at the time of the misconduct, the child may be disciplined the same as a nondisabled child.~~

~~(5) In the case of an expulsion or long-term suspension, parental consent is not required.~~

~~c. Dangerous student with a disability. LEAs may not unilaterally change the placement of a student with dangerous behavior when the misconduct is caused by the disability. LEAs, however, may use normal disciplinary measures for a child who exhibits dangerous behavior to include, for example, time-outs or suspension up to 10 days. An LEA may only impose an expulsion or long-term suspension on a student with a disability whose misconduct has been determined to be caused by his disability by obtaining an injunction, based on dangerousness of the student, from a court of competent jurisdiction.~~

~~12. Assistive technology. Each LEA shall ensure that assistive technology devices or assistive technology services, or both, 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.~~

~~C. Educational interpreting services.~~

~~1. Educational personnel providing interpreting services for students using sign language shall have achieved a Virginia Quality Assurance Screening Level III or hold any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation).~~

~~2. Educational personnel providing interpreting services for students using cued speech shall have achieved a Virginia Quality Assurance Screening Cued Speech Level III or National Cued Speech Association Cued Speech Transliterator Certificate.~~

~~3. Educational personnel providing interpreting services for students requiring oral interpreting shall have met Virginia Quality Assurance Screening's minimum requirements for competency on the Registry of Interpreters for the Deaf Code of Ethics.~~

~~4. An individual providing interpreting services for students using sign language or cued speech who does not hold the required Virginia Quality Assurance Screening level or Registry of Interpreters for the Deaf certificate (excluding certificate in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate may be employed according to all of the following criteria:~~

- ~~a. The individual must have a Virginia Quality Assurance Screening Level I upon hiring date in any local education agency or state-operated program in~~

~~Virginia (or the implementation date of this chapter, whichever is later). The local education agency/state-operated program shall inform the Department of Education of the person's name, social security number and hiring date;~~

~~b. Each individual must achieve Level III Virginia Quality Assurance Screening or any Registry of Interpreters for the Deaf Certificate (excluding certification in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate by the third anniversary date of hiring in any local education agency or state-operated program (or implementation date of this chapter, whichever is later); and~~

~~c. The local education agency/state-operated program shall annually submit a professional development plan to the Virginia Department of Education on behalf of the individual.~~

~~[4. H.] Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities.~~

~~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 in this section apply to students with disabilities in state, regional [,] or local adult or juvenile correctional facilities with the exception that the IEP team of a student with disabilities who is convicted as an adult under state law 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.~~

~~a. All requirements regarding IEP [development, review, and] revision in this section shall apply.~~

~~b. If such modifications are made by the IEP team, the requirements related to least restrictive environment in 8 VAC 20-80-64 do not apply.~~

~~c. IEP requirements regarding participation in [statewide assessment systems state assessments] , including alternate [assessment systems assessments] , do not apply. Assessment requirements [for graduation to graduate] with a [modified standard,] standard [,] or advanced studies diploma shall apply.~~

~~d. [Provision of IEP requirements regarding] transition planning and transition services do not apply [for 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.~~

8 VAC 20-80-64. Least restrictive environment and placements.

A. General least restrictive environment requirements.

1. Each local educational agency shall ensure:

a. That to the maximum extent appropriate, children with disabilities, 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 services and activities provided for children without disabilities, each local educational agency 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.

3. For children [placed by local school divisions] in public or private institutions, the local educational agency shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also [private school placements in] 8 VAC 20-80-66.)

B. Continuum of alternative placements.

1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

2. The continuum must:

a. Include the alternative placements listed in the definition of special education (instruction in regular classes [,]; special classes [,]; special schools [,]; home-based instruction [,; and] instruction in hospitals and institutions, [and] including Woodrow Wilson Rehabilitation Center and other state facilities); and

b. Make provision for supplementary [resource] services (e.g., resource [room or] services or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, [that is where which occurs when] some or all goals [, including benchmarks] and objectives [,] of the student's [individualized education program 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 will be acceptable for meeting the requirement for a continuum of alternative placements [~~e.g., Level I services as the only option for children who need Level II or a separate facility as the only alternative placement for students with disabilities~~]. All placement decisions must be based on the individual needs of each child.

4. Local educational agencies shall document [fully] all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities must be served in a program with age-appropriate peers [~~e.g., secondary age children shall be placed in a secondary school and elementary age children shall be placed in an elementary school,~~] 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.

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, each local educational agency shall ensure that:

a. The placement decision is [:

~~(1) Made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and~~

~~(2)~~ 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 [not] a child [with 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. [~~Children with disabilities on home-based instruction.~~] Home-based instruction shall be made available to [students children] whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. [~~Children with disabilities on homebound instruction.~~] Homebound instruction shall be made available to [students 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 must revise the IEP, as appropriate [, and determine the delivery of homebound services, including the number of hours of services].

Final Regulations

[8 VAC 20-80-65. Placement of children at the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

A. Placements shall be made by the local school division, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton (Virginia schools). The Virginia schools shall determine if the student meets the admission criteria of the Virginia schools.

B. When an eligible child is placed in the Virginia schools, the local school divisions shall be responsible for ensuring compliance with the requirements of this chapter.

C. A contractual agreement shall be established between the Virginia schools and the local school division for each child enrolled in the Virginia schools.

1. This agreement shall include, but not be limited to:

- a. The educational services provided by each party;
- b. The responsibility for development of IEPs;
- c. The responsibility for completing evaluations and determining continuing eligibility for special education and related services; and
- d. The responsibility for providing procedural safeguards and a free appropriate public education.

2. The Virginia schools and the local school divisions shall review the contractual agreement at least annually and revise it as necessary.

3. For students who are residential students, the respective 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.]

8 VAC 20-80-66. Private school placement.

A. Private school placement by a local school division or Comprehensive Services Act team.

1. ~~[Whenever an eligible~~ When a [child [with a disability] is placed [in a private school that is licensed or has a certificate to operate or facility] by a local school division or [is placed for noneducational reasons by a] Comprehensive Services Act team that includes [~~that~~ the] school division [~~under Chapter 46 (§ 2.1-745 et seq.) of Title 2.1 of the Code of Virginia~~ in a private special education school or facility that is licensed or has a certificate to operate] , the local school division shall be responsible for ensuring compliance with the requirements of this chapter, including participation in [~~state-wide~~ state] and division-wide assessments. [The local school division shall not be responsible for ensuring compliance with the least restrictive education requirements of this chapter for children placed for noneducational reasons by a Comprehensive Services Act team.]

2. Before a local school division places a child with a disability in a private [special education] school [or facility] that is licensed or has a certificate to operate [~~or facility~~] , the local school division shall initiate and conduct a meeting [~~;~~] in accordance with [~~the preceding requirements, 8 VAC 20-80-62~~] to develop an IEP for the child. The local school division shall ensure that a representative of a private [special education] 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.

3. ~~[Where~~ When] a child is presently receiving the services of a private [special education] school [or facility] that is licensed or has a certificate to operate [~~or facility~~] , the local school division shall ensure that a representative of the private [special education] school or facility attends the meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

4. After a child with a disability enters a private [special education] 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 the local school division.

5. If the private [special education] school or facility initiates and conducts these meetings, the local school division shall ensure that the parent or parents and a local school division representative:

- 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. ~~[Even]~~ If [a the] private [special education] 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 the local school division.

7. ~~[Whenever~~ When] a child with a disability is placed [by a local school division or a Comprehensive Services Act team] in [an approved a] private [special education] school or facility [~~by a local school division or a Comprehensive Services Act team~~ that is licensed or has a certificate to operate] , all rights and protections [~~extended to any child with disabilities~~] under this chapter shall be [~~available~~ extended] to the child.

[8. If the parent or parents request a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent or parents and the local educational agency

prior to placement by the Comprehensive Services Act team.]

~~[8. Whenever an eligible~~ 9. When a] child [with a disability] is placed in [~~an approved~~ a] private [special education] school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children, [~~as provided by~~ in accordance with] the Code of Virginia.

B. Placement of children by parents if a free appropriate public education is at issue.

1. This section does not require a local school division 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 the local school division made a free appropriate public education available to the child and the parent or parents elected to place the child in a private school or facility.

2. Disagreements between a parent or parents and a local school division regarding the availability of an appropriate program for the child [7] and the question of financial responsibility [7] are subject to the due process procedures of 8 VAC 20-80-76.

3. ~~[Reimbursement for private school placement.]~~ If the parent or parents of a child with a disability, who previously received special education and related services under the authority of a local school division, enroll the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the local school division, a court or a hearing officer may require the [~~agency~~ local school division] to reimburse the parent or parents for the cost of that enrollment if the court or hearing officer finds that the local school division 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 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 the] local school division.

4. ~~[Limitation on reimbursement.]~~ The cost of reimbursement described in this section may be reduced or denied [#] :

a. [If (i)] at the most recent IEP meeting that the parent or parents attended prior to removal of the child from the public school, the [parent or] parents did not inform the IEP team that they were rejecting the placement proposed by the local school division 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 [~~b.~~ (ii)] 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 or parents did not give written notice to the local school division of the information described above;

~~[~~a.~~ b.]~~ If, prior to the parent's or parents' removal of the child from the public school, the local school division informed the parent or parents, through the notice requirements described in 8 VAC 20-80-76, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the [parent or] parents did not make the child available for the evaluation; or

~~[~~a.~~ c.]~~ Upon a judicial finding of unreasonableness with respect to actions taken by the parent or parents.

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's or parents' failure to provide the notice to the local school division if:

- The parent is illiterate or cannot write in English;
- Compliance with this section would likely result in physical or serious emotional harm to the child;
- The school prevented the parent or parents from providing the notice; or
- The parent or parents had not received notice of the notice requirement in this section.

C. Child find for private school ~~[and home-instructed, home-instructed, and home-tutored]~~ children with disabilities.

1. Each local school division shall locate, identify, and evaluate all private school children with disabilities, including children attending religious schools, [~~residing~~ who reside] in the jurisdiction of the local school division. The provisions of this subsection shall apply to children who are home instructed [and home tutored] in accordance with the Code of Virginia. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.

2. Each local school division shall consult with appropriate representatives of private school children with disabilities on how to carry out the child find activities.

D. Placement of children by parents when a free appropriate public education is not at issue. To the extent consistent with their number and location in the state, provision must be made for the participation of private school children with disabilities in the program carried out under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) by providing them with special education and related services in accordance with a services plan developed and implemented under this subsection.

1. The provisions of this subsection shall apply to children who are home instructed [or home tutored] in accordance with the Code of Virginia.

2. Each local school division shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part.

Final Regulations

3. Expenditures.

a. To meet the requirement of [the] Individuals with Disabilities Education Act (20 USC § 1400 et seq.), each local school division must 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 the local school division's total subgrant under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) as the number of private school children with disabilities [,] aged three to 21, inclusive, residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction [,] aged three to 21, inclusive[;] and

(2) For children [,] aged three to five, inclusive, an amount that is the same proportion of the local school division total subgrant under the act as the number of private school children with disabilities, aged three to five, inclusive, residing in its jurisdiction, is to the total number of children with disabilities in its jurisdiction [,] aged three to five, inclusive.

b. Each local school division shall consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities and ensure that the count is conducted on December 1. The child count must be used to determine the amount that the local school division must spend on providing special education and related services to private school children with disabilities in the subsequent fiscal year.

c. Expenditures for child find activities, including evaluation and eligibility, described in 8 VAC 20-80-50 through 8 VAC 20-80-56, may not be considered in determining whether the local [~~educational agency~~ school division] has met the expenditure requirements of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

d. Local school divisions are not prohibited from providing services to private school children with disabilities in excess of those required by this section.

4. Services determined.

a. No 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. Decisions about the services that will be provided to private school children with disabilities [;] must be made in accordance with subdivisions 4 b and c of this subsection.

b. Consultation with representatives of private school children with disabilities.

(1) Each local school division shall consult, in a timely and meaningful way, with appropriate representatives of private school children with

disabilities in light of the funding, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide (i) which children will receive services; (ii) what services will be provided; (iii) how and where the services will be provided; and (iv) how the services provided will be evaluated.

(2) Each local school division shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(3) The consultation required by this section must occur before the local school division makes any decision that affects the opportunities of private school children with disabilities to participate in services.

(4) The local school division shall make the final decisions with respect to the services to be provided to eligible private school children.

c. Services plan for each child served under this section. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from a local school division, the local school division 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 religious or other private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

5. Services provided.

a. The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

b. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

c. No 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 private school child with a disability who has been designated to receive services under this subsection must have a services plan that describes the specific special education and related services that the local school division will provide to the child in light of the services that the local school division has determined it will make available to private school children with disabilities.

(2) The services plan must, to the extent appropriate, meet the requirements for the content of the IEP (8 VAC 20-80-62 F) with respect to the services provided, and be developed, reviewed, and revised consistent with 8 VAC 20-80-62 B 1, B 2, B 3, B 4, C, D, and E.

6. Location of services. Services provided to [a] private school [~~children~~ child] with [~~disabilities~~ a disability] may be provided on-site at [a the] child's private school, including a religious school, to the extent consistent with law.

7. Transportation.

a. If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must 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. Local school divisions are 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 the local school division has met the requirement of this section.

8. Procedural safeguards, due process, and complaints.

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 a local school division 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 a local school division has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation [,] and eligibility) for private school children with disabilities (subsection C of this section).

c. State complaints. Complaints that the Virginia Department of Education or local school division has failed to meet the requirements of this section may be filed under the procedures in 8 VAC 20-80-78.

9. Separate classes prohibited. A local school division may not use funds available under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) 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.

10. Requirement that funds not benefit a private school. A local school division may not use funds provided under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local school division shall use funds provided under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to meet the special education and related services needs of students enrolled in private schools, but not for the needs of a private school or the general needs of the students enrolled in the private school.

11. Use of public school personnel. A local school division may use funds available under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for private school children with disabilities and if those services are not normally provided by the private school.

12. Use of private school personnel. A local school division may use funds available under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to pay for the services of an employee of a private school to provide services to a child enrolled in private school by the child's [parent or] parents, 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.

13. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.

a. A local school division must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the [~~public agency~~ local school division] acquires with funds under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) for the benefit of private school children with disabilities.

b. The local school division may place equipment and supplies in a private school for the period of time needed for the program.

c. The local school division 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. The local school division 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 [~~other than~~] purposes [of other than] special

Final Regulations

education and related services for children with disabilities.

e. No funds under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) may be used for repairs, minor remodeling, or construction of private school facilities.

8 VAC 20-80-68. Discipline procedures.

[A. General. A student with a disability shall be entitled to the same due process rights that all students are entitled to under the Code of Virginia and the local educational agency's disciplinary policies and procedures.

A. B.] Short-term removals.

1. A student with a disability may be removed from the student's current educational setting up to 10 cumulative school days in a school year for any violation of school rules to the extent removal would be applied to [students a student] without [disabilities a disability] .

2. A student with a disability [is entitled to the same due process rights that all students are entitled to under the school division's disciplinary policies and procedures. may be removed from the student's current educational setting for a period of time that cumulatively exceeds 10 school days in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the removals do constitute a pattern, the requirements of subsection C of this section apply.

a. Isolated, short-term suspensions for unrelated instances of misconduct may not be considered a pattern.

b. These removals do not constitute a change in placement.]

[B. C.] Long-term removals.

1. For purposes of removals of a student with a disability from the student's current educational placement, a change in placement occurs if:

a. The removal is for more than 10 consecutive school days; or

b. [The student receives] A series of removals [that constitute constitutes] a pattern because [:-(1)] the removals cumulate to more than 10 school days in a school year [;] and [(2) The removals involve because of] such factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

[c. A student with a disability may be removed for a period of time that cumulatively exceeds 10 school days in a given school year for separate accounts of misconduct as long as the removals do not constitute a pattern.

(1) Isolated, short-term suspensions for unrelated instances of misconduct may not be considered a pattern.

~~(2) These removals do not constitute a change in placement.]~~

2. Authority of school personnel.

a. A student with a disability may be removed consistent with subdivision 1 of this subsection for any violation of school rules to the extent removal would be applied to students without disabilities.

b. School personnel may remove a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a [child student] without a disability would be subject to discipline, but [not] for [not] more than 45 calendar days, if:

(1) The student carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of [the a] local educational agency or the Virginia Department of Education; or

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of [the a] local educational agency or the Virginia Department of Education. For purposes of this part, the following definitions apply:

(a) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act at 21 USC § 812 (c).

(b) Illegal drug means a controlled substance, but does not include a 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 or under any other provision of federal law.

(c) Weapon has the meaning given the term "dangerous weapon" in 18 USC § 930 (g), paragraph 2, as well as any [other provisions of weapon defined as a dangerous weapon in] the Code of Virginia.

c. The interim alternative educational setting must be determined by an IEP team. The interim alternative educational setting must be selected so as to enable the student to:

(1) Continue to progress in the general curriculum, although in another setting;

(2) Continue to receive those services and modifications including those described in the student's current IEP [;] that will enable the student to meet the IEP goals; and

(3) Include services and modifications that address the behavior and are designed to prevent the behavior from recurring.

d. The local educational agency shall ensure that the following procedures are implemented either before or

not later than 10 business days after either first removing the student for more than 10 school days in a school year [7] or commencing a removal that constitutes a change in placement under subdivision 1 of this subsection, including placements in interim alternative educational settings:

(1) The IEP team shall convene to develop a behavioral assessment plan if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral plan for the student before the behavior resulted in the removal described in subdivision 1 of this subsection.

[(2) The functional behavioral assessment may be a review of existing data that can be completed at the IEP meeting. Parental consent is not necessary to review existing data.]

[~~(2)~~ (3)] The IEP team shall reconvene as soon as practicable after developing the assessment plan and completing the assessments required by the plan. The IEP team shall develop and implement appropriate behavioral interventions to address the behavior.

[~~(3)~~ (4)] If the student had a behavioral intervention plan before engaging in the behavior, the IEP team shall convene to review the plan and its implementation [7] and modify the plan and its implementation, as necessary, to address the behavior.

e. If the student who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than 10 school days in a school year is subjected to a further removal that does not constitute a change in placement under subdivision 1 of this subsection [,] the IEP team shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members [~~believes~~ believe] that modifications are needed in the student's behavioral intervention plan, the IEP team shall meet and modify the plan and its implementation as necessary.

3. Services during periods of disciplinary removal.

a. The local educational agency is not required to provide services during the first 10 school days in a school year that a student with a disability is removed from the student's current educational setting if services are not provided to [~~students~~ a student] without [~~disabilities~~ a disability] who [~~have~~ has] been similarly removed.

[~~b. A student with a disability is entitled to the same due process rights that all students are entitled to under the school division's disciplinary policies and procedures.]~~

[~~e. b.]~~ For a subsequent removal that is less than 10 school days in a school year, but exceeds 10 cumulative school days of removal, and which does not constitute a change in placement under subdivision

1 of this subsection, the local educational agency shall provide services to the extent determined necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of the student's IEP.

[~~e. c.]~~ The procedures for determining services under subdivision 3 [~~e. b.]~~ of this subsection for periods of removals are as follows:

(1) For removals for more than 10 school days in a school year which do not constitute a change in placement, school personnel, in consultation with the student's special education teacher, make the service determinations.

(2) For removals that constitute a change in placement, the IEP team determines what services are needed.

4. Authority of the hearing officer.

a. A local educational agency 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 student with a disability for not more than 45 calendar days if the local educational agency believes that the student's behavior is likely to result in injury to self or others. [This procedure may be repeated as necessary.]

b. The hearing officer under 8 VAC 20-80-76 may order a change in the placement to an appropriate interim alternative educational setting for not more than 45 calendar days if the local educational agency has demonstrated by substantial evidence (beyond a preponderance of the evidence) that maintaining the current placement of the student is substantially likely to result in injury to the student or others. The hearing officer must:

(1) Consider the appropriateness of the student's current placement;

(2) Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

(3) Determine that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher [7] meets the requirements of subdivision 2 c of this subsection.

c. A local educational agency may ask the hearing officer for an extension of 45 calendar days for the interim alternative educational setting of a student with a disability when school personnel believe that the student's return to the regular placement would be dangerous to the student or others.

5. Manifestation determination.

a. Manifestation determinations are required if the local educational agency is contemplating a removal that

Final Regulations

constitutes a change in placement, including removal to an interim alternative educational setting, for a student with a disability who has violated any rule or code of conduct of the local educational agency that applies to all students. The local educational agency shall notify the [parent or] parents of that decision and provide the [parent or] parents with the procedural safeguards notice not later than the date on which the decision to take the action is made.

b. The IEP team and other qualified personnel 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. [The other qualified personnel may include individuals who are knowledgeable about how a student's disability can impact on behavior or on understanding, who understand the impact and consequences of behavior, or who are knowledgeable about the student and the student's disability.] The IEP team [and other qualified personnel] shall review the relationship between the student's disability and the behavior subject to the disciplinary action.

(1) The IEP team and other qualified personnel may determine the behavior was not a manifestation of the student's disability only if the team and other qualified personnel first consider, in terms of the behavior subject to the disciplinary action, all relevant information, including:

(a) Evaluation and diagnostic results, including the results [or of] other relevant information supplied by the parents of the student;

(b) Observations of the [~~child~~ student] ; [and]

(c) The student's IEP and placement [~~; and~~]

(2) The IEP team and other qualified personnel shall then determine that:

(a) In relationship to the behavior subject to the disciplinary action, the student's IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;

(b) The student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) The student's disability did not impair the student's ability to control the behavior subject to the disciplinary action.

c. If the IEP team and other qualified personnel determine that the standards in subdivision 5 b (2) of this subsection were not met, the behavior must be considered a manifestation of the student's disability. [If the behavior is a manifestation of the student's disability:

(1) The student can be removed from the student's educational placement only through the IEP process or through placement in an interim alternative educational setting as provided in subdivision C 2 b, C 4, or C 7 c of this section; and

(2) The IEP team shall develop or modify strategies, including positive behavioral interventions and supports to address the behavior.]

d. The review by the IEP team and other qualified personnel to determine manifestation may be conducted at the same IEP meeting to develop or review the student's behavioral intervention plan, as long as the [local educational agency notified the parent or parents of the] purposes of the meeting [~~are provided the parent~~] .

e. If the IEP team and other qualified personnel determine deficiencies in the student's IEP or placement, the local educational agency shall take immediate steps to remedy those deficiencies [through the IEP process] .

f. If the IEP team and other qualified personnel determine that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to [~~students~~ a student] without [~~disabilities~~ a disability] may be applied to the student [with a disability] in the same manner in which the procedures would be applied to [~~students~~ a student] without [~~disabilities~~ a disability] .

(1) If the local educational agency initiates disciplinary procedures, providing due process rights that are applicable to all students, the local educational agency shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the [person or] persons making the final determination regarding the disciplinary action.

(2) The IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

6. Parent appeal.

a. If the student's parent or parents disagree 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 [~~discipline~~ disciplinary] procedures, the parent or parents may request an expedited due process hearing.

b. In accordance with the Virginia Department of Education's due process hearing procedures, an expedited hearing shall be scheduled in response to the parent's or parents' request. In reviewing the decision with respect to the manifestation determination, the hearing officer shall determine whether the local educational agency has demonstrated that the student's behavior was not a

manifestation of the student's disability consistent with the requirements of subdivision 5 of this subsection. In reviewing the decision to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in subdivision 4 of this subsection.

7. Placement during appeals.

a. If the parent or parents request a hearing to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer [;] or until the expiration of the time period not to exceed 45 calendar days, unless the parent or parents and local educational agency agree otherwise.

b. If the student is placed in an interim alternative educational setting and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of the due process proceedings, the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided in subdivision 7 c of this subsection.

c. If school personnel maintain that it is dangerous for the student to be in the current placement (the student's placement prior to the interim alternative educational setting) during the pendency of the due process proceedings, the local educational agency may request an expedited due process hearing under the procedures contained in subdivision 4 [b a] of this subsection.

d. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in subdivision 4 [e b] of this subsection.

e. [~~Placements~~ A placement] ordered by the hearing officer under the [procedures for an] expedited [~~hearings procedures~~ due process hearing] may not be longer than 45 calendar days. If the local educational agency believes that it is dangerous for the student to return to the current placement, the local educational agency may request of the hearing officer to extend the [placement for longer than] 45 calendar days, in accordance with subdivision 4 [e b] of this subsection.

8. Protection for students not yet eligible for special education and related services.

a. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates any rule or code of conduct of the local educational agency, including behavior described in subdivisions 2 and 4 of this subsection, may assert any of the protections provided in this chapter if the local educational agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

b. A local educational agency shall be deemed to have knowledge that a student is a student with a disability if:

(1) The parent or parents of the student have expressed concern in writing (or orally if the parent or parents do not know how to write or have a disability that prevents a written statement) to school personnel that the student is in need of special education and related services;

(2) The behavior or performance of the student demonstrates the need for these services;

(3) The parent or parents of the student have requested an evaluation of the student to be determined eligible for special education and related services; or

(4) [~~The A~~] teacher of the student or school personnel [~~has have~~] expressed concern about the behavior or performance of the student to the director of special education of the local educational agency or to other personnel in accordance with the local educational agency's child find or special education referral system.

c. A local educational agency would not be deemed to have knowledge that a student is a student with a disability if the local educational agency:

(1) Conducted an evaluation and determined that the student [~~is was~~] not a student with a disability; or

(2) Determined that an evaluation was not necessary [;] and provided notice to the student's [parent or] parents of its determination in accordance with the notice requirements found in 8 VAC 20-80-70.

d. If the local educational agency does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures applied to [~~students a student~~] without [~~disabilities a disability~~] who [~~engage~~] in comparable behaviors.

e. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under subdivisions 2 and 4 of this subsection, the evaluation must be conducted in an expedited manner.

(1) Until the evaluation is completed, the student remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.

(2) If the student is determined to be a student with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the [parent or] parents, the local educational agency shall provide special education and related services [~~in accordance with the disciplinary procedures~~]

Final Regulations

~~contained in these procedures~~ as required for a student with a disability who is disciplined] .

9. Expedited due process hearing.

a. Under subdivision 4 of this subsection, a local educational agency may request an expedited [due process] hearing if there is substantial evidence that maintaining the current placement for a student with a disability is substantially likely to result in injury to the students or others.

b. Under subdivision 6 of this subsection, the parent or parents may request an expedited [due process] hearing if the parent or parents disagree with the manifestation determination or any decision regarding placement under this section.

c. The Virginia Department of Education shall establish procedures for expedited due process hearings to include the following requirements:

(1) Timelines for conducting the hearing and [~~issuance~~ issuing] of the decision consistent with the requirements found in 8 VAC 20-80-76; [and]

(2) [~~Delineation~~ Description] of any appeal requirements consistent with the requirements found in 8 VAC 20-80-76.

10. Referral to and action by law enforcement and judicial authorities.

a. Nothing in this chapter prohibits a local educational agency from reporting a crime by a student with a disability to appropriate authorities, or [~~to prevent~~ 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 student with a disability [to the extent such action applies to a student without a disability].

b. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be [~~consistent~~ in accordance] with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

8 VAC 20-80-70. Procedural safeguards.

A. ~~Due process~~ Opportunity to examine records; parent participation [~~and involvement~~].

1. Procedural safeguards. Each ~~LEA~~ local educational agency shall establish, maintain, and implement procedural safeguards as follows:

a. The parent or parents of a child with a disability, ~~upon request~~, shall be afforded an opportunity to:

(1) Inspect and review all education records involving: ~~(4)~~ with respect to (i) the identification, evaluation ~~or~~, and educational placement of the

child; ~~or~~ (2) and (ii) the provision of a free appropriate public education to the child. ~~(see: as set forth in the Management of the Student's Scholastic Records Record in the Public Schools of Virginia [7] 8 VAC 20-150-10 et seq.)~~

~~b. The parent of a child with a disability shall be provided, on request, information as to where an independent educational evaluation (IEE) may be obtained.~~

(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) Each local educational agency shall provide notice to ensure that [~~one or both of~~] the [parent or] parents of a child with a disability [~~are present at each meeting or are afforded have~~] the opportunity to participate [in meetings described in subdivision 1 a (2) of this subsection,] including notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to [~~attend and scheduling the meeting at a mutually agreed on time and place~~] participate]. The notice must: (i) indicate the purpose, [date,] time, and location of the meeting and who will be in attendance [~~and~~ ;] (ii) inform the parent or parents that at their discretion or at the discretion of the local educational agency [,] 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 [; and (iii) inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual].

(2) A meeting does not include informal or unscheduled conversations involving local educational agency 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 local educational agency 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. [~~(4)~~] Each local educational agency shall ensure that the parent or parents of each child with a disability are members of [~~any group~~ :]

[(1) The IEP team] that makes decisions on the educational placement of their child [: ; or]

[(2) Any Comprehensive Services Act team that makes decisions on the educational placement of their child.]

~~[(2) In implementing the requirements, the local educational agency shall provide notice to ensure that one or both of the parents of a child with a disability are present at each meeting or are afforded the opportunity to participate, including notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed-on time and place. The notice must indicate: (i) the purpose, time, and location of the meeting and who will be in attendance; (ii) inform the parent or parents that at their discretion or at the discretion of the local educational agency other individuals who have 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.~~

~~(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, the local educational agency 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 a group without the involvement of the parent or parents if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency must have a record of its attempts to ensure their involvement, including: (i) information about its attempts to arrange a mutually agreed-on time and place, such as detailed records of telephone calls made or attempted and the results of those calls; (ii) copies of correspondence sent to the parents and any responses received; and (iii) detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.~~

~~(5) The local educational agency shall make reasonable efforts to ensure that the parent or parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness or whose native language is other than English.]~~

B. Independent educational evaluation.

1. General.

~~e. a. The parent or parents of a child with a disability shall have the right to obtain an IEE independent educational evaluation of the child:.~~

~~b. The local educational agency shall provide to the parent or parents of a child with a disability, upon request, 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.

~~(1) Such IEE will be a. The parent or parents have the right to an independent educational evaluation at public expense if the parent disagrees or parents disagree with [the an] evaluation obtained by the LEA; however, the LEA shall have the right to initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate then, the parent still has the right to an IEE, but not at public expense local educational agency.~~

~~b. If the parent or parents request an independent educational evaluation at public expense, the local educational agency must, 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 hearing that the evaluation obtained by the parent or parents does not meet local educational agency criteria.~~

~~c. If the local educational agency initiates a hearing and the final decision is that the [local educational agency's] evaluation [provided by the local educational agency] is appropriate, the parent or parents still have the right to an independent educational evaluation, but not at public expense.~~

~~d. If the parent or parents request an independent educational evaluation, the local educational agency may ask [the reasons] for the parent's or parents' [reasons why they object objection] to the public evaluation. However, the explanation by the parent or parents may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.~~

~~(2) Whenever e. [Agency criteria.] If an IEE independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's or parents' right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation.~~

~~(3) 3. Parent-initiated evaluations. The results of [the an] IEE independent educational evaluation whether or not at public expense:~~

~~(a) a. Must be considered by the LEA local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and~~

Final Regulations

~~(b) b.~~ May be presented as evidence at a hearing under ~~8 VAC 20-80-70 A 2 of this chapter~~ 8 VAC 20-80-76.

C. Prior notice by the local educational agency; content of notice.

~~d. The parent of a child with a disability shall be given~~ 1. Written notice ~~within~~ must be given to the parent or parents of a child with a disability [within] a reasonable time before the LEA local educational agency:

a. Proposes or ~~refuses~~ 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 free appropriate public education for the child.

[2.] If the notice relates to an action proposed by the local educational agency that also requires parental consent, the local educational agency may give notice at the time it requests parental consent.

~~e.~~ [2 3]. The notice shall include:

~~(1) A full explanation of all procedural safeguards available to the parents;~~

~~(2) a.~~ A description of the action proposed or refused by the LEA, local educational agency;

b. An explanation of [why] the LEA local educational [agency proposes or refuses agency's proposal or refusal] to take the action; ~~and~~;

c. A description of any other options the LEA local educational agency considered and the reasons [why for the rejection of] those options [were rejected];

~~(3) d.~~ A description of the nature, purpose, and use of any each evaluation procedure, test, record, or report the LEA local educational agency used as a basis for the ~~proposal proposed or refusal refused action; and~~

~~(4) e.~~ A description of any other factors [which that] are relevant to the LEA's local educational agency's proposal or refusal;

f. A statement that the parent or parents of a child with a disability have protection under the procedural safeguards [of this chapter] and, if [this 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 or parents to contact [in order] to obtain assistance in understanding the provisions of this section.

~~f. Information contained in [3. 4.]~~ The notice shall be: ~~(1)~~ (i) written in language understandable by to the general public; ~~(2) and (ii)~~ provided in the native language of the parent or parents or other mode of communication used

by the parent or parents, unless it is clearly not feasible to do so; and

~~(3)~~ If the native language or other mode of communication of the parent or parents is not a written language, ~~then~~ the LEA local educational agency shall take steps to ensure that:

~~(a) That~~ a. The notice is translated orally or by other means to the parent or parents in his their native language or other mode of communication;

~~(b) That~~ b. The parent understands or parents understand the content of the notice; and

~~(c) That~~ c. There is documentation written evidence that the requirements in of subdivisions ~~(a) a and (b) b~~ of subdivision A 1 f (3) of this section subdivision have been met.

D. Procedural safeguards notice.

1. A copy of the procedural safeguards available to the parent or parents of a child with a disability must be given to the parent or parents at a minimum [upon]:

a. [Upon] Initial referral for evaluation;

b. [Upon] Each notification of an IEP meeting;

c. [Upon] Reevaluation of the child; [and]

d. [Upon] Receipt of a request for a due process hearing [; and

e. Notification of a decision to take disciplinary action, in accordance with 8 VAC 20-80-68 B 5] .

2. The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to:

a. Independent educational evaluation;

b. Prior written notice;

c. Parental consent;

d. Access to educational records;

e. Opportunity to present complaints and to initiate due process hearings;

f. The child's placement during pendency of due process proceedings;

g. Procedures for students who are subject to placement in an interim alternative educational setting;

h. Requirements for unilateral placement by parents of children in private schools at public expense;

i. Mediation;

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;

k. Civil actions;

l. Attorneys' fees; and

m. The state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

3. *The notice required under this [section subsection] must meet the prior notice requirements regarding understandable language [of in] subsection C of this section.*

E. Parental consent.

~~g. Written~~ 1. *General [. Informed]* parental consent shall be obtained before:

~~(1) Preplacement~~ 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];*

b. *Any change in identification of a child with [disabilities a disability];*

~~(2) c. Initial placement of provision of special education and related services to a child with a disability in a program providing special education and related services; and any revision to the child's IEP [services];~~

~~(3) Any change in program/placement, including d. Any partial or complete termination of special education and related services, except for expulsions and graduation. Consent for placement may be revoked up until the first day of the placement. with a standard or advanced studies diploma; and~~

~~h. Written parental consent shall be obtained for the following:~~

~~(1) Any change in identification of a child with disabilities; and~~

~~(2) Any evaluation which is conducted other than the triennial evaluations. (Parental consent is not necessary for reviewing the child's records for conducting a reevaluation.)~~

~~e. Accessing a parent's or parents' private insurance proceeds [in accordance with this chapter].~~

2. *Consent for initial evaluation may not be construed as consent for initial placement.*

3. *[Consent] for initial placement [may be revoked by the parent at any time prior to the first day of that placement.] 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).*

~~i. Except for preplacement evaluation and initial placement, consent or refusal to give consent for those other situations requiring consent shall be given by the parent to the LEA within 10 administrative working days after notice is received. If the parent fails to notify the LEA within 10 administrative working days, the LEA may proceed as if consent had been granted, and the parent must initiate due process to contest the action. If the parent refuses to give consent, the LEA~~

~~shall attempt to resolve parental withholding of consent through informal means. If those informal methods are not successful, the LEA must use other measures as necessary to ensure that, except for preplacement evaluation and initial placement, parental refusal to consent will not result in a denial of a necessary free appropriate public education.~~

2. *Impartial due process hearing.* Each LEA or the parent of a child determined or believed to have a disability, shall have the right to initiate a hearing when a disagreement occurs on matters relating to identification, evaluation (including determination of whether or not an IEE at public expense is appropriate), or educational placement of the child or the provision of a free appropriate public education for the child. The LEA may initiate due process to appeal parental withholding of consent where this chapter requires the LEA to obtain consent.

3. *Child's status during proceedings.* The child's status during proceedings shall be as follows:

~~a. During the pendency of any administrative hearing or appeal or during the pendency of any judicial proceeding regarding this chapter, unless the LEA and the parent of the child agree otherwise, the child must remain in his current educational placement. While the placement may not be changed, this does not preclude using normal procedures for dealing with children who are endangering themselves or others. Such procedures do not include expulsion or suspension over 10 days; however, the procedures may include time out, detention, restriction of privileges, or temporary suspension up to 10 days.~~

~~b. If the issue involves an application for initial admission to public school, the child of school age, with consent of the parent, must be placed in a public school program until the completion of all proceedings.~~

4. *Mediation.* This chapter does not preclude the use of mediation in the resolution of differences, but mediation shall not be used to deny or delay a parent's rights. Such mediation may be conducted only by personnel who were not previously involved in the particular case. However, such mediation shall not extend the resolution of a hearing beyond the 45 calendar days unless otherwise approved and documented as in the best interests of the child by the hearing officer upon request of the parties. The hearing officer shall notify the parties and the SEA in writing of the specific number of days to be allowed for mediation.

5. *Commencement of the due process hearing.*

~~a. Request for a hearing shall be made in writing to the LEA or other public agency board as appropriate.~~

~~b. The LEA shall inform the parent of any free or low-cost legal or other relevant services available in the area as well as the attorney fees provision of 8 VAC 20-80-70 A 12 when:~~

~~(1) The parent requests the information; or~~

Final Regulations

(2) The parent or the LEA initiates a hearing.

c. ~~The LEA shall ensure that the Virginia Supreme Court appoints a hearing officer within five administrative working days following the request for a hearing to facilitate compliance with the 45-calendar days timeline.~~

6. ~~Qualifications, removal, substitution and challenge of hearing officers.~~

~~"Impartial hearing officer" means a person selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted:~~

a. ~~By a person employed by an agency involved with the care or education of the child; or~~

b. ~~By a person having a personal or professional interest which would conflict with his objectivity in the hearing.~~

~~Appointment, qualifications, retention, training, selection, removal and disqualification of hearing officers are governed by the Hearing Office System Rules of Administration Promulgated by the Supreme Court of Virginia.~~

7. ~~Responsibilities of LEA; prehearing.~~

a. ~~The confirmation of the appointment of the hearing officer by the LEA shall be done in such a manner as to protect the confidentiality of the parents and the child. All necessary information shall be forwarded promptly to the hearing officer, together with the official request for a hearing in order to ensure that timelines are maintained.~~

b. ~~The LEA shall send a copy of the correspondence confirming the appointment of a hearing officer along with a copy of the request for a hearing to the SEA within five administrative working days of the appointment of a hearing officer.~~

c. ~~The LEA shall arrange for recording equipment to be set up, or a stenographer to be present, in the hearing room. The LEA shall also ensure that the recording equipment, if used, is reliable and working and that the recording is clear and can be transcribed, if necessary. A complete, accurate, written verbatim transcript of the proceedings need not be made at the conclusion of the hearing, unless the hearing officer needs it for review prior to rendering a decision. When there is an appeal of the decision, a verbatim copy of the recording or transcript shall be supplied to the parties to the appeal, upon request, and free of charge.~~

d. ~~Each LEA shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.~~

8. ~~Responsibilities of the hearing officer; prehearing.~~

a. ~~The hearing officer shall, within five administrative working days of appointment, secure a time, date and location for the hearing which is convenient to both~~

~~parties, and notify both parties to the hearing, and the SEA, in writing, of the time, date and location of the hearing.~~

b. ~~The hearing officer shall ascertain whether or not the parties will have attorneys at the hearing. If so, the hearing officer shall send copies of correspondence to the attorneys of the parties.~~

c. ~~The hearing officer shall ascertain from the parents whether the hearing will be open.~~

d. ~~The hearing officer shall ensure that a stenographer or recording equipment is present at the hearing and ensure that testimony is clearly recorded, either by the stenographer or recording equipment, to permit an accurate record of the proceedings. If a tape recorder is used, the hearing officer shall be provided a written list of speakers in order of appearance, and at the beginning of the hearing identify on tape each speaker's title, position, and interest in the proceeding. Thereafter, each speaker, prior to addressing the hearing, shall state his name for the record.~~

e. ~~The hearing officer shall receive a list of witnesses and documentary evidence for the hearing no later than five administrative working days prior to the hearing.~~

f. ~~The hearing officer may schedule a prehearing conference to be attended by the parties and attorneys, if appropriate. Such a conference may be requested by the hearing officer or the parties to the hearing to simplify or eliminate issues.~~

g. ~~The hearing officer has power to issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence.~~

(1) ~~The hearing officer may procure an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.~~

(2) ~~Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not question or modify the subpoena after objection to that.~~

h. ~~The hearing officer shall ensure that the LEA has appointed a surrogate parent who is acting to protect the educational interests and rights of the child in accordance with 8 VAC 20-80-80 of this chapter.~~

9. ~~Rights of parties to the hearing.~~

a. ~~Any party to a hearing shall have the right to:~~

(1) ~~Be accompanied and advised by counsel or by individuals with special knowledge or training concerning the problems of children with disabilities, without being in violation of the provisions of § 54.1-3904 of the Code of Virginia.~~

(2) ~~Present evidence and confront, cross-examine, and request the hearing officer to compel the attendance of witnesses.~~

~~(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five administrative working days before the hearing.~~

~~(4) Receive written findings of fact and decisions rendered by the hearing officer.~~

b. The parents involved in a hearing must be given the right to:

~~(1) Have the child who is the subject of the hearing present;~~

~~(2) Open the hearing to the public;~~

~~(3) Receive a copy of the implementation plan; and~~

~~(4) Obtain the written or electronic verbatim record of the hearing upon request and free of charge.~~

10. Due process hearing procedure.

a. The rights of all parties to the hearing shall be protected by the hearing officer.

b. The hearing officer shall ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing. The hearing officer may excuse witnesses after they testify to limit the number of expert witnesses present at the same time or to sequester witnesses during the hearing.

c. The hearing officer may stop unnecessarily hostile or irrelevant pursuits in questioning.

d. The hearing officer shall remand the matter in dispute to a conference between the parties only when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to delay or deprive the parties of their rights and shall be exercised only when the best interest of the child will be served.

e. The hearing officer may require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment.

f. The hearing officer, in the course of the proceedings, shall include in the written findings a determination of the following:

~~(1) Whether or not the requirements of notice to parents were satisfied;~~

~~(2) Whether or not the child has a disability;~~

~~(3) Whether or not the child needs special education and related services; and~~

~~(4) Whether or not the LEA is supplying a free appropriate public education.~~

g. The hearing officer shall make no presumptions in the case and shall base his findings of fact and decisions solely upon the preponderance of the

evidence presented at the hearing and applicable state and federal law.

h. The hearing officer shall report findings of fact and decisions to both parties to the appeal, the LEA, and to the SEA.

i. A decision made by the hearing officer is final, unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative working days of the date of the hearing decision.

11. Administrative appeal and impartial review.

a. If there is an appeal of the decision of a hearing officer, the SEA shall ensure an impartial review of the hearing. The review shall be conducted by a reviewing officer appointed according to the Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia. The SEA shall ensure the appointment within two administrative days of the receipt of a request for a review of a due process hearing. The official conducting the review shall:

~~(1) Examine the entire hearing record;~~

~~(2) Ensure that the procedures at the hearing were consistent with the requirements of due process;~~

~~(3) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, then all hearing rights as specified in this section apply;~~

~~(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;~~

~~(5) Advise all parties of their right to continue to be represented by counsel whether or not the reviewing official determines that a further hearing is necessary;~~

~~(6) Make an independent decision upon completion of the review; and~~

~~(7) Give a copy of written findings and the decisions to the parties to the appeal, the LEA and to the SEA in the manner prescribed.~~

b. The decision made by the reviewing official is final and binding on all parties, unless any party aggrieved by the findings and decisions of the administrative review brings civil action in any state court of competent jurisdiction within one year or in federal district court. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence in its discretion at the request of either party, and basing its decision on the preponderance of the evidence, shall grant such relief as it determines to be appropriate.

12. Attorney's fees.

a. In any such action or proceeding, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardian of a child with a disability who is the prevailing party.

Final Regulations

~~b. If a written offer of settlement is made to a parent or guardian within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins, and the offer is not accepted within 10 days and the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parent or guardian than the offer of settlement, no award of attorney's fees and related costs may be made for services performed subsequent to the time of such offer, unless the court finds that the prevailing party was reasonably justified in rejecting the settlement offer.~~

13. Timelines for hearings and reviews.

~~a. The LEA shall ensure that not later than 45 calendar days after the receipt of a request for a due process hearing:~~

~~(1) A final decision is rendered in the hearing, unless otherwise documented by the hearing officer; and~~

~~(2) A copy of the decision is mailed to the parties and the SEA.~~

~~b. The SEA shall ensure that not later than 30 calendar days after the receipt of a request for a review:~~

~~(1) A final decision is rendered in the review, unless otherwise documented by the reviewing officer; and~~

~~(2) A copy of the decision is mailed to the parties.~~

~~c. A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in subdivisions a and b of subdivision A 13 of this section at the request of either party. This action shall in no way be used to delay or deprive the parties of their rights and should be exercised only when the best interests of the child will be served. Changes in hearing dates or extensions are to be noted in writing which shall be sent to all parties and to the SEA.~~

~~d. Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parent and child involved.~~

14. Costs of due process hearings and state review.

~~a. Costs for a local hearing shall be shared equally by the LEA and the SEA. The costs shared by the SEA shall include expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone expenses); expenses incurred by order of the hearing or reviewing officer (i.e., independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e., hearing tapes or stenographer). The SEA shall not be liable to the LEA for expenses incurred for witnesses (except where hearing or reviewing officers subpoena witnesses on their own initiative) or for attorney's fees.~~

~~b. The SEA shall be responsible for all approved costs for state reviews.~~

15. Implementation plan.

~~a. The LEA shall develop an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing or review request. Such plan shall be based upon the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan must state how and when the decision or agreement will be put into operation. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall include the name and position of a case manager in the LEA charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing or reviewing officer, and the SEA.~~

~~b. Failure of either of the parties to comply with the implementation plan shall be reported to the SEA for investigation or appropriate action.~~

16. Due process file. The LEA shall maintain a file containing the following:

~~a. A copy of the hearing and reviewing officer's findings of fact and decisions;~~

~~b. A copy of the implementation plan;~~

~~c. A copy of the electronic or verbatim transcript of the hearing proceedings; and~~

~~d. A copy of all documents and exhibits presented at the due process hearing and state level review.~~

~~B. Confidentiality of information. The confidentiality of information shall be as set forth in the Management of the Student's Scholastic Record.~~

~~C. Complaint procedure. Complaints regarding violations of rights of parents or children with disabilities or both shall be addressed to the Superintendent of Public Instruction or designee, with the additional requirements as follows:~~

~~1. The complaint must be in writing, signed by the organization or individual filing the complaint, and contain a statement that an LEA has violated the Individuals with Disabilities Education Act (IDEA) (20 USC § 1400 et seq.) or this chapter.~~

~~2. The complaint must contain a statement of facts on which the complaint is based. In addition, all relevant documents shall be forwarded to the Superintendent of Public Instruction or designee.~~

4. Parental consent is not required before:

~~a. [*Reviewing* Review of] existing data as part of an evaluation or a reevaluation [, including a functional behavioral assessment];~~

~~b. [*Administering* 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 or parents of all children; [or]~~

c. ~~[Administering Administration of]~~ a test or ~~[other]~~ evaluation that is used to measure progress on the ~~[children's child's]~~ goals and ~~[benchmarks or]~~ objectives and is included in the IEP ~~[; or]~~

d. A teacher's or related service provider's observations or ongoing classroom evaluations].

5. If the parent or parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the local educational agency may ~~[continue to pursue those evaluations by using the due process use mediation or due process hearing]~~ procedures ~~[or the mediation procedures if appropriate]~~ to pursue the evaluation].

6. Failure to respond to request for reevaluation.

a. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent or parents have failed to respond.

b. To meet the reasonable measures requirement ~~[in this subdivision 6-a]~~, the local educational agency must ~~[use parent participation procedures consistent with those in 8 VAC 20-80-62-D-4]~~ have a record of its attempts to secure the consent, such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parent or parents and any responses received; and

(3) Detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits].

7. A local educational agency may not use a parent's or parents' refusal to consent to one service or activity to deny the parent, parents [,] or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter.

F. Parental rights regarding use of public or private insurance.

1. Each local educational agency using ~~[Medicaid or other]~~ public insurance to pay for services required under this chapter [, as permitted under the public insurance program,] shall:

a. Provide notice to the parent or parents that:

(1) The parent or parents are not required to sign up for public insurance in order for their child to receive a free appropriate public education; ~~[and]~~

(2) The parent or parents are not required to incur out-of-pocket expenses, such as payment of a deductible or copay amount ~~[incurred in filing a claim for services; and]~~

(3) The local educational agency may not use a child's benefits under a public insurance program if that use would (i) decrease available lifetime coverage or any other insured benefit; (ii) result in

the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (iii) increase premiums or lead to the discontinuation of insurance; or (iv) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures].

b. Obtain ~~[informed]~~ parental consent to release educational records to the public insurance ~~[company program]~~ for billing purposes in accordance with the provisions of the Management of ~~[the]~~ Student's Scholastic ~~[Records Record]~~ in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

2. Each local educational agency using private insurance to pay for services required under this chapter shall:

a. Obtain ~~[informed]~~ parental consent ~~[each time the local education agency proposes]~~ to access the parent's ~~[or parents']~~ private insurance proceeds.

b. Obtain parental consent and inform the parent ~~[or parents]~~ that their refusal to permit the ~~[public local educational]~~ agency to access their private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent or parents each time it proposes to access the parent's or parents' private insurance.

c. Obtain parental consent to release educational information to the private insurance company for billing purposes in accordance with the provisions of the Management of ~~[the]~~ Student's Scholastic ~~[Records Record]~~ in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

G. ~~[The]~~ Confidentiality of information ~~[shall be as set forth in the Management of Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.)]~~.

[1. Access rights.

a. The local educational agency shall permit a parent or parents 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. The local educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8 VAC 20-80-76 and 8 VAC 20-80-68, and in no case more than 45 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 the local educational agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would

Final Regulations

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. A local educational agency may presume that a parent has authority to inspect and review records relating to his children unless the local educational agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency, obtaining access to education records collected, maintained, or used under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.), including the name of the party, the date of access, and the purpose of the access.

3. Record on more than one child. If any education record includes information on more than one child, the parent or parents 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.

4. List of types and locations of information. Each local educational agency shall provide on request to a parent or parents a list of the types and locations of education records collected, maintained, or used by the local educational agency.

5. Fees.

a. Each local educational agency may charge a fee for copies of records that are made for a parent or parents under this chapter if the fee does not effectively prevent the parent or parents from exercising their right to inspect and review those records.

b. A local educational agency may not charge a fee to search for or to retrieve information under this section.

6. Amendment of records at parent's request.

a. A parent or parents who believe 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 local educational agency that maintains the information to amend the information.

b. The local educational agency 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 the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the parent or parents of the refusal and advise the parent or parents of the right to a hearing under subdivision 7 of this subsection.

7. Opportunity for a hearing. The local educational agency 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.

8. Results of hearing.

a. If, as a result of the hearing, the local educational agency 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, the local educational agency 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 must:

(1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

9. Hearing procedures. A hearing held under subdivision 7 of this subsection must be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act (20 USC § 1232g).

10. Consent.

a. Except as to disclosure to law enforcement and judicial authorities in accordance with 8 VAC 20-80-68, for which parental consent is not required under the Family Educational Rights and Privacy Act (20 USC § 1232g), parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of the local educational agencies collecting, maintaining, or using the information under this chapter, subject to subdivision 10 b of this subsection; or

(2) Used for any purpose other than meeting a requirement of this chapter.

b. A local educational agency subject to the Family Education Rights and Privacy Act (20 USC § 1232g) may not release information from education records to any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) without parental consent unless authorized to do so under the Family Education Rights and Privacy Act.

c. In the event that a parent refuses to provide consent under this section, a local educational agency shall use established policies and procedures.

11. Safeguards.

a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

c. All persons collecting, maintaining, or using personally identifiable information must receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of information.

d. Each local educational agency 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.

a. The local educational agency 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. The information must 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 may be maintained without time limitation.

c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.]

8 VAC 20-80-72. Transfer of rights to students who reach the age of majority.

[A. All rights accorded to the parent or parents under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) transfer to children 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.

B. Notification.

1. The local educational agency shall notify the parent or parents and the student of the following:

a. That educational rights under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) will transfer from the parent or parents to the student upon the student reaching the age of majority. Such notification must be given at least one year prior to the student's eighteenth birthday; and

b. That procedures exist for appointing the parent or parents or, if the parent or parents 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. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student has been informed of the rights that will transfer to the student on reaching the age of 18.

3. The local educational agency shall provide any further notices required under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to both the student and the parent or parents.

4. The local educational agency may continue to invite the parent or parents, as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.

5. The adult student may invite the student's parent or parents to participate in meetings where decisions are being made regarding the student's educational program.]

[A. 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 Individuals with Disabilities Education Act [(20 USC § 1400 et seq.)] shall transfer to the adult student [,] unless one of the following actions has been taken:

1. The adult student [~~has been~~ 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. A local educational agency [~~may~~ shall] rely on such [~~a written~~] designation until notified that the authority to act under the designation [~~has been~~ is] revoked, terminated [,] or superseded by court order or by the adult student [- ;]

3. The adult student [~~has been~~ is] certified, according to the following procedures, as unable to provide informed consent. Any [~~competent~~] adult student who [~~has been~~ 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 [~~, including all rights accruing to the adult student under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)~~] and [~~the~~ to] exercise [~~of~~] rights related to the student's [~~school~~ scholastic] record. [~~a~~] An educational

Final Regulations

representative may be appointed based on the following conditions and procedures:

[~~(4)~~ a.] Two professionals (one from list one and one from list two [, as set out in the following subdivisions,]) [~~must~~ 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:

[~~(a)~~ (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.

[~~(b)~~ (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 Virginia Supreme Court; or (v) a court-appointed special advocate for the adult student.

[~~(2)~~ b.] The individuals who provide the certification in subdivision 3 a [~~(4)~~] of this subsection may not be employees of the local educational agency currently serving the adult student or be related by blood or marriage to the adult student.

[~~(3)~~ c. "] Incapable of providing informed consent, ["] as used in this [~~procedure~~ section], means that the individual is [unable to]:

[~~(a) Unable to~~ (1)] Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

[~~(b) Unable to~~ (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

[~~(c) Unable to~~ (3)] Communicate such understanding in any meaningful way.

[~~(4)~~ 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.

[~~(5)~~ 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.

[~~(6)~~ f.] The adult student's ability to provide informed consent must 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 local educational agencies]. Challenges must be provided in writing to the local educational agency's [~~director~~ administrator] of special education who then must notify the adult student and current appointed representative.

[~~(a)~~ (1)] Upon receipt of a written challenge to the certification by the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to [~~subdivision 3 b~~ subsection D] of this [~~subsection~~ section,] for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction [-;]

[~~(b)~~ (2)] Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, the local educational agency may not rely on an educational representative [,] appointed pursuant to [~~this procedure~~ 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 and treatment of the mentally retarded in accordance with § 37.1-65.1 of the Code of Virginia or in a coma and eligible for admission to a state hospital in accordance with § 37.1-65.3 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].

[~~b. Upon receiving the written certification of the adult student's inability to provide informed consent D. If the local educational agency 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], the local educational agency shall designate the parent or parents 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 or parents or adult spouse is not available [~~or~~ and] competent to give informed consent, the [~~individual designated by the local educational agency~~ administrator of special education or designee] shall designate a competent individual from among the following:

[(4) a.] An adult brother or sister;

[(2) b.] An adult aunt or uncle; or

[(3) c.] A grandparent.

[2.] If no [~~one family member~~] from the previous categories is [~~willing available~~] and [~~able competent~~] to serve as the adult student's educational representative, then [~~an individual (who is not an employee of the local educational agency) shall be designated to serve in this capacity~~ a person trained as a surrogate parent shall be appointed to serve as the educational representative] by the local educational agency.

[B. Notification.

~~1. The local educational agency shall notify the parent or parents and the student of the following:~~

~~a. That educational rights under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) will transfer from the parent or parents to the student upon the student reaching the age of majority. Such notification must be given at least one year prior to the student's eighteenth birthday.~~

~~b. The procedures for appointing the parent or parents or, if the parent or parents 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 child is determined not to have the ability to provide informed consent with respect to the educational program of the student as specified in subsection A of this section.~~

~~2. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student has been informed of the rights that will transfer to the student on reaching the age of 18.~~

~~3. The local educational agency shall provide any further notices required under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to both the student and the parent or parents.~~

~~4. The local educational agency may continue to invite the parent or parents, as appropriate, as bonafide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult child's educational program.~~

~~5. The adult student may invite the student's parent or parents to participate in meetings where decisions are being made regarding the student's educational program.~~

~~C. All rights accorded to the parent or parents under the Individuals with Disabilities Education Act (20 USC §§1400 et seq.) transfer to children upon the age of majority (18) who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution.]~~

8 VAC 20-80-74. Mediation.

A. Each local educational agency shall ensure that the parent or parents [of a child with a disability] are informed of the option of mediation to resolve disputes [involving the local educational agency's proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child], at a minimum, whenever a due process hearing is requested.

B. The local educational agency [~~may~~ shall] use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is:

1. Voluntary on the part of both the local educational agency and parent;

2. Not used to deny or delay a parent's or parents' right to a due process hearing or to deny any other rights afforded under this chapter; and

3. Conducted by a qualified and impartial mediator [~~from a list maintained by the Virginia Department of Education,~~] who is trained in effective mediation techniques and is knowledgeable in laws and regulations relating to the provision of special education and related services [~~, from a list maintained by the Virginia Department of Education~~].

C. The local educational agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parent [or parents], with a disinterested party who is under contract with [~~the~~] a parent training and information center [~~established under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.); or~~] community parent resource center in Virginia established under § 1482 or § 1485 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.); or [2.] an appropriate alternative dispute resolution entity.

[1.] The purpose of the meeting is to [~~encourage the use and~~] explain the benefits of [~~the mediation process to the parent or parents~~] and encourage the parents to use the process].

[2.] The local educational agency may not deny or delay a parent's or parents' right to a due process hearing if the parent or parents choose not to participate in this meeting.

D. In accordance with the Virginia Department of Education's procedures:

1. The Virginia Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;

2. The mediator shall be chosen on a rotation basis; and

3. The Virginia Department of Education shall bear the cost of the mediation process, including costs in subsection C of this section.

Final Regulations

E. The mediation process shall:

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 mediation agreement if an agreement is reached by the parties to the dispute; and
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. Parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.

F. An individual who serves as a mediator:

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; ~~and~~
2. Must not have a personal or professional conflict of interest ~~and~~

~~A person who otherwise qualifies as a mediator~~

3. ~~Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.~~

8 VAC 20-80-76. Due process hearing.

A. The Virginia Department of Education administers a special education due process hearing system that provides procedures for the training of hearing officers, requests for a hearing, appointment of hearing officers, the management and monitoring of hearings, and the administration of the hearing system. The Virginia Department of Education is responsible for the operation of the due process system; however, the local educational agency shares responsibility for the hearing process by ensuring the timely appointment of officers, communicating with the Virginia Department of Education, assisting with the hearing, and implementing the hearing officer's decision. A hearing officer's decision may be appealed directly to any state court of competent jurisdiction or to a district court of the United States.

B. Basis for due process hearing request.

1. Either a parent or parents or a local ~~school division~~ educational agency may request a due process hearing when a disagreement arises regarding any of the following:
 - a. Identification of a child with a disability;
 - b. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
 - c. Educational placement and services of the child; and
 - d. Provision of a free appropriate public education to the child.
2. A local educational agency may initiate a due process hearing to resolve a disagreement when the parent or parents withhold consent for 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 ~~to have~~ of having] a disability.

3. In circumstances involving disciplinary actions, ~~a the~~ parent or parents of a student with a disability may request an expedited due process hearing [if the parent or parents disagree with]:

a. ~~[If the parent or parents disagree with]~~ A determination that the child's behavior was not a manifestation of the child's disability; or

b. ~~[If the parent or parents disagree with]~~ Any decision regarding ~~an interim alternative~~ placement [under the disciplinary procedures].

4. The local educational agency may request an expedited hearing if the school division maintains that it is dangerous for the child to be in the current placement [(placement prior to removal to the interim alternative setting)] during the pendency of the due process proceedings.

C. Procedure for requesting a due process hearing.

1. A request for a hearing ~~is shall be~~ made in writing to the local educational agency, with a copy to the Virginia Department of Education. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education ~~will shall~~ immediately notify the local educational agency by telephone or by facsimile ~~and~~ and forward a copy of the request to the local educational agency within one day of the Virginia Department of Education's receipt, including those cases where mediation is requested. [The request for a hearing shall be kept confidential by the local educational agency and the Virginia Department of Education.

2. The notice of request must include the following information:

- a. The name of the child;
- b. The address of the residence of the 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 or parents at the time of the notice.]

~~[2. 3.] The local educational agency shall [upon receipt of a request for a due process hearing,] inform the parent or parents of [the availability of mediation described in 8 VAC 20-80-74 and of any free or] low-cost legal [and other relevant] services [and provide procedural safeguards and rights available in the area]. The local educational agency [shall confirm that the mediation option has been explored must also provide the parent or parents with a procedural safeguards notice].~~

[3. 4.] The local educational agency shall appoint the hearing officer within five business days of the request for a hearing. The local educational agency contacts the Supreme Court of Virginia to secure the name of a hearing officer, contacts the hearing officer to confirm availability, and upon acceptance, appoints the hearing officer in writing, with a copy to the Virginia Department of Education. In the case of an expedited hearing, [the local educational agency must appoint] the hearing officer [~~must be appointed~~] within [~~two~~ three] business days of the request for a hearing.

D. Assignment of hearing officer.

1. A hearing officer is appointed to a case from a list maintained by the Supreme Court of Virginia.

2. Upon a request by the local educational agency, the Supreme Court identifies a hearing officer from its list and provides the name to the local educational agency. [~~Should~~ If] the first person selected [~~be is~~] unavailable or disqualified, the local educational agency shall immediately request another name to ensure [that] a timely appointment is made.

3. Upon request, the Virginia Department of Education shall share information on qualifications of the hearing officer with the parent or parents and the local educational agency, and either party has two business days to object [to the appointment] on the basis of conflict of interest.

4. [~~Hearing officers who serve as counsel for the parent or parents or local educational agencies are not excluded from the hearing officers list, but~~] A hearing [~~may~~ shall] not be conducted by a person [~~having~~ who]:

a. Has] a personal or professional interest which would conflict with that person's objectivity in the hearing [- ;

b. Is an employee of the Virginia Department of Education or the local educational agency 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 hearing officer.

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.] If a hearing officer recuses himself or is otherwise disqualified, the local educational agency shall ensure that another hearing officer is promptly appointed.

E. Child's status during administrative or judicial proceedings.

1. [Except as provided in 8 VAC 20-80-68 C 4,] during the pendency of any administrative or judicial proceeding, the child must remain in the current educational placement unless the parent or parents of the child and local educational agency agree otherwise[- ; or]

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent or parents, must be placed in the public school until the completion of all the proceedings[- ; or]

3. If the decision of a hearing officer agrees with the child's parent or parents that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent or parents for the purposes of maintaining the child's placement during the pendency of any administrative or judicial appeal proceeding[- ; or]

4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8 VAC 20-80-68 [- ; or

5. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8 VAC 20-80-66 A 8.]

F. Rights of parties in the hearing.

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 hearing officer] compel the attendance of witnesses;

c. [Move that the hearing officer] prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing [or in the case of an expedited hearing, two business days before the hearing];

d. Obtain a written or, at the option of the parent or parents, electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the parent or parents, 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 [nonexpedited] hearing [and two business days prior to an expedited 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 hearing officer may bar any party that fails to comply with the disclosure requirements 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 or parents involved in a hearing must be given the right to:

Final Regulations

(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 must be provided at no cost to [the parent or] parents.

G. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall:

1. Maintain and monitor the due process hearing system and establish procedures for its operation;

2. Ensure that the local educational agency [~~is informed of discharges~~] its responsibilities in carrying out the requirements of state and federal statutes and regulations;

3. Develop and disseminate a model form to [~~assist be used by~~] the parent or parents [~~in~~ to give notice of the following when] filing a request for [a] due process [~~that includes hearing:~~] the name of the child [;] the address of the residence of the child [;] the name of the school the child is attending [;] a description of the nature of the problem of the child relating to the proposed or refused initiation or change, [including facts relating to the problem;] and a proposed resolution of the problem to the extent known and available to the parent or parents at the time [of the notice];

4. Ensure that the hearing is conducted by individuals who are impartial and who are not employees of the Virginia Department of Education or the local educational agency providing education or care of the child, or by anyone with a personal or professional interest that would conflict with [his] objectivity in the case [;]

5. [~~Assist in ensuring~~ Maintain and ensure] that each local educational agency [~~has~~ maintains] a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each officer [;]

6. [~~The Virginia Department of Education notifies~~ Notify] the Supreme Court of the receipt of either the hearing officer's written decision or [other] conclusion of the case [; and]

7. Provide findings and decisions [of all due process hearings] to the state advisory committee and to the public after deleting any personally identifiable information.

H. Responsibilities of the parent. In a due process hearing, the parent [or parents] shall:

1. [~~Notify the hearing officer~~ Decide] whether the hearing will be open [- to the public;]

2. [~~Ensure that the parent, parents or individuals assisting the parent~~] Make timely and necessary responses to the hearing officer [- personally or through counsel or other authorized representatives;]

3. Assist in clarifying the issues for the hearing and participate in the prehearing conference [- scheduled by the hearing officer;]

4. [~~Upon request,~~] Provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing [;]

5. [~~Upon request,~~] Provide documents and exhibits necessary for the hearing within required timelines [-; and]

6. Comply with timelines, orders, and requests of the hearing officer.

I. Responsibilities of the local educational agency. The local educational agency shall:

[1. Maintain a list of the persons serving as hearing officers. This list shall include a statement of the qualifications of each officer;]

[~~4. 2.~~] Provide the parent or parents a form [~~to assist in the initiation of~~ for use to provide notice that they are requesting] a due process hearing and [~~written~~ a copy of their] procedural safeguards [- ;]

[~~2. Upon receipt of the notice, ensure that the notice remains confidential.~~]

3. Maintain the confidentiality of the completed notice form and its contents;

~~3. 4.] Ensure that the [parent's or parents'] right to a hearing is not delayed or denied for failure to [provide the required complete the] notice [- ;~~

4. 5.] Ensure that a hearing officer is appointed within five business days of [~~the~~ a] request for a [nonexpedited] hearing [- and three business days of a request for an expedited hearing;

~~5. 6.] Inform the parent or parents at the time the request is made [that mediation is available. Of the availability of mediation;~~

~~6. 7.] Inform the parent or parents of any free or low-cost legal and other relevant services if the parent or parents request it, or anytime the parent, parents, or the local educational agency initiates a hearing [- ;~~

~~7. 8.] Assist the hearing officer, upon request, in securing the location and recording equipment for the hearing [- ;~~

~~8. 9.] Make timely and [appropriate necessary] responses to the hearing officer [- ;~~

~~9. 10.] Assist in clarifying the issues for the hearing and participate in the pre-hearing conference [- scheduled by the hearing officer;~~

~~10. 11.] Upon request, provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing [- ;~~

~~11. 12.] Provide documents and exhibits necessary for the hearing within required timelines [- ;~~

~~42.~~ 13.] Comply with timelines, orders, and requests of the hearing officer [- ;

~~43.~~ 14.] Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and [the] implementation plan, including mediation communications, except as prohibited by laws or regulations [- ;

44. 15.] Forward all necessary communications to the Virginia Department of Education and parties as required [- ;

45. 16.] Develop and submit an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing request [with the following exception: the appeal or consideration of an appeal of the decision by the local school division and the decision is not an agreement by the hearing officer with the parent or parents of the child that a change in placement is appropriate. In such cases, the hearing officer's order must be implemented while the case is appealed and an implementation plan must be submitted]. Such plan shall be based upon the decision of the hearing officer or agreement between the parties. The implementation plan [~~must~~ shall] state how and when the decision or agreement will be put into operation. [If the case is closed pursuant to a settlement or mediation agreement, that agreement shall be made a part of the implementation plan.] If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall contain the name and position of a case manager in the local educational agency charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing officer, and the Virginia Department of Education [- ;

~~46.~~ 17.] Notify the Virginia Department of Education [if when] the local educational agency [~~has knowledge that the case has been filed in court.~~ is considering an appeal of the hearing officer's decision or when a hearing officer's decision has been appealed to court by either the parent or parents or the local educational agency; and

~~47.~~ 18.] Forward the record [of the due process proceeding] to the [appropriate] court for any case [that is] appealed [~~if requested by the court~~].

J. Responsibilities of the hearing officer. The hearing officer shall:

1. Affirm, by accepting appointment, that he has complied with all training requirements and agrees to complete the hearing within the regulatory timelines: 45 calendar days if assigned to a [~~regular~~ nonexpedited] due process hearing and [~~40~~ 20] business days if assigned to an expedited hearing [- ;

2. Ensure impartiality, and [~~ensure that~~ decline the appointment if] the hearing officer is [~~not~~] an employee of the Virginia Department of Education or of the local

educational agency that is involved in the education or care of the child [- ;]

3. Ensure that the rights of all parties are protected and that the laws and regulations regarding the educational placement or services of the child are followed in the conduct of the hearing and in rendering the decision [- ;]

4. Within five business days of appointment, 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. If the hearing is an expedited hearing, the hearing officer [~~must~~ shall] complete these responsibilities within [~~one day~~ two business days] of appointment [- ;]

5. Ascertain whether [~~or not~~] the parties will have attorneys or others assisting them at the hearing. The hearing officer shall send copies of correspondence to the parties and their attorneys [- ;]

6. Conduct a prehearing conference [via a telephone conference call or in person] unless the 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 hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference [- ;]

7. At the prehearing stage, inform the parties of their rights regarding mediation, of their opportunity to settle the case, and [~~that~~] at the end of the hearing and upon receiving the decision, of their right to appeal the case directly to either a state or federal court at their discretion [- ;]

8. 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 [- ;]

9. Ascertain from the parent or parents whether the hearing will be open [- to the public;]

10. Ensure that the parties have the right to a written or, at the option of the parent or parents, [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 [- ;]

11. 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. If the hearing is an expedited hearing, receipt must be no later than two business days prior to the hearing [- ;]

12. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8 VAC 20-80-64 when the parent, parents, or guardian is not available or cannot be located [- ;]

Final Regulations

13. Ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing [- ;]

14. Not require the parties or their representatives to submit extensive briefs as a condition of rendering a decision [- ;]

15. Make no presumptions in the case and 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;]

16. Report findings of fact and decisions in writing to both parties, their attorneys, and the Virginia Department of Education. If the hearing is an expedited hearing, the hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within five business days of the hearing being held [- ;]

17. Include in the written findings of a [~~regular~~ nonexpedited] due process hearing, a determination of whether [~~or not~~] the:

- a. Requirements of notice to the parent or parents were satisfied;
- b. Child has a disability;
- c. Child needs special education and related services; and
- d. Local educational agency is providing a free appropriate public education [- ;]

18. Maintain an organized and 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 following requirements:

a. The IEP team first considered, in terms of the behavior subject to disciplinary action, all relevant information, including:

- (1) Evaluation and diagnostic results, including such results or other relevant information supplied by the parent or parents of the child;
- (2) Observations of the child; and
- (3) The child's IEP and placement; and

b. The IEP team then determined that:

- (1) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- (2) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(3) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

c. If the IEP team determined that any of these standards were not met, the behavior must be considered a manifestation of the child's disability [- ; and]

20. In hearing a case [in an expedited due process hearing] regarding the authority of local educational agency personnel to change the child's placement to an interim alternative educational placement for up to 45 days:

- a. Consider [~~the appropriateness of whether~~] the child's current placement [is appropriate];
- b. Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;
- c. Determine that the local educational agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others; and
- d. Determine that the interim alternative educational setting meets the following requirements:

(1) Is selected so as to enable the child to continue to [~~participate~~ progress] in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Includes services and modifications designed to address the behavior so that it does not recur, such as a functional assessment and a positive behavior support plan.

K. Authority of the hearing officer. The hearing officer has the authority to:

1. Exclude any documentary evidence which was not provided and [~~exclude any~~] testimony of witnesses who were not identified at [~~local educational agencies~~ least] five business days prior to the hearing unless the hearing is an expedited hearing, in which case the information must be received and witnesses identified at least two 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 ([or] two business days if an expedited 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 hearing officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

b. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not quash or modify the subpoena after objection [~~hereto~~ ;]

4. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the hearing officer's rules and with relevant laws and regulations [- ;]

5. Excuse witnesses after they testify to limit the number of expert witnesses present at the same time or sequester witnesses during the hearing [- ;]

6. 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 hearing officer determines that the best interests of the child will be served [- ;]

7. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment [- ;]

8. At the request of either party [for a nonexpedited 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 should 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 hearing officer may grant such requests for cause, but not [for] attorney convenience. Changes in hearing dates or timeline extensions [~~are to~~ shall] be noted in writing and [~~shall be~~] sent to all parties, their attorneys, and to the Virginia Department of Education [- ;]

9. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the hearing [~~officer's~~ officer's] orders [- ;]

~~[40. Determine during the prehearing conference whether individuals who are advising the parties, other than counsel, have special knowledge or training with respect to the problems of children with disabilities and document and communicate any concerns regarding the qualifications of such individuals to the parties.]~~

~~44. 10.] Set guidelines regarding media coverage if the hearing is open [- to the public ;]~~

~~[42. 11. Enter a disposition as to every issue presented for decision and] identify and determine the prevailing party on each issue that [~~was~~ is] decided [- ;]~~

~~[43. 12.] Order a change in the placement of a child with a disability to an appropriate interim alternative~~

educational setting for not more than 45 days if the hearing is an expedited hearing, and after:

a. Determining [~~that whether~~] the [~~public~~ local educational] agency has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

b. Considering [~~the appropriateness of whether~~] the child's current placement [is appropriate];

c. Considering whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

d. Determining [~~that whether~~] the interim alternative educational setting [that is proposed by school personnel who have consulted with the child's special education teacher] meets the following requirements:

(1) Is selected so as to enable the child to continue to [~~participate~~ progress] in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and

(2) Includes services and modifications designed to address the behavior so that it does not recur [- ; and]

[44. 13.] In an expedited hearing, determine whether it is dangerous for a child to remain in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of due process proceedings. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the following standards:

a. Determine [~~that whether~~] the local educational agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

b. Consider [~~the appropriateness of whether~~] the child's current placement [is appropriate];

c. Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

d. Determine [~~that whether~~] the interim alternative educational setting was determined by the IEP team and meets the following requirements:

(1) Is selected so as to enable the child to continue to [~~participate~~ progress] in the general curriculum, although in another setting, and to continue to receive those services and modifications, including

Final Regulations

those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP;

(2) Includes services and modifications designed to address the behavior so that it does not recur; and

(3) Is for not longer than 45 calendar days and [is] repeated if proper procedures [were are] followed.

[The procedures in subdivisions 13 a through d of this subsection may be repeated as necessary.]

L. Timelines for [nonexpedited due process] hearings. The hearing officer shall:

1. Render a final written decision within 45 calendar days after [a the] request for [the] hearing [and, in an expedited hearing, render an oral decision at the conclusion of the hearing, followed by a written decision within five business days of the expedited hearing being held; is received by the local educational agency;]

2. Grant an extension only when it serves the best interests of the child [; and]

3. Document in writing within five business days [;] changes in hearing dates or extensions [and within two business days for an expedited hearing] and send [documents documentation] to all parties [;] and the Virginia Department of Education.

[M. Timelines for expedited due process hearings. The hearing officer shall:

1. Render a final written decision within 20 calendar days after the receipt of the request for the expedited hearing by the local educational agency without exceptions or extensions; and

2. Document in writing within two business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.]

[~~M.~~ N.] Costs of due process hearing and [attorney's attorneys'] fees.

1. The costs of an independent educational evaluation, hearing officer, court reporters, and transcripts which are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of Education. Costs for any [of these] services [initiated incurred] by a party for the specific benefit of that party's case are [covered by the responsibility of] that party.

2. The local educational agency is responsible for its own [attorney's attorneys'] fees.

3. The parent or parents are responsible for their [attorney's attorneys'] fees. If the parent or parents are the prevailing party, they have the right to petition either a state circuit court or a federal district court for an award of [attorney's 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 or parents 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 [set forth] in [accordance with] the Individuals with Disabilities Education Act [1997] (20 USC § 1400 et seq.) and its implementing regulations [and 8 VAC 20-80-155].

[~~N. Finality of hearing officer's decision~~ O. Right of appeal].

1. A decision by the hearing officer [is in any hearing, including an expedited hearing, shall be] final and binding unless the decision is appealed by a party [to within one year 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 Individuals with Disabilities Education Act (20 USC § 1400 et seq.) without regard to the amount in controversy].

2. On appeal, the court shall receive the record [of the administrative proceedings], [may shall] hear additional evidence[, and at the request of a party,] shall base its decision on a preponderance of evidence [, and shall grant the relief that the court determines to be appropriate].

[3. If the hearing officer's decision is appealed in court, implementation of the hearing officer's order is held in abeyance except in those cases where the hearing officer has agreed with the child's parent or parents that a change in placement is appropriate in accordance with subsection E of this section. In those cases, the hearing officer's order must be implemented while the case is being appealed.]

[~~3. 4.~~] In every case within 45 days of the final decision of the hearing officer, an implementation plan must be filed by the local educational agency, with copies to the parties, the Virginia Department of Education [,] and the hearing officer [unless the school division has appealed or is considering an appeal of the decision and the decision is not an agreement by the hearing officer with the parent or parents of the child that a change in placement is appropriate as noted in subdivision 3 of this subsection].

[~~4. If the hearing officer's decision is appealed in court and properly served within the 45-day period, implementation of the hearing officer's order is held in abeyance except in those cases where the hearing officer has agreed with the child's parent or parents that a change in placement is appropriate (see subsection E of this section). In those cases, the hearing officer's order must be implemented while the case is being appealed.~~]

5. If the local educational agency does not file an implementation plan, the local educational agency must notify the Virginia Department of Education within 45 days of the issuance of the decision of the hearing officer that the local educational agency is considering appealing the hearing officer's decision or either the local

educational agency or the parent or parents have appealed the hearing officer's decision.

~~5- 6.]~~ If the hearing officer's decision is not implemented as required by this chapter, a complaint may be filed with the Virginia Department of Education for an investigation through the state's complaint system.

[~~Q- P.]~~ Special authority of the Virginia Department of Education.

1. The Virginia Department of Education may take action to ensure that the hearing officer:

a. [~~Has complied~~ Complies] with all training requirements [; ;]

b. Conducts the hearing in a manner that protects the rights of all parties [; ;]

c. [~~Makes~~ Issues] written findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law [; ;]

d. Provides reports and the decision in writing to both parties and to the Virginia Department of Education [; ;]

e. Does not require the submission of burdensome legal research of case law or legal briefs from parties before rendering a decision [; and]

f. Complies with timelines as specified in this section].

[2. If the hearing officer does not meet the administrative responsibilities for management of the hearing proceedings in a case, the Virginia Department of Education may take action in the best interest of the child to remove the hearing officer from the case.]

[~~2- 3.]~~ The Virginia Department of Education may impose training and assessment requirements for new and continuing hearing officers as part of the specialized training requirements set by the Supreme Court of Virginia and as otherwise determined by the Virginia Department of Education to be necessary. The Virginia Department of Education may develop training and assessment methodology, including academic or alternative means for completing training requirements. The training requirements may include, but not be limited to, the following topics:

a. Knowledge of disabilities and their implications in the education setting;

b. Special education law generally, both federal and state;

c. Other relevant statutory law;

d. Knowledge of special education services and placements [,] including interim alternative educational placements;

e. Knowledge of special education standards, procedures [,] and regulations impacting the delivery of educational services to students;

f. Skill development and understanding of characteristics unique to disabilities.

[4. The Virginia Department of Education may establish the number of hearing officers who will be trained and certified to hear special education due process cases.

5. Any hearing officer who has been suspended or removed pursuant to Rule 4 of the Hearing Officer System Rules of Administration or has withdrawn from the Virginia Supreme Court's hearing officer list shall submit a written petition to the Virginia Department of Education requesting approval to be recertified to hear special education cases.]

[~~3- 6.]~~ If a special education complaint asserting errors by a hearing officer is received, the Virginia Department of Education may require the hearing officer to respond to the complaint. If the Virginia Department of Education determines that the complainant's allegations are valid, the Virginia Department of Education may disallow any claim for compensation by the hearing officer for responding to the complaint.

[7. Any hearing officer who exceeds the timelines as prescribed in this section for reasons unrelated to the best interest of the child and not properly documented prior to the mandated timelines shall be required by the Virginia Department of Education to attend specialized training on these requirements before being assigned to another case.]

[~~P- Q.]~~ Management and monitoring of the [due process] hearing system.

1. The Virginia Department of Education shall conduct an analysis of special education hearing officers' decisions and the hearing system procedures that incorporates input from the parties to the hearing. Summary information developed from the analysis will be provided to the Virginia Supreme Court, upon request, and may be utilized by the Supreme Court in its evaluation of hearing officers as required in the Hearing [~~Officers- Officer~~] System Rules of Administration. Upon request, the Virginia Department of Education shall provide to the Supreme Court information regarding the hearing officer's participation in training, management of the hearing process, actual administration of any hearings, and a review of any decisions rendered.

2. Review and analysis of special education hearing officers' decisions.

a. Within 30 calendar days of receipt of the special education hearing officer's decision, the Virginia Department of Education shall review the decision relative to:

(1) Apparent bias to either party;

(2) Correct use of citations;

(3) Readability; and

(4) Other errors, such as incorrect names or conflicting data, but not [~~including~~] errors of law which are reserved for appellate review.

Final Regulations

b. Procedures.

(1) In conducting its internal review, the Virginia Department of Education may be assisted by external resources.

(2) The Virginia Department of Education may inform the hearing officer in writing of any concerns and may require the hearing officer to issue an error correction or a statement of clarification.

[~~Q. R.~~] Nothing in this chapter prohibits or limits rights under other federal [~~statutes~~ laws] or regulations.

8 VAC 20-80-78. Complaint 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 [~~his~~] designee is responsible for the operation of the [~~complaints~~ complaint] system. The system has the following requirements:

B. A complaint may be filed by any individual, organization, or an individual from another state and must:

1. Be in writing [~~;~~ ;]

2. Be signed by the complainant [~~;~~ ;]

3. Contain a statement that a local educational agency has violated the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) or these special education regulations [~~;~~ and] include the facts upon which the complaint is based;]

4. Address an action that occurred not more than one year prior to the date the complaint is received, unless the Virginia Department of Education determines that a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the Virginia Department of Education [~~;~~ and]

5. Contain all relevant documents.

~~3. C. Upon receipt of a complaint, the Superintendent of Public Instruction or designee Virginia Department of Education shall initiate an investigation to determine whether [or not] the LEA against whom such complaint has been filed local educational agency is in compliance with applicable law and regulations- in accordance with the following procedures:~~

~~4. 1. Within seven administrative business days of the receipt of [a] written, signed the complaint, the Superintendent of Public Instruction or designee Virginia Department of Education shall send written notification in writing to each complainant and LEA local educational agency against which the violation has been alleged, acknowledging receipt of a complaint [with , and shall send] copies to other appropriate SEA Virginia Department of Education personnel.~~

[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 request that the local educational agency submit within 10 business days of receipt of the letter of notification written documentation that the complaint has been resolved; and

(4) If the complaint was not resolved, a request that the local educational agency submit within 10 business days of receipt of the letter of notification 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 complainant if the complaint was filed by the parent or parents of the child, the student, or their attorney. If the complaint was filed by another individual, the local educational agency shall simultaneously send the response and submitted documentation to that individual if a release signed by the parent or parents or student who has reached the age of majority has been provided.]

[~~a. 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, ~~either orally or in writing~~, about the allegations in the complaint, either orally or in writing [~~;~~ within 10 business days of the receipt of the letter of notification. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.]

[~~b. The notification sent] by the SEA complaint officer [to the] LEA [local educational agency shall include:]~~

~~a. [(1) A copy of the complaint;]~~

~~b. [(2) An offer of technical assistance in resolving the complaint; and]~~

~~c. [(3) A request for written response to the complaint within 10] administrative [business days of the receipt of the letter] or [of notification.]~~

~~5. 2. If a reply from the LEA local educational agency is not filed with the Superintendent of Public Instruction or designee Virginia Department of Education within 10 administrative business days of the receipt of the notice, then the Superintendent of Public Instruction or designee Virginia Department of Education shall send a second notice to the LEA local educational agency advising that failure to respond within seven administrative business days of the date of such notice will result in review by the Superintendent of Public Instruction or [assistant superintendent designee] for action regarding appropriate sanctions.~~

~~6. The Superintendent of Public Instruction or designee shall take action with respect to the response as follows:~~

~~a-~~ 3. *The Virginia Department of Education shall review the complaint and reply filed by the LEA local educational agency to determine if further investigation or corrective action needs to be taken.*

~~a.~~ If no further investigation or action is necessary, ~~then the Superintendent of Public Instruction or designee~~ Virginia Department of Education shall notify both parties [] in writing, stating the grounds for such finding.

~~b-~~ *b. If further investigation is necessary, the Virginia Department of Education shall conduct an investigation of the complaint which shall include a complete review of all relevant documentation and may include an independent on-site investigation, if necessary.*

c. 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.

d. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the [local educational agency Virginia Department of Education] shall inform the complainant that the due process hearing decision is binding.

4. *During the course of the investigation, the Virginia Department of Education shall:*

~~e-~~ *a. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.*

~~e-~~ *b. Make a determination of compliance or noncompliance on each issue 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) A time limit of 60 calendar days shall be allowed [] after the written complaint is received [] to carry out the investigation and to resolve the complaint.

(2) An extension of the 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint will be notified in writing by the Superintendent of Public Instruction or designee ~~whenever~~ Virginia Department of Education of the exceptional circumstances exist and specify the extended time limit.

c. 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-~~ *d. 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.*

~~7. The Superintendent of Public Instruction or designee will~~ *e. Notify the parties in writing of any needed corrective actions and the specific steps [which that] must be taken by the LEA local educational agency to bring it into compliance. The LEA local educational agency will be given 15 administrative business days from the date of notice of noncompliance to respond and initiate corrective action.*

5. *In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education must address:*

~~a. [How to remediate~~ *The remediation of] the denial of those services, including, as appropriate, compensatory services, [the] awarding [of] 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.

~~8. Where~~ *D. When the LEA local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 administrative 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 SEA Virginia Department of Education.*

~~9-~~ *E. If the LEA local educational agency does not come into compliance within the period of time set forth in the notification, ~~then~~ the matter will be referred by to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education for a hearing, if deemed necessary.*

~~10-~~ *F. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that the LEA local educational agency has failed to comply with applicable laws and regulations [] and determines that compliance cannot be secured by voluntary means, then ~~he~~ the superintendent 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 LEA local educational agency until there is no longer any failure to comply with the applicable law or regulation.*

~~11. Parties to the complaint procedure shall have the right to request the United States Secretary of Education to review the final decision.~~

[G. 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

Final Regulations

decision in accordance with procedures established by the Virginia Board of Education.]

[~~G. H.~~] 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.

8 VAC 20-80-80. Requirements for establishing Surrogate parent procedures for LEAs and applicable state agencies and institutions.

A. Role of surrogate parent. The surrogate parent [requirement in both state and federal laws and regulations is intended to ensure appropriate decision making in educational matters. The surrogate parent is an advocate acting to serve the best educational interests of a child who is suspected of having, or is determined to have, a disability. State and federal regulations require that the surrogate parent represent appointed in accordance with this section represents] the child in all matters relating to:

1. The identification, evaluation, or educational placement of the child; or
2. The provision of a free appropriate public education to the child.

B. Appointment of surrogate parents.

1. Children [~~(ages, aged)~~] two to 21, inclusive [~~(),~~] who are suspected of having or determined to have disabilities, ~~whose natural parents or guardians have allowed relatives or private individuals to act as parents to the child,~~ do not require a surrogate parent: if:

a. The natural parent or parents or guardians [~~have allowed~~ are allowing] relatives or private individuals to act as a parent;

b. The child is in the custody of the local department of social services or a licensed child-placing agency [~~(),~~] and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction [~~pursuant to~~ in accordance with] § [~~(§)~~] 16.1-283, [~~(§)~~] 16.1-277.01 [~~(),~~] or [~~(§)~~] 16.1-277.02 of the Code of Virginia. The foster parent for that child may serve as the parent [~~for of~~] the child for the purposes of any special education proceedings.

c. The child is in the custody of a local department of social services or a licensed child-placing agency [~~(),~~] and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction [~~pursuant to~~ in accordance with] § 63.1-206.1 of the Code of Virginia. The permanent foster [~~parents parent~~] named in the order for that child may serve as the parent [~~for of~~] the child for the purposes of any special education proceedings.

2. A surrogate parent shall be appointed for a child, [~~ages aged~~] two to 21, inclusive, who is suspected of having or determined to have a disability when:

a. No parent or person who has been allowed to act as a parent by the natural parents or guardians, as defined in this chapter, can be identified; or

b. The LEA local educational agency, after reasonable efforts, cannot discover the location whereabouts of a parent; [~~or parents~~].

c. The child is a ward of the state.

3. A surrogate parent [~~may shall~~] be appointed [~~as the educational representative~~] for a child who [~~is in the custody of a local social services or other child welfare agency, and the parent or parents are known, but, after invitation by the local school division in accordance with 8 VAC 20-80-62 D, fails to participate in the meetings required by this chapter. The parent or parents shall continue to be notified of all meetings and if the parent or parents attend, the parent or parents shall exercise their own parental rights~~] reaches the age of majority if the local educational agency has received written notification that the child is not competent to provide informed consent in accordance with 8 VAC 20-80-72 C 3 or C 4 and no family member is available to serve as the child's educational representative].

2. 4. [~~Each The~~] LEA local educational agency shall establish procedures for identifying children in its jurisdiction who are in need of surrogate parents according to the definition determining whether a child needs a surrogate parent.

3. 5. [~~Each The~~] LEA local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the LEA local educational agency superintendent or designee.

a. The appointment having been effected, the LEA local educational agency shall notify in writing:

(1) The child with a disability [~~(ages, aged)~~] two to 21, inclusive[~~(),~~], as appropriate to the disability;

(2) The surrogate parent-appointee;

(3) The person charged with responsibility for the child; and

(4) The public custodial state agency charged with responsibility for the child; ~~when the child is a ward of the state;~~

(5) The SEA.

b. LEAs are required to send parents' copy of notice to child's guardian or custodial state agency or both. In instances where the LEA has not been able to locate the present whereabouts of the parents, a letter to the parents' last known address is evidence of the LEA's good faith effort to effect this requirement.

c. b. The surrogate parent shall serve during, or for the duration of, the school year for which he the surrogate parent is appointed.

(1) When it has been determined that the child requires a differentiated instructional program as

delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of ~~that current document~~ *the child's IEP*.

(2) ~~[Should If]~~ *a the child [require requires]* the services of a surrogate parent during the summer months, the *LEA local educational agency* shall extend the appointment as needed, consistent with timelines required by law.

~~d.~~ *c.* At the conclusion of each school year, ~~[the]~~ appointment of surrogate parents shall be renewed or not renewed following a review by the *LEA local educational agency*.

~~4.~~ *6.* Each *LEA local educational agency* shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before ~~his that surrogate parent's~~ appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

a. The child reaches the age of majority ~~[except those persons who are of the age of majority but who are determined to be and rights are transferred to the child or to]~~ *legally dependent and [subject to a guardianship or for whom] an educational representative [who has been] appointed [for the child] in accordance with the procedures in 8 VAC 20-80-72 [apply]*;

b. The child is found no longer eligible for special education services ~~(except when termination of special education services is being contested)~~ *and the surrogate parent has consented to the termination of those services*;

c. Legal guardianship ~~responsible~~ for the child is transferred to a person who is able to carry out the role of the parent;

d. ~~[A The]~~ *parent or parents, who was whose whereabouts were previously unknown or unavailable, is are now known [or and] available*; or

e. The appointed surrogate parent is no longer eligible ~~(see "Qualifications for Surrogate Parent")~~ *according to subsection D of this section*.

C. Identification and recruitment of surrogate parents.

1. The *LEA local educational agency* shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for *LEAs [the] local educational [agencies agency]* to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. ~~[It should be noted, however, that geographic proximity is essential to the relationship between the child with a disability and the surrogate parent.]~~

2. Individuals who are not on the *LEA local educational agency* list may be eligible to serve as surrogate parents, subject to the *LEA's local educational agency's* discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the *LEA's local educational agency's* determination of surrogate eligibility. Other factors which warrant the *LEA's local educational agency's* attention are as follows:

a. Consideration of the appointment of a relative to serve as surrogate parent;

b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;

c. Consideration of the appointment of a qualified person of the same racial, cultural, ~~[and or]~~ linguistic background as the child ~~[who is suspected of having or has been identified as having a disability]~~; and

d. The appropriateness of the child's participation in the selection of ~~his the~~ surrogate parent.

D. Qualifications of surrogate parents.

1. ~~[Each The]~~ *LEA local educational agency* shall ensure that a person appointed as a surrogate:

~~1.~~ *a.* Has no interest that conflicts with the interest of the child ~~he represents~~;

~~2.~~ *b.* Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed ~~an SEA a local educational agency~~ approved training session prior to representing the child. ~~[Thereafter,]~~ the *LEA local educational agency* shall provide ~~[annual]~~ training, ~~[at least annually as necessary]~~, for surrogate parents to ensure that they possess knowledge of special education and related services for children with disabilities, as well as knowledge of the legal requirements necessary to represent the children effectively.

~~3.~~ *c.* Is not an employee of ~~a the Virginia Department of Education, or any other public agency~~ which is involved in the education or care of the child;

~~4.~~ *d.* Is an adult ~~and legal citizen of the United States~~; and

~~5.~~ *e.* Resides in the same general geographic area as the child, whenever possible.

2. *A local educational agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the above standards.*

3. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency ~~solely~~ because ~~he the person~~ is paid by the agency ~~solely~~ to serve as a surrogate parent.

Final Regulations

E. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents ~~[of children determined or suspected to have disabilities under this chapter]~~.

8 VAC 20-80-90. Local educational agency administration and governance.

A. ~~[Each The]~~ local educational agency 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.

A. B. Plans, applications [,] and reports.

1. ~~[Each The]~~ LEA local educational agency ~~[is required to shall]~~ prepare and submit to the appropriate state authority ~~the following Virginia Department of Education, policies and procedures for the provision of special education and related services that comply with all sections of this chapter and other relevant federal and state [statutes laws] and regulations and any revisions to [the such] policies and procedures [for the provision of special education and related services]~~. Local school divisions shall first submit ~~[these the]~~ policies and procedures and ~~[the]~~ revisions to ~~[the]~~ policies and procedures to their local school board for approval. ~~[State-operated programs, the Virginia School for the Deaf and the Blind at Staunton, and the Virginia School for the Deaf, the Blind and the Multi-Disabled at Hampton shall first submit the policies and procedures to the state special education advisory committee for review.]~~ The policies and procedures shall include:

a. ~~To the SEA, by such data as the board may specify, acceptable annual special education plan/report and funding applications that:~~

(1) ~~Specify plans for providing free appropriate education and related services to all children with disabilities for the following year; and~~

(2) ~~Report on the extent to which the plan for the preceding year has been implemented.~~

b. ~~To the SEA, a. An application for funding under Part B of Public Law 94-142, 20 USC §§ 1411 et seq., as amended, or Public Law 89-313, 20 USC §§ 236 et seq., as amended, the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) containing assurances of compliance in accordance with various the requirements of the Act and the procedures outlined by the SEA Virginia Department of Education.~~

2. ~~Each LEA shall include the following provisions and assurances in the annual special education plan/report and funding applications:~~

a. ~~A free appropriate public education will be available for each child with a disability, ages two to 21, inclusive;~~

b. ~~All children, ages two to 21, inclusive, residing in the LEA who have disabilities and need special education and related services are identified, located, evaluated, and placed in an appropriate educational program;~~

c. ~~Children with disabilities and their parents or guardians are guaranteed procedural safeguards in the process of identification, evaluation, or educational placement, or the provision of a free appropriate public education;~~

d. ~~To the maximum extent appropriate, children with disabilities will be educated with children who are nondisabled;~~

e. ~~Confidential records of children with disabilities shall be properly maintained;~~

f. ~~Testing and evaluative materials used for the purpose of classifying and placing children with disabilities are selected and administered so as not to be racially or culturally discriminatory;~~

g. ~~An individualized education program will be maintained for each child with a disability;~~

h. ~~A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the needs of children with disabilities is provided;~~

i. ~~There will be ongoing parent consultation;~~

j. ~~A full educational opportunity goal is provided for all children with disabilities, from birth to age 21, inclusive, including appropriate career education, prevocational education, and vocational education; and~~

k. ~~Children with disabilities must be given the right of to participate in the Literacy Testing Program (LTP).~~

b. ~~Progress toward meeting the goals for the performance of children with disabilities [set forth] in [accordance with] subdivision 10 of 8 VAC 20-80-30 and the comprehensive system of personnel development [set forth] in [accordance with] subdivision 11 of 8 VAC 20-80-30.~~

3. 2. ~~[Each The]~~ LEA local educational agency shall also ensure that all required special education ~~[plans, applications, reports, and program evaluations policies and procedures and the revisions to those policies and procedures necessary for ensuring a free appropriate public education to a child]~~ are available for public inspection.

B. C. Personnel development. ~~[Each The]~~ LEA local educational agency shall establish a program and procedures for the development and implementation of a comprehensive system of personnel development ~~which shall include: that is consistent with the state improvement plan identified in subdivisions [40 12] and [44 13] of 8 VAC 20-80-30.~~

1. ~~In-service training for all general and special education instruction, related services, and support personnel; and~~

2. ~~Procedures to ensure that all personnel who are responsible for the instructional programs or delivery of related or support services to children with disabilities are properly certified and endorsed.~~

D. ~~[Interagency disputes regarding]~~ Provision of or payment for special education ~~[and related services]~~. ~~[If a~~

~~participating agency fails to provide or pay for the special education and related services described in 8 VAC 20-80-30, the local educational agency shall provide or pay for such services to the child.~~

~~1. The local educational agency shall use the process developed by the Virginia Department of Education in accordance with 8 VAC 20-80-20 to resolve any disputes regarding provision of or payment for special education and related services.~~

1. If any public noneducational 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 noneducational agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

2. If any public noneducational 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.

~~2. The local educational agency may [then] claim reimbursement for the services from the public [noneducational] agency that failed to provide [or pay] for [such the] services and [such public that] agency shall reimburse the local educational agency [pursuant to] in accordance with the terms of the interagency agreement described in subdivision 16 of [8 VAC 20-80-30.~~

~~G. E. Local advisory committee. [There shall be]~~ A local advisory committee for special education [,] appointed by each local school board [to, shall] advise the school board through the division superintendent. The composition of the committee shall include parents of children with disabilities [and persons with disabilities] .

1. 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 unmet needs in the education of children with disabilities;

b. Assist the local school division in the formulation and development of long-range plans designed to provide needed educational services for children plans for improving performance of [students children] with disabilities [specified in subdivision B 1 b of this section] ;

c. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;

d. Submit periodic reports and recommendations regarding the education of children with disabilities to

the division superintendent for transmission to the local school board; [and]

e. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services [; and

f. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board and the Virginia Department of Education] .

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 quarterly and shall be open to the public.

~~[5. One meeting shall be designated specifically for the review of the] annual special education plan/report and funding applications [policies and procedures for the provision of special education and related services prior to submission to the local school board and the Virginia Department of Education.]~~

~~D. F. Regional [special education] programs.~~

1. [~~Where~~ If] it becomes necessary for local school divisions to develop regional [or cooperative] programs to serve their children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with [the] least restrictive environment requirements specified in 8 VAC 20-80-64.

2. [~~Where~~ If] LEAs 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. The annual special education plan/report and funding applications of each LEA participating in a regional program shall contain a description of its program, activities and supervisory involvement as prescribed by the SEA. Each joint board may submit a composite annual special education plan/report and funding applications which are composed of excerpts from each of the participating LEAs.~~

4. 3. Each joint board shall appoint a qualified director who shall be the administrative head of the [~~cooperative unit~~ regional program] . The director shall be responsible for the administration of programs and services which are approved by the [governing body joint board] .

G. Transition from infant and toddler programs to early childhood special education programs.

1. Children [who are] participating in early intervention programs [assisted] under Part C of [IDEA, the

Final Regulations

Individuals with Disabilities Education Act (20 USC § 1400 et seq.)] and who will participate in preschool programs [assisted] under Part B [of IDEA], shall be afforded a smooth and effective transition to [these the] preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.

2. The local [educational agency school division] shall participate in transition planning conferences when notified by the designated local Part C early intervention agency, in accordance with 34 CFR § 303.148(b).

H. Programs for children with disabilities in regional or local jails.

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 days] .

2. Each local [educational agency 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 this agreement shall be submitted with the policy and procedures specified in subsection A of this section.

PART IV. FUNDING.

8 VAC 20-80-100. Reimbursement to LEAs and state-operated programs Eligibility for funding.

A. State and federal funds administered by the SEA are disbursed to LEAs and state-operated programs in accordance with the following requirements:

1. Compliance with regulations of the Board of Education including those for accreditation;

2. Education programs for children with disabilities shall be operated pursuant to an approved annual special education plan/report and funding applications;

3. Special education teachers, speech-language pathologists, school psychologists, visiting teachers, school social workers, and supervisors of special education shall meet fully the Board of Education licensure and endorsement requirements for such employment;

A. Each local [educational agency school division] and state-operated program [must shall] maintain current policies and procedures and supporting documentation to demonstrate compliance with the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures and supporting documentation shall be submitted upon amendment or revision. Changes [will shall] be made as determined by local need; as a result of changes in state or federal laws or regulations; [or] as a

result of required corrective action [; or as a result of decisions reached in administrative proceedings], [court cases judicial determinations], or other findings of noncompliance.

4. B. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

8 VAC 20-80-110. State funds for local school divisions.

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities [are shall be] provided through the SEA's Virginia Department of Education's appropriation as follows: provided in this section.

4. B. Children with disabilities enrolled in programs operated by a local school board:

a. Day 1. Public school programs. In addition to the funds received for each pupil from [state] basic aid, LEAs local school divisions [will shall] receive payment to support the state share of the number of special education teachers and aides paraprofessionals required by the Standards of Quality [(§ 22.1-253.13:1 et seq. of the Code of Virginia)] .

b. 2. Homebound instruction. LEAs shall be reimbursed 60% of the hourly payment to teachers employed to provide homebound instruction to eligible children. Such reimbursement shall not exceed 60% of an established hourly rate determined annually by the department and shall be in addition to basic aid. Subject to availability, [funds are available to] local [educational agencies school divisions shall receive funds] to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement will be made in the year following delivery of instruction.

e. 3. Transportation. Local [educational agencies school divisions] that transport children with disabilities, [ages aged] two to 21, inclusive, transported on approved school buses or on public transit buses to public schools or approved private schools, pursuant to their IEPs, are funded reimbursed in accordance with pupil transportation regulations (8 VAC 20-70-10 et seq.).

2. C. Children with disabilities enrolled in regional special education programs:

a. 1. Reimbursement is available for a portion of the tuition costs based on the local composite index computed at 60% as specified by the Virginia Appropriation Act. Rates will be approved following procedures established by the Virginia Board of Education. Regional special education programs operated by a joint board [, or for] LEAs [local school divisions operating a residential program accepting

~~eligible children with disabilities from other local school divisions] and the Woodrow Wilson Rehabilitation Center are eligible to [participate in this program receive reimbursement]. Reimbursement is available to programs offering services to children who have one or more of the following disabilities:~~

- ~~(1) A a. Severe and profound disability;~~
- ~~(2) A serious b. Emotional disturbance;~~
- ~~(3) c. Autism;~~
- ~~(4) d. Multiple disabilities;~~
- ~~(5) e. Deafness;~~
- ~~(6) A f. Hearing impairment, including deafness;~~
- ~~(7) g. Deaf-blindness; or~~
- ~~(8) A h. Traumatic brain injury.~~

~~b. 2. Such reimbursement shall be in lieu of the [state] per pupil basic [operation cost and other state] aid otherwise available for each child. Decisions regarding the determination of reasonable tuition costs and other reasonable charges may be appealed under procedures prescribed in the Rules of the Interdepartmental Committee on Rate Setting. The Joint Regulations on Rate Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections.~~

D. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions will be reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails.

3. E. Funds under the Comprehensive Services Act for At-Risk Youth and Families:

~~a. 1. Funds are available under the Comprehensive Services Act [for At-Risk Youth and Families] to support [the state's share of costs for children with disabilities whose IEPs] call for [require private day or private residential placement, or other purchased services], under the provisions of the Comprehensive Services Act [- the cost of:~~

- a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;*
- b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and*
- c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.]*

~~[a. 2.] Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.~~

~~[b. 3.] Comprehensive Services Act reimbursement requirements shall be applicable.~~

~~[c. In the event that there is a dispute between the local school division and the Comprehensive Services Act team regarding implementation of or payment for services in the child's IEP, the local school division shall ensure that services are provided in accordance with the IEP while the dispute is being resolved. The provisions of subdivision 14 of 8 VAC 20-80-30 shall apply.]~~

~~b. [2. 4.] When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the LEA local school division shall not be responsible for the cost of the placement. If a hearing officer or reviewing officer or court determines that such placement, rather than the IEP proposed by the LEA local school division, is appropriate and no appeal is perfected from that decision, the LEA local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the [state's share of] costs.~~

4. F. Reimbursement for educating children with disabilities [placed in receiving] foster care or noncustodial foster care across geographic boundaries [and educated in the local school division] shall be made in accordance with procedures established by the SEA Virginia Department of Education.

8 VAC 20-80-120. Federal funds.

~~A. Federal funds are available under Part B of Public Law 94-142, as amended, [20 USC §§ 1411 et seq.,] the Individuals with Disabilities Education Act [; () 20 USC § 1400 et seq. [;)] to assist local school divisions educational agencies with the excess cost of providing special education and related services for to eligible children with disabilities ages two to 21, inclusive. The application for such funds is submitted local educational agency must submit an annual application to the SEA according to applicable federal requirements Virginia Department of Education describing the use of such funds.~~

~~B. In order to qualify for Part B funds, a LEA local [educational agency school division] must spend as much in state and local funds on [elementary] children with disabilities as on elementary nondisabled children, and as much on secondary children with disabilities as on secondary nondisabled children without disabilities.~~

C. Part B funds may not be used to supplant state and local expenditures for special education and related services, and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local [educational agency school division] from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

Final Regulations

D. ~~The entitlement amount of Part B funds determined to be available for each LEA local educational agency [is shall be] based upon the unduplicated number of children with disabilities certified by the division superintendent as receiving special education and related services on December 1 of the prior year formula specified under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).~~

E. ~~Children with disabilities transferred from state-operated programs to LEAs may be served with funds applied for in accordance with the provisions of Public Law 89-313, as amended, 20 USC §§ 236 et seq. However, no child included in the count for Public Law 94-142, as amended, 20 USC §§ 1411 et seq., is eligible to be counted for funding under Public Law 89-313, as amended, 20 USC §§ 236 et seq.~~

E. A local educational agency may use Part B funds to implement a schoolwide program under § 1114 of the Improving America's School Act (Title I) (20 USC § 1001 et seq.), but the amount of Part B funds used in any fiscal year shall not exceed ~~[(#)]~~ the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by ~~[(#)]~~ the number of children with disabilities participating in the schoolwide program. Part B funds used for this purpose are not subject to other Part B funding requirements, but the local educational agency must ensure that all children with disabilities in schoolwide program schools:

1. Receive services in accordance with a properly developed IEP; and
2. Are afforded all of the rights and services guaranteed to children with disabilities under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

F. ~~[Permissive use of funds:]~~ Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child.

[G. A local educational agency may not use more than 5.0% of the money it receives under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) for any fiscal year to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families. The conditions specified by the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) shall apply.]

[~~G. H.~~] If the Virginia Department of Education determines that a local school division is adequately providing a free appropriate [public] education to all children with disabilities residing in the area served by that school division with state and local funds, the department may reallocate any portion of the funds under Part B of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) that are not needed by the school division to provide a free [and] appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

[~~H. I.~~] In any fiscal year in which the percentage increase in the state's Part B allocation exceeds the rate of inflation, a portion as defined by the federal regulations of the state's grant must be awarded to the local educational agency to assist them in providing direct services and in making systemic change to improve results for children with disabilities. The [state Virginia Department of Education] may establish priorities in awarding these subgrants competitively or on a targeted basis.

8 VAC 20-80-130. Funds for to assist with the education of children with disabilities residing in state-operated programs.

~~Funds to assist with the education of children with disabilities residing in state-operated facilities are available as follows:~~

4. A. [~~Children in~~] State mental health facilities. State funds for ~~special education and related services~~ for children in state mental health facilities are appropriated to the Virginia Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds [to the mental health facilities]. Federal funds are available under the provisions of ~~Public Law 89-313, as amended, 20 USC §§ 236 et seq the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)~~.

2. B. [~~Children in~~] State training centers for the mentally retarded. State funds for special education and related services for children *with disabilities* in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds [to the centers]. Federal funds are available under the provisions of ~~Public Law 89-313, as amended, 20 USC §§ 236 et seq the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)~~.

3. C. [~~Children in~~] State specialized children's hospitals. State funds ~~are provided~~ for special education and related services ~~in the special education appropriation~~ are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of ~~Public Law 89-313, as amended, 20 USC §§ 236 et seq. the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)~~.

4. D. [~~Children in~~] Woodrow Wilson Rehabilitation Center. State funds for ~~special education and related services~~ for children are ~~derived from the special education appropriation~~ appropriated to the Virginia Department of Education. Federal funds are available under the provisions of ~~Public Law 89-313, as amended, 20 USC §§ 236 et seq the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)~~.

~~5. E. [Children in] Regional [and local] juvenile detention homes. State funds for special education services are available from the special education appropriation appropriated to the Virginia Department of Education.~~

~~6. F. State-operated diagnostic clinics. State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state Department of Health are derived from the special education appropriation appropriated to the Virginia Department of Education.~~

~~7. G. Virginia Department of Correctional Education. State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state operated adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available under the provisions of Public Law 94-142, as amended, 20 USC §§ 236 et seq the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).~~

~~[H. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton. State funds are appropriated directly to these schools to operate day and residential special education programs for children placed by local school divisions. Local funds for the education of children at the schools shall be the amount equal to the local per pupil expenditure for the period in which the child is a resident of the school. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the schools.]~~

8 VAC 20-80-140. Funding, withholding, and recovery of funds.

A. The ~~SEA~~ Virginia Department of Education shall disburse funds to ~~LEAs~~ local educational agencies for the education of children with disabilities [~~(ages, aged)~~] two to 21, inclusive [~~),~~] when they provide documentation of compliance with state and federal laws and regulations.

B. ~~[Where If]~~ documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall notify the ~~LEA~~ local educational agency that state and federal funds will not be available for reimbursement for special education programs and services.

1. The notification shall include the substance of the alleged violation, and the ~~LEA~~ local educational agency shall be given an opportunity to submit a written response; and

2. The ~~LEA~~ local educational agency shall have the right to appeal to the Virginia Board of Education under 8 VAC 20-80-150 of this part.

C. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8 VAC 20-80-150 of this part, finds that an ~~LEA~~ a local educational agency has failed to comply with the ~~Board of Education~~ state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, then the

superintendent shall issue a decision in writing stating that state and federal funds for the education of *eligible* children with disabilities shall not be made available to that ~~LEA~~ local educational agency until it complies with the ~~Board of Education~~ state and federal laws and regulations.

D. ~~[Where If]~~ there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the ~~LEA~~ local educational agency, the foregoing due process procedures shall apply.

E. ~~[Where If]~~ it is determined that such funds have been erroneously claimed, the ~~SEA~~ Virginia Department of Education shall bill the ~~LEA~~ local educational agency for the amount of funds improperly received ~~or~~ [and withhold an equal amount of state or federal funds for the following year if not repaid by the local educational agency] .

8 VAC 20-80-150. Appeal of administrative decision regarding funding.

A. The ~~SEA~~ Virginia Department of [~~Education~~ Education's] recommendation to disapprove an ~~LEA~~ annual special education plan/report and funding applications local eligibility for funding under Individuals with Disabilities Education Act (20 USC § 1400 et seq.) [~~or,~~] to withhold [~~special education~~ state and federal] funds [~~for special education and related services,~~] or [~~to disapprove~~] rates set for [~~the~~] regional special education programs may be appealed by an ~~LEA~~ a local educational agency.

B. The procedures for the appeal of administrative decisions are as follows:

1. The ~~LEA~~ local educational agency must request [~~;~~] in writing [~~;~~] a hearing by the ~~SEA~~ Virginia Department of Education within 30 administrative working business days from the receipt of notification from the Superintendent of Public Instruction;

2. Within 10 administrative working business days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the ~~LEA~~ local educational agency in writing of the date, time [~~,~~] and location of the hearing;

3. The hearing shall [~~transpire be conducted~~] within 15 administrative working business days from the date of notification;

4. The hearing board shall be composed of the following persons: conducted by an independent hearing officer appointed from a list maintained by the Supreme Court of Virginia;

a. Two persons from the ~~SEA~~ who were not participants in the contested decision; these persons shall be appointed by the Superintendent of Public Instruction; and

b. Two members of the State Special Education Advisory Committee to be appointed by the chairman of the committee;

Final Regulations

5. Witnesses and attorneys may be present and testify for the ~~SEA~~ *Virginia Department of Education* or the ~~LEA~~ *local educational agency*;

6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

7. The hearing ~~board~~ officer shall review all pertinent evidence presented and shall ~~make a written recommendation to the Board of Education which will~~ render a decision based on the preponderance of evidence presented at the hearing and [on] applicable state and federal law; and

8. ~~The decision made by the Board of Education is final, unless a party appeals to a state court of competent jurisdiction or federal district court. No later than 10 business days after the hearing, the hearing officer shall issue a written ruling, including findings of fact and reasons for the findings;~~

9. The decision made by the hearing officer [is shall be] final unless an appeal is requested by a local educational agency;

10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of [the] Education Department General Administrative Regulations; and

11. Notice of appeal [~~must~~ shall] be filed within 30 business days after the local educational agency has been notified by the Virginia Department of Education of the results of the hearing.

8 VAC 20-80-152. Use of public and private insurance.

A. Children with disabilities who are covered by public insurance.

1. A local educational agency may use [~~the~~] Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public insurance program [except as provided in subdivision 2 of this subsection] .

2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, a local educational agency:

a. May not require the parent or parents to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;

b. May not require the parent or parents to incur any out-of-pocket expense [,] such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this section, but [in accordance with subsection C of this section] may pay the cost that the parent or parents otherwise would be required to pay; and

c. May not use a child's benefits under a public insurance program if that use would:

(1) Decrease available lifetime coverage or any other insured benefit;

(2) Result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(3) Increase premiums or lead to the discontinuation of insurance; or

(4) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

B. Children with disabilities who are covered by private insurance.

1. With regard to services required to provide a free appropriate public education to an eligible child under this [~~part~~ chapter] , a local educational agency may access a parent's [~~or parents'~~] private insurance proceeds only if the parent [~~or parents provide~~ provides] informed consent [as defined by this chapter] .

2. Each time the local educational agency proposes to access the parent's or parents' private insurance proceeds, it must:

a. Obtain [informed] parental consent; and

b. Inform the parent [~~or parents~~] that [~~their~~ the] refusal to permit the local educational agency to access [~~their~~ his] private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent or parents.

[C. Use of Part B funds.

1. If a local educational agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this chapter to ensure a full appropriate public education, the local educational agency may use its Part B funds under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) to pay for the service.

2. To avoid financial cost to a parent who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the local educational agency may use its Part B funds to pay the costs the parent otherwise would have to pay to use the parent's insurance (e.g., deductible or co-pay amounts).]

[~~G. D.~~] Proceeds from public or private insurance.

1. Proceeds from public or private insurance will not be treated as program income for purposes of the Education Department General Administrative Regulations.

2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid) for services under this [~~part~~ chapter] , those funds will not be considered [state or] local funds for purposes of the maintenance of effort provisions.

[~~D. E.~~] Nothing in this [~~part~~ chapter] should be construed to alter the requirements imposed on a state Medicaid agency [~~;~~] or any other agency administering a public insurance program by federal [~~statute~~ law], regulations [~~,~~] or policy under Title XIX [~~;~~] or Title XXI of the Social Security Act, or any other public insurance program.

8 VAC 20-80-155. Attorneys' fees.

A. In any action or proceeding brought under [~~8-VAC-20-80-76~~ § 1415 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.)], the court [~~;~~] in its discretion [~~;~~] may award reasonable attorneys' fees as part of the costs to the parent or parents of a child with a disability who is the prevailing party.

1. Funds under Part B [~~of the Act~~] may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under [§ 1415 and] Subpart E of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

2. This section does not preclude a local educational agency from using funds under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) for conducting an action or proceeding under [~~8-VAC-20-80-76~~ § 1415 of the Act] .

B. A court [~~awards~~ shall award] reasonable attorneys' fees under [~~8-VAC-20-80-76~~ § 1415 of the Act] consistent with the following:

1. Determination of amount of attorneys' fees. Fees awarded under [~~8-VAC-20-80-76~~ § 1415 of the Act] must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

2. Prohibition of attorneys' fees and related costs for certain services.

a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under [~~8-VAC-20-80-76~~ § 1415 of the Act] for services performed subsequent to the time of a written offer of settlement to a parent or parents if:

(1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 [calendar] days before the proceeding begins;

(2) The offer is not accepted within 10 [calendar] days; and

(3) The court or administrative hearing officer finds that the relief finally obtained by the parent or parents is not more favorable to the [parent or] parents than the offer of settlement.

b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation described in this

chapter that is conducted prior to [the] filing of a request for due process under this chapter.

3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent or parents who are the prevailing party and who [~~was~~ were] substantially justified in rejecting the settlement offer.

4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter [~~;~~] if the court finds that:

a. The parent or parents, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. The attorney representing the parent or parents did not provide to the [~~school district~~ local educational agency] the appropriate information in the [notice to request a] due process [~~complaint~~ hearing] in accordance with this chapter.

5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of this subsection do not apply in any action or proceeding if the court finds that the state or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of [§ 1415 of] the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

PART V.

ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND INSTITUTIONS FOR EDUCATION AND TRAINING OF CHILDREN WITH DISABILITIES IN RESIDENCE OR CUSTODY.

8 VAC 20-80-160. ~~Provision of special education to~~ Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.

A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education [~~and at least which is~~] comparable to that [~~which would be~~] provided to [~~such~~] children [with disabilities] in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed

Final Regulations

to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to [the] Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice.

b. The Superintendent of Public Instruction shall approve the education programs at the Virginia [~~Schools~~ School] for the Deaf and the Blind [at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton].

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities.

d. The Virginia Board of Education shall provide for and direct the education of school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services.

e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes.

f. The Virginia Board of Education shall supervise the evaluation, education [,] and training provided to school-age children by the Virginia Department of Health and [to school-age children] in the [~~child's~~] teaching hospitals associated with the Medical College of Hampton Roads, the Medical College of Virginia Hospitals, and The University of Virginia Hospitals.

2. The procedures outlined in ~~Part III, Responsibilities of LEAs and State Agencies, of this chapter (8 VAC 20-80-40 et seq.)~~ 8 VAC 20-80-90 are applicable to each state board, agency [,] and institution having children with disabilities in residence and custody.

~~8 VAC 20-80-170.~~ B. Annual [program] plan. Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the ~~SEA~~ Virginia Department of Education for approval by the Virginia Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Virginia Board of Education, shall include the provisions and assurances as specified in 8 VAC 20-80-90 ~~of this chapter~~. In addition, the program plan shall include the following:

1. The educational objectives of the state board, agency, or institution;
2. Strategies for achieving the educational objectives, including an organized program for staff development;

3. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;

4. A system of communication to [~~assure~~ ensure] service continuity in the transition of the student into and out of the educational program of the facility [;] and, where applicable, the requirements for reenrollment of juveniles committed to the Department of Juvenile Justice, as provided for in the Code of Virginia;

5. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;

6. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner [~~in matters of concern to them~~];

7. A cooperatively developed procedure for the evaluation of educational personnel;

8. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board;

9. A comprehensive system of personnel development to include the ~~in-service~~ training of general and special education instructional and personnel, support personnel, and paraprofessionals related to the educational needs of children in residence ~~is provided as required under 8 VAC 20-80-30;~~

10. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week [~~is~~] available for each student [to implement] his [~~the student's~~] IEP; ~~11. A waiver statement is on file for each.~~

[a.] If a student ~~whose~~ has a medical or physical condition that requires modification of the school schedule, a waiver statement shall be placed on file.

[b.] This waiver statement shall document the physical or mental condition of the individual student which requires significant modification of this schedule, and [~~there shall be on file statements of concurrence by the principal, supervisor or educational director and other personnel as follows~~ personnel from the following facilities shall file statements of concurrence]:

[~~a.~~ (1) The attending physician -- the] Department of Mental Health, Mental Retardation and Substance Abuse Services facilities [~~--attending physician~~];

[~~b. Department of Correctional Education -- treatment team~~ (2) The] central review committee [~~or ,~~] institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions [~~;-in-addition ,~~ with] a waiver statement signed by [~~or the~~] Department of Juvenile Justice security staff or designee for safety or security conditions [-- the Department of Correctional Education];

~~[e. School for the deaf and the blind — (3) The]~~
physician, staffing committee ~~[and or]~~ principal ~~[--~~
~~the Virginia School for the Deaf and the Blind at~~
~~Staunton and the Virginia School for the Deaf, Blind~~
~~and Multi-Disabled at Hampton];~~

~~[d. Woodrow Wilson Rehabilitation Center — (4)~~
~~The]~~ center counselor upon recommendation of the
staffing committee ~~[-- Woodrow Wilson~~
~~Rehabilitation Center];~~

~~[e. (5) The attending physician --]~~ state medical
facilities ~~[--attending physicians];~~

~~[f. (6) The detention superintendent or designee --]~~
juvenile detention homes ~~[—detention~~
~~superintendent or designee].~~

~~12- 11. [Each state school for the deaf and the blind The~~
~~Virginia School for the Deaf and the Blind at Staunton~~
~~and the Virginia School for the Deaf, Blind and Multi-~~
~~Disabled at Hampton] shall provide [for each age group~~
~~of children] a planned dormitory and a student-life~~
~~program [for each age group of children], including~~
~~social and daily living skills, recreation, and cultural~~
~~activities.~~

~~8-VAC 20-80-180. C. Staff and facility.~~

~~A- 1. Each state board, agency or institution shall assign~~
personnel to the educational program as follows:

~~4- a. Administrative, supervisory, instructional, support~~
and ancillary personnel holding valid professional
licenses, certificates and endorsements as appropriate
in the area of assignment (national standards may
apply in the absence of state licensure or certification
requirements).

~~2- b. Additional education personnel to provide~~
required related services as delineated in the *child's*
IEP.

~~3- Teacher aids must c. Trained and supervised~~
~~paraprofessionals who shall [be high school graduates~~
~~have earned a high school diploma] or equivalent.~~

~~B- 2. Each state board, agency or institution shall staff~~
the educational program as follows:

~~4- a. A principal, supervisor, education director [,] or~~
lead teacher for the educational program provided at
each school or institution, except for juvenile detention
homes;

~~2- b. Instructional personnel sufficient to maintain~~
pupil-teacher ratios not to exceed the following:

~~a- Serious (1) Emotional disturbance - one teacher~~
for every eight children or one teacher and one ~~aide~~
~~paraprofessional~~ for every 10 children;

~~b- (2) Hearing impairment/ [deafness deaf] - one~~
teacher for every seven children with one ~~aide~~
~~paraprofessional~~ for every three classroom teachers;
at the Virginia ~~[Schools School]~~ for the Deaf and
the Blind ~~[at Staunton and the Virginia School for~~
~~the Deaf, Blind and Multi-Disabled at Hampton] -~~

one teacher for every eight children or one teacher
and one paraprofessional for every 10 children;

~~e- (3) Mental retardation - one teacher and one aide~~
~~paraprofessional~~ for every 10 children;

~~d- (4) Severe and profound disability - one teacher~~
and one ~~aide~~ ~~paraprofessional~~ for every six children
or one teacher and two ~~aides~~ ~~paraprofessionals~~ for
every 10 children;

~~e- (5) Visual impairment - one teacher for every~~
seven children ~~[with and]~~ one ~~aide~~ ~~paraprofessional~~
for every three classroom teachers;

~~f- (6) Other health impairment - one teacher for every~~
eight children or one teacher and one ~~aide~~
~~paraprofessional~~ for every 10 children;

~~g- (7) Orthopedic impairment - one teacher for every~~
eight children or one teacher and one ~~aide~~
~~paraprofessional~~ for every 10 children;

~~h- (8) Specific learning disability - one teacher for~~
every eight children or one teacher and one ~~aide~~
~~paraprofessional~~ for every 10 children;

~~i- (9) Multiple disabilities/ or deaf-blindness - one~~
teacher and one ~~aide~~ ~~paraprofessional~~ for every six
students or one teacher and two ~~aides~~
~~paraprofessionals~~ for every 10 students;

~~j- (10) Autism - one teacher for every six students or~~
one teacher and one ~~aide~~ ~~paraprofessional~~ for every
eight students;

~~[(11) Traumatic brain injury – students may be~~
~~placed in any program, according to the student's~~
~~IEP;]~~

~~k- [(14) (12)] Department of Correctional Education~~
- no greater than an average of one teacher and one
~~aide~~ ~~paraprofessional~~ for every 10 children;

~~l- [(12) (13)] Woodrow Wilson Rehabilitation Center~~
- no greater than an average of one teacher for
every 10 children;

~~m- [(13) (14)] Juvenile detention homes - a~~
~~student/teacher ratio shall be based on the bed~~
~~capacity of the detention home: one teacher per 12~~
~~beds [as funded by the Virginia Appropriation Act.~~
~~Where one teacher for every 12 beds, based on the~~
~~bad capacity of the facility. If the number of students~~
~~exceeds the bed capacity, then the ratio shall be one~~
~~teacher for every 12 students based on the average~~
~~daily attendance from the previous school year. If]~~
unusual or extenuating circumstances exist, the
agency may apply to the Superintendent of Public
Instruction for an exception to the ratio requirements.
Such requests shall be supported by sufficient
justification.

~~G- 3. Each facility shall have available adequate and~~
appropriate classroom space, ~~[within the available~~
~~resources of the agency housing the education program.~~
~~Each education program shall have access to]~~ a library,

Final Regulations

and instructional materials and supplies to meet the educational needs of the children.

PART VI.

COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED.

8 VAC 20-80-190. ~~Public elementary or secondary programs Compliance with § 504 of the Rehabilitation Act of 1973, as amended.~~

A. ~~[For these public elementary or secondary education programs operated by the Virginia Department of Education, the department Each state-operated program providing educational services to persons of school age, the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton] shall [: 1. Develop] an individualized education program [a plan for each qualified person who] is handicapped [has a disability as defined by the Rehabilitation Act of 1973 and its amendments (29 USC § 701 et seq.); and provide a free appropriate public education to each qualified person with a disability of school age and provide procedural safeguards in accordance with the Virginia Department of Education's 504 plan.]~~

~~[2. Utilize the system of procedural safeguards specified in this chapter to resolve disputes regarding the identification, evaluation or educational placement of persons who] are handicapped [have a disability as defined by the Rehabilitation Act of 1973 and its amendments (29 USC § 701 et seq.).]~~

8 VAC 20-80-200. Local education agencies.

B. ~~Local education educational agencies [, as defined by this chapter,] other than the Virginia Department of Education, may utilize the due process hearing system specified in this chapter 8 VAC 20-80-76 to resolve disputes regarding the identification, evaluation [,] or educational placement of [qualified] persons who are handicapped have a disability [as defined by the Rehabilitation Act of 1973 and its amendments (29 USC § 701 et seq.).]~~

Appendix A.

Figure 1. ~~[Local school division] caseload maximums as funded by the Virginia Appropriation Act.~~

Caseload Maximums			
	Level II		Level I
Disability Category	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the time	
Autism	8	6	24
[Deaf-blind Deaf-blindness]	8	6	
Developmental Delay: age 5 - [9 8]	10	8	
Developmental Delay: age 2 - 5	8 Center Based 10 Combined	12 Home Based and/or Itinerant	

Emotional Disturbance	10	8	24
Hearing Impairment/ Deaf	10	8	24
Learning Disability	10	8	24
Mental Retardation	10	8	24
Multiple Disabilities	8	6	
Orthopedic Impairment	10	8	24
Other Health Impairment	10	8	24
Severe Disabilities	8	6	
Speech or Language Impairment			[70 68] (itinerant)
Traumatic Brain Injury	May be placed in any program, according to IEP.		
[Visual Impairment	Determined on a local or regional basis, jointly with the Virginia Department of Visually Handicapped.]		
[Combined group of students needing Level I services with students needing Level II services.	20 Points (see Figure 21)]		

[Va. Code § 22.1-217; Va. Appropriation Act]

Figure 2. Values for students receiving Level I services when combined with students receiving Level II services.

	Level [I II] Values		Level [# I] Values
Disability Category	With paraprofessional 100% of the time	Without paraprofessional 100% of the time	
Autism	2.5	3.3	1
[Deaf-Blind Deaf-blindness]	2.5	3.3	1
Developmental Delay: age 5 - [9 8]	2.0	2.5	1
[Hearing Impairment/ Deaf Emotional Disturbance]	2.0	2.5	1
[Emotional Disturbance Hearing Impairment/ Deaf]	2.0	2.5	1

Learning Disability	2.0	2.5	1
Mental Retardation	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
[Visual Impairment	<i>Determined on a local or regional basis, jointly with the Virginia Department of Visually Handicapped.]</i>		
[Severe Disabilities	2.0	2.5	1]
[Traumatic Brain Injury	2.0	2.5	1]

VA.R. Doc. Nos. R98-275 and R98-276; Filed November 1, 2000, 8:57 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **Residential and Psychiatric Treatment for Children and Adolescents.**

12 VAC 30-10-10 et seq. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12 VAC 30-10-150).

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-30, 12 VAC 30-50-70, 12 VAC 30-50-130, and 12 VAC 30-50-250).

12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12 VAC 30-80-21).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (adding 12 VAC 30-130-850 through 12 VAC 30-130-890).

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: January 1, 2001.

Summary:

The amendments expand coverage of inpatient psychiatric services under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to include services in residential treatment facilities.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-10-150. Amount, duration, and scope of services: Medically needy.

This State Plan covers the medically needy. The services described below and in 12 VAC 30-50-40 et seq. are provided. Services for medically needy include:

(i) If services in an institution for mental diseases (42 CFR 440.140 and 440.160) or an intermediate care facility for the mentally retarded (or both) are provided to any medically needy group, then each medically needy group is provided either the services listed in § 1905(a)(1) through (5) and (17) of the Act, or seven of the services listed in § 1902(a)(1) through (20). The services are provided as defined in 42 CFR 440, Subpart A and in § 1902, 1905, and 1915 of the Act.

The above-stated is applicable with respect to nurse-midwife services under § 1902(a)(17).

(ii) Prenatal care and delivery services for pregnant women.

(iii) Pregnancy-related, including family planning services, and postpartum services for a 60-day period (beginning on the day the pregnancy ends) and any remaining days in the month in which the ~~60th~~ *sixtieth* day falls are provided to women who, while pregnant, were eligible for, applied for, and received medical assistance on the day the pregnancy ends.

(iv) Services for any other medical condition that may complicate the pregnancy (other than pregnancy-related and postpartum services) are provided to pregnant women.

(v) Ambulatory services, as defined in 12 VAC 30-50-40 for recipients under age 18 and recipients entitled to institutional services.

(vi) Home health services to recipients entitled to nursing facility services as indicated in 12 VAC 30-10-220 ~~of this plan~~.

(vii) Services for the medically needy do not include services in an institution for mental diseases for individuals over age 65.

(viii) Services for the medically needy do not include services in an intermediate care facility for the mentally retarded.

(ix) Services for the medically needy do not include inpatient psychiatric services for individuals under age 21, *other than those covered under early and periodic screening, diagnosis, and treatment (at 12 VAC 30-50-130).*

(x) Services for the medically needy do not include respiratory care services provided to ventilator dependent individuals. See 12 VAC 30-10-300 ~~of this plan~~.

(xi) Home and community care for functionally disabled elderly individuals is not covered.

12 VAC 30-50-40 et seq. identifies the services provided to each covered group of the medically needy; specifies all limitations on the amount, duration, and scope of those items;

Final Regulations

and specifies the ambulatory services provided under this plan and any limitations on them. It also lists the additional coverage (that is in excess of established service limits) for pregnancy-related services and services for conditions that may complicate the pregnancy.

12 VAC 30-50-30. Services not provided to the categorically needy.

The following services and devices are not provided to the categorically needy:

1. Chiropractors' services.
2. Private duty nursing services.
3. Dentures.
4. Other diagnostic and preventive services other than those provided elsewhere in this plan: diagnostic services (see 12 VAC 30-50-95 et seq.).
5. Inpatient psychiatric facility services for individuals under ~~22~~ 21 years of age, *other than those covered under early and periodic screening, diagnosis, and treatment (at 12 VAC 30-50-130).*
6. Special tuberculosis (TB) related services under § 1902(z)(2)(F) of the Act.
7. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).
8. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).
9. Any other medical care and any type of remedial care recognized under state law specified by the Secretary: services of Christian Science Nurses; personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

12 VAC 30-50-70. Services or devices not provided to the medically needy.

1. Chiropractors' services.
2. Private duty nursing services.
3. Dentures.
4. Diagnostic or preventive services other than those provided elsewhere in the State Plan.
5. Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals age 65 or older in institutions for mental disease(s).
6. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Act, to be in need of such care in a public institution, or a distinct part thereof, for the mentally retarded or persons with related conditions.
7. Inpatient psychiatric facility services for individuals under ~~22~~ 21 years of age, *other than those covered*

under early and periodic screening, diagnosis, and treatment (at 12 VAC 30-50-130).

8. Special tuberculosis (TB) services under § 1902(z)(2)(F) of the Act.
9. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).
10. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).
11. Services of Christian Science nurses.
12. Personal care services in a recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.
13. Home and community care for functionally disabled elderly individuals, as defined, described and limited in ~~12 VAC 30-50-410 through~~ 12 VAC 30-50-460 and 12 VAC 30-50-470.
14. Personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (i) authorized for the individual by a physician in accordance with a plan of treatment, (ii) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (iii) furnished in a home.

12 VAC 30-50-130. Skilled nursing facility services, EPSDT, ~~community mental health services and family planning.~~

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.
2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.
3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified

by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

~~C.~~ 5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment shall be provided in sessions of two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

6. *Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:*

a. *A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, [or] the Council on Accreditation of Services for Families and Children [or the Council on Quality and Leadership].*

b. *Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12 VAC 30-50-100, 12 VAC 30-50-105, and 12 VAC 30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12 VAC 30-130-850 et seq.) of this chapter.*

c. *Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.*

~~D.~~ C. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services [~~which~~ *that*] delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

12 VAC 30-50-250. Inpatient psychiatric facility services for individuals under ~~22~~ 21 years of age.

Inpatient psychiatric facility services for individuals under ~~22~~ 21 years of age are not provided, other than those provided under early and periodic screening, diagnosis, and treatment (12 VAC 30-50-130).

12 VAC 30-80-21. Inpatient psychiatric services in residential treatment facilities (under EPSDT).

A. *Effective January 1, 2000, the state agency shall pay for inpatient psychiatric services in residential treatment facilities provided by participating providers, under the terms and payment methodology described in this section.*

B. *Methodology. Effective January 1, 2000, payment will be made for inpatient psychiatric services in residential treatment facilities using a per diem payment rate as determined by the state agency based on information submitted by enrolled residential psychiatric treatment facilities. This rate shall constitute payment for all residential psychiatric treatment facility services, excluding all professional services.*

C. *Data collection. Enrolled residential treatment facilities shall submit cost reports on uniform reporting forms provided by the state agency at such time as required by the agency. Such cost reports shall cover a 12-month period. If a complete cost report is not submitted by a provider, the Program shall take action in accordance with its policies to assure that an overpayment is not being made.*

Final Regulations

PART XIV. RESIDENTIAL PSYCHIATRIC TREATMENT FOR CHILDREN AND ADOLESCENTS.

12 VAC 30-130-850. Definitions.

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

"Active treatment" means implementation of a professionally developed and supervised individual plan of care that must be designed to achieve the recipient's discharge from inpatient status at the earliest possible time.

"Certification" means a statement signed by a physician that inpatient services in a residential treatment facility are or were needed. The certification must be made at the time of admission, or, if an individual applies for assistance while in a mental hospital or residential treatment facility, before the Medicaid agency authorizes payment.

"Comprehensive individual plan of care" or "CIPOC" means a written plan developed for each recipient in accordance with 12 VAC 30-130-890 to improve his condition to the extent that inpatient care is no longer necessary.

"Initial plan of care" means a plan of care established at admission, signed by the attending physician or staff physician, that meets the requirements in 12 VAC 30-130-890.

"Recertification" means a certification for each applicant or recipient that inpatient services in a residential treatment facility are needed. Recertification must be made at least every 60 days by a physician, or physician assistant or nurse practitioner acting within the scope of practice as defined by state law and under the supervision of a physician.

"Recipient" or "recipients" means the child or adolescent younger than 21 years of age receiving this covered service.

12 VAC 30-130-860. Service coverage; eligible individuals; service certification.

A. Residential treatment programs shall be 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address the special mental health and behavioral needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services must include, but shall not be limited to, assessment and evaluation, medical treatment (including drugs), individual and group counseling, and family therapy necessary to treat the child.

B. Residential treatment programs shall provide a total, 24 hours per day, specialized form of highly organized, intensive and planned therapeutic interventions that shall be utilized to treat some of the most severe mental, emotional, and behavioral disorders. Residential treatment is a definitive therapeutic modality designed to deliver specified results for a defined group of problems for children or adolescents for whom outpatient day treatment or other less intrusive levels of care are not appropriate, and for whom a protected, structured milieu is medically necessary for an extended period of time.

C. Active treatment shall be required. Residential treatment services shall be designed to serve the mental health needs of children. In order to be reimbursed for residential treatment, the facility must provide active mental health treatment beginning at admission and it must be related to the recipient's principle diagnosis and admitting symptoms. To the extent that any recipient needs mental health treatment and his needs meet the medical necessity criteria for the service, he will be approved for these services. The service definitions do not include interventions and activities designed only to meet the supportive nonmental health special needs, including but not limited to personal care, habilitation or academic educational needs of the recipients.

D. An eligible individual is a recipient under the age of 21 years whose treatment needs cannot be met by ambulatory care resources available in the community, for whom proper treatment of his psychiatric condition requires services on an inpatient basis under the direction of a physician, and the services can reasonably be expected to improve his condition or prevent further regression so that the services will no longer be needed.

E. In order for Medicaid to reimburse for residential treatment to be provided to a recipient, the need for the service must be certified according to the standards and requirements set forth in subdivisions 1 and 2 of this subsection. At least one member of the independent certifying team must have pediatric mental health expertise.

1. For an individual who is already a Medicaid recipient when he is admitted to a facility or program, certification must be made by an independent certifying team that:

- a. Includes a licensed physician;
- b. Has competence in diagnosis and treatment of pediatric mental illness; and
- c. Has knowledge of the recipient's mental health history and current situation.

2. For a recipient who applies for Medicaid while an inpatient in the facility or program, the certification must:

- a. Be made by the team responsible for the plan of care;
- b. Cover any period of time before the application for Medicaid eligibility for which claims for reimbursement by Medicaid are made; and
- c. Be signed by a physician member of the team.

12 VAC 30-130-870. Preauthorization.

A. Authorization for residential treatment shall be required within 24 hours of admission and shall be conducted by DMAS or its utilization management contractor using medical necessity criteria specified by DMAS. At preauthorization, an initial length of stay shall be assigned and the residential treatment provider shall be responsible for obtaining authorization for continued stay. Reimbursement for residential treatment will be implemented on January 1, 2000. For cases already in care, DMAS will reimburse beginning January 1, 2000, or from the date when the required

documentation is received and approved if the provider has a valid Medicaid provider agreement in effect on that date.

B. DMAS will not pay for admission to or continued stay in residential facilities that were not authorized by DMAS.

C. Information that is required in order to obtain admission preauthorization for Medicaid payment shall include:

1. A completed state-designated uniform assessment instrument approved by the department.

2. A certification of the need for this service by the team described in 12 VAC 30-130-860 that:

- a. The ambulatory care resources available in the community do not meet the specific treatment needs of the recipient;

- b. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

- c. The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will not be needed.

3. Additional required written documentation shall include all of the following:

- a. Diagnosis, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV, effective October 1, 1996), including Axis I (Clinical Disorders), Axis II (Personality Disorders/Mental Retardation, Axis III (General Medical Conditions), Axis IV (Psychosocial and Environmental Problems), and Axis V (Global Assessment of Functioning);

- b. A description of the child's behavior during the seven days immediately prior to admission;

- c. A description of alternative placements tried or explored and the outcomes of each placement;

- d. The child's functional level and clinical stability;

- e. The level of family support available; and

- f. The initial plan of care as defined and specified at 12 VAC 30-130-890.

D. Denial of service may be appealed by the recipient consistent with 12 VAC 30-110-10 et seq.; denial of reimbursement may be appealed by the provider consistent with the Administrative Process Act (§ 9-6.14:4.1 et seq. of the Code of Virginia).

12 VAC 30-130-880. Provider qualifications.

A. Providers must provide all residential treatment services as defined within this part and set forth in 42 CFR Part 441 Subpart D.

B. Providers must be:

1. A residential treatment program for children and adolescents licensed by DMHMRSAS that is located in a psychiatric hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations;

2. A residential treatment program for children and adolescents licensed by DMHMRSAS that is located in a psychiatric unit of an acute general hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

3. A psychiatric facility that is (i) accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities [, the Council on Accreditation of Services for Families and Children], or the Council on Accreditation of Services for Families and Children and (ii) licensed by DMHMRSAS as a residential treatment program for children and adolescents.

12 VAC 30-130-890. Plans of care; review of plans of care.

A. An initial plan of care must be completed at admission and a Comprehensive Individual Plan of Care must be completed no later than 14 days after admission.

B. Initial plan of care must include:

1. Diagnoses, symptoms, complaints, and complications indicating the need for admission;

2. A description of the functional level of the recipient;

3. Treatment objectives with short-term and long-term goals;

4. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the patient;

5. Plans for continuing care, including review and modification to the plan of care; and

6. Plans for discharge.

C. The Comprehensive Individual Plan of Care (CIPOC) must meet all of the following criteria:

1. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the recipient's situation and must reflect the need for inpatient psychiatric care;

2. Be developed by an interdisciplinary team of physicians and other personnel specified under subsection F of this section, who are employed by, or provide services to, patients in the facility in consultation with the recipient and his parents, legal guardians, or appropriate others in whose care he will be released after discharge;

3. Include state treatment objectives that must include measurable short-term and long-term goals;

4. Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; and

5. Describe discharge plans and coordination of inpatient services and post-discharge plans with related

Final Regulations

community services to ensure continuity of care upon discharge with the recipient's family, school, and community.

D. Review of the Comprehensive Individual Plan of Care. The CIPOC must be reviewed every 30 days by the team specified in subsection F of this section to:

1. Determine that services being provided are or were required on an inpatient basis; and
2. Recommend changes in the plan as indicated by the recipient's overall adjustment as an inpatient.

E. The development and review of the plan of care as specified in this section satisfies the facility's utilization control requirements for recertification and establishment and periodic review of the plan of care, as required in 42 CFR 456.160 and 456.180.

F. Team developing the Comprehensive Individual Plan of Care. The following requirements must be met:

1. At least one member of the team must have expertise in pediatric mental health. Based on education and experience, preferably including competence in child psychiatry, the team must be capable of all of the following:
 - a. Assessing the recipient's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;
 - b. Assessing the potential resources of the recipient's family;
 - c. Setting treatment objectives; and
 - d. Prescribing therapeutic modalities to achieve the plan's objectives.
2. The team must include, at a minimum, either:
 - a. A board-eligible or board-certified psychiatrist;
 - b. A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or
 - c. A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.
3. The team must also include one of the following:
 - a. A psychiatric social worker;
 - b. A registered nurse with specialized training or one year's experience in treating mentally ill individuals;
 - c. An occupational therapist who is licensed, if required by the state, and who has specialized training or one year of experience in treating mentally ill individuals; or

d. A psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

G. All Medicaid services are subject to utilization review. Absence of any of the required documentation may result in denial or retraction of any reimbursement.

DOCUMENT INCORPORATED BY REFERENCE

Diagnostic and Statistical Manual of Mental Disorders (DSM-IV Manual), Fourth Edition, Effective October 1, 1996, American Psychiatric Association.

NOTICE: The forms used in administering 12 VAC 30-130-10 et seq., Amount, Duration and Scope of Selected Services, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Forms accompanying Part II of this chapter:

Virginia Uniform Assessment Instrument.

Forms accompanying Part III of this chapter:

MI/MR Supplement Level I (form and instructions).
MI/MR Supplement Level II.

Forms accompanying Part VII of this chapter:

Request for Hospice Benefits DMAS-420, Revised 5/91.

Forms accompanying Part VIII of this chapter:

Inventory for Client and Agency Planning (ICAP) Response Booklet, D9200/D9210, 1986.

Forms accompanying Part IX of this chapter:

Patient Information form.
Instructions for Completion DMAS-122 form.

Forms accompanying Part XII of this chapter:

Health Insurance Premium Payment (HIPP) Program Insurance Information Request Form.
Health Insurance Premium Payment (HIPP) Program Medical History Form (HIPP Form-7, Rev. 11/92).
Health Insurance Premium Payment (HIPP) Program Employers Insurance Verification Form (HIPP Form-2, Rev. 11/92).
Health Insurance Premium Payment (HIPP) Program Employer Agreement (HIPP Form-3, Rev. 11/92).
Health Insurance Premium Payment (HIPP) Program Notice of HIPP Determination (HIPP Form-4, Rev. 11/92).
Health Insurance Premium Payment (HIPP) Program Notice of HIPP Approval.
Health Insurance Premium Payment (HIPP) Program Notice of HIPP Status (HIPP Form-6, Rev. 11/92).
Inventory for Client and Agency Planning (ICAP) Response Booklet, D9200/D9210, 1986.

Forms accompanying Part XIV of this chapter:

Residential Psychiatric Treatment for Children and Adolescents, FH/REV (eff. 10/20/99).

DO NOT WRITE IN SHADED AREAS. DO NOT ADD CONDITIONS TO THE AGREEMENT. WE DO NOT ACCEPT AGREEMENTS VIA FAX OR AGREEMENTS ON THERMAL PAPER.

Commonwealth of Virginia
Department of Medical Assistance Services
Medical Assistance Program
Residential Psychiatric Treatment for Children and Adolescents

If re-enrolling, enter Medicaid Provider Number here→ _____

Check this box if requesting new number→ ☐

Enter 6-digit MEDICARE provider number here→ _____

This is to certify:	PAYMENT/CORRESPONDENCE ADDRESS	PHYSICAL ADDRESS (REQUIRED IF DIFFERENT FROM PAYMENT ADDRESS)
NAME		
ATTENTION		
ADDR LINE 1		
ADDR LINE 2		
CITY, STATE, ZIP		

on this _____ day of _____, _____ agrees to participate in the Virginia Medical Assistance Program (VMAP), the Department of Medical Assistance Services, the legally designated State Agency for the administration of Medicaid.

- The provider is a psychiatric entity licensed by DMHMRAS as a Residential Treatment Program and accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) OR Council on Accreditation of Services for Families and Children OR the Commission on Accreditation of Rehabilitation Facilities and meets all the requirements in 42 CFR 441, Subpart D.
- Services will be provided without regard to age, sex, race, color, religion, national origin, or type of illness or condition. No handicapped individual shall, solely by reason of his medical or physical handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in accordance with the terms of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) in DMAS.
- The applicant agrees to keep such records as DMAS determines necessary. The applicant will furnish DMAS, on request, information regarding payments claimed for providing services under the state plan. Access to records and facilities by authorized DMAS representatives, the Attorney General, or his authorized representatives, and authorized federal personnel will be permitted upon reasonable request.
- The provider agrees to care for patients at the DMAS rate as of the date the service is rendered, which is an all-inclusive fee.
- Payment made by DMAS at its established rates constitutes full payment except for patient pay amounts determined by DMAS, and the applicant agrees not to submit additional charges to the recipient for services covered under Medicaid. The collection or receipt of any money, gift, donation or other consideration from or on behalf of a Medicaid recipient for any service provided under Medicaid is expressly prohibited and may subject the provider to federal or state prosecution. Should an audit by authorized state or federal officials result in disallowance of amounts previously paid to the provider by DMAS, the provider will reimburse DMAS upon demand.
- The applicant agrees to pursue all other available third party payment sources prior to submitting a claim to DMAS.
- The applicant agrees to comply with all applicable state and federal laws, as well as administrative policies and procedures of DMAS as from time to time amended.
- This agreement may be terminated at will on 30 (thirty) days' written notice by either party or by DMAS when the provider is no longer eligible to participate in the Program.
- All disputes regarding provider reimbursement and/or termination of this agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be pursuant to the Virginia Administrative Process Act.

10. This agreement shall commence on _____ and terminate on _____

For First Health's use only

Director, Division of Program Operations	Date

IRS Name (required)

mail one completed
original agreement
to: First Health - VMAP-Provider Enrollment Unit
4461 Cox Rd, Suite 102
Glen Allen, VA 23060-3331

For Provider of Services:

Original Signature of Provider _____ Date _____

Title _____

____ City OR ____ County of _____

IRS Identification Number _____ (Area Code) Telephone Number _____

Medicare Carrier and Vendor Number (if applicable) _____

residential

FH/REV 10/20/1999

VA.R. Doc. No. R00-81; Filed November 1, 2000, 11:52 a.m.

Final Regulations

Title of Regulation: School Health Services: 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-229.1).

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: January 1, 2001.

Summary:

The amendments conform the State Plan to Chapters 967 and 1005 of the 1999 Acts of Assembly by expanding school health service coverage for special education children. The expanded services include, in accordance with the relevant child's individualized education program and medical necessity criteria, increased skilled nursing and physical, occupational, and speech/language therapy services; the recognition of different types of licenses for reimbursement by DMAS; and the coverage of psychiatric and psychological screenings in the schools. The regulations also recognize the school's authority to conduct routine screenings of children who are not in special education.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-50-229.1. School health services.

A. School health services *shall require parental consent* and shall be defined as those therapy ~~and~~ services, nursing services, *psychiatric/psychological screenings, and well-child screenings* rendered by employees of school divisions ~~which~~ *that* are enrolled with DMAS to serve children who:

1. Qualify to receive special education services as described under *and consistent with all of the requirements* of Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). Children qualifying for special education services pursuant to Part B of the federal Individuals with Disabilities Education Act, as amended, shall not be restricted in their choice of enrolled providers of medical care services as described in the State Plan for Medical Assistance; or

2. *Qualify to receive [routine] screening services under the State Plan [and have parental consent for routine health screenings, but not .] Diagnostic and treatment services, that are [otherwise] covered under early and periodic screening, diagnosis and treatment services [, shall not be covered for participating school divisions. Participating school divisions must receive parental consent before conducting screening services]*.

B. Physical therapy and related services.

1. The services covered under this subsection shall include physical therapy, occupational therapy, and speech/language pathology services. All of the requirements, *with the exception of the 24-visit limit*, of 12 VAC 30-50-200 and 42 CFR 440.110 applicable to these services shall continue to apply with regard to, but not necessarily limited to, necessary authorizations, documentation requirements, and provider qualifications, ~~and service limitations~~. *Consistent with the child's Individualized Education Program (IEP), 35 therapy visits will be covered per year per discipline without DMAS prior authorization.*

2. Consultation by physical therapy, occupational therapy, or speech pathology providers in meetings for the development, evaluation, or reevaluation of the ~~Individualized Education Program (IEP)~~ IEP for specific children shall be covered when the IEP with the physical therapy, occupational therapy, or speech pathology services is implemented (based on the date of services billed to DMAS) as soon as possible after the IEP meeting, not to exceed 60 days, except where there are extenuating circumstances. This consultation is to be billed to DMAS no earlier than the date such services are implemented. No more than two consultations (*across all three areas of therapies, nursing, and psychiatric/psychological disciplines*) may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by either registered nurses ~~or~~, licensed practical nurses, *therapists, or psychiatrists/psychologists*. If an IEP eligibility meeting is billed to DMAS, then the subsequent IEP plan meeting must also be billed for any DMAS reimbursement to occur.

3. Extenuating circumstances are recognized regarding the coverage of the IEP consultation when the physical therapy, occupational therapy, or speech pathology services cannot be implemented as soon as possible following the effective date of the IEP. Such extenuating circumstances may include, but shall not be limited to, arrangements for transportation, hospitalization of the child, or summer or vacation periods. DMAS or its contractor must approve other extenuating circumstances.

4. *Consistent with § 32.1-326.3 of the Code of Virginia, speech-language services must be rendered either by:*

a. *A speech-language pathologist who meets the qualifications under 42 CFR 440.110(c): (i) has a certificate of clinical competence from the American Speech and Hearing Association; (ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or (iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;*

b. *A speech-language pathologist with a current license in speech pathology issued by the Board of Audiology and Speech-Language Pathology;*

c. A speech-language pathologist licensed by the Board of Education with an endorsement in speech-language disorders preK-12 and a master's degree in speech-language pathology. These persons also have a license without examination from the Board of Audiology and Speech-Language Pathology; or

d. A speech-language pathologist who does not meet the criteria for subdivisions a, b, or c above and is directly supervised by a speech-language pathologist who meets the criteria of clause a (i) or a (ii) or subdivision b or c above. The speech-language pathologist must be licensed by the Board of Education with an endorsement in speech-language disorders preK-12 but does not hold a master's degree in speech-language pathology. Direct supervision must take place on site at least every 30 calendar days for a minimum of two hours and must be documented accordingly. The speech-language pathologist who meets the criteria for clause a (i) or a (ii) or subdivision b or c above is readily available to offer needed supervision when speech-language services are provided.

C. Skilled nursing services.

1. These services must be medically necessary skilled nursing services ~~which that~~ are required by a child in order to benefit from an educational program, as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). These services shall be limited to a maximum of ~~six~~ 26 units a day of medically necessary services. Services not deemed to be medically necessary, upon utilization review, shall not be covered. A unit, for the purposes of this school-based health service, shall be defined as 15 minutes of ~~medical~~ skilled nursing care.

2. These services must be performed by a Virginia-licensed registered nurse (RN), or licensed practical nurse (LPN) under the supervision of a licensed RN. The service provider shall be either employed by the school division or under contract to the school division. The skilled nursing services shall be rendered in accordance with the licensing standards and criteria of the Virginia Board of Nursing. Supervision of LPNs shall be provided consistent with the regulatory standards of the Board of Nursing at 18 VAC 90-20-270.

3. Consultation by skilled nursing providers in meetings for the development, evaluation, or reevaluation of the IEP for specific children shall be covered when the IEP with the skilled nursing services is implemented (based on the dates of services billed to DMAS) as soon as possible after the IEP meeting, not to exceed 60 days, except where there are extenuating circumstances. This consultation is to be billed to DMAS no earlier than the date such services are implemented. No more than two consultations (*across all three areas of therapies, nursing, and psychiatric/psychological disciplines*) may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by physical therapists, occupational therapists, ~~and~~ speech therapists, nurses, and psychiatrists/psychologists. If an

IEP eligibility meeting is billed to DMAS, then the subsequent IEP plan meeting must also be billed for any DMAS reimbursement to occur.

4. Extenuating circumstances are recognized regarding the coverage of the IEP consultation when the skilled nursing services cannot be implemented as soon as possible following the effective date of the IEP. Such extenuating circumstances may include, but shall not be limited to, arrangements for transportation, hospitalization of the child, or summer or vacation periods. DMAS or its contractor must approve other extenuating circumstances.

5. The coverage of skilled nursing services shall be of a level of complexity and sophistication (*based on assessment, planning, implementation and evaluation*) [~~which that~~] ~~are~~ is consistent with skilled nursing services *when performed by a registered nurse or a licensed practical nurse*. These skilled nursing services shall include, but not necessarily be limited to, dressing changes, maintaining patent airways, *medication administration/monitoring* and urinary catheterizations. *Skilled nursing services shall be consistent with the medical necessity criteria in the school services manual.*

6. Skilled nursing services shall be directly and specifically related to an active, written plan of care [~~which that~~] is based on a physician's or nurse practitioner's written order for skilled nursing services. The registered nurse shall establish, sign, and date the plan of care. The plan of care shall be periodically reviewed by a physician or nurse practitioner after any needed consultation with skilled nursing staff. The services shall be specific and provide effective treatment for the child's condition in accordance with accepted standards of skilled nursing practice. The plan of care is further described in subdivision 7 of this subsection. Skilled nursing services rendered [~~which that~~] exceed the physician's or nurse practitioner's written order for skilled nursing services shall not be reimbursed by DMAS. A copy of the plan of care shall be given to the child's Medicaid primary care provider.

7. Documentation of services shall include a written plan of care [~~which that~~] identifies the medical condition or conditions to be addressed by skilled nursing services, goals for skilled nursing services, time tables for accomplishing such stated goals, actual skilled nursing services to be delivered and whether the services will be delivered by an RN or LPN. Services [~~which that~~] have been delivered and for which reimbursement from Medicaid is to be claimed must be supported with like documentation. Documentation of school-based skilled nursing services shall include the dates and times of services entered by the responsible licensed nurse; the actual nursing services rendered; the identification of the child on each page of the medical record; the current diagnosis and elements of the history and exam [~~which that~~] form the basis of the diagnosis; any prescribed drugs [~~which that~~] are part of the treatment including the quantities ~~and~~, dosage, *and frequency*; and notes to indicate progress made by the child, changes to the

Final Regulations

diagnosis, or treatment and response to treatment. The plan of care is to be part of the child's medical record. Actions related to the skilled nursing services such as notifying parents, calling the physician, or notifying emergency medical services shall also be documented. All documentation shall be signed and dated by the person performing the service. *Lengthier skilled nursing services shall have more extensive documentation.* The documentation shall be written immediately, or as soon thereafter as possible, after the procedure or treatment was implemented with the date and time specified, unless otherwise instructed in writing by Medicaid. Documentation is further described in the Medicaid school services manual. Skilled nursing services documentation shall otherwise be in accordance with the Virginia Board of Nursing, Department of Health, and Department of Education statutes, regulations, and standards relating to school health. Documentation shall also be in accordance with school division standards.

8. Service limitations. The following general conditions shall apply to reimbursable skilled nursing services in school divisions:

- a. Patient must be under the care of a physician or nurse practitioner who is legally authorized to practice and who is acting within the scope of his license.
- b. A recertification by a physician or nurse practitioner of the skilled nursing services shall be conducted at least once each school year. The recertification statement must be signed and dated by the physician or nurse practitioner who reviews the plan of care, and may be obtained when the plan of care is reviewed. The physician or nurse practitioner recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.
- c. Physician or nurse practitioner orders for nursing services shall be required.
- d. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided.
- e. Skilled nursing services are to be terminated when further progress toward the treatment goals are unlikely or when they are not benefiting the child or when the services can be provided by someone other than the skilled nursing professional.

D. Psychiatric and psychological services. Evaluations and therapy services shall be covered when rendered by individuals who are licensed by the Board of Medicine and practice as psychiatrists or by psychologists licensed by the Board of Psychology as clinical psychologists or by school psychologists-limited licensed by the Board of Psychology. Services by these practitioners shall be subject to coverage at 12 VAC 30-50-140 D.

1. Consultation by psychiatric/psychologist providers in meetings for the development, evaluation, or reevaluation of the IEP for specific children shall be covered when the IEP with the psychiatric/psychological services is implemented (based on the dates of services billed to DMAS) as soon as possible after the IEP meeting, not to exceed 60 days, except where there are extenuating circumstances. This consultation is to be billed to DMAS no earlier than the date such services are implemented. No more than two consultations (across all three therapies, nursing, and psychiatric/psychological disciplines) may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by physical therapists, occupational therapists, speech therapists, and nurses. If an IEP eligibility meeting is billed to DMAS, then the subsequent IEP plan meeting must also be billed for any DMAS reimbursement to occur.

2. Extenuating circumstances are recognized regarding the coverage of the IEP consultation when the psychological services cannot be implemented as soon as possible following the effective date of the IEP. Such extenuating circumstances may include, but shall not be limited to, arrangements for transportation, hospitalization of the child, or summer or vacation periods. DMAS or its contractor must approve other extenuating circumstances.

E. Early and periodic screening, diagnosis, and treatment (EPSDT) services. Routine screening services shall be covered for school divisions when rendered by either physicians or nurse practitioners. Diagnostic and treatment services also covered under EPSDT shall not be covered for school divisions. School divisions shall be required to refer children who are identified through health assessment screenings as having potential abnormalities to their primary care physician for further diagnostic and treatment procedures.

F. Specific exclusions from school health services. All services encompassing and related to family planning, pregnancy, and abortion services shall be specifically excluded from Medicaid reimbursement if rendered in the school district setting.

VA.R. Doc. No. R00-89; Filed November 1, 2000, 11:52 a.m.

Title of Regulation: Case Management for Treatment Foster Care:

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-480).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-170).

12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12 VAC 30-80-111).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (adding 12 VAC 30-130-900 through 12 VAC 30-130-950).

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: January 1, 2001.

Summary:

The amendments add coverage of case management for treatment foster care services. Previously, this service was not covered by Medicaid. Including this service under Medicaid coverage will provide federal matching funds for a service that otherwise would be funded with only state and local money.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-50-480. (~~Reserved.~~) Case management for foster care children.

A. Target group. Children or youth with behavioral disorders or emotional disturbances who are referred to treatment foster care by the Family Assessment and Planning Team of the Comprehensive Services Act for Youth and Families (CSA). "Child" or "youth" means any Medicaid eligible individual to 21 years of age who is otherwise eligible for CSA services. Family Assessment and Planning Teams (FAPT) are multidisciplinary teams of professionals established by each locality in accordance with §§ 2.1-753, 2.1-754, and 2.1-755 of the Code of Virginia to assess the needs of referred children. The FAPT shall develop individual services plans for youths and families who are reviewed by the team. The FAPT shall refer those children needing treatment foster care case management to a qualified participating case manager.

B. Services will be provided in the entire state.

C. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services. Case management shall assist individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of a child. Case management services will coordinate services to minimize fragmentation of care, reduce barriers, and link children with appropriate services to ensure comprehensive, continuous access to needed medical, social, educational, and other services appropriate to the needs of the child. The foster care case manager will provide:

1. Periodic assessments to determine clients' needs for psychosocial, nutritional, medical, and educational services.

2. Service planning by developing individualized treatment and service plans to describe what services and resources are needed to meet the service needs of the client and help access those resources. Such service planning shall not include performing medical and psychiatric assessment but shall include referrals for such assessments. The case manager shall collaborate closely with the FAPT and other involved parties in preparation of all case plans.

3. Coordination and referral by assisting the client in arranging for appropriate services and ensuring continuity of care for a child in treatment foster care. The case manager shall link the child to services and supports specified in the individualized treatment and service plan. The case manager shall directly assist the child to locate or obtain needed services and resources. The case manager shall coordinate services and service planning with other agencies and providers involved with the child by arranging, as needed, medical, remedial, and dental services.

4. Followup and monitoring by assessing ongoing progress in each case and ensuring services are delivered. The case manager shall continually evaluate and review each child's plan of care. The case manager shall collaborate with the FAPT and other involved parties on reviews and coordination of services to youth and families.

5. Education and counseling by guiding the client and developing a supportive relationship that promotes the service plan.

E. Provider participation. Any public or private child-placing agency licensed or certified by the Department of Social Services for treatment foster care may be a provider of treatment foster care case management.

Providers may bill Medicaid for case management for children in treatment foster care only when the services are provided by qualified treatment foster care case managers. The case manager must meet, at a minimum, the case worker qualifications found in the Minimum Standards for Licensed Child-Placing Agencies (22 VAC 40-130-10 et seq.).

F. Freedom of choice. Section 1915(g)(1) of the Act specifies that there shall be no restriction on free choice of qualified providers, in violation of § 1902(a)(23) of the Act. The state assures that there will be no restriction on a recipient's free choice of qualified providers of case management services. In addition, the state assures that case management services will not restrict an individual's free choice of providers of other Medicaid services.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

3. Eligible recipients will be free to refuse case management services.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or

Final Regulations

private entities under other program authorities for this same purpose. The case management services will be funded from Medicaid service funds, not administrative. This case management service shall not be construed as case management under EPSDT.

12 VAC 30-60-170. ~~(Reserved.)~~ Utilization review of treatment foster care case management services (TFC).

A. Service description and provider qualifications. TFC case management is a community-based program where treatment services are designed to address the special needs of children. TFC case management focuses on a continuity of services, is goal directed, results oriented, and emphasizes permanency planning for the child in care. Services shall not include room and board. Child-placing agencies licensed or certified by the Virginia Department of Social Services and that meet the provider qualifications for treatment foster care set forth in Part XV (12 VAC 30-130-900 et seq.) of this chapter shall provide these services.

B. Utilization control.

1. Assessment. Each child referred for TFC case management must be assessed by a Family Assessment and Planning Team (FAPT) under the Comprehensive Services Act or by an interdisciplinary team approved by the State Executive Council. The team must (i) assess the child's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities; (ii) assess the potential for reunification of the child's family; (iii) set treatment objectives; and (iv) prescribe therapeutic modalities to achieve the plan's objectives.

2. Qualified assessors. A qualified assessor is a Family Assessment and Planning Team as authorized under §§ 2.1-753, 2.1-754, and 2.1-755 of the Code of Virginia.

3. Preauthorization. Preauthorization shall be required for Medicaid payment of TFC case management services for each admission to this service and will be conducted by DMAS or its utilization management contractor. When service is authorized, an initial length of stay will be assigned. The provider must request authorization for continued stay. Failure to obtain authorization of Medicaid reimbursement for this service within 10 days of admission will result in denial of payments or recovery of expenditures.

4. Medical necessity criteria. Children whose conditions meet this medical necessity criteria will be eligible for Medicaid payment for TFC case management. TFC case management will serve children under age 21 in treatment foster care who are seriously emotionally disturbed (SED) or children with behavioral disorders who in the absence of such programs would be at risk for placement into more restrictive residential settings such as psychiatric hospitals, correctional facilities, residential treatment programs or group homes. The child must have a documented moderate to severe impairment and moderate to severe risk factors as recorded on a state-designated uniform assessment instrument. The child's condition must meet one of the three levels described below.

a. Level I: Moderate impairment with one or more of the following moderate risk factors as documented on the state-designated uniform assessment instrument:

- (1) Needs intensive supervision to prevent harmful consequences;
- (2) Moderate/frequent disruptive or noncompliant behaviors in home setting [~~which~~ that] increase the risk to self or others;
- (3) Needs assistance of trained professionals as caregivers.

b. Level II: Child must display a significant impairment with problems with authority, impulsivity and caregiver issues as documented on the state-designated uniform assessment instrument. For example, the child must:

- (1) Be unable to handle the emotional demands of family living;
- (2) Need 24-hour immediate response to crisis behaviors; or
- (3) Have severe disruptive peer and authority interactions that increase risk and impede growth.

c. Level III: Child must display a significant impairment with severe risk factors as documented on the state-designated uniform assessment instrument. Child must demonstrate risk behaviors that create significant risk of harm to self or others.

5. TFC case management admission documentation required. Before Medicaid preauthorization will be granted, the referring entity must submit the following documentation. The documentation will be evaluated by DMAS or its designee to determine whether the child's condition meets the department's medical necessity criteria.

- a. A completed state-designated uniform assessment instrument;
- b. Diagnosis (Diagnostic Statistical Manual, Fourth Revision (DSM IV), including Axis I (Clinical Disorders); Axis II (Personality Disorders/Mental Retardation); Axis III (General Medical Conditions); Axis IV (Psychosocial and Environmental Problems); and Axis V (Global Assessment of Functioning);
- c. A description of the child's immediate behavior prior to admission;
- d. A description of alternative placements tried or explored;
- e. The child's functional level;
- f. Clinical stability;
- g. The level of family support available;
- h. Initial plan of care; and
- i. One of the following:

(1) Written documentation that the Community Planning and Management Team (CPMT) has approved the admission to treatment foster care; or

(2) Certification by the FAPT that TFC case management is medically necessary.

6. Penalty for failure to obtain preauthorization or to prepare and maintain the previously described documentation. The failure to obtain authorization for this service within 10 days of admission or to develop and maintain the documentation enumerated above will result in denial of payments or recovery of expenditures.

12 VAC 30-80-111. Treatment foster care (TFC) case management.

The Medicaid agency will reimburse providers for the covered services for TFC case management for each eligible child at the daily rate agreed upon between the local Community Policy and Management Team (CPMT) in the locality [~~which~~ that] is responsible for the child's care and the TFC case management provider. This daily rate shall be based upon the intensity of the case management needed by the child and be subject to an upper limit set by the Medicaid agency. DMAS shall pay the lesser of the rate negotiated by the CPMT or the maximum rate established by the department.

PART XV.

CASE MANAGEMENT TREATMENT FOSTER CARE SERVICES.

12 VAC 30-130-900. Definitions.

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

"Case management" means an activity, including casework, [~~which~~ that] assists Medicaid eligibles in gaining and coordinating access to necessary care and services appropriate to his needs.

"Casework" means both direct treatment with an individual or several individuals, and intervention in the situation on the client's behalf. The objectives of casework include meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening distress, and enhancing opportunities and capacities for fulfillment.

"Child" means any individual less than 18 years of age or under 21 if placed by a local department of social services or through referral from a Family Assessment and Planning Team.

"Child's family" means the birth or adoptive parent or parents, legal guardian or guardians, or family to whom the child may return.

"Child placing agency," "agency" or "agencies" means any person who places children in foster homes, adoptive homes, child-caring institutions or independent living arrangements in response to §§ 63.1-204, 63.1-205, and [~~63.1-220.2~~ 63.1-219.28] of the Code of Virginia or a local board of public welfare or social services that places children in foster homes

or adoptive homes pursuant to §§ 63.1-56, 63.1-204, and [~~63.1-220.2~~ 63.1-219.28] of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or of any county, city, or town, acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed if authorized by the Code of Virginia to provide the services of a child-placing agency.

"Client" means Medicaid-eligible and enrolled individual.

"Community Planning and Management Team" means a team described in § 2.1-750 of the Code of Virginia.

"Comprehensive Services Act" means § 2.1-745 et seq. of the Code of Virginia.

"Department" or "DMAS" means the Department of Medical Assistance Services.

"Family Assessment and Planning Team" means a team described in §§ 2.1-753, 2.1-754, and 2.1-755 of the Code of Virginia.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or child-placing agency.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child under age 21 who is abused or neglected as defined, except for age, in § 63.1-248.2 of the Code of Virginia or in need of services as defined in § 16.1-228 of the Code of Virginia and to his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or the public agency designated by the community policy and management team and the parents or guardians, and (iii) has been committed or entrusted to a local board of social services or child-placing agency.

"Foster home" means the place of residence of any individual or individuals approved by a local department of social services or licensed child placing agency in which any child other than a child by birth or adoption resides as a member of the household.

"Initial plan of care" means a written plan [~~which~~ that] delineates the services that are to be provided to the child at admission.

"Records" means the written information assembled in a file relating to the agency, staff, volunteers, the child, the child's birth family, the child's foster family, the child's treatment foster family, and the child's adoptive family.

"Treatment" is the coordinated provision of services and use of professionally developed and supervised interventions designed to produce a planned outcome in a person's behavior, attitude, emotional functioning or general condition.

"Treatment and service plan" means a written comprehensive plan of care, based on an assessment of the

Final Regulations

medical, psychological, social, behavioral and developmental aspects of the child's situation, containing measurable goals, procedures and interventions for achieving them, and a process for assessing the results. The treatment plan must state the treatment objectives; prescribe an integrated program of therapies, activities, and experiences designed to meet the objectives; and must include coordination with related community services to ensure continuity of care with the child's family, school and community.

"Treatment foster care (TFC)" means a community-based program where services are designed to address the special needs of children. Services to the children are delivered primarily by treatment foster parents who are trained, supervised, and supported by agency staff. Treatment is primarily foster family based and is planned and delivered by a treatment team.

Treatment foster care focuses on a continuity of services, is goal-directed, results oriented, and emphasizes permanency planning for the child in care.

"Treatment team" means the group that may consist of the child, professional agency staff, other professionals, the child's family members (where appropriate), and the child-placing agency and treatment foster parents who provide mutual support, evaluate treatment, and design, implement and revise the treatment and service plan.

12 VAC 30-130-910. Targeted case management for foster care children in treatment foster care covered services.

Service description. Case management is a component of treatment foster care (TFC) through which a case manager or caseworker provides treatment planning, treatment services, monitors the treatment plan and links the child to other community resources as necessary to address the special identified needs of the child. Services to the children shall be delivered primarily by treatment foster parents who are trained, supervised and supported by professional child-placing agency staff. TFC case management focuses on a continuity of services, is goal directed, results oriented, and emphasizes permanency planning for the child in care. Services shall not include room and board. The following activities are considered covered services related to TFC case management services.

1. Placement activities, which may include, but are not restricted to, care planning, placement monitoring, and discharge planning;
2. Case management and casework services; and
3. Supervision of foster parents to evaluate the effectiveness of the child's plan of treatment.

12 VAC 30-130-920. Provider qualifications.

A. License or certification. Treatment foster care case management shall be provided by child-placing agencies with treatment foster care programs that are licensed or certified by the Virginia Department of Social Services to be in compliance with the Minimum Standards for Licensed Child-Placing Agencies (22 VAC 40-130-10 et seq.) and meet the

provider qualifications for treatment foster care set forth in this part.

B. Caseload size.

1. The treatment foster care case manager shall have a maximum of 12 children in his caseload for a full-time professional staff person. The caseload shall be adjusted downward if:

a. The caseworker's job responsibilities exceed those listed in the agency's job description for a caseworker, as determined by the supervisor; or

b. The difficulty of the client population served requires more intensive supervision and training of the treatment foster parents.

c. Exception: A caseworker may have a maximum caseload of 15 children as long as not more than 10 of the children are in treatment foster care and the above criteria for adjusting the caseload downward do not apply.

2. There shall be a maximum of six children in the caseload for a beginning trainee that may be increased to nine by the end of the first year and 12 by the end of the second year.

3. There shall be a maximum of three children in a caseload for a student intern if any student intern works in the agency.

12 VAC 30-130-930. Organization and administration requirements.

A. These standards shall be met by any enrolled provider signing an agreement with DMAS to provide case management services to children in treatment foster care.

B. A Medicaid enrolled treatment foster care case management provider must be licensed by the Department of Social Services (DSS) as a child-placing agency with treatment foster care as defined in this part or shall be certified by DSS as designated by DMAS to meet all the requirements of this part. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed but shall be required to be certified to meet all the requirements of this part by the DSS.

C. Treatment and service plans in treatment foster care.

1. The treatment foster care case management provider shall prepare and implement an individualized treatment and service plan for each child in its care. When available, the parents shall be consulted unless parental rights have been terminated. If the parents cannot be consulted, the agency shall document the reason in the child's record.

2. When the treatment foster care case management provider holds custody of the child, a service plan shall be filed with the court within 60 days after the agency receives custody unless the court grants an additional 60 days, or the child is returned home or placed for adoption

within 60 days. Providers with legal custody of the child shall follow the requirements of §§ 16.1-281 and 16.1-282 of the Code of Virginia.

3. The permanency planning goals and the requirements and procedures in the Department of Social Services Service Programs Manual, Volume VII, Section III, Chapter B, "Preparing the Initial Service Plan" may be consulted.

4. The initial plan of care for services to the child must be developed within two weeks of placement [~~consistent with 22 VAC 40-130-640~~].

5. Comprehensive treatment and service plan. The case manager and other designated child-placing agency staff shall develop and implement for each child in care an individualized comprehensive treatment and service plan within the first 45 days of placement that shall include:

a. A comprehensive assessment of the child's emotional, behavioral, educational, nutritional, and medical needs;

b. The treatment goals and objectives including the child's specific problems, behaviors and skills to be addressed, the criteria for achievement and target dates for each goal and objective;

c. The treatment foster care case management provider's program of therapies, activities and services, including the specific methods of intervention and strategies designed to meet the above goals and objectives, and describing how the provider is working with related community resources, including the child's primary care physician [,] to provide a continuity of care;

d. The permanency planning goals and objectives, services to be provided for their achievement, and plans for reunification of the child and the child's family, where appropriate [; . Unless specifically prohibited by court order, foster children shall have access to regular contact with their families.]

e. The target date for discharge from the program;

f. For children age 16 and over, the plan shall include a description of the programs and services that will help the child transition from foster care to independent living; and

g. The dated signature of the case manager and the identity of all members of the treatment team that participated in the plan's development.

6. The case manager shall include and work with the child, the custodial agency, the treatment foster parents and the parents, where appropriate, in the development of the treatment and service plan and a copy shall be provided to the custodial agency. A copy shall be provided to the treatment foster parents as long as confidential information about the child's birth family is not revealed. A copy shall be provided to the parents, if appropriate, as long as confidential information about the treatment foster parents is not revealed. If any of these

parties do not participate in the development of the treatment and service plan, the case manager shall document the reasons in the child's record.

7. The case manager shall provide supervision, training, support and guidance to foster families in implementing the treatment and service plan for the child.

8. The case manager shall arrange for and encourage contact and visitation between the foster child, his family and others as specified in the treatment and service plan.

D. Progress report and ongoing services plans.

1. The case manager shall complete written progress reports beginning 90 days after the date of the child's placement and every 90 days thereafter.

2. The progress report shall specify the time period covered and include:

a. Progress on the child's specific problems and behaviors and any changes in the methods of intervention and strategies to be implemented:

(1) Description of the treatment goals and objectives met, goals and objectives to be continued or added, the criteria for achievement and target dates for each goal and objective;

(2) Description of the therapies, activities, and services provided during the previous 90 days toward the treatment goals and objectives; and

(3) Any changes needed for the next 90 days;

b. Services provided during the last 90 days towards the permanency planning goals, including plans for reunification of the child and family or placement with relatives, any changes in these goals, [the criteria for achievement and target dates for each goal and objective,] and services to be provided during the next 90 days;

c. The child's assessment of his progress and his description of services needed, where appropriate;

d. Contacts between the child and the child's family, where appropriate;

e. Medical needs, specifying medical treatment provided and still needed and medications provided;

f. An update to the discharge plans, including the projected discharge date; and

g. A description of the programs and services provided to children ages 16 and older to help the child transition from foster care to independent living, where appropriate.

3. Annually, the progress report shall address the above requirements as well as evaluate and update the comprehensive treatment and service plan for the upcoming year.

4. The case manager shall date and sign each progress report.

Final Regulations

5. The case manager shall include each child who has the ability to understand in the preparation of the child's treatment and service plans and progress reports or document the reasons this was not possible. The child's comments shall be recorded in the report.

6. The case manager shall include and work with the child, the treatment foster parents, the custodial agency and the parents, where appropriate, in the development of the progress report. A copy shall be provided to the placing agency worker and, if appropriate, to the treatment foster parents.

E. Contacts with child.

1. There shall be face-to-face contact between the case manager and the child, based upon the child's treatment and service plan and as often as necessary to ensure that the child is receiving safe and effective services.

2. Face-to-face contacts shall be no less than twice a month, one of which shall be in the foster home. One of the contacts shall include the child and at least one treatment foster parent and shall assess the relationship between the child and the treatment foster parents.

3. The contacts shall assess the child's progress, provide training and guidance to the treatment foster parents, monitor service delivery, and allow the child to communicate concerns.

4. A description of all contacts shall be documented in the narrative.

5. Children who are able to communicate shall be interviewed privately at least once a month.

6. Unless specifically prohibited by court or custodial agency, foster children shall have access to regular contact with their families as described in the treatment and service plan.

7. The case manager shall work actively to support and enhance child/family relationships and work directly with the child's family toward reunification as specified in the treatment and service plan.

8. The case manager shall record all medications prescribed for each child and all reported side effects or adverse reactions.

F. Professional clinical or consultative services. In consultation with the custodial agency, the case manager or caseworker shall provide or arrange for a child to receive psychiatric, psychological, and other clinical services if the need for them has been recommended or identified.

G. Narratives in the child's record. Narratives shall be in chronological order and current within 30 days. Narratives shall include areas specified in this part and shall cover:

1. Treatment and services provided;
2. All contacts related to the child;
3. Visitation between the child and the child's family; and
4. Other significant events.

H. Treatment teams in treatment foster care.

1. The treatment foster care case management provider shall ensure that a professional staff person provides leadership to the treatment team that includes:

a. Managing team decision making regarding the care and treatment of the child and services to the child's family;

b. Providing information and training as needed to treatment team members; and

c. Involving the child and the child's family in treatment team meetings, plans, and decisions, and keeping them informed of the child's progress, whenever possible.

2. Treatment team members shall consult as often as necessary, but at least on a quarterly basis.

12 VAC 30-130-940. Discharge from care.

A. A discharge summary shall be developed for each child and placed in the child's record within 30 days of discharge. It shall include the date of and reason for discharge, the name of the person with whom the child was placed or to whom he was discharged, and a description of the services provided to the child and progress made while the child was in care. Written recommendations for aftercare shall be made for each child prior to the child's discharge. Such recommendations shall specify the nature, frequency, and duration of aftercare services to be provided to the child and the child's family.

B. The summary shall also include an evaluation of the progress made [~~towards~~ toward] the child's treatment goals.

C. Discharge planning shall be developed with the treatment team and with the child, the child's parents or guardian, and the custodial agency.

D. Children in the custody of a local department of social services or private child-placing agency shall not be discharged without the knowledge, consultation, and notification of the custodial agency.

12 VAC 30-130-950. Entries in case records.

All entries shall be dated and shall identify the individual who performed the service. If a treatment foster care case management provider has offices in more than one location, the record shall identify the office that provided the service. Each child's record shall contain documentation that verifies the services rendered for billing.

<p>NOTICE: The forms used in administering 12 VAC 30-130-10 et seq., Amount, Duration and Scope of Selected Services, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>

FORMS

Forms accompanying Part II of this chapter:

Virginia Uniform Assessment Instrument.

Forms accompanying Part III of this chapter:

MI/MR Supplement Level I (form and instructions).

MI/MR Supplement Level II.

Forms accompanying Part VII of this chapter:

Request for Hospice Benefits DMAS-420, Revised 5/91.

Forms accompanying Part VIII of this chapter:

Inventory for Client and Agency Planning (ICAP)
Response Booklet, D9200/D9210, 1986.

Forms accompanying Part IX of this chapter:

Patient Information form.
Instructions for Completion DMAS-122 form.

Forms accompanying Part XII of this chapter:

Health Insurance Premium Payment (HIPP) Program
Insurance Information Request Form.
Health Insurance Premium Payment (HIPP) Program
Medical History Form (HIPP Form-7, Rev. 11/92).
Health Insurance Premium Payment (HIPP) Program
Employers Insurance Verification Form (HIPP Form-2,
Rev. 11/92).
Health Insurance Premium Payment (HIPP) Program
Employer Agreement (HIPP Form-3, Rev. 11/92).
Health Insurance Premium Payment (HIPP) Program
Notice of HIPP Determination (HIPP Form-4, Rev.
11/92).
Health Insurance Premium Payment (HIPP) Program
Notice of HIPP Approval.
Health Insurance Premium Payment (HIPP) Program
Notice of HIPP Status (HIPP Form-6, Rev. 11/92).
Inventory for Client and Agency Planning (ICAP)
Response Booklet, D9200/D9210, 1986.

Forms accompanying Part XIV of this chapter:

*Treatment Foster Care Case Management Agreement,
TFC CM Provider Agreement DMAS-345, FH/REV (eff.
10/20/99).*

Final Regulations

DO NOT WRITE IN SHADED AREAS. DO NOT ADD CONDITIONS TO THE AGREEMENT. WE DO NOT ACCEPT AGREEMENTS VIA FAX OR AGREEMENTS ON THERMAL PAPER.

Commonwealth of Virginia
Department of Medical Assistance Services
Medical Assistance Program

Treatment Foster Care Case Management Agreement

If re-enrolling, enter Medicaid Provider Number here→ _____

Check this box if requesting new number→ ☐

This is to certify:	PAYMENT/CORRESPONDENCE ADDRESS	PHYSICAL ADDRESS (REQUIRED IF DIFFERENT FROM PAYMENT ADDRESS)
NAME		
ATTENTION		
ADDR LINE 1		
ADDR LINE 2		
CITY, STATE, ZIP		

on this _____ day of _____, _____ agrees to participate in the Virginia Medical Assistance Program (VMAP), the Department of Medical Assistance Services, the legally designated State Agency for the administration of Medicaid.

1. The provider will provide Treatment Foster Care Case Management Services.
2. Services will be provided without regard to age, sex, race, color, religion, national origin, or type of illness or condition. In accordance with the terms of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), no handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in VMAP.
3. The provider agrees to keep such records as VMAP determines necessary. The provider will furnish VMAP on request information regarding payments claimed for providing services under the State Plan. Access to records and facilities by authorized VMAP representatives and the Attorney General of Virginia or his authorized representatives, and authorized federal personnel will be permitted upon reasonable request.
4. The provider agrees to care for patients at the lesser of the rate established by the Community Planning and Management Team or the current maximum rate established by VMAP as of the date of service.
5. Payment made under VMAP constitutes full payment for treatment foster care case management on behalf of the recipient except for patient pay amounts determined by VMAP, and the provider agrees not to submit additional charges to the recipient or the Community Planning and Management Team for treatment foster care case management services covered under VMAP. The collection or receipt of any money, gift, donation or other consideration from or on behalf of a VMAP recipient for any service provided under VMAP is expressly prohibited and may subject the provider to federal or state prosecution.
6. The provider agrees to pursue all other health care resources of payment prior to submitting a claim to VMAP.
7. Payment by VMAP at its established rates for the services involved shall constitute full payment for the services rendered. Should an audit by authorized state or federal officials result in disallowance of amounts previously paid to the provider by VMAP, the provider shall reimburse VMAP upon demand.
8. The provider agrees to comply with all applicable state and federal laws, as well as administrative policies and procedures of VMAP as from time to time amended.
9. This agreement may be terminated at will on thirty days' written notice by either party or by VMAP when the provider is no longer eligible to participate in the program.
10. All disputes regarding provider reimbursement and/or termination of this agreement by VMAP for any reason shall be resolved through administrative proceedings conducted at the office of VMAP in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be pursuant to the Virginia Administrative Process Act.
11. The provider agrees, at all times, to retain full responsibility for any and all performance under this agreement, whether performed by the provider or others under contract to the provider.

~~12. This agreement shall commence on _____ and terminate on _____.~~

For First Health's use only

Director, Division of Program Operations	Date
--	------

IRS Name (Required)
mail completed First Health - VMAP-Provider Enrollment Unit
original agreement 4461 Cox Rd. Suite 102
to: Glen Allen, VA 23060-3331

For Provider of Services:

Original Signature of Provider	Date
Title	
City OR County of	
IRS Identification Number	(Area Code) Telephone Number

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20 VAC 5-202-10 et seq. **Regulations Governing the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act (PUA000029).**

Statutory Authority: §§ 12.1-13 and 56-590 of the Code of Virginia.

Effective Date: October 20, 2000.

Summary:

The regulations implement § 56-590 of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) wherein incumbent electric utilities are required to (i) functionally separate their generation, transmission and distribution services by January 1, 2002, and (ii) submit applications for such purpose to the commission by January 1, 2001. The regulations principally address (i) permissible relations between affiliated functionally separate entities resulting from this process and (ii) the requirements that applications for functional separation submitted to the commission must satisfy.

Agency Contact: Susan Larsen, Deputy Director, Division of Public Utility Accounting, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9950 or e-mail Sdlarsen@scc.state.va.us. There is a copy charge of \$1.00 for the first two pages and \$.50 for each additional page.

AT RICHMOND, OCTOBER 19, 2000

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUA000029

Ex Parte: In the matter concerning the Functional separation of incumbent electric Utilities under the Virginia Electric Utility Restructuring Act.

FINAL ORDER

This Order promulgates regulations governing the functional separation of incumbent electric utilities' generation, transmission and distribution services by January 1, 2002. Section 56-590 of the Virginia Electric Utility Restructuring Act ("the Act") establishes the functional

separation requirement, and directs incumbent electric utilities to submit proposed functional separation plans to the Virginia State Corporation Commission ("the Commission") by January 1, 2001. The Commission is directed by § 56-590 to promulgate rules and regulations in furtherance of its provisions "to the extent necessary to promote effective competition in the Commonwealth."

On April 18, 2000, the Commission issued an order inviting interested persons to file comments or request a hearing concerning proposed regulations implementing the provisions of § 56-590 that were attached to that Order. Comments and requests for hearing were to be filed on or before May 22, 2000. However, on May 15, 2000, Virginia Electric and Power Company ("Virginia Power"), The Potomac Edison Company d/b/a/ Allegheny Power ("Allegheny"), and thirteen jurisdictional electric cooperatives, together with Old Dominion Electric Cooperative, and the Virginia, Maryland & Delaware Association of Electric Cooperatives ("the Cooperatives") filed a joint motion for an extension of time in which to file comments and requests for hearing in this proceeding. The Commission, thereafter, by order dated May 19, 2000, extended the time to file comments concerning the proposed rules to June 12, 2000.

The following parties filed comments concerning the proposed rules: Virginia Power; AEP-Virginia ("AEP"); the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Allegheny; the Cooperatives (filing jointly); the Virginia Independent Power Producers, Inc. ("Independent Power Producers"); Washington Gas Light Company ("Washington Gas"); the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates (filing jointly) ("the Committees"); Kentucky Utilities Company d/b/a/ Old Dominion Power Company ("Kentucky Utilities"); and RGC Resources, Inc. ("RGC"). No party requested a hearing.

NOW UPON CONSIDERATION of the pleadings and comments filed herein, we find that we should adopt the rules appended to this order as Attachment A, applicable to the implementation of § 56-590 of the Act, effective as of the date of this Order. While we will not review each rule in detail, we will comment briefly on several of them.

First, we note that Kentucky Utilities and the Cooperatives have requested certain exemptions from the operation of the rules we adopt in this Order. In the case of Kentucky Utilities, that company states that it has no generation facilities and only limited transmission facilities located in Virginia, and that its Virginia operations account for less than five percent of its overall business operations. Consequently, Kentucky Utilities asks the Commission to accept in fulfillment of § 56-590's requirements, Kentucky Utilities' compliance with a code of conduct established under Kentucky law (HB 897 of 2000) that governs relations between utilities and their affiliates. The Cooperatives have requested that the final regulations include within the definition of "affiliated generation company" and "transmission provider," exemptions for those assets or facilities operated by an incumbent electric utility primarily for the maintenance and control of the distribution function. The Cooperatives have also proposed other exemptions, including an exemption for electric cooperatives that purchase all of

Final Regulations

their generation from the Tennessee Valley Authority ("TVA"), from any provisions of the Commissions' rules that may conflict with retail rates set for any such cooperative by TVA.

Section 56-590 does not authorize the Commission to exempt any incumbent electric utility from the requirement to file a functional separation plan with the Commission by January 1, 2001. However, certain provisions of these rules may be inapplicable in certain circumstances. Consequently, we have established in 20 VAC 5-202-50 A a procedure for reviewing waiver requests, such as those raised by Kentucky Utilities and the Cooperatives, on a case-by-case basis. This procedure is consistent with the approach we have taken in other restructuring-related rulemakings, and offers, in our estimation, an orderly manner in which to take up concerns such as those described above.

Second, we address the definition of "generation company" in 20 VAC 5-202-20 as a person "owning, controlling, or operating a facility that produces electric energy for sale to *wholesale customers*." (emphasis supplied). Consumer Counsel suggests that the definition be expanded to include generation companies that provide sales at retail. However, we believe that limiting the applicability of these regulations to generation companies making sales at wholesale will eliminate potentially confusing overlap between these rules and the Interim Rules Governing Electric and Natural Gas Retail Access Pilot Programs ("pilot rules") adopted in Case No. PUE980812. Any company that makes retail sales must be licensed as a competitive service provider and is subject to the pilot rules. Moreover, if parties are concerned about potential gaps between these two sets of rules as to the treatment of incumbent electric utilities and their affiliates, we note that their provisions are virtually identical. In that vein, AEP and Allegheny question in their comments whether utilities that are registered holding companies should be subject to the asymmetrical pricing standard set forth in 20 VAC 5-202-30 B 5. We note that the pilot rules impose an identical requirement in 20 VAC 5-311-30 A 10. Additionally, Virginia Power, AEP and Kentucky Utilities question the necessity of the provisions of 20 VAC 5-202-30 B 6 and 7 that place reporting requirements on affiliated generation companies pertaining to tracking of employees; the companies' affiliate relationships with local distribution companies; and complaint investigations. We believe these requirements are appropriate and necessary. Moreover, they parallel similar requirements established in the pilot rules under 20 VAC 5-311-30 A 9 c, 20 VAC 5-311-20 B 6 c, and 20 VAC 5-311-60 G.

Both the Consumer Counsel and the Committees have expressed concern in their comments that provisions in 20 VAC 5-202-30 may have the effect of making permanent the provisions of the pilot rules concerning affiliate relationships. The Commission has, as much as possible, made the affiliate requirements in these rules mirror those in the pilot rules. At this point in time, we believe it would be inappropriate to apply any restrictions in these rules concerning affiliate relations that are tighter than those imposed in the pilot rules. We would note, however, that as the restructuring process advances along its statutory timeline, we would anticipate changes in the provisions of

20 VAC 5-202-30 corresponding to the competitive market's development and evolution.

Third, AEP, Virginia Power, and Allegheny opposed the requirements of proposed 20 VAC 5-202-40 B 6 requiring that incumbent electric utilities provide the fair market value of generation assets, even if they intend to transfer these assets at book value. These companies contend that to the extent that transfers to functionally separate units will be made at book value, a market valuation is unnecessary. Similarly, AEP, Virginia Power, and the Independent Power Producers opposed a related requirement in proposed 20 VAC 5-202-40 B 6 requiring that incumbent electric utilities provide a year-by-year fair market valuation of long-term power contracts. In our view, the fair market value of (i) generation assets at the time of their sale or transfer, and (ii) long-term power contracts on a year-to-year basis is information that is critical to the Legislative Transition Task Force's ("LTTF") assessment of stranded cost recovery pursuant to the provisions of § 56-595. However, while the Commission is required by this statute to assist the LTTF in monitoring stranded cost recovery, we will defer to the LTTF to determine as soon as possible, by resolution or some other specific directive to the Commission, whether it will want this information for its use in monitoring utilities' recovery of stranded costs. Thus, in final rule 20 VAC 5-202-40 B 6 c, the fair market valuation of generation assets and purchase power contracts will be required by the Commission if and when the LTTF directs the Commission to obtain that information for its use pursuant to the LTTF's obligations under § 56-595 of the Act.

Fourth, our final rules respond to AEP's concerns regarding proposed rule 20 VAC 5-202-40 B 10, and its treatment of potentially confidential, proprietary or competitively sensitive information. As proposed, the rule permitted an incumbent electric utility to request confidential treatment for any information submitted as part of a functional separation plan, and to furnish the reasons for such requested treatment. AEP believes that the rule should go further to require preliminary, confidential treatment of such information by the Commission pending its final determination of confidentiality. Moreover, AEP believes it should have the opportunity to withdraw any information it deems confidential if the Commission decides to permit its public disclosure, e.g., if the Commission determines that in its view the information is not confidential, proprietary, etc. We have responded to AEP's concerns in 20 VAC 5-202-50 B of the final rules by permitting any filing containing information declared confidential by the applicant to be filed under seal, while also making provision for public disclosure of redacted versions. Such information will be treated as confidential pending the Commission's ultimate determination of its appropriate treatment. However, unredacted versions must be made available by any such incumbent for immediate, internal use by the Commission's Staff.

Fifth, with respect to the functional separation plan filing requirements detailed in 20 VAC 5-202-40, we note that substantially less information is required to be filed under the rule we adopt today, as compared to the provisions of 20 VAC 5-202-40 when issued for comment under our April 18, 2000, order. For example, we have eliminated the

filing of information concerning (i) the likely impact of proposed functional separation on the capital structure of incumbent utilities, (ii) anticipated long term capital structures of the functionally separate entities resulting from proposed functional separation plans, (iii) mediation steps taken to avoid violating any existing debt indentures, (iv) expected transaction costs or refinancing costs required to effect functional separation, (v) changes to existing credit support arrangements, (vi) intended use of cash proceeds in the event of divestiture, (vii) methods proposed for allocating any net gains or net losses between ratepayers and shareholders in the event of divestiture, (viii) any current or anticipated Securities and Exchange Commission authorizations for securities to be issued in connection with a functional separation plan, and (ix) proposed dividend policies concerning dividends from any proposed functionally separate entity to any parent entities following functional separation. We have eliminated from the final rules the filing requirements described above because, in our view, information falling into these categories can be requested by the Staff on a case-by-case basis under the Commission's discovery rules, if and when such information is required in the public interest.

Sixth, we have provided in 20 VAC 5-202-50 C that, except for good cause shown, incumbent electric utilities planning to transfer generation assets in connection with their functional separation shall submit Transfers Act applications concurrent with the filing of their functional separation plan. We believe this will help streamline the process for the incumbents and the Commission.

Seventh, 20 VAC 5-202-40 B 7 requires that each functional separation plan include a detailed cost of service study reflecting total company and total Virginia operations. The cost of service study must be based upon a test year beginning no earlier than January 1, 1999. This information is essential to the unbundling of utilities' rates for purposes of determining (i) unbundled generation rates to be utilized in calculating wires charges for shopping customers pursuant to § 56-583, and (ii) unbundled distribution and transmission rates to be utilized during the capped rate period under § 56-582. We note that we have eliminated from the adopted version of this rule, the requirement in the proposed version of rule that the seven-factor test set forth in Order 888 of the Federal Energy Regulatory Commission ("FERC") be utilized for the purpose of separating transmission and distribution in conjunction with this unbundling process. We are adopting this approach in the interest of reducing complexity in this part of the application.

Finally, we turn to the provisions of 20 VAC 5-202-40 B 6 g, h, and i in which incumbents are asked to provide assessments of how their functional separation plans advance or satisfy their obligations under the Act to (i) make electric service available at the capped rates established under § 56-582, and (ii) provide default service as a default supplier pursuant to § 56-585. In the case of default service, incumbents are also asked to include a "detailed description of pricing and capacity if the incumbent electric utility proposes to utilize equivalent generation in satisfaction of such obligation." Incumbents intending to utilize equivalent generation are further required to provide an analysis of the cost of retaining generation compared to the cost of obtaining

equivalent generation, if the incumbents intend to divest all or part of their generation assets supporting Virginia load. Finally, these rules also require the incumbents to explain how (i) equivalent generation will provide rates, reliability and capacity comparable to the generation assets currently held by the incumbents and, (ii) obtaining equivalent generation is in the public interest.

The requirements of 20 VAC 5-202-40 B 6 g, h, and i reflect the interaction among §§ 56-590 B 3, 56-582, 56-585 and 56-90. First, § 56-590 B 3 authorizes the Commission to impose conditions, consistent with the public interest, on an incumbent's functional separation plan,

... including requirements that (i) the incumbent electric utility's generation assets or their equivalent remain available for electric service during the capped rate period as provided in § 56-582 [and] during any period the incumbent electric utility serves as a default provider as provided for in § 56-585. ...

Put simply, § 56-590 B 3 authorizes the Commission to ensure that every incumbent's plan for functional separation supports the incumbent's statutory obligation to provide capped rate service and default service as required by the Act. To that end, this statute provides that the Commission may require that incumbents' generation assets remain available, or that equivalent assets remain available to support (i) regulated capped rate service, and (ii) regulated default service. This provision, therefore, places a specific limitation on the exercise of incumbents' discretion to dispose of their generation units in conjunction with the implementation of the Restructuring Act.¹ This requirement complements § 56-90 of the Transfers Act, a provision that prohibits this Commission from approving transfers of utility assets, unless such transfers will not impair or jeopardize adequate service to the public at just and reasonable rates.²

20 VAC 5-202-40 B 6 g, h, and i require the filing of information we believe necessary to discharge our duties under the Restructuring Act; specifically, our obligation to ensure that the generation component of incumbent utilities' capped and default rates can be supported, in fact. Therefore, to the extent that an incumbent's plan for functional separation calls for total or partial divestiture of generation assets supporting Virginia load, our rules require the incumbent to provide this Commission with the information it needs to determine how the incumbent can fulfill its obligations under the Act.

AEP and Virginia Power devoted considerable time to the meaning of the term "generation assets or their equivalent" in their comments opposing the provisions of 20 VAC 5-202-40 B 6 g, h, and i. Virginia Power, for example, asserts that in

¹ This is consistent with the provisions of § 56-577 A 1 stating that on and after January 1, 2002, generation is no longer subject to regulation, *except as otherwise specified in the Restructuring Act*.

² We note that § 56-590 G, explicitly provides that nothing in the Act shall be deemed to abrogate or modify the Commission's authority under Chapter 5 (the Transfers Act). Consonant with that provision, 20 VAC 5-202-50 C requires each incumbent electric utility to file simultaneously with its functional separation plan any Transfers Act application such a utility must make for purposes of transferring assets.

Final Regulations

the context of default service, equivalency pertains only to an amount of capacity and not to the price of that capacity. Thus, under that construction, once capped rates are terminated or expire, any default service provided thereafter will simply be a "pass through" at market rates—whatever those rates may be. AEP takes a somewhat different tack, contending that it is up to each incumbent electric utility—and not this Commission—to decide whether capped and default rates will be supported with utilities' generation assets, or with equivalent assets. Under that view, even a nondivesting utility would be the ultimate arbiter of whether its own generation, or some equivalent, would back its capped rate and default service obligations. Under either view, however, the incumbent's sole obligation concerning default service is reduced simply to keeping energized the distribution lines to customers in their former service territories.

We find no basis for AEP's contention in the plain language of § 56-590 B 3; the statute clearly addresses the authority of the Commission to impose conditions upon functional separation plans in the public interest. The statute makes no reference to incumbent options in this context.

With respect to Virginia Power's default service "pass through" position, we note, preliminarily, that § 56-585 C provides that the rates for default service are regulated rates to be established by the Commission pursuant to Chapter 10 of Title 56—the source of our traditional ratemaking authority—and § 56-585 B 3. Section 56-585 B 3 declares that when incumbents are required to furnish default service, their rates must be fairly compensatory to the utility and "[r]eflect any cost of energy prudently procured, including energy procured from the competitive market" Chapter 10 requires that rates be just and reasonable.

Virginia Power relies on § 56-585 B 3 as a primary basis for its argument that a utility may satisfy its potential default service obligation simply by procuring energy from the competitive market and passing the cost of that capacity through to default customers. Thus, according to the company, default service is merely an assurance of capacity availability, and not the price of that capacity. Consequently, it asserts, the Commission has no basis under § 56-590 B 3 to inquire into the price of any purchased power substituted for an incumbent utility's generation, i.e., purchased power that an incumbent utility might offer in its functional separation plan for purposes of supporting its default service obligation. Under Virginia Power's reading of the Act, if an incumbent electric utility, such as Virginia Power, decides to divest its generation assets, default service electric customers in that utility's service territory will have no regulated rate protections under the Act once capped rates are terminated (potentially between 2004 and 2007) or expire by operation of law on July 1, 2007. In our view, this interpretation does not square with the provisions of the Act, taken as a whole.

Default service, regardless of whether provided before or after the termination or expiration of capped rates, is, by the express terms of § 56-585, provided through rates regulated under the provisions of Chapter 10 and § 56-585 B 3. We do not read § 56-585 B 3 simply as a vehicle for passing through market rates to default service customers. Section 56-585 B 3 provides that the Commission may require an incumbent

utility (or its affiliate) to provide default service at rates that "are fairly compensatory" and reflect prudently purchased power "including energy procured from the competitive market" Virginia Power's argument focuses primarily on a single phrase in § 56-585 B 3 allowing the flow-through of prudently purchased power from the competitive market as the basis for concluding that the Commission may not consider the cost or price aspects of "equivalent" generation in applying § 56-590 B 3. Such an argument would have us ignore the remaining language of that section and the very specific provisions of § 56-585 C and D. This we cannot do; the Act must be considered as a whole.

First, as noted above, § 56-585 B 3 does not refer solely to the pass-through of purchased power from the competitive market. The section provides generally that rates must be "fairly compensatory" and allows the flow-through of purchased power. This is, essentially, a reaffirmation of the basics of regulated rates found in Chapter 10 of Title 56, and protects both the provider and the customer. The language "fairly compensatory" appears to refer to the requirements found in § 56-235.2 that public utilities recover their actual cost of service and a fair rate of return on their rate base used to service jurisdictional customers. Reference to the recovery of prudently incurred purchase power costs in § 56-585 B 3 restates part of § 56-249.6 that authorizes utilities to recover prudently-incurred purchased power costs. There is no suggestion in § 56-585 B 3 or elsewhere that the Commission cannot or should not consider what those costs might be when determining under § 56-590 B 3 whether to require a utility in its functional separation plan to retain its generation assets or their equivalent during the rate cap period, or when the utility serves as a default provider under § 56-585.

The express provisions of § 56-585 C are also critical to our analysis. This section provides that the Commission shall "determine the rates, terms and conditions" of default service consistent with the provisions of § 56-585 B 3 and Chapter 10 of Title 56. The Commission is also authorized to "use any rate method that promotes the public interest" Thus, the Commission is given both direction and discretion in establishing rates for default service. Section 56-585 C leaves no doubt that the Commission is obligated to establish rates for default service. Virginia Power's interpretation of the Act would appear to render the General Assembly's ratemaking directives in § 56-585 C meaningless and further require that we disregard them when applying § 56-590 B 3. We must, however, read the statute as a whole and consider our ratemaking obligations for default service when we examine functional separation plans. Indeed, considering such ratemaking obligations is in furtherance of the public interest standard expressly invoked in § 56-590 B 3. It is, after all, only in the examination of these plans that the Commission can determine whether incumbents will be able to support, in fact, their default service obligations.

Section 56-585 C also requires that the Commission shall "establish such requirements for providers and customers as it finds necessary to promote the reliable and *economic* provision of such services and to prevent the inefficient use of such services." (Emphasis supplied.) Thus, the Commission is required to set rates for default service and to promote "reliable and economic" service. The phrase "reliable and

economic" must inform our construction of "generation assets or their equivalent" in § 56-590 B 3. Simply put, the Commission cannot fulfill its statutory obligation under § 56-585 to determine rates and promote "reliable and economic" default service unless it also requires incumbent electric utilities filing functional separation plans under § 56-590 to have in place generation assets, or their equivalent, sufficient to fulfill the incumbents' price and capacity obligations established under § 56-585.

We also note that under the Act, regulated rate protection for default service customers continues until the General Assembly decides to eliminate or alter its provision. Section 56-585 D requires the Commission to convene annual proceedings (commencing in 2004) to assist the General Assembly in its consideration of this important issue. Specifically, the Commission, after notice and an opportunity for hearing, will determine whether there is a sufficient degree of competition such that default service can be discontinued for particular customers, classes of customers, or geographic areas of the Commonwealth, and that any such discontinuance will not be contrary to the public interest. The Commission will report its findings to the General Assembly and the Legislative Transition Task Force, not later than December 1, 2004, and annually thereafter. The General Assembly has, in § 56-585 D, established an essential connection between the termination of default service and the development of sufficient competition within the Commonwealth. This connection is firmly grounded in the language of § 56-585. Subsections C and D of § 56-585 work together to provide regulated default service and rates to Virginians requiring or desiring it until the market can provide what default service must provide under this statute: reliable and economic service.

It bears emphasizing that the scope of § 56-585 encompasses service for those electric customers that (i) choose not to shop for a competitive supplier, (ii) are unable to shop, or (iii) sign up with a competitive supplier who at some point fails to perform. These customers are aggregated under the term "default service." As evident from the statute's express, ratemaking language, default service is intended to provide reliable and economic electric service to *all* nonshopping customers—but it is particularly critical for those unable to obtain service from competitive suppliers, i.e., the market.

It is also apparent to us that § 56-585 C establishes ratemaking provisions for the purpose of promoting the economic and reliable provision of default service, that are far more elaborate than the mere flow-through of market-priced power. Under long-settled canons of statutory construction, we cannot simply dismiss these rate-setting provisions as excess verbiage.

Thus, the language in § 56-585, taken as a whole, simply does not support the view that default service is little more than "supplier of last resort" service provided at market-based pricing. We, therefore, conclude that the plain language of §§ 56-590 B 3, 56-582, and 56-585, as written, compels us to ensure that incumbents provide reliable and economic generation, or generation equivalents, in support of their capped rate and default service obligations. In our view, these

statutes obligate this Commission to require the information incumbents must provide under 20 VAC 5-202-40 B 6 g, h, and i.

In short, as the Restructuring Act is written, all Virginians have some form of regulated rate protection until competition is deemed to be effective. Section 56-582 provides capped rate protection until July, 2007. The capped rates may be terminated prior to July 2007, upon application of a utility if the Commission determines that there is "an effectively competitive market . . ." for generation service in the utility's service territory. Section 56-585 provides protections for default service that may extend beyond 2007. It is the General Assembly that determines when default service rate protection is to be terminated, presumably when there is effective competition. These rate protections do not perpetuate regulation, but rather protect the public until competition is deemed effective.

As amply evident from our discussion above, the issue of "equivalent generation"—an issue prompted by the provisions of § 56-590 B 3 together with §§ 56-582, and 56-585—has proven to be one of the most controversial issues before the Commission in the course of its rulemaking associated with the Restructuring Act. This is not surprising for three important reasons. First, resolving this issue is more than an academic exercise. Its outcome carries enormous economic implications and will likely determine how quickly incumbents' generation assets will be freed of any residual, public service obligations. Second, the Act itself was the product of three years of intense debate before the General Assembly joint subcommittee charged with determining whether and in what manner electric utility restructuring should come to Virginia. Consequently, virtually every provision in the Act ultimately adopted by the General Assembly as Senate Bill 1269 of 1999 was marked by vigorous contest or hard-fought compromise. Sweeping, complex legislation borne of such circumstances is seldom, when first enacted, the model of precision; the Restructuring Act is no exception. Indeed, it would be surprising if the parties contending over legislation enacted under such circumstances failed to disagree as to the precise meaning of the many new and undefined phrases and terms contained within it. Third, and closely related to the second point, is the Commission's obligation to read and implement this Act as a whole, and not just those of its parts advocated by various interests. Thus, in addressing this "equivalent generation" issue, the Commission has had the task of interconnecting and harmonizing the statutory provisions identified above, none of which state specifically that "generation or its equivalent" does or does not encompass price as well as capacity. The absence of express language has given rise to this controversy. But, the Commission cannot sidestep its responsibilities simply because the issue is controversial. The General Assembly has established in § 56-590 B 2, a functional separation plan filing deadline of January 1, 2001. Thus, the Commission must act now—even in the face of the controversy spawned by the language in § 56-590 B 3—to promulgate these rules and therefore ensure that Virginia's incumbent electric utilities can meet this critical deadline.

It is important to note that § 56-590 B 1 gives this Commission until January 1, 2002, to work with utilities in

Final Regulations

finalizing and implementing their functional separation plans. Consequently, while we have made a determination herein, based on the reasoning set forth in detail above, that price and capacity are, as a matter of our construction of the *entire* Act, contained within the meaning of "generation or its equivalent," the General Assembly has the opportunity in the upcoming 2001 legislative session to undertake a direct and thorough review of this controversial issue. Any statutory amendments resulting from that review will, of course, be integrated into this Commission's review of incumbents' functional separation plans, and likely would not disturb the overall timeline established by the Act. In so doing, the General Assembly may determine that "generation or its equivalent" should have a meaning other than the one we ascribe to it today. Should it choose to do so, however, we would encourage the General Assembly, to address directly—in express, statutory language—whether, and to what extent, default service customers should have any explicit, generation price protection following the termination or expiration of capped rates under the Act. Such legislative action would put to rest this controversy and thus send a clear, unambiguous signal to Virginia's electricity customers, Virginia's incumbent electric utilities, and to competitive electric suppliers concerning the exact nature of Virginia's competitive electricity market following the conclusion of capped rates. In the meantime, however, this Commission has—as we must—provided structure and guidance on this issue through the issuance of these rules, subject to such future legislative clarification as the General Assembly may choose to provide.

Finally, we will, by this order, take a preliminary step in aid of any General Assembly consideration of the generation equivalency and default service issues discussed above. The rules we adopt here today provide that we may grant waivers or exemptions from particular provisions on a case-by-case basis (20 VAC 5-202-50 A). Given the controversy discussed above, we have concluded that it is appropriate to grant, on our own motion, a temporary waiver of those provisions in 20 VAC 5-202-40 B 6 g, h, and i, which would otherwise require incumbent utilities to file information regarding costs, pricing and rates related to incumbents' generation assets or their equivalent. We will not require the filing of this information until April 2, 2001. All other information, including reliability and capacity information relating to incumbents' generation assets or their equivalent, as required by 20 VAC 5-202-40 B 6 g, h, and i, shall, however, be filed on or before January 1, 2001.

Moreover, to the extent that any incumbent electric utility files an application under the Utility Transfers Act, Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia, pursuant to the provisions of 20 VAC 5-202-50 C, an additional waiver is hereby granted to the extent that information concerning the effects of any proposed transfer on existing or prospective rates is not required to be filed until April 2, 2001.³ All other information required to be filed under the Utility Transfers Act

shall, however, be filed with the Commission as prescribed by 20 VAC 5-202-50 C.

Should the General Assembly take action in its 2001 session that would (i) render unnecessary the filing of information concerning costs, pricing or rates under 20 VAC 5-202-40 B 6 g, h, or i, or (ii) affect the filing of rate-related information in conjunction with any Utility Transfers Act application filed pursuant to 20 VAC 5-202-50 C, this Order will be amended accordingly. If, however, no such actions are taken by the 2001 General Assembly, then delaying these filings until April 2, 2001 will simply provide additional time for the incumbent utilities to assemble that information. In either event, we will take no final action based on the costs, price and rate information scheduled to be filed on April 2, 2001, prior to July 2, 2001, in order that we may incorporate the effects of any amendments by the General Assembly to this or any related provision of the Act in our final orders concerning each incumbent's restructuring plan. Thus, as set forth above, interested parties and the public can be assured that we will refrain from taking final action concerning this issue until the General Assembly has had an opportunity to address it in its 2001 legislative session. This action by the Commission, therefore, provides all concerned ample time and opportunity to seek modifications or clarifications of the Act concerning this issue, should they so desire.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt the Regulations Concerning the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act, appended hereto as Attachment A.

(2) Each incumbent electric utility required to file a functional separation plan under the Act and pursuant to the rules we issue herein, is hereby granted a temporary waiver of those provisions in 20 VAC 5-202-40 B 6 g, h, and i, which would otherwise require such utilities to file information regarding costs, pricing and rates related to incumbents' generation assets or their equivalent. Such information is not required to be filed until April 2, 2001. All other information, including reliability and capacity information relating to incumbents' generation assets or their equivalent, as required by 20 VAC 5-202-40 B 6 g, h, and i, shall, however, be filed on or before January 1, 2001.

(3) To the extent that any incumbent electric utility files an application under the Utility Transfers Act, Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia, pursuant to the provisions of 20 VAC 5-202-50 C, information concerning the effects of any proposed transfer on existing or prospective rates is not required to be filed until April 2, 2001. All other information required to be filed under the Utility Transfers Act shall, however, be filed with the Commission as prescribed by 20 VAC 5-202-50 C.

(4) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations.

ATTESTED COPIES of this Order shall be sent by the Clerk of the Commission to: Edward L. Flippen, Esquire,

³ To the extent that the General Assembly decides to take legislative action concerning § 56-590 B 3, we would strongly recommend that such action be taken with due regard to ensuring that any amendments thereto do not create conflicts between the Restructuring Act and § 56-90 of the Utility Transfers Act, Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia.

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Commissioner Miller, dissenting in part and concurring in part:

I write to express my disagreement with the conclusion of my colleagues that Virginia Code §§ 56-585 and 56-590 give us the authority to control the costs of incumbent utilities' generation assets used to support default service under the Restructuring Act. The majority use that conclusion as a basis for adoption of 20 VAC 5-202-40 B 6 g, h, and i. I dissent to the adoption of those rules.¹

For me, there is no ambiguity in the Restructuring Act with respect to the pricing of electric energy beyond July 1, 2007. One of the central tenets of the Act is that the open marketplace is to be, in the future, the "regulator" of prices paid by consumers for electric energy.² While no one would regard this a novel proposition with respect to independent competitive service suppliers, my colleagues have not accepted the propriety of applying this principle to default service under the Act.

Section 56-585.B.3. states that the incumbent electric utility, the distribution utility, or an affiliate thereof, may be required by the Commission to furnish default service. The Act does not set a date by which default service is to end. Sections 56-585.B.3 and

56-585.C specify how the Commission is to regulate default service rates, as I will discuss below.

Section 56-590.B.3 requires that the Commission direct the functional separation of incumbent electric utilities, and states that:

Consistent with this chapter, the Commission may impose conditions, as the public interest requires, upon its approval of the incumbent electric utility's plan for functional separation, including requirements that (i) the incumbent electric utility's generation assets or their equivalent remain available for electric service . . . during any period the incumbent electric utility serves as default provider as provided for in § 56-585

The majority believe that the above provisions of §§ 56-585 and 56-590 authorize the Commission to impose limits on the costs at which generation resources must be devoted to meeting default service requirements, should the incumbent, the distribution company or an affiliate be designated as the default provider. Indeed, this position has found concrete expression, and quantification, in two stipulated cases this year.³ In each case, the staff and parties negotiated, as a part of the stipulations, that generating assets must be made available during an indeterminate default period at cost levels that, in essence, would have prevailed under traditional cost of service regulation.

Before discussing this position in more detail, it will be helpful to examine other key provisions of the Act. This review will put the above Code sections into the competitive context I believe the legislature intended.

Section 56-577.A.3, provides that, effective January 1, 2002, "the generation of electric energy shall no longer be subject to regulation under this title, except as specified in this chapter." Also, § 56-581.A states that: "subject to the provisions of this chapter after the date of customer choice, the Commission shall no longer regulate rates and services for the generation component of retail electric energy sold to retail customers."

While these broad pronouncements favoring competition are admittedly made subject to other portions of the Act, they do set the tone for the overall principle described above, namely, that generation is to be deregulated in Virginia and that, as a necessary consequence, it is the market that is to set prices for electric energy after July 1, 2007.

The Act's provisions affecting capped rates reinforce this principle. Section 56-582.C states that, after January 1, 2004 (not coincidentally, the date by which all customers can "shop"), utilities may petition the Commission to terminate capped rates, and we may do so if we find "an effectively competitive market" for generation services within the service territory.

¹ I also dissent to the adoption of a portion of 20 VAC 5-202-30 B 5 a. The second sentence of that rule provides:

An affiliated generation company shall be compensated at the lower of fully distributed cost or market price for all nontariffed services, facilities and products provided to the local distribution company.

This rule would also suit the majority's purposes by allowing the Commission to ignore market prices if, for example, the local distribution company were to serve as default supplier, but depend on the affiliated generation company for its power supplies. If market prices were higher than "costs," however determined, in that situation, this rule would also produce results at odds with what I believe to be the intent of the Restructuring Act.

² Two exceptions to this principle involve the capped rate period and default services. Each of these is discussed below.

³ *Application of Delmarva Power and Light Co. for approval of a plan for functional separation of generation pursuant to the Virginia Electric Utility Restructuring Act* (Case No. PUE000086) and *Application of Delmarva Power & Light Co., Connectiv Delmarva Generation, Inc., Connectiv Energy Supply, Inc., for approval of transactions under Chapters 4 and 5 of Title 56 of the Code of Virginia* (Case No. PUA000032), Final Order, June 29, 2000; *Application of The Potomac Edison Co. d/b/a Allegheny Power* (Case No. PUE000280), Order Approving Phase I Transfers, July 11, 2000.

Final Regulations

Importantly, this section contains no reference to the question of what price levels might be produced by such a market.⁴ Thus, if we find the market effectively competitive, we may terminate capped rates, even if competitive prices are different than they would have been under regulation, or "should be" according to some other viewpoint. Again, the goal of the Act is the development of a competitive market, not prices that are constrained indefinitely in some artificial fashion.

The fact that the General Assembly allowed for the possibility that even the consumers' rate cap protection, one of the centerpieces of the Act, could be eliminated early under circumstances of effective competition should bear heavily on how we react to views concerning other portions of the Act. In particular, we should look with skepticism at the contention that functionally separated generation plant can still be cost regulated for the benefit of default customers, even after the end of the rate cap period in 2007.

It is not necessary to rely on other portions of the Act, however; the default service section itself embodies the same principle. Section 56-585.D states that, by July 1, 2004, and annually thereafter, the Commission must decide "whether there is a sufficient degree of competition such that the elimination of default service . . . will not be contrary to the public interest." Again, the important question is whether competition is sufficient. That is not the same inquiry as to whether prices are "just and reasonable," "affordable," or other terminology concerned with the actual level of prices produced by that competition.

This passage supports my belief that the General Assembly's principal concern in enacting the default service provision was to protect consumers against the possibility that sufficient competitors and resources would not be available in the open market. If no such scarcity exists, then consumers will have adequate choices available to them, and default service will no longer be needed as a "safe harbor." However, I cannot find that this statute evinces a concern with the prices consumers will face from those "sufficient" competitors.

By contrast, the purpose of the capped rate period, in my view, was to furnish price protection for a certain reasonable period after the advent of the competitive era to give competitors a chance to enter the Virginia market, and to allow consumers time to become comfortable with this new structure without exposure to fluctuating prices.

Thus, the rate cap and default service provisions serve two distinct functions, and they should not be confused. The rate cap provisions supply price protection; the default service provisions furnish resource protection. Attempts to regulate the costs of generation resources devoted to default service are an effort to perpetuate rate cap protection longer than the General Assembly decreed, that is, beyond July 1, 2007.

This conclusion is supported by § 56-582.D, which provides that, until capped rates expire or are terminated early, the incumbent electric utility must provide those rates to any customer in its territory. Thus, although customers enjoy the protection of capped rates while they are in effect, there is no guarantee that prices will remain at such "pre-deregulation" levels when those rates end.

⁴ I do not deny that price levels might be relevant as to whether a market is "effectively competitive," but they would be considered with all other evidence on the point.

With this background, I will now discuss the key provisions of § 56-590.B.3. As noted, that section states that the incumbent electric utility may be required, as a condition of its functional separation plan, to ensure that its "generation assets or their equivalent remain available" during any period it is providing default service. It first should be emphasized here that we are given the discretion whether to impose any such requirements. The statute says, "the Commission may impose conditions . . ." We are not required to implement any measures of this nature. We should, therefore, be cautious of mandating specific conditions unless they are supported by a reasonable interpretation of the Act.

One must now consider whether the language of § 56-590 justifies the imposition of cost controls on generation assets. If so, such language was truly a strange way to phrase that principle. "Generation assets" can obviously "remain available" to serve load, regardless of the cost of those assets. Would it have not been clearer to state, for example, that the Commission could require that the incumbent's "generation assets or their equivalent remain available for electric service during the default service period at costs that are found by the Commission to produce rates that are reasonably affordable," or some similar standard?

Given the clear dependence placed on the competitive market by the Act, a cost component cannot reasonably be grafted onto the "assets remain available" concept in the absence of some clear indication that the General Assembly intended this reading, of which I find none. I further note that § 56-590.B.3 begins by stating that any conditions imposed by the Commission on functional separation are to be "consistent with this chapter," a chapter replete with reliance on competitive markets. In addition, rules are only to be adopted under § 56-590.D "to the extent necessary to promote effective competition."

Section 56-590.B.3, when read in its proper perspective, merely expresses a complementary concept to similar provisions in §§ 56-579.D.3 and 56-587.B. In the latter passages, the Commission is given authority to ensure that even competitive suppliers have sufficient resources, "including necessary reserve requirements," and "adequate access to generation and generation reserves" to supply their customers. By the same token, under § 56-590 we can require incumbents to maintain the physical capacity to serve default load if they are assigned that responsibility. Importantly, none of these statutes grants the Commission cost controls as one of its tools.

Another section of the Act does give the Commission pricing authority in certain exceptional situations. However, even this section illustrates that competition is to be the guiding principle, and that as long as an adequately functioning market sets the price levels, they may not be modified by the Commission. Section 56-578.G declares that, if the Commission determines that a person has "market power" within a transmission constrained area, the Commission may, subject to certain carefully prescribed limitations, adjust rates for services within that area, "only to the extent necessary to protect retail customers from such market power." The Act defines "market power" as:

The ability to impose on customers a significant and nontransitory price increase on a product or service in a market above the price level which would prevail in a competitive market.

(Emphasis supplied.)

Thus, even in these critical circumstances, the Commission may protect consumers by adjusting prices only to levels "which would prevail in a competitive market." Whether we believe those competitive prices are "reasonable," or whether they are higher than they would have been under traditional regulation, should be of no consequence under this Act, even when dealing with such anti-competitive forces as market power.

I now turn from § 56-590 to discuss § 56-585.B.3 and C. Here, as I acknowledged in footnote 1, *supra*, there are provisions giving the Commission authority to regulate the rates charged for default service. Those who would disagree with my position on this issue will thus ask, what more is necessary? If you can regulate the rates paid by default customers, what greater authority do you need?

In discussing § 56-590 above, my view of the Act rejects the contention that we can regulate the costs of crucial resources that make up part of the expense of serving those customers. In contrast, critical to understanding the provisions of § 56-585.B.3 & C is that they deal with regulating the retail rates paid by default customers. This is a very substantive difference.

An analogy to traditional cost of service regulation may help. Assume that a utility had a purchased power contract for a number of years that provided power at two cents per kWh. Retail rates in the past would obviously have included those costs. Now assume that, prior to the next rate case, the contract expired and had to be replaced by one that cost three cents per kWh. In the next case, the utility presumably would seek to recover those increased costs. Upon proper proof of these facts, the Commission would have two basic options. If adequate evidence were adduced that the new contract had been imprudently procured, its costs could be disallowed. However, in the absence of such evidence, the new rates would normally be set to recover the costs of this more expensive power.

That was the essence of traditional ratemaking. While rates paid by consumers were certainly regulated by the Commission, it had little power, in the absence of a finding of imprudence, to control the costs of the basic goods and services that were purchased for the public service. Most of such cost elements were allowed to be recovered through rates.

Here, however, the approach of the rules adopted by the majority is to attempt to reach deeper into the subject than a review of the relevant, legitimate expenses of the default supplier. The suggestion that the costs of generating assets devoted to default service should be controlled is an attempt to manage those expense levels directly. In my example above, this approach would cause the costs of the new power purchase agreement to be ignored in future cases, and the utility to be treated as if the expired contract for less expensive power were still in effect.

This treatment would be applied, not because of any finding of imprudence, but simply because the old contract was cheaper than the new one. In the present context, I believe this approach is simply an attempt to safeguard consumers against competitive market prices, because those prices might turn out to be higher than levels that would result from treating the utility as if the Act had changed nothing with regard to its generation assets. While perhaps an understandable motive, I find it inconsistent with the overall

objective of the Act. After the period of rate cap protection, the costs of generation are to be set by the market, not by regulators.⁵

Relevant provisions of § 56-585 support this conclusion. It bears noting that § 56-585 expresses an initial preference that we select default service providers other than the incumbent electric utility or distribution company.

Subdivision B.1 of that section sets forth the criteria that we are to apply when selecting a provider. Among them are cost, experience, safety, reliability, corporate structure, and access to electric energy resources. These factors apply, of course, to consideration of other suppliers just as they do to the local utility. Next, subdivision B.2 states that the Commission may "designate one or more willing providers" of default service. In such a case, does the Act allow us to control the "cost" of generation in the stringent sense? Hardly, if we expect to find a "willing provider." Cost is obviously an important feature for comparison in choosing among possible volunteers for such duty, but we should not expect such cost to be amenable to our direct control. Why then should we expect it if we instead designate the utility as the provider?⁶

It is only after describing the process of seeking a "willing provider" that the Act states, in subsection B.3:

In the absence of a finding under subdivision 2, [the Commission] may require an incumbent electric utility . . . to provide . . . such services, . . . at rates which are fairly compensatory to the utility and which reflect any cost of energy prudently procured, including energy procured from the competitive market.

(Emphasis supplied.)

Thus, the local utility does not have the option of refusing the call, as do competitive suppliers. It does not matter whether the utility is "willing." In return, however, the statute provides certain protections to the utility.

First, the rates must be "fairly compensatory." In my view of this Act, whether a rate is fairly compensatory to a utility directed to provide default service should be determined with reference to the concept of "foregone opportunities." Proponents of the notion of continued regulation of generation costs fear that market prices might be higher than the utility's embedded cost of service under traditional principles. If such is the case, then the utility is being forced to give up the opportunity of selling its power at higher prices in the competitive market in order to supply default service. I would therefore not deem it "fairly compensatory" to fix rates on old ratemaking principles under such a state of facts. Rather, the utility should be compensated at levels it could realize in the competitive market, were it free to do so.

Second, the above portion of the Act recognizes explicitly that such compensation is to cover the cost of energy prudently procured, including that obtained from the competitive market. The Act thereby again encourages reliance on the competitive market.

Subsection C of § 56-585 next provides that the Commission is to set

⁵ I will explain below why the motive of price protection after the end of the rate cap period is also not a good one for public policy reasons.

⁶ As discussed below, the policy implications of such an approach could be quite serious.

Final Regulations

the rates, terms and conditions for such services consistent with the provisions of subdivision B.3 and Chapter 10 . . . and shall establish such requirements for providers and customers as it finds necessary to promote the reliable and economic provision of such services and to prevent the inefficient use of such services. The Commission may use any rate method that promotes the public interest . . .

This section, relied on by the majority, does not support their position. It first references subdivision B.3, which I discuss above. That section does not apply to suppliers of default service other than the local utility or its progeny. On the other hand, the reference to Chapter 10 in subsection C appears to apply to both types of entities.

The latter point helps put this mention of Chapter 10 in proper context. Rates charged by suppliers are to be determined "consistent with the provisions of . . . Chapter 10." What can that statement possibly mean in the context of selecting a "willing provider" for default services. Does it mean, in the words of § 56-235.2, a part of Chapter 10, that the rates of such a provider are

to be considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, . . . and a fair return[?]

(Emphasis supplied.)

How many "willing providers" would we find if it became known that such standards would be applied to their voluntary participation in Virginia's default service program? Such interpretation would frustrate one of the major tenets of an attempt by the legislature to assure the provision of default service, with a reasonable opportunity for competitive suppliers to provide such service. If this treatment could not successfully be applied to such companies, why then should we attempt to subject the local utility to it? This point indicates that the brief reference to Chapter 10 in this statute is not as all encompassing as it might first appear.

Subdivision C goes on to discuss the establishment of

requirements for providers and customers . . . to promote the reliable and economic provision of such services and to prevent the inefficient use of such services.

This clause is not referenced to the standards of Chapter 10, or § 56-585.B.3. It thus is not necessarily related to the ratemaking aspects of default service. I believe it has greater relevance to the Commission's need for authority to prevent "gaming" of the system by customers and suppliers, or the improper and uneconomic use of default service in situations not intended by the Act.

In any event, the final sentence of § 56-585.C is perhaps the most important for the purposes of this discussion:

The Commission may use any rate method that promotes the public interest . . .

I believe that the public interest would be best promoted by basing default service retail rates on market-determined costs for the generation resources that will be required to support that service. In

addition to the fact that the Act's relevant provisions sustain this result, as discussed above, sound public policy reasons underlie it.

As I noted earlier, the fundamental reason to seek to continue cost of service regulation of generation assets related to default service appears to be the fear that market determined costs might be higher in the future than the embedded costs associated with those resources. If one assumes that scenario to be accurate, then default customers' rates could increase beyond a level that some would consider "reasonable." But, consider the alternative:

- If it becomes clear to the market at large that the local utility's rates for default service are subject to restraints of the above nature, it is unlikely that any other suppliers will seek to win the default service business. The utility will thus be selected by "default."
- After that designation, there will also be no incentive for other players to enter Virginia, even as competitive providers. Why should they, if they know that their rates are effectively "capped" by lower-than-market default rates? Thus, consumers will have few options to default service, and they will remain there.
- Since the Act provides no ending date for default service, the dearth of competitive suppliers will self-perpetuate the need for the default option, long past the end of the capped rate period.
- The final result of this improper handling of default service, which the Act intended to be only a temporary measure until the development of "a sufficient degree of competition" (§ 56-585.D), could well be that no such market ever develops in Virginia. The overall competitive goal of the Act would thus be frustrated.

In conclusion, the Act sets up competition in generation as the ultimate goal of deregulation. Since capped rates have a finite existence under the Act, but default service does not, the position of the majority can result in the perpetuation of price cap regulation into the indeterminate future. The result of the order as now framed does not sufficiently recognize that deregulation of generation, competitive choice, and functional separation are key facets of the Act. The Act will not support such an interpretation.

While I dissent to the actions of the majority discussed above, I concur with the procedural provisions of this order that grant a temporary waiver of the effectiveness of the filing requirements of 20 VAC 5-202-40 B 6 g, h, and i until April 2, 2001, with the Commission delaying action thereon until July 2, 2001. These delays will give the General Assembly an opportunity, during the upcoming 2001 legislative session, to "undertake a direct and thorough review" of the very important substantive issues involved here. Should legislation result, it will be effective before the Commission acts under the delayed schedule announced here. Since, as I have explained, I do not agree with the majority's interpretation of §§ 56-585 and 56-590 in the first place, I am agreeable that the General Assembly be given a chance to consider these matters before there be any possible substantive application of the disputed rules.

Because of the serious controversy arising from the language of these sections, it is appropriate that the General Assembly address these important aspects of the Act, and to establish clearly the policy of the Commonwealth, rather than for the Commission to take steps that might be contrary to such policy.

/s/ Clinton Miller
Commissioner

CHAPTER 202.
REGULATIONS GOVERNING THE FUNCTIONAL
SEPARATION OF INCUMBENT ELECTRIC UTILITIES
UNDER THE VIRGINIA ELECTRIC UTILITY
RESTRUCTURING ACT.

20 VAC 5-202-10. Applicability and scope.

These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia), and they apply [only] to [~~all~~] incumbent electric utilities subject to the provisions thereof. Section 56-590 of the Act declares that all incumbent electric utilities shall functionally separate their generation, transmission and distribution services by January 1, 2002 [, and that such functional separation may be accomplished through the creation of affiliates or through such other means as may be acceptable to the commission]. The utilities are required to submit proposed functional separation plans to the Virginia State Corporation Commission by January 1, 2001.

Section 56-590 B 3 of the Act authorizes the commission to impose conditions, as the public interest requires, upon its approval of incumbent electric utilities' plan for functional separation, including requirements that (i) incumbent electric utilities' generation assets or their equivalent remain available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period incumbent electric utilities serve as default providers pursuant to § 56-585, and (ii) incumbent electric utilities receive commission approval for the sale, transfer or other disposition of generation assets during the capped rate period and, if applicable, during any period incumbent electric utilities serve as default providers.

Pursuant to § 56-590 C, the commission is also directed, to the extent necessary to promote effective competition in the Commonwealth, to promulgate regulations:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;
3. Prohibiting affiliated entities from engaging in discriminatory behavior toward nonaffiliated units; and
4. Establishing codes of conduct detailing permissible relations between functionally separate units.

Additionally, § 56-590 F provides, in pertinent part, that nothing in the Virginia Electric Utility Restructuring Act shall be deemed to abrogate or modify the commission's authority under Chapters 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia.

These regulations, therefore, implement the statutory provisions of the Virginia Electric Utility Restructuring Act described above, and are intended to aid incumbent electric utilities required to (i) functionally separate their generation, transmission and distribution services by January 1, 2002,

and (ii) submit applications for such purpose to the commission by January 1, 2001. Such regulations shall not, however, be deemed to modify or supercede any regulations adopted by the commission concerning the relationships between [~~incumbent electric utilities~~ local distribution companies] and any company licensed by the commission to provide competitive energy services, which regulations shall include the commission's Interim Rules Governing Electric and Natural Gas Retail Access Pilot Programs [, 20 VAC 5-311-10 et seq.,] and any successor regulations thereto.

20 VAC 5-202-20. 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 Virginia Electric Utility Restructuring Act.

"Affiliated generation company" means a generation company that controls, is controlled by, or is under common control with a local distribution company. [For purposes of this chapter, any unit or division created by a local distribution company for the purpose of acting as a generation company shall be treated as an affiliated generation company and shall be subject to the same provisions and regulations.]

"Commission" or "SCC" means the Virginia State Corporation Commission.

"FERC" means the Federal Energy Regulatory Commission.

"Generation company" means a person owning, controlling, or operating a facility that produces electric energy for sale to wholesale customers.

"Incumbent electric utility" shall have the same meaning as set forth in § 56-576 of the Code of Virginia.

"Local distribution company" means [~~the an~~] entity regulated by the Virginia State Corporation Commission that owns or controls the distribution facilities required for delivery of electricity to the end user.

"Market price" or "market value" means the value of [comparable] goods or services determined through such methods as competitive bidding, appraisals, catalog listings, sales to third parties and asset replacement cost determinations.

"Person" shall have the same meaning as set forth in § 56-576 of the Code of Virginia.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission (FERC) that owns or operates, or both, [~~the~~] transmission facilities [~~required for the delivery of electricity to local distribution companies or end users~~].

20 VAC 5-202-30. Relations between affiliated functionally separated entities; SCC oversight.

[A. The following practices are prohibited:

1. Cost shifting or cross subsidies between functionally separate units;

Final Regulations

2. Anticompetitive behavior or self-dealing between functionally separate units; and
3. Discriminatory behavior by affiliated entities toward nonaffiliated units.

B.] The following provisions apply to (i) the relationships between [~~affiliated functionally separate entities~~ a local distribution company and any affiliated generation company] following the commission's approval of their functional separation and (ii) the commission's oversight of such [~~functionally separate entities~~ affiliated companies]:

1. [~~To the extent local distribution companies administer or otherwise furnish fuel procurement or fuel supply services, such companies shall give no undue preference to any affiliated generation company over the interest of any other generation company relating to the provision of fuel or fuel supply resources. The local distribution company shall not give undue preference to an affiliated generation company over the interests of any other generation company.~~] For purposes of this subdivision, "undue preference" means a preference that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.

2. To the extent local distribution companies administer or otherwise furnish [~~fuel procurement or~~] fuel supply services, such companies shall provide information related to fuel or fuel supply resources to an affiliated generation company only if it makes such information simultaneously available, through an electronic bulletin board or similar means of public dissemination, to all other generation companies conducting business in Virginia. Nothing in this subdivision shall require any local distribution company to disseminate to all generation companies information requested and deemed competitively sensitive by a generation company and supplied by the local distribution company. This subdivision is not applicable to daily operational data provided by the local distribution company to any generation company in the ordinary course of conducting business.

3. Affiliated local distribution and generation companies shall maintain separate records and [accounts for functionally separate units and separate] books of account [for separate legal entities].

4. [Each local distribution company shall operate independently of any affiliated generation company and shall observe the following requirements:]

a. Each local distribution company shall establish and implement internal controls [~~designed~~] to ensure that such company and its employees who are engaged in (i) merchant operations, transmission, or reliability functions of electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions [~~of any such systems, have no access to, or connection with, similar functions performed by or on behalf of any affiliated generation company if that access or connection do not provide information to an affiliated generation company or to entities that provide similar functions for or on behalf of~~

such an affiliated general company that] would give any such affiliated generation company an undue advantage over nonaffiliated generation companies. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.

b. Each local distribution company shall file with the [~~Director of the State Corporation Commission's Division of Public Utility Accounting~~ commission,] a listing and description of all internal controls implemented pursuant to this section [~~not later than 60 days after the commission issues an order authorizing the functional separation of such local distribution company from an incumbent electric utility's generation and transmission services as provided for in 20 VAC 5-202-40 or within 10 days subsequent to any modification of such controls~~].

5. Local distribution companies shall be subject to the following requirements concerning affiliate transactions:

a. Local distribution companies shall be compensated at the greater of fully distributed cost or market price for all nontariffed services, facilities, and products provided to an affiliated generation company. An affiliated generation company shall be compensated at the lower of fully distributed [~~costs~~ cost] or market [~~prices~~ price] for all nontariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable for purposes of such calculations, nontariffed services, facilities and products shall be compensated at fully distributed costs. In such event, the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a determination of the unavailability of market price data shall be [~~filed by the local distribution company with the Director of the State Corporation Commission's Division of Public Utility Accounting within 30 days of any such transaction included with the report required in subdivision 5 b of this subsection~~].

b. Local distribution companies shall file annually with the [~~Director of the State Corporation Commission's Division of Public Utility Accounting~~ commission,] a report that shall, at a minimum, include: (i) the amount and description of each type of nontariffed service provided to or by an affiliated generation company; (ii) accounts debited or credited; and (iii) the compensation basis used (i.e., market price or fully distributed cost). The local distribution company shall make available to the commission's staff, upon request, the following documentation for each agreement and arrangement where services are provided to or by an affiliated generation company: (i) component costs (i.e., direct or indirect labor, fringe benefits, travel or housing, materials [,] supplies, indirect miscellaneous expenses, equipment or facilities charges, and overhead); (ii) profit component; and (iii) comparable market values and documentation.

6. Affiliated generation and local distribution companies shall document each occasion that (i) an employee of one becomes an employee of the other or of any transmission provider that services either, or (ii) an employee of any transmission provider that services any such affiliated distribution company or generation company becomes any employee of either. Upon request of the commission's staff, such information shall be filed with the commission identifying each such employment described in this subdivision. This information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.

7. The [~~State Corporation~~] commission may inspect the books, papers, records and documents of, and require special reports and statements from, every generation company affiliated with a local distribution company regarding [~~(i) such generation company's qualifications to conduct business within the Commonwealth, and (ii) transactions with its local distribution company affiliate.~~] Upon complaint or on its own initiative, the commission may also (i) investigate alleged violations of this chapter, and (ii) seek to resolve any complaints filed with the commission against any such affiliated generation company.

[~~8. Requests for waivers of any of the provisions of this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission deems appropriate in the public interest.~~]

20 VAC 5-202-40. Application for functional separation.

A. Each incumbent electric utility required by the Act to functionally separate its generation, transmission and distribution services shall submit a plan to the commission therefor by January 1, 2001, conforming to the requirements set forth below. In addition to information specifically required under this chapter, the incumbent electric utility shall provide any information or documentation it believes will assist the commission in evaluating such utility's functional separation plan.

B. Each plan submitted by an incumbent electric utility shall, at a minimum, contain the following provisions or information [~~÷~~ . If such information is not available as of the date of the filing, the application shall contain a detailed explanation as to why such information is not available, the efforts under way to develop such information, and an estimate of the time within which it will be available.]

1. A table of contents detailing the plan's components that shall include, at a minimum, a list of testimonies, schedules, supporting witnesses and issues addressed.

2. An executive summary of the functional separation plan that shall include the following:

a. An overview of the present structure of the integrated utility.

b. An overview of the proposed functional separation plan, including but not limited to, the following issues or matters:

(1) The specific type of functional separation proposed (e.g., transfer to an affiliate or division, divestiture, etc.) with an assessment of how such method will comply with § 56-590 of the Code of Virginia.

(2) A timeline for implementing the functional separation plan's major components.

(3) A description of measures proposed to ensure that the proposed plan of functional separation will not jeopardize or impair the safety or reliability of the incumbent electric utility's generation, transmission, and distribution systems.

(4) The estimated amount of assets and liabilities (including deferred taxes) proposed to be transferred to each functionally separate entity or third party.

(5) The estimated cost of the proposed plan of functional separation.

(6) Measures proposed in the plan to enable the incumbent electric utility to (i) meet potential obligations to provide capped rate service and default service, and (ii) assure that generation assets or their equivalent remain available during the capped rate and default service periods established under the Act.

[~~(7) An assessment of the incumbent electric utility's intentions to request or not request a wires charge, and the basis for any such request.~~]

c. A list of specific approvals sought by the incumbent electric utility in conjunction with its functional separation plan, identifying the sections of the Code of Virginia under which each such approval is sought, and describing the proposed timeframe for each such approval.

d. A summary of any other information the incumbent electric utility believes will be helpful to the commission in assessing the proposed functional separation plan.

e. Waivers that [~~any the~~] incumbent electric utility is requesting [~~in connection with a proposed functional separation plan that relate to~~ from] the requirements of this [~~section~~ chapter], and the reasons therefor.

f. Exemptions that [~~any the~~] incumbent electric utility is requesting pursuant to § 56-590 F from the provisions of Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia [~~, to the extent that any such incumbent electric utility's proposed functional separation plan includes a covered transaction otherwise subject to the provisions of § 56-590 D~~].

3. An assessment of the financial impact of the proposed functional separation plan, including information concerning the following:

[~~a. The likely impact of the proposed functional separation on the capital structure of the incumbent electric utility and the proposed companies, identifying important accounting and divestiture timing implications for interim capital structures.~~]

Final Regulations

~~b. The anticipated long-term capital structures of the functionally separate entities resulting from the proposed plan, including (i) targeted credit ratings for each functionally separate entity; and (ii) pro forma capital structures proposed by the targeted implementation date for functional separation, and on December 31, 2003, and December 31, 2006. If any such proposed functionally separate entities will have noninvestment grade credit rating targets, incumbent electric utilities shall describe all credit support agreements intended to benefit such entities.~~

~~c. The anticipated financing of future assets for each functionally separate entity resulting from the proposed plan (e.g., variable rate credit facility, parental equity infusion, project debt financing, parental guaranteed financing, etc.).~~

~~d. All mediation steps taken to avoid violating any existing debt indentures, including tax-exempt financing.~~

~~e. Expected transaction costs or refinancing costs required to effect functional separation, including (i) descriptions of methods for determining call premiums on debt or preferred securities, and (ii) descriptions of all terms and conditions for any common stock reacquisition plans (e.g., Dutch Auctions, privately negotiated transactions, open market purchases, etc.).~~

~~f. Any changes to existing credit support arrangements or any new credit arrangements likely to result from the plan.~~

~~g. The intended use of cash proceeds in the event of divestiture (e.g., to pay down existing debt, repurchase common stock, acquire additional assets, etc.). The information furnished shall also include a description of any change in parent company dividend policy resulting from any such divestiture.~~

~~h. Methods proposed for allocating any net gains or net losses between ratepayers and shareholders in the event of divestiture. Such information shall include excerpts from any state or federal commission orders or settlements supporting the proposed methodology.~~

~~i. Any current or anticipated Securities and Exchange Commission (SEC) authorizations to issue securities supporting the proposed functional separation plan.~~

~~j. Any proposed dividend policy concerning dividends from any proposed functionally separate entity to any parent entity thereof following functional separation.~~

a. The capital structure and cost of capital, including any transaction or refinancing costs, of the functionally separate entities resulting from the proposed plan used to calculate the unbundled cost of capital supporting the cost of service study required by subdivision 7 of this subsection.]

[k. b.] The manner in which any assets are proposed to be transferred in the form of a dividend from any proposed functionally separate entity to any parent entity thereof incident to functional separation.

~~[l. The financial impact on the incumbent electric utility's Virginia customers of divesting or transferring such utility's generation assets to a third party or affiliate, as compared to the financial impact on such customers resulting from the incumbent electric utility retaining generation assets specific to its Virginia load throughout the Act's prescribed capped rate and default service periods.~~

~~m. An assessment of the incumbent electric utility's intentions to request or not request a wires charge and the basis for any such request. This information shall include~~

~~c.] A description of (i) how the [incumbent electric utility local distribution company] will account for [the a] wires charge and (ii) how [the a] wires charge will impact the financial statements [of the local distribution company].~~

~~[n. d.] Any other financial information relevant to the incumbent electric utility's proposed functional separation plan.~~

4. Information concerning the proposed structure of each functionally separate entity, as follows:

a. The legal structure of each functionally separate entity proposed in the functional separation plan (e.g., corporation, limited liability company, limited liability partnership, etc.).

b. The names and addresses of each proposed functionally separate entity's officers and directors, or their equivalents.

c. The location and mailing address of each proposed functionally separate entity's headquarters.

d. A description of how functional separation requirements in any other states have affected, or may affect, the incumbent electric utility, its structure and operations.

e. A description of all federal agency approvals required in connection with the execution and implementation of the incumbent electric utility's proposed functional separation plan, identifying any state commission findings (i) required in conjunction with such federal agency approvals, or (ii) otherwise required pursuant to federal law.

f. A timeline for implementing major elements of the functional separation plan.

5. Information concerning separation of functions and operations, as follows:

a. A description of the products and services to be offered by any proposed functionally separate entity.

b. A description of functions and services to be transferred from the incumbent electric utility to any proposed functionally separate entity.

c. A description of competitive services to be offered by [each functionally separate entity of] the incumbent electric utility.

d. Information concerning the total number of incumbent electric utility employees [~~likely~~ proposed] to be (i) transferred to any proposed functionally separate entity, or (ii) jointly employed by [~~the incumbent electric utility and~~] any proposed functionally separate [~~entity~~ entities], following functional separation.

e. A detailed description of measures proposed to ensure the safety and reliability of the incumbent electric utility's generation, transmission and distribution system in conjunction with functional separation.

f. An estimate of the cost of functional separation, and an explanation of how the costs thereof will be shared [~~between~~ among] the [~~incumbent electric utility and~~] proposed functionally separate entities.

[g. A list and description of the internal controls established to ensure that the local distribution company and its affiliated generation company operate independently as required by 20 VAC 5-202-30 B 4.]

6. Information concerning asset and liability transfers or sales, as follows:

a. A list of assets or liabilities that the incumbent electric utility proposes to transfer to a functionally separate entity or proposes to sell to a third party. The list shall include the FERC account number, book value, [~~fair market value,~~] proposed transfer date and the recipient of the assets or liabilities.

b. The method used to value the transfer of assets to a functionally separate entity or to a third party, and justification for the chosen methodology. Information furnished shall include documentation supporting the valuation and transfer thereof.

c. [A If the Legislative Transition Task Force adopts a resolution requesting the commission's assistance with monitoring the recovery of net stranded costs pursuant to § 56-595 C of the Act, then the following information shall be provided to the commission: (i) fair market value of each generation and transmission asset functionally unbundled, transferred or sold to a third party or affiliate and (ii) a] list of all long-term power contracts [~~proposed for transfer from the incumbent electric utility to functionally separate entities functionally unbundled, transferred or sold to a third party or affiliate~~]. Information furnished shall include the length and anticipated expiration date of each contract, annual cash payments for power, and the market value of each power contract for each year of its remaining life.

d. Detailed documentation supporting (i) the accounting for the proposed transfer or divestiture of generation assets, and (ii) projected impacts of such transfers or divestiture on current and deferred income taxes. The information furnished shall include the income statement and balance sheet effects of income taxes, both before and after the proposed transfer or divestiture.

e. A copy of the proposed system of accounts [, if other than the FERC uniform system of accounts,] that any affected affiliated generation company will use for booking purposes.

f. A list of new investments (including amounts and time period) necessitated by the incumbent electric utility's proposed functional separation plan.

g. In furtherance of the commission's responsibility under § 56-590 B 3 of the Code of Virginia, each incumbent utility shall provide an assessment of how its proposed functional separation plan advances or satisfies such utility's obligation to make electric service available at the capped rates established under § 56-582 D.

h. In furtherance of the commission's responsibility under § 56-590 B 3 of the Code of Virginia, each incumbent utility shall provide an assessment of how its proposed functional separation plan advances or satisfies such utility's potential obligation to provide electric service as a default supplier pursuant to § 56-585. Such assessment shall include a detailed description of pricing and capacity if the incumbent electric utility proposes to utilize equivalent generation in satisfaction of such obligation.

i. An analysis comparing the cost of obtaining equivalent generation to the cost of retaining generation assets if the incumbent electric utility proposes to divest all or part of its generation assets supporting its Virginia load. The information furnished shall explain how such equivalent generation will [~~provide~~ produce rates,] reliability and capacity that [is are] at least comparable to that provided by the generation assets currently held by the incumbent electric utility. Additionally, the information shall include the incumbent electric utility's assessment of how obtaining equivalent generation is in the public interest.

7. Information concerning a cost of service study as follows:

a. A cost of service study [, based on a test year beginning no earlier than January 1, 1999,] reflecting total company and total Virginia operations. [~~The FERC seven factor test as set forth in FERC Order 888, Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,~~⁴ or any subsequent method for separation of transmission and

⁴ ~~Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stat. & Regs. ¶ 31,036 (1996) (Order No. 88), order on reh'g, Order No. 888-A, 62 FR 12,274 (March 14, 1997), FERC Stat. & Regs. ¶ 31,048 (1997) (Order No. 888-A), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), appeal docketed, Transmission Access Policy Study Group, et al. v. FERC, Nos. 97-1715 et al. (D.C. Cir.).~~

Final Regulations

~~distribution adopted by the FERC, shall be used to identify federal and state regulated transmission.]~~

b. A cost of service study that separates total Virginia operations identified in a of this subdivision into Virginia jurisdictional and Virginia nonjurisdictional operations.

c. A cost of service study that separates Virginia jurisdictional operations established under [subdivision 7] b of this [~~subdivision~~ subsection], by class and function utilizing the rate of return approved by the commission in the incumbent electric utility's most recent rate case or alternative regulatory plan. Class costs shall be subdivided by generation, transmission, distribution, metering, billing, and other customer services as may be warranted [~~and~~ or] required by the commission. Such divisions shall be further subdivided as demand, energy and customer. The class study shall include computations of the average price per unit for these various subdivisions.

8. [~~Changes proposed to the local distribution company's distribution and default service~~ The incumbent electric utility's proposed unbundled] tariffs, rates, terms and conditions.

9. A description of how the incumbent electric utility's proposed functional separation will comply with 20 VAC 5-202-30.

[~~10. Requests by the incumbent electric utility for confidential treatment of any information furnished in a proposed functional separation plan that such utility deems confidential. Such request shall also provide, in detail, the reasons for any such requests.~~

~~11. Waivers requested by any incumbent electric utility pertaining to the application of any rule under this chapter. The incumbent electric utility's application shall include a detailed explanation of any waiver requested and the reasons therefor.~~

~~12. Exemptions that any incumbent electric utility is requesting pursuant to § 56-590 F from the provisions of Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia, to the extent that any such incumbent electric utility's proposed functional separation plan includes a covered transaction otherwise subject to the provisions of § 56-590.~~

20 VAC 5-202-50. Waiver or exemption requests; confidential information; other filings.

A. Any request for a waiver of any provision in this chapter shall be considered by the commission on a case-by-case basis and may be granted upon such terms and conditions as the commission may impose.

B. Where a filing made pursuant to this chapter contains information that the applicant claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be

maintained under seal unless and until the commission rules otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission.

Filings containing confidential (or redacted) information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential (or redacted) information, including supporting material, shall be clearly marked within the filing.

C. Each incumbent electric utility shall file simultaneously with its functional separation plan its application for transfer of assets pursuant to the Utility Transfers Act, Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia, if any, except for good cause shown.

D. Any incumbent electric utility requesting an exemption pursuant to § 56-590 G from the provisions of Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia, to the extent that any such incumbent electric utility's proposed functional separation plan includes a covered transaction otherwise subject to the provisions of § 56-590, shall clearly identify such request in its functional separation plan filed with the commission.]

VA.R. Doc. No. R00-165; Filed October 20, 2000, 11:20 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-35-5 et seq. Virginia Independence Program (amending 22 VAC 40-35-10 and 22 VAC 40-35-125; adding 22 VAC 40-35-126, 22 VAC 40-35-127, and 22 VAC 40-35-128).**

Statutory Authority: §§ 58.1-439.9 and 63.1-25 of the Code of Virginia.

Effective Date: December 20, 2000.

Summary:

The regulation sets forth procedures for employers to claim tax credits when they hire Temporary Assistance for Needy Families (TANF) recipients as authorized by the passage of HB 696 during the 1998 Session of the Virginia General Assembly. The tax credit provides incentives to employers to hire TANF recipients who otherwise may not be considered for an employment opportunity.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Richard Martin, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1825.

22 VAC 40-35-10. Definitions.

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

"Actively seeking employment" means satisfactorily participating in any assigned job-seeking activity while in the program.

"Adult portion" means the TANF amount paid on behalf of the parent or other caretaker-relative with whom the TANF child resides, including a minor parent. This amount is the difference in the standard of assistance for a family size which includes the adult and the standard of assistance for a family size of one less person.

"AFDC-Foster Care" means a federal program authorized under § 472 of the Social Security Act (42 USC § 672) and administered by the Virginia Department of Social Services, which provides financial assistance on behalf of qualifying children.

"Agreement" means the written individualized agreement of personal responsibility required by § 63.1-133.49 of the Code of Virginia.

"Allotment" means the monthly food stamp benefit given to a household.

"Applicant" means a person who has applied for TANF or TANF-UP benefits and the disposition of the application has not yet been determined.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance.

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 CFR 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Case management" means the process of assessing, coordinating, monitoring, delivering or brokering activities and services necessary for VIEW participants to enter employment or employment-related activities as quickly as possible.

"Case management services" means services which include, but are not limited to, job development and job placement, community work experience, education, skills training, and support services.

"Case manager" means the worker designated by the local department of social services, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Child day care" means those services for which a participant is eligible pursuant to child day care services policy.

"Child day care services/program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children under the age of 13 (or

children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than a 24-hour period.

"Community work experience" means work for benefits in a public or private organization that serves a community/public function.

"Department" means the Virginia Department of Social Services.

"Diversionary cash assistance" means a one-time lump sum payment to an individual or third-party vendor to prevent long-term receipt of TANF.

"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act (42 USC §§ 651-669) to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments.

"Employer tax credit" means a tax credit available to an employer pursuant to § 58.1-439.9 of the Code of Virginia.

"Family" means a TANF assistance unit.

"Food Stamp Program" means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.

"Full Employment Program" or "FEP" means subsidized, training-oriented, employment which replaces the TANF and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.

"Full-time unsubsidized employment" means employment which is considered by the employer to be full time, but in no case less than 30 hours per week, and for which no JOBS, VIEW, TANF, or food stamp funds are used to pay the individual's salary.

"Grant" means the monthly TANF benefit payment.

"Hardship exceptions" means prescribed reasons which, if applicable, would allow an extension of receipt of TANF benefits.

"He" means a male or female, as applicable.

"Hiring authority" means an individual with the authority to hire employees for a business.

"In loco parentis" means an adult relative or other adult who is acting in place of a parent.

"Incapacitated" means a medically verified condition which renders an individual unable to work.

"Job Opportunities and Basic Skills Training Program (JOBS)" means the program authorized by Title IV-F of the Social Security Act (42 USC §§ 681-687). This program provides education, training and work experience to enhance

Final Regulations

employment opportunities for TANF recipients who are not exempt from participation.

"Job finding" means identification of available jobs.

"Job matching" means matching a participant's minimum skills or prior work experience to available job openings.

"Job placement" means placing a participant in an unsubsidized or subsidized job. Job placement is the result of job finding and job matching.

"Job search" means a structured, time-limited period in which the participant is required to search for employment. To complete the job search, the participant must search and apply for a set number of jobs.

"Job skills training" means training in technical job skills or required knowledge in a specific occupational area in the labor market.

"Local agency" or *"local department"* means any one of the local social services or welfare agencies throughout the Commonwealth which administers the VIP program.

"Minor parent" means any parent under 18 years of age.

"On-the-job training" means training which is provided by an employer during routine performance of a job.

"Parent" means a mother or father, married or unmarried, natural, or adoptive following entry of an interlocutory order. The parent may be a minor parent.

"Participant" means a TANF or TANF-UP recipient who is participating in the VIEW program.

"Participating family" means an assistance unit including a parent who participates in the Virginia Initiative for Employment not Welfare (VIEW) Program.

"Part-time unsubsidized employment" means employment of at least eight hours but less than 30 hours per week and for which no JOBS, VIEW, TANF, or food stamp funds are used to pay the individual's salary.

"Post-secondary education" means formal instruction at an institution of higher education or vocational school leading to the attainment of a certificate, an associate degree, or a baccalaureate degree.

"Qualified business employer" means an employer whose business employed not more than 100 employees at the time that the employer first hired a qualified employee.

"Qualified employee" means an employee who is a Virginia resident and is a recipient of Temporary Assistance for Needy Families (TANF).

"Qualified employer" means an employer who may participate in the Virginia Targeted Jobs Grant Program by virtue of meeting all of the program criteria for employers.

"Qualified participant" means a Virginia Initiative for Employment not Welfare participant who meets all of the program criteria and may be hired by a qualified employer.

"Recipient" means an individual who is presently receiving a TANF assistance payment or whose eligibility exists even though the assistance payment is zero.

"Recipient family" means an assistance unit in which the caretaker-relative is a parent of the eligible child and the parent's needs may or may not be included on the grant.

"Relative" means spouse, child, grandchild, parent, or sibling of a qualified employer.

"Sanction" means to reduce or suspend a participant's TANF grant or food stamp allotment or both, where applicable, for noncompliance with these regulations or the statute.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth or (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12.

"Support services" means services such as child care or transportation provided to program participants to enable the participant to work or to receive training or education which are intended to lead to employment.

"Temporary Assistance for Needy Families" or *"TANF"* means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or *"TANF-UP"* means the program authorized in § 63.1-105 of the Code of Virginia and administered by the Virginia Department of Social Services, which provides aid to two-parent families with dependent children who are in financial need.

"Time limitations" means a specified period of time, under the statute, to receive TANF.

"Transitional support services" means child care, transportation or medical assistance provided to working participants whose TANF has been terminated either voluntarily, although still eligible for TANF, or involuntarily, due to time limitations.

"Truant" means a child who (i) fails to report to school for three consecutive school days, or for a total of five scheduled school days per month or an aggregate of seven scheduled school days per school calendar quarter, whichever occurs sooner, and no indication has been received by school personnel that the child's parent or guardian is aware of the child's absence, and a reasonable effort by school personnel to notify the parent or guardian has failed; or (ii) is not enrolled in school at any time during the month.

"Underemployed" means working at a job for less than the federal hourly minimum wage.

"Unsubsidized employment" means employment in which no government funds are used to subsidize directly the wages earned by a participant.

"Virginia Independence Program" or "VIP" means the program in the Commonwealth of Virginia which is made up of the TANF Program and the Virginia Initiative for Employment not Welfare.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.

"Virginia Targeted Jobs Grant ~~Program~~" or "VTJG" means ~~the program established in a grant paid to an employer in accordance with § 63.1-25.3 of the Code of Virginia which pays a grant to employers who hire qualified participants in the Virginia Initiative for Employment not Welfare Program.~~

"Work activity" means participation in unsubsidized employment, FEP, part-time work, community work experience, or on-the-job training.

22 VAC 40-35-125. The Virginia Targeted Jobs Grant Program.

A. In order to enhance the employment opportunities of participants, the VIEW program shall administer a grant program called the Virginia Targeted Jobs Grant Program (VTJG).

1. The Virginia Targeted Jobs Grant Program shall pay a grant not to exceed \$1,000 to participating qualified employers. For the purpose of this section, a qualified employer may not claim a grant if the qualified employee was employed within one year of the date of the current hiring.

2. Participating employers shall sign an agreement with the Virginia Department of Social Services which will outline the program requirements for both the employer and the Commonwealth.

B. In order to be a qualified employee, the individual must have been a recipient of TANF for at least nine months prior to hiring.

1. The employee must be unemployed or underemployed at the time he is hired by the employer.

2. The employee shall not be a relative of the hiring authority. For the purpose of this section, a relative means a spouse, child, grandchild, parent or sibling of the employer.

3. The employee must have worked for the employer for at least 1,000 hours during the taxable year.

4. The employee must have been placed with the employer as a result of his participation in the Department of Social Services' VIEW Program.

C. In order to make application for the Virginia Targeted Jobs Grant Program grant, a participating employer shall complete the application form supplied by the Department of Social Services. The application form shall be submitted to the Virginia Department of Social Services, Division of Financial Management with certification of the participant's employment for the period in question. The application must be filed no later than the last day of the third ~~quarter~~ month following the close of the taxable year for which the grant is

claimed. Grants will be awarded by May 30 of each year. *If funds are not sufficient to cover the cost of the VTJGs to which each employer is entitled, each employer will be authorized a credit proportionate to his share of the available funding.* Grants for applications received after April 15 will not be awarded until the following fiscal year. A VTJG Certification of Participant Placement must accompany the application.

D. The Commissioner of the Department of Social Services, or his designee, may examine the books, records, and other applicable documents to determine that the employer has satisfied the above requirements and is eligible for a VTJG.

PART IV. EMPLOYER TAX CREDIT.

22 VAC 40-35-126. Employer eligibility.

A. *For taxable years beginning on and after January 1, 1999, a qualified business employer shall be allowed a credit imposed against taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia in an amount equal to 5.0% of the annual salary paid during the taxable year to a qualified employee; however, in no case shall the credit exceed \$750 per qualified employee.*

B. *For the purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business.*

C. *Any credit not usable for a taxable year may be carried over to the next three taxable years. The amount of any credit allowed shall not exceed the tax imposed for the taxable year. A credit may not be carried back to a prior taxable year. If a qualified business that is subject to the tax limitation is allowed another credit under another provision of the Code of Virginia, or has a credit carryover from a preceding taxable year, such employer must first utilize any credit which does not have a carry over provision, and then any credit which is carried forward from a prior taxable year, prior to using a credit allowed under this section.*

D. *The amount of tax credits available, when added to the amount of grants made to employers under the Virginia Targeted Jobs Grant Program for the fiscal year, shall not exceed the amount appropriated to the Virginia Targeted Jobs Grant Fund as provided in the general appropriation act.*

E. *No qualified business employer shall be eligible to claim a credit for any taxable year that the employer is the recipient of a grant for the same qualified employee under the Virginia Targeted Jobs Grant Program.*

Final Regulations

PART V.

PROCEDURES FOR CLAIMING A VIRGINIA TARGETED JOBS GRANT OR EMPLOYER TAX CREDIT.

22 VAC 40-35-127. Procedures for claiming a Virginia Targeted Jobs Grant.

A. No later than three months following the close of a taxable year, but no later than April 15 of each year, any employer who hires a qualified employee during the taxable year must submit an application for a Virginia Targeted Jobs Grant (VTJG) to the Virginia Department of Social Services, Division of Financial Management, pursuant to 22 VAC 40-35-125.

B. The employer will include on the application:

1. The taxable year for which the qualified employee was hired;
2. The employee name and SSN;
3. The date the qualified employee was hired;
4. Total wages paid to the qualified employee during the taxable year;
5. Total hours worked by the employee during the taxable year;
6. The employer federal ID number;
7. A statement that the qualified employee was not previously employed by the employer within 12 months of the date the qualified employee was hired; and
8. A certification that the employee is not a relative and has worked for more than 1,000 hours at a rate of pay which is at least the minimum wage during the taxable year for which the employer is claiming the VTJG.

C. By May 15 of each year the total amount of VTJGs will be calculated and grants will be issued by the DSS in accordance with 22 VAC 40-35-125 C.

D. Unused balances for a fiscal year will be issued to qualifying employers as an employer tax credit.

22 VAC 40-35-128. Procedures for claiming an employer tax credit.

A. By April 15 of each year, any qualified business employer who hires a qualified employee during a taxable year beginning on or after January 1, 1999, must submit a Virginia Employer Tax Credit Application Form to the Virginia Department of Social Services, Division of Financial Management.

B. The request will include:

1. A certification that the company meets the definition of a qualified business employer as defined in § 58.1-439.9 of the Code of Virginia;
2. The employee name and SSN;
3. The taxable year for which the qualified employee was hired;
4. The date the qualified employee was hired;

5. Total wages paid to the qualified employee during the taxable year;

6. Total hours worked by the employee during the taxable year; and

7. The employer federal ID number.

C. After the department calculates and issues VTJG payments, the unexpended VTJG appropriation, as set forth in 22 VAC 40-35-127 D, will be used to determine each qualified employer's entitlement to a employer tax credit. Based upon the number of employer tax credit requests received and the balance of VTJG funds, the department will determine the maximum employer tax credits (MTC) allowed, not to exceed \$750 per qualified employee. If funds are not sufficient to cover the cost of the MTC to which each employer is entitled, each employer will be authorized a credit proportionate to his share of the available funding. The department will notify each qualified employer of the employer tax credit allowable for the taxable year which will be the MTC or a lesser amount based upon wages paid or maximum funding available. By June 15 of each year, the department will issue certifications of allowable employer tax credits to each qualified employer. The employer may amend their tax return for the taxable year for which the credit was earned or may apply the credit to a future year pursuant to § 58.1-439.9 of the Code of Virginia.

D. The department will notify the Virginia Department of Planning and Budget of the combined VTJG issued and MTC certified in the fiscal year by June 30 of each year.

PART ~~IV~~ VI. APPEALS.

<p>NOTICE: The forms used in administering 22 VAC 40-35-5 et seq., Virginia Independence Program, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>

FORMS

View Agreement of Personal Responsibility.

View Activity and Service Plan.

View Full Employment Agreement.

Virginia Employer Tax Credit Application Form.

Commonwealth of Virginia
Department of Social Services

Virginia Employer Tax Credit Application Form

EMPLOYER NAME: _____

ADDRESS: _____ PHONE: _____

TAX IDENTIFICATION NUMBER: _____

TAXABLE YEAR (month/year through month/year): _____

NO. OF EMPLOYEES AT THE TIME THE TANF EMPLOYEE WAS HIRED _____

EMPLOYEE NAME: _____

EMPLOYEE SSN: _____

DATE OF EMPLOYMENT: _____

TOTAL WAGES PAID DURING TAXABLE YEAR: _____

I, _____
(Employer) certify that the information provided

above is true and correct to the best of my knowledge.

Employer Signature Date

Return completed form to the Virginia Department of Social Services, Division of Financial Management, 730
E. Broad Street, Richmond, Virginia 23219.

Department of Social Service Use only:

The above referenced employee was receiving TANF assistance on the date of hire identified above.

Verified by: _____
Signature Position

VA.R. Doc. No. R99-177; Filed October 27, 2000; 2:01 p.m.

Final Regulations

Notice of Delay in Effective Date

Title of Regulation: 22 VAC 40-130-10 et seq. **Minimum Standards for Licensed Child-Placing Agencies.**

At its meeting on October 18, 2000, the State Board of Social Services voted to delay the effective date of 22 VAC 40-130-10 et seq., Minimum Standards for Licensed Child-Placing Agencies, to July 1, 2001. The final regulation was published in 16:22 VA.R. 2745-2796 July 17, 2000, with an effective date of November 1, 2000, but the regulatory process was suspended in 16:24 VA.R. 3113 August 14, 2000, in order to solicit additional comments. The effective date has been delayed to provide the board adequate time to review all comments received during the additional public comment period to determine any appropriate action to take.

Agency Contact: Richard Martin, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1825, e-mail lrm2@email1.dss.state.va.us.

Title of Regulation: 22 VAC 40-680-10 et seq. **Virginia Energy Assistance Program (amending 22 VAC 40-680-10 and 22 VAC 40-680-20).**

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Date: December 20, 2000.

Summary:

The amendments eliminate the requirement for verification of resources for energy assistance applicants and remove the resource reference from definitions.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Charlene H. Chapman, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1751.

22 VAC 40-680-10. Definitions.

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

"Department" means the Department of Social Services.

"Disabled person" means a person receiving Social Security disability, Railroad Retirement disability, 100% Veterans Administration disability, Supplemental Security Income as disabled, or an individual who has been certified as permanently and totally disabled for Medicaid purposes.

"Elderly person" means anyone who is 60 years of age or older.

"Energy burden" means the average fuel cost for the primary fuel type used by a household divided by the income of the household.

"Energy-related emergency" means a household has no heat or an imminent utility cutoff or no single source of operable or safe heating equipment.

"Fiscal year" means October 1 through September 30.

"Household" means an individual or group of individuals who occupies a housing unit and functions as an economic unit by purchasing residential energy in common (share heat), or making undesignated payments for energy in the form of rent (heat is included in the rent).

"Poverty guidelines" means the Poverty Income Guidelines as established and published annually by the Department of Health and Human Services.

"Primary fuel" means the fuel used to operate the primary heating system currently used to heat the majority of the house.

"Primary heating system" means the system that is currently used to heat the majority of the house.

~~**"Resources"** means cash, checking accounts, savings account, saving certificates, stocks, bonds, money market certificates, certificates of deposit, credit unions, Christmas clubs, mutual fund shares, promissory notes, deeds of trust, individual retirement accounts, prepaid funeral expenses in excess of \$900, or any other similar resource which can be liquidated in not more than 60 days.~~

"Vulnerability factor" means an individual is a child under the age of six or meets the definition of an elderly or disabled person.

22 VAC 40-680-20. Eligibility criteria; transfer of resources.

A. The purpose of the fuel assistance component is to provide heating assistance to eligible households to offset the costs of home heating energy that are excessive in relation to household income.

B. Eligibility criteria is set out in this subsection.

1. **Income limits.** Maximum income limits shall be at or below 130% of the poverty guidelines. In order to be eligible for fuel assistance, a household's income must be at or below the maximum income limits.

2. ~~**Resource limits.** The resource limit for a household containing an elderly or disabled person shall be \$3,000. The resource limit for all other households shall be \$2,000. In addition, any individual or family applying for or receiving assistance under the fuel assistance programs may have or establish one interest-bearing savings account per assistance unit not to exceed \$5,000 at a financial institution for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university or for making a down payment on a primary residence. Any funds deposited in the account and any interest earned thereon, and any amounts~~

~~withdrawn from the account for the purposes stated in this section shall be exempt from consideration in any calculation. In order to be eligible for fuel assistance, a household's countable resources must be at or below the amount specified.~~

~~3.~~ 2. Alien status. Any alien who has obtained the status of an alien lawfully admitted for temporary residence is ineligible for a period of five years from the date such status was obtained. This shall not apply to a Cuban or Haitian entrant or to an alien who is an aged, blind or disabled individual.

~~4.~~ 3. Ineligible households. The households that are ineligible to receive fuel assistance are:

- a. Subsidized households whose total heating costs are included in their rent.
- b. Persons living in institutions.
- c. Persons living in temporary shelters or group homes who have no heating expense or who pay a nominal fee to live there.
- d. Persons who reside in only one room within a larger dwelling.
- e. Subsidized households who are responsible for payment of individual excess fuel usage charges even though heating expenses are included in their rent.

~~C. Any applicant of fuel assistance shall be ineligible for that fuel season if he improperly transfers or otherwise improperly disposed of his legal or equitable interest in nonexempt liquid resources without adequate compensation within one year of application for fuel assistance.~~

~~Compensation that is adequate means goods, services or money that approximates the value of the resources.~~

~~This policy does not apply if any of the following occur:~~

- ~~1. The transfer was not done in an effort to become eligible for fuel assistance;~~
- ~~2. The resource was less than the allowable resource limit; or~~
- ~~3. The disposition or transfer was done without the person's full understanding.~~

VA.R. Doc. No. R99-180; Filed October 27, 2000, 2 p.m.



EMERGENCY REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R01-40; Filed October 20, 2000, 4:32 p.m.

MARINE RESOURCES COMMISSION

Title of Regulation: **4 VAC 20-900-10 et seq. Pertaining to Horseshoe Crab (amending 4 VAC 20-900-25).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Date: October 20, 2000 through November 19, 2000.

Summary:

The amendment decreases the landings quota for horseshoe crabs from 355,000 crabs to 152,495 crabs and allows for the transfer of additional quota to Virginia from other jurisdictions.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet, in any direction, of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

C. The commercial landings quota of horseshoe crab for each calendar year shall be ~~355,000~~ 152,495 horseshoe crabs. *Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions, in accordance with the provisions of the Atlantic States Marine Fisheries Commission Horseshoe Crab Fishery Management Plan, provided that the combined total of the landings quota and transfers from other jurisdictions shall not exceed 355,000 horseshoe crabs.*

D. It shall be unlawful for any person to harvest from Virginia waters or to land in Virginia any horseshoe crab for commercial purposes after the landing quota described in subsection C of this section has been attained and announced as such.

E. It shall be unlawful for any person to take, catch, harvest or attempt to take, catch or harvest horseshoe crabs with a dredge from the tidal waters of Virginia from May 1 through June 7.

F. It shall be unlawful for any person to possess horseshoe crabs taken by dredge from the tidal waters of Virginia from May 1 through June 7.

FORMS

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

EDITOR'S NOTICE: The following form used in administering the following regulation has been amended by the Department of Social Services to reflect technical changes and is published following the listing. The form is available for public inspection at the Department of Social Services, 730 East Broad Street, Richmond, VA 23219, or at the office of the Registrar of Regulations. Copies of the form may be obtained from L. Richard Martin, Jr., Division of Management and Customer Services, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1825.

Title of Regulation: **22 VAC 40-170-10 et seq. Voluntary Registration of Family Day Homes-Requirements for Contracting Organizations.**

FORMS

~~Family Day Home~~ *Voluntary Registration Contracting Organization's Recommendation to Deny, Revoke, or Refuse to Renew, or Withdraw Close Certificate of Registration, 032-05-209/1 (rev. 06/96 10/00).*

**VOLUNTARY REGISTRATION CONTRACTING ORGANIZATION'S
RECOMMENDATION TO DENY, REVOKE, REFUSE TO RENEW, OR CLOSE
CERTIFICATE OF REGISTRATION**

Provider Name: _____

Provider Address: _____

CHECK ONE OF THE FOLLOWING:

_____ Deny
_____ Revoke

_____ Refuse to Renew
_____ Close (Provider Surrendered Certificate)

CERTIFICATE # _____

**REASON FOR DENYING, REVOKING, OR REFUSING TO RENEW: (specifically state the
standard(s) not met)**

DATE CERTIFICATE SURRENDERED: _____

REASON FOR SURRENDER: _____

Authorized Agency Representative

Contracting Organization

____/____/____
Date

**** Attach Parts I and II of the Completed Application Form**
**** Attach Certificate if Surrendered**

Mail to:
Voluntary Registration Technician
Division of Licensing Programs
Virginia Department of Social Services
730 East Broad Street
Richmond, VA 23219

032-05-209/2 (10/00)

GOVERNOR

EXECUTIVE ORDER NUMBER SEVENTY-TWO (00)

ESTABLISHING THE VIRGINIA WETLANDS RESTORATION COORDINATING COMMITTEE

Tidal and non-tidal wetlands are essential to meeting the goals for restoring water quality throughout the Commonwealth. Wetlands play a significant role in protecting water quality by filtering runoff and removing nutrients and sediments, producing dissolved oxygen, moderating flood damage, providing shoreline erosion protection, and acting as recharge points for underground water supplies. Wetlands also provide important habitat for the spawning, nesting, and foraging of wildlife and other living resources that are adapted for the wetlands' unique characteristics.

Since the 1780s, Virginia has lost a significant number of its tidal and non-tidal wetlands. In 1997, recognizing the importance of wetlands, the multi-state Chesapeake Bay Executive Council, of which Virginia is a member, adopted Directive 97-2, *Wetlands Protection and Restoration Goals*. The Council adopted a commitment for the signatory jurisdictions "to develop strategies to achieve the protection and preservation of the Bay's wetland resources."

The Citizens Wetlands Advisory Committee (CWAC) was convened by the Secretary of Natural Resources to refine goals and strategies and advise the Governor regarding Directive 97-2 and the long-term preservation of wetlands. The CWAC recommended that "the goal of the Commonwealth of Virginia should be to protect, preserve, enhance and create wetlands throughout the Commonwealth and to achieve an increase in the acreage and function of the wetlands. This shall include a policy of no net loss in existing wetlands to be achieved through state and federal regulatory compensation and mitigation requirements for permitted wetland losses. A net gain of wetlands shall be accomplished through voluntary efforts to preserve, restore and create wetland acreage."

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.1-41.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Virginia Wetlands Restoration Coordinating Committee to accomplish Virginia's goals for wetlands creation and to aid in the voluntary conservation, establishment, and restoration of wetlands in all regions of the Commonwealth.

Virginia Wetlands Restoration Coordinating Committee

The Virginia Wetlands Restoration Coordinating Committee (hereinafter called the Coordinating Committee) will be responsible for encouraging voluntary establishment or restoration of wetlands by private or public landowners throughout the Commonwealth.

A. Composition of the Coordinating Committee

The Coordinating Committee shall operate under the direction of the Secretary of Natural Resources. The director of the Department of Game and Inland Fisheries and the director of the Department of Conservation and

Recreation shall serve as co-chairs of the Coordinating Committee. The co-chairs of the Coordinating Committee shall have the power to set meetings and make assignments to members of the Coordinating Committee.

The Coordinating Committee shall consist of the agency head/dean or a designee from the following agencies and institutions:

- The Department of Game and Inland Fisheries,
- The Department of Environmental Quality,
- The Department of Conservation and Recreation,
- The Department of Forestry,
- The Chesapeake Bay Local Assistance Department,
- The Marine Resources Commission,
- The Virginia Institute of Marine Science,
- The Department of Agriculture and Consumer Services,
- The Department of General Services,
- The Virginia Department of Transportation,
- The Department of Mines, Minerals and Energy,
- The School of Agriculture, Science and Technology at Virginia State University, and
- The College of Natural Resources at Virginia Polytechnic Institute and State University.

In addition, staff from the Chesapeake Bay Commission, the United States Department of Agriculture's Natural Resources Conservation Service, the United States Forest Service, the Virginia Cooperative Extension Service at Virginia Polytechnic Institute and State University and Virginia State University, the Chesapeake Bay Program of the United States Environmental Protection Agency may participate in this program, as well as the U.S. Army Corps of Engineers.

B. Duties of the Coordinating Committee

The specific duties of the Coordinating Committee are to:

- Promote the voluntary establishment or restoration of wetlands (tidal and non-tidal) by private landowners throughout the Commonwealth.
- Coordinate a comprehensive survey of public lands held by the Commonwealth, as well as lands purchased with state funds but held by private organizations, in search of suitable sites for wetland creation, preservation, and enhancement. Should a GIS approach be taken to address this task, the activity, at first using existing data, should be coordinated through the technical staff for the Virginia Land Conservation Foundation (VLCF). Responsibility for the development of any new information such as agency property boundaries or identification and ground truthing of existing wetlands should rest with the land-holding agency, and the data should be shared with the VLCF's technical staff as it becomes available.
- Provide the Secretary of Natural Resources with an estimate of the cost and opportunities for funding the restoration or establishment of wetlands on public lands.

Governor

· Report to me yearly by December 1 through the Secretary regarding the Commonwealth's progress statewide and, in particular, the achievements toward meeting its commitment to restore or establish wetland acreage within the Commonwealth's portion of the Chesapeake Bay watershed.

Responsibility of state agencies owning land

State agencies owning, leasing, and/or managing state lands for the public good have the responsibility to be good stewards of that land. As a part of this stewardship, the health and management of wetland areas is critical to ecosystem function and health. I hereby call on all land-holding state agencies, including public institutions of higher education, to demonstrate leadership in this initiative by working to conserve existing wetlands, to restore wetlands and forested streamside buffers, and to create new wetlands on state-owned property throughout the Commonwealth, particularly in the Chesapeake Bay watershed.

Specifically, I hereby request all land-holding state agencies and institutions of higher education to participate in the restoration of wetlands by taking the following steps:

1. Identify areas suitable for wetland restoration, establishment, or preservation on the land owned by the agency or institution.
2. Develop measurable indicators for wetland conservation, restoration, and establishment, consistent with the goals of the Coordinating Committee and site-specific conditions, in an agency-specific plan.
3. Identify resources that can be used to establish or restore wetlands on state property.
4. Establish or restore wetlands as appropriate on state lands with the advice of the Coordinating Committee, within the extent of identified resources.

The Department of Game and Inland Fisheries and other agencies that participate in the Coordinating Committee shall provide technical assistance and guidance, within the extent of resources available, to the various land-holding state agencies and institutions which have identified available land for the restoration or establishment of wetlands.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until December 31, 2010, unless amended or rescinded by further Executive Order.

Given under my hand and the Seal of the Commonwealth of Virginia on this 20th day of October, 2000.

/s/ James S. Gilmore, III,
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Public Meeting and Public Comment – Blackwater Creek and Maggodee Creek TMDL for Fecal Coliform Bacteria

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria on two stream segments in the Lower Blackwater River watershed. The impaired segments are Maggodee Creek and the lower portion of the Blackwater River, both of which are located in Franklin County. These two segments are identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The second public meeting on the development of fecal coliform bacteria TMDL's for these two segments will be held on Tuesday, December 5, 2000, at 7 p.m. in the Town Council Chambers; Allen O. Woody, Jr. Municipal Building; 345 Donald Avenue in Rocky Mount, Virginia 24151. Final DRAFT TMDL reports will be presented.

The public comment period will end on December 19, 2000. Fact sheets on the development of TMDL's for fecal coliform bacteria and copies of the draft TMDL reports are available upon request. Questions or information requests should be addressed to Michael McLeod. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Donald M. McLeod, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, Virginia 24019, telephone (540) 562-6721, Fax (540) 562-6729, or e-mail dmmcleod@deq.state.va.us.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER THIRTY-NINE (00)

VIRGINIA'S INSTANT GAME LOTTERY 191; "DEUCES WILD," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 191, "Deuces Wild." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs

Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: July 20, 2000

DIRECTOR'S ORDER NUMBER FORTY (00)

VIRGINIA'S INSTANT GAME LOTTERY 193; "HALLOWEEN CASH," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 193, "Halloween Cash." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: July 28, 2000

DIRECTOR'S ORDER NUMBER FORTY-ONE (00)

VIRGINIA'S INSTANT GAME LOTTERY 460; "JUMBO BUCKS," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 460, "Jumbo Bucks." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

General Notices/Errata

/s/ David L. Norton
Manager, Legal Affairs
Date: July 28, 2000

DIRECTOR'S ORDER NUMBER FORTY-TWO (00)

VIRGINIA'S INSTANT GAME LOTTERY 461; "CASH CARNIVAL," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 461, "Cash Carnival." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: July 28, 2000

DIRECTOR'S ORDER NUMBER FORTY-THREE (00)

VIRGINIA'S INSTANT GAME LOTTERY 463; "SHOW ME THE MONEY," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 463, "Show Me the Money." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: August 21, 2000

DIRECTOR'S ORDER NUMBER FORTY-FOUR (00)

VIRGINIA'S INSTANT GAME LOTTERY 195; "RAKE IT IN," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 195, "Rake It In." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: August 21, 2000

DIRECTOR'S ORDER NUMBER FORTY-FIVE (00)

VIRGINIA'S INSTANT GAME LOTTERY 314; "HIGH STAKES BINGO," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 314, "High Stakes Bingo." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: August 21, 2000

DIRECTOR'S ORDER NUMBER FORTY-SIX (00)

VIRGINIA'S INSTANT GAME LOTTERY 462; "CLUB CASINO," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in

Virginia's Instant Game Lottery 462, "Club Casino." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: August 21, 2000

DIRECTOR'S ORDER NUMBER FORTY-SEVEN (00)

VIRGINIA'S INSTANT GAME LOTTERY 464; "FORTUNE HUNT," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 464, "Fortune Hunt." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: August 30, 2000

DIRECTOR'S ORDER NUMBER FORTY-EIGHT (00)

CERTAIN VIRGINIA INSTANT GAME LOTTERIES; END OF GAMES.

In accordance with the authority granted by §§ 58.1-4006 A and 9-6.14:4.1 B (15) of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on Friday, September 15, 2000:

Instant Game 134 – Hot Dice
Instant Game 151 – Spring Fling
Instant Game 424 – Win for Life
Instant Game 432 – Lifetime Bonus
Instant Game 433 – Break the Bank
Instant Game 447 – Royal Flush

Instant Game 455 – Casino Cash

The last day for lottery retailers to return for credit unsold tickets from any of these games will be Friday, October 27, 2000. The last day to redeem winning tickets for any of these games will be Wednesday, March 14, 2001, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a United States Postal Service postmark of March 14, 2001, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia; and at any State Lottery Department regional office. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: August 30, 2000

DIRECTOR'S ORDER NUMBER FORTY-NINE (00)

CERTAIN VIRGINIA INSTANT GAME LOTTERIES; END OF GAMES.

In accordance with the authority granted by §§ 58.1-4006 A and 9-6.14:4.1 B (15) of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on Friday, September 15, 2000:

Instant Game 309 - Wild Bingo
Instant Game 421 - Virginia Instant Millions

The last day for lottery retailers to return for credit unsold tickets from any of these games will be Friday, October 27, 2000. The last day to redeem winning tickets for any of these games will be Wednesday, March 14, 2001, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a United States Postal Service postmark of March 14, 2001, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia; and at any State Lottery Department regional office. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

General Notices/Errata

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle, Director
Date: September 14, 2000

DIRECTOR'S ORDER NUMBER FIFTY (00)

"ON-COUNTER DISPENSER CHALLENGE" VIRGINIA LOTTERY RETAILER INCENTIVE PROGRAM RULES.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate rules for the "On-Counter Dispenser Challenge" Virginia Lottery Retailer Incentive Program that will be conducted from Friday, September 1, 2000 through Sunday, December 31, 2000. This program was adopted by the State Lottery Board on June 28, 2000.

These rules amplify and conform to the duly adopted State Lottery Department regulations and are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until December 31, 2000, unless otherwise extended by the Director.

/s/ Penelope W. Kyle, Director
Date: September 1, 2000

DIRECTOR'S ORDER NUMBER FIFTY-ONE (00)

"LOTTO VIRGINIA" VIRGINIA LOTTERY RETAILER INCENTIVE PROGRAM RULES.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate rules for the "Lotto Virginia" Virginia Lottery Retailer Incentive Program that will be conducted from Sunday, September 24, 2000 through Sunday, October 22, 2000. This program was adopted by the State Lottery Board on June 28, 2000.

These rules amplify and conform to the duly adopted State Lottery Department regulations and are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until October 22, 2000, unless otherwise extended by the Director.

/s/ Penelope W. Kyle, Director
Date: September 14, 2000

DIRECTOR'S ORDER NUMBER FIFTY-TWO (00)

VIRGINIA'S INSTANT GAME LOTTERY 465; "REINDEER GAMES," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 465, "Reindeer Games." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: October 4, 2000

DIRECTOR'S ORDER NUMBER FIFTY-THREE (00)

VIRGINIA'S INSTANT GAME LOTTERY 466; "TREASURE TREE," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 466, "Treasure Tree." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: September 28, 2000

DIRECTOR'S ORDER NUMBER FIFTY-FOUR (00)

VIRGINIA'S INSTANT GAME LOTTERY 196; "HOLIDAY CASH," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in

Virginia's Instant Game Lottery 196, "Holiday Cash." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: October 6, 2000

DIRECTOR'S ORDER NUMBER FIFTY-FIVE (00)

VIRGINIA'S INSTANT GAME LOTTERY 197; "LET THE GOOD TIMES ROLL," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 197, "Let The Good Times Roll." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: October 6, 2000

DIRECTOR'S ORDER NUMBER FIFTY-SIX (00)

VIRGINIA'S INSTANT GAME LOTTERY 199; "LUCKY DUCK," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 199, "Lucky Duck." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department

headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: October 6, 2000

DIRECTOR'S ORDER NUMBER FIFTY-SEVEN (00)

VIRGINIA'S INSTANT GAME LOTTERY 315; "BINGO BLIZZARD," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 315, "Bingo Blizzard." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: October 10, 2000

DIRECTOR'S ORDER NUMBER FIFTY-EIGHT (00)

VIRGINIA'S INSTANT GAME LOTTERY 468; "PINBALL WIZARD," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 468, "Pinball Wizard." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

General Notices/Errata

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: October 18, 2000

DIRECTOR'S ORDER NUMBER FIFTY-NINE (00)

VIRGINIA'S INSTANT GAME LOTTERY 469; "HIGH STAKES," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by §§ 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 469, "High Stakes." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Manager, Legal Affairs
Date: October 18, 2000

BOARD OF OPTOMETRY

Notice of Periodic Review of Regulations

Pursuant to Executive Order 25 (98) and its Public Participation Guideline Regulations, the Board of Optometry is requesting comment on existing regulations:

18 VAC 105-20-10 et seq. Regulations Governing the Practice of Optometry.

Goals of the regulations are to (i) achieve high ratings on Customer Service Satisfaction Survey for application process and renewal of licensure due to removal of any unnecessary requirements, and (ii) reduce the number of disciplinary cases related to practice in a mercantile establishment.

18 VAC 105-30-10 et seq. Regulations Governing Certification of Optometrists to Use Therapeutic Pharmaceutical Agents.

The goal of the regulation is to achieve high ratings on Customer Service Satisfaction Survey for application process and renewal of licensure due to removal of any unnecessary requirements.

If any member of the public would like to comment on these regulations, please send comments until January 1, 2001, to

Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 6606 West Broad Street, Richmond, VA 23230; e-mail eyeatts@dhp.state.va.us or FAX (804) 662-9114. Regulations may be viewed online at www.townhall.state.va.us or copies will be sent upon request.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Periodic Review of Regulations

Pursuant to Executive Order Number Twenty-five (1998), the Department of Environmental Quality on behalf of the Virginia Waste Management Board, will review the Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101-10 et seq.). The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number Twenty-five (1998).

The purpose of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish appropriate practices for facilities that manage only vegetative waste or compost yard waste and exclude all other wastes.

The department and the board are seeking public comment on the review of any issue relating to these regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety of welfare of citizens or for the economical performance of important governmental functions; (iii) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (iv) the regulations are clearly written and easily understandable by the affected persons.

Comments on the above are welcome and will be accepted until December 22, 2000. Comments should be sent to Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009, 804.698.4213, FAX 804.698.4327 or email rgwickline@deq.state.va.us.

VIRGINIA CODE COMMISSION

Change in Subscription Rate for the Virginia Register of Regulations

The Virginia Code Commission approved an increase of the annual subscription rate for the Virginia Register of Regulations to \$125 and an increase for single copy issues of the Register to \$5.00 per issue. The new rates became effective with Volume 17, Issue 1, which was published on September 25, 2000.

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in *The Virginia Register of Regulations*. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page:



<http://legis.state.va.us/codecomm/register/regindex.htm>

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS
- RR08


CALENDAR OF EVENTS

Symbol Key

-  Location accessible to persons with disabilities
 Teletype (TTY)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.


For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES


Virginia Corn Board

† **December 14, 2000 - 9 a.m.** -- Open Meeting
Parker Ridge, 6311 Courthouse Road, Providence, Virginia. 

The board will hear and approve previous meeting minutes, review checkoff revenues, and the financial status resulting from sales of the 2000 Virginia corn crop. As well, reports will be heard from the Chairman, board member representation to the U.S. Grains Council, the National Corn Growers Association, and the Virginia corn Growers' Association. In addition, the nomination and election of 2000 officers will take place at this meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.

Virginia Seed Potato Board


† **November 28, 2000 - 7:30 p.m.** -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, Painter, Virginia. 

The board will meet to review regulations, plan for the 2001 seed season, and discuss other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs

any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Kent Lewis, Director, Department of Agriculture and Consumer Services, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973, e-mail jknight@vdacs.state.va.us.

Virginia Soybean Board

† **December 12, 2000 - 10 a.m.** -- Open Meeting
The Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. 

The board will discuss checkoff revenues resulting from the sale of the 2000 Virginia soybean crop and approve previous meeting minutes. Fairly good growing conditions coupled with low prices will be a major topic of discussion. In addition, reports will be heard from the Chairman, the Program Director, United Soybean Board representatives, and the Virginia Soybean Association. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.


STATE AIR POLLUTION CONTROL BOARD

November 29, 2000 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia.

A public meeting to receive comments on the Notice of Intended Regulatory Action to develop amendments that

conform to state law and federal Clean Air Act requirements for the testing of emissions from motor vehicles located or primarily operated in Northern Virginia.

Contact: Beth Major, State Air Pollution Control Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, e-mail memajor@deq.state.va.us.

December 11, 2000 - 9 a.m. -- Open Meeting
Main Street Centre, Conference Room, 600 East Main Street, Richmond, Virginia. 

A public meeting to receive comments on the intent of the board to make the state toxic pollutant program consistent with the federal Clean Air Act.

Contact: Dr. Kathleen Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, e-mail krsands@deq.state.va.us.

STATE AIR POLLUTION CONTROL BOARD VIRGINIA WASTE MANAGEMENT BOARD STATE WATER CONTROL BOARD


December 4, 2000 - 9 a.m. -- Public Hearing
Main Street Centre, 600 East Main Street, Lower Level, Conference Room, Richmond, Virginia.

December 26, 2000 - Public comments may be submitted until 4:30 p.m. on this date.


Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to adopt regulations entitled **9 VAC 5-210-10 et seq., Regulation for Dispute Resolution**; that the Virginia Waste Management Board intends to adopt regulations entitled **9 VAC 20-15-20 et seq., Regulation for Dispute Resolution**; and that the State Water Control Board intends to adopt regulations entitled **9 VAC 25-15-10 et seq., Regulation for Dispute Resolution**. The proposed regulations encourage the fair, expeditious, voluntary, consensual resolution of disputes by providing an alternative to administrative hearings and litigation. The disputes eligible for referral to voluntary dispute resolution are those relating to the issuance of a permit or to the adoption of a regulation. The decision to employ dispute resolution is in the boards' sole discretion, and the outcome of any dispute resolution procedure does not bind the boards but may be considered by the boards in issuing a permit or promulgating a regulation. The proposed regulations contain provisions addressing situations appropriate for the use of dispute resolution, costs, confidentiality of proceedings, public participation, the use of neutral facilitators, and procedures for mediation.

Statutory Authority: § 10.1-1186.3 of the Code of Virginia.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone

(804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY 


ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

† November 21, 2000 -10 a.m. -- Open Meeting
Summerville Assisted Living at Prince William, 3940 Prince William Parkway, Woodbridge, Virginia.  (Interpreter for the deaf provided upon request)


A regular business meeting.

Contact: Mrs. Virginia Pomata Chairman, 639 Nalls Farm Way, Woodbridge, VA, telephone (703) 430-1426


BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

December 15, 2000 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 


A meeting of the full board to conduct business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-514, FAX (804) 367-2475 or (804) 367-9753/TTY 

Certified Interior Designer Section


December 6, 2000 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 

Calendar of Events


ART AND ARCHITECTURAL REVIEW BOARD

December 1, 2000 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A monthly meeting to review projects submitted by state agencies.

Contact: Richard L. Ford, Chairman, Art and Architectural Review Board, 1011 East Main Street, Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981.

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY


† December 14, 2000 - 10 a.m. -- Open Meeting
The Bull and Bear Club, 901 E. Cary Street, 12th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting of the Board of Directors to conduct business and to obtain public comment. Following the business meeting, the board will go into closed session in order to review loan applications from Virginians with disabilities.

Contact: Shilpa Joshi, Assistive Technology Loan Fund Authority, 8004 Franklin Farms Dr., Richmond, Virginia 23288, telephone (804) 662-9000, FAX (804) 662-9533, toll-free (800) 552-5019, (804) 371-3378/TTY , e-mail loanfund@erols.com.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES


State Executive Council

November 29, 2000 - 9 a.m. -- Open Meeting
December 20, 2000 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Richmond, Lower Level, Training Room 3, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to provide for interagency programmatic and fiscal policies and oversee the administration of funds appropriated under the Act. Advise the SHHR and the Governor. Agenda is posted on the web a week prior to the meeting.

Contact: Alan G. Saunders, Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Suite 137, Richmond, VA, telephone (804) 662-9815, FAX (804) 62-9831, e-mail AGS992@central.dss.state.va.us.

State and Local Advisory Team

December 7, 2000 - 9:15 a.m. -- Open Meeting
St. Joseph's Villa, 8000 Brook Road, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss policy and procedure recommendations to be presented to the State Executive Council on the Comprehensive Services Act. Public comment will be received from 9:45 a.m. to 10 a.m.

Contact: Elisabeth Hutton, Secretary, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 371-4099.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY


December 22, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to amend regulations entitled: **18 VAC 30-20-10 et seq. Regulations of the Board of Audiology and Speech-Language Pathology.** The purpose of the proposed amendments is to establish requirements for evidence of continued competency and for an inactive license for audiologists and speech-language pathologists.


Statutory Authority: §§ 54.1-103 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523 or e-mail Etisdale@dhp.state.va.us.

BOARD FOR BARBERS AND COSMETOLOGY

December 4, 2000 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia  (Interpreter for the deaf provided upon request)


A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail barbercosmo@dpor.state.va.us.


BOARD FOR BRANCH PILOTS

December 12, 2000 - 9 a.m. -- Open Meeting


December 13, 2000 - 9 a.m. -- Open Meeting

Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to administer examinations and conduct any board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail branchpilots@dpor.state.va.us.

December 19, 2000 - 9:30 a.m. -- Open Meeting

Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail branchpilots@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

November 21, 2000 - 7 p.m. -- Public Hearing

Fairfax County Government Center, 12000 Government Center Parkway, Conference Rooms 4 and 5, Fairfax, Virginia.

December 8, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Chesapeake Bay Local Assistance Board intends to amend regulations entitled: **9 VAC 10-20-10 et seq. Chesapeake Bay Preservation Area Designation and Management Regulations.** This regulation amendment is being proposed to accomplish the following:

1. Achieve greater clarity in all regulatory language to minimize confusion and misinterpretation.
2. Eliminate any conflicts and unnecessary redundancies between the requirements in the regulations and those in other related state and federal laws and regulations while still providing for maximum water quality protection.

Specific issues under consideration where conflicts or redundancies are perceived to exist are as follows:

- a. Stormwater management criteria (9 VAC 10-20-120, subdivision 8);
- b. Erosion and sediment control criteria (9 VAC 10-20-120, subdivision 6);
- c. Septic system criteria (9 VAC 10-20-120, subdivision 7);
- d. Agricultural criteria [9 VAC 10-20-120, subdivision 9);
- e. Silvicultural criteria (9 VAC 10-20-120, subdivision 10); and

3. Improve vegetative buffer area criteria (9 VAC 10-20-80, subdivision 5; and 9 VAC 10-20-130, subdivisions 3-5 and 7) to provide greater clarity as well as consistency with the riparian forest buffer policy developed by the Executive Council of the Regional Chesapeake Bay Program.


4. Improve agricultural conservation criteria (9 VAC 10-20-120, subdivision 9; and 9 VAC 10-20-130, subdivision 5 b, (1) – (3)) to correct the inability to meet the existing conservation plan approval deadline, reduce administrative overhead and result in more water quality protection practices on the land.

5. Add criteria regarding a board/department process to review local program implementation for consistency with the regulations (Parts V, VI and VII).

Accomplish numerous technical amendments necessitated by changes in terminology and numbering protocols.


A more detailed and specific explanation of the proposed amendments can be found on the agency's web site (<http://www.cblad.state.va.us>) or at the Department of Planning and Budget's Regulatory Town Hall web site (<http://www.townhall.state.va.us>) within the document entitled "Agency Background Statement."

Statutory Authority: §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

Contact: Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7503, FAX (804) 225-3447, toll-free 1-800-243-7229/TTY 

COMPENSATION BOARD

November 28, 2000 - 11 a.m. -- Open Meeting

Ninth Street Office Building, 202 North 9th Street, 10th Floor, Richmond, Virginia. 


A monthly board meeting.

Contact: Cindy Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218,

Calendar of Events

telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.


COMMONWEALTH COMPETITION COUNCIL

† **November 28, 2000 – 8:30 a.m.** -- Open Meeting
Virginia Bio-Technology Research Park, 800 East Leigh Street, Richmond, Virginia.  ((Interpreter for the deaf provided upon request))

Planning session.


Contact: Peggy R. Robertson, Executive Assistant, Commonwealth Competition Council, P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 786-0240, FAX (804) 786-1594, e-mail probertson@ccc.state.va.us.

Taskforce Studying Commercial Activities of Not-for-Profit Organizations

† **December 5, 2000 - 9 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 4th Floor East Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Invited speakers; review of draft report.

Contact: Peggy R. Robertson, Executive Assistant, Commonwealth Competition Council, P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 786-0240, FAX (804) 786-1594, e-mail probertson@ccc.state.va.us.

† **December 14, 2000 - 9 a.m.** -- Open Meeting
General Assembly Building, 4th Floor East Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review final draft of report.

Contact: Peggy R. Robertson, Executive Assistant, Commonwealth Competition Council, P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 786-0240, FAX (804) 786-1594, e-mail probertson@ccc.state.va.us.

DEPARTMENT OF CONSERVATION AND RECREATION


Cave Board

January 27, 2001 - 1 p.m. -- Open Meeting
Endless Caverns, New Market, Virginia.  (Interpreter for the deaf provided upon request)

Committee meetings at 11 a.m. followed by the full board at 1 p.m.

Contact: Lawrence Smith, Natural Area Protection Manager, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 371-6205, e-mail lsmith@dcrc.state.va.us.


Board on Conservation and Development of Public Beaches

† **December 13, 2000 - 10 a.m.** -- Open Meeting
Hampton City Hall, City Council Chambers, Hampton, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcrc.state.va.us.


Falls of the James Scenic River Advisory Board

† **December 7, 2000 - 12 p.m.** -- Open Meeting
Richmond City Hall, 900 E. Broad Street, Planning Commission Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting to discuss river issues.


Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail rgibbons@dcrc.state.va.us.

CRIMINAL JUSTICE SERVICES BOARD

December 14, 2000 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the Committee on Training.


Contact: Thomas Nowlin, Executive Secretary, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6348, FAX (804) 371-8981, e-mail tnowlin@dcjs.state.va.us.

December 14, 2000 - 11 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

The last board meeting in the year 2000. At this meeting regular business will be discussed, as well as the selection of meeting dates for the year 2001.

Contact: Christine Wiedemer, Administrative Staff Assistant to the Director, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8718, FAX (804) 371-8981, e-mail cwiedemer@dcjs.state.va.us.

BOARD OF DENTISTRY

† **December 1, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

An informal conference committee will convene to hear possible violations of the regulations governing the practice of dentistry. No public comment will be heard.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 West Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail mjmiller@dhp.state.va.us.

BOARD OF EDUCATION

November 20, 2000 - 9 a.m. -- Open Meeting
Virginia Commonwealth University, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A work session of the Advisory Board on Teacher Education and Licensure. Public comment will not be received at this meeting. Persons requesting services of interpreter for the deaf should do so in advance. Contact the board for exact location.

Contact: Dr. Thomas Elliott, Assistant Superintendent for Teacher Licensure, Board of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 371-2522, FAX (804) 225-2524.

November 24, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to **repeal** regulations entitled: **8 VAC 20-540-10 et seq. Regulations Governing Approved Programs for Virginia Institutions of Higher Education** and **adopt** regulations entitled: **8 VAC 20-541-10 et seq. Regulations Governing Approved Programs for Virginia Institutions of Higher Education**. The Board of Education seeks to repeal the current regulations (8 VAC 20-540) and promulgate regulations by the same title (8 VAC 20-541). The purpose is to ensure that prospective teachers receive the academic training necessary to become a quality teacher.

Statutory Authority: §§ 22.1-16, 22.1-298, and 22.1-305.2 of the Code of Virginia.

Contact: Dr. Thomas A. Elliott, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522 or FAX (804) 225-2524.

November 24, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **8 VAC 20-110-10 et seq. Regulations Governing Pupil Accounting Records**. The purpose of the proposed amendments is

to eliminate the requirement that school divisions either maintain paper records of student enrollment and attendance data or implement equivalent systems.

Statutory Authority: §§ 22.1-16, 22.1-20, and 22.1-259 of the Code of Virginia.

Contact: Jerry Mathews, Principal Specialist-Software, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2950 or FAX (804) 225-2524.

November 30, 2000 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Persons requesting services of interpreter for the deaf should do so in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy, Board of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

Task Force on Adult Education and Literacy

† **November 29, 2000 - 10 a.m.** -- Open Meeting
James Monroe Building, 18th Floor, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Persons requesting services of interpreter for the deaf should do so in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy, Board of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY

November 29, 2000 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting to receive comments on and to discuss the Notice of Intended Regulatory Action to develop amendments that conform to state law and federal Clean Air Act requirements for the testing of emissions from motor vehicles located or primarily operated in Northern Virginia. Unlike a public hearing, which is intended to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Contact: Beth Major, Environmental Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, (804) 698-4021/TTY ☎.

Calendar of Events

December 8, 2000 - 9 a.m. -- Open Meeting

December 9, 2000 - 9 a.m. -- Open Meeting


Virginia Commonwealth University, Student Commons Building, Richmond, Virginia.

A meeting of the Virginia Environmental Education Advisory Committee in conjunction with the Governor's Forum on Environmental Education.

Contact: Ann Regn, Environmental Education Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4442, FAX (804) 698-4522, e-mail amregn@deq.state.va.us.

Virginia Ground Water Protection Steering Committee

November 21, 2000 - 9 a.m. -- Open Meeting


Department of Environmental Quality, 629 East Main Street, 10th Floor, Conference Room, Richmond, Virginia. 

A regular meeting. Anyone interested in attending the meeting is welcome. Meeting minutes and agenda are available from the contact person.


Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, FAX (804) 698-4032, e-mail mamassie@deq.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS


November 29, 2000 - 9 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 


The Legislative Committee will consider issues related to laws and regulations and the practice of funeral directing and embalming. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail etisdale@dhp.state.va.us.

December 6, 2000 - 9 a.m. -- Open Meeting


Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

A meeting to consider matters and agenda items arising from the September workshop and other issues brought before the board. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail etisdale@dhp.state.va.us.

December 6, 2000 - 1 p.m. -- Open Meeting

December 7, 2000 - 9 a.m. -- Open Meeting


Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

A meeting to hold formal hearings. There will not be a public comment period.


Contact: Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9907, FAX (804) 662-9523, e-mail CEmma-Leigh@dhp.state.va.us.

DEPARTMENT OF HEALTH

† **December 4, 2000 - 7 p.m.** -- Public Hearing

Council of Community Services, 502 Campbell Avenue, S.W., Board Room, Roanoke, Virginia.  (Interpreter for the deaf provided upon request)

† **December 11, 2000 - 7 p.m.** -- Public Hearing


Cooperative Extension Office, 24 Pelham Street, Community Room, Warrenton, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing for review and comments regarding the Virginia Department of Health's 2001 Comprehensive Plan for HIV Care grant monies under Title II of the Ryan White Comprehensive AIDS Resource Emergency Act of 1990 (as amended in 1996).

Contact: Bettie Brady, R.N., BSN, Public Health Nurse Senior, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23219, telephone (804) 371-2492, FAX (804) 533-3223 or toll-free 1-800-533-4148.

AIDS Drug Advisory Committee

† **November 29, 2000 - 10:15 a.m.** -- Open Meeting


Department of Health, Main Street Station, 1500 East Main Street, Room 223, Richmond, Virginia. 

A semi-annual meeting of the committee. No public comment will be solicited.

Contact: Anne Elam, Public Health Supervisor, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23219, telephone (804) 371-8294 or toll-free 1-800-533-4148.

DEPARTMENT OF HEALTH PROFESSIONS

† **December 1, 2000 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

An orientation on the functions of health regulatory boards for board members and staff who have been appointed or hired within the past year.

Contact: Robert A. Nebiker, Senior Deputy Director, Department of Health Professions, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717,

telephone (804) 662-9919, FAX (804) 662-9114, (804) 662-7197/TTY ☎, e-mail rnebiker@dhp.state.va.us.

December 8, 2000 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.🗣 (Interpreter for the deaf provided upon request)

The Health Practitioners' Intervention Program will meet with its contractor and representatives to review reports, policies, and procedures for the Health Practitioner's Intervention Program. The committee will meet in open session for general discussion of the program, and may meet in executive session to consider specific requests from applicants or participants in the program.

Contact: John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114, (804) 662-9197/TTY ☎

BOARD FOR HEARING AID SPECIALISTS

November 20, 2000 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.🗣 (Interpreter for the deaf provided upon request)

The Committee for Consumer Awareness will meet to develop a plan for disseminating consumer information about the fitting and dispensing of hearing aids. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.state.va.us.

December 11, 2000 - 8:30 a.m. -- Open Meeting
NOTE: CHANGE IN LOCATION.
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia.🗣 (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation and the meeting time is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.state.va.us.

SOUTHWEST VIRGINIA HIGHER EDUCATION CENTER

December 12, 2000 - 4 p.m. -- Open Meeting
Southwest Virginia Higher Education Center, Abingdon, Virginia.🗣

The fall board meeting.

Contact: Sonia Craig, Scheduling Coordinator, Southwest Virginia Higher Education Center, P.O. Box 1987, Abingdon, VA, telephone (540) 469-4001, toll-free (800) 792-3683, e-mail scaraig@swcenter.edu.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

November 21, 2000 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia.🗣

A general meeting. Agenda materials will be available on the web site approximately one week prior to the meeting at www.schev.edu.

Contact: Lee Ann Rung, Executive Assistant, State Council of Higher Education for Virginia, James Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail lrung@schev.edu.

DEPARTMENT OF HISTORIC RESOURCES

† **December 6, 2000 - 10 a.m.** -- Open Meeting
Wilton House Museum, 215 South Wilton Road, Dependency Building, Richmond, Virginia.🗣

A meeting of the State Review Board and the Historic Resources Board to consider nominations to the National Register of Historic Places and the Virginia Landmarks Register, preliminary information applications, and easements and highway markers.

Contact: Marc Wagner, Register Manager, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391, (804) 367-2386/TTY ☎, e-mail mwagner@dhr.state.va.us.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

December 5, 2000 - 9 a.m. -- Open Meeting
Hopewell Community Center, 100 West City Point Road, Hopewell, Virginia.🗣 (Interpreter for the deaf provided upon request)

Calendar of Events

Local Emergency Preparedness Committee meeting as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main Street, Hopewell, VA 23860, telephone (804) 541-2298.


DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

December 6, 2000 - 1:30 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Conference Room C, Richmond, Virginia. 

A quarterly meeting of the State Advisory Council to discuss the state employee health benefits program.

Contact: Anthony Graziano, Director, Office of Health Benefit Programs, Department of Human Resource Management, James Monroe Bldg., 101 N. 14th St., 13th Floor, Richmond, VA 23294, telephone (804) 371-7931.

VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

† November 21, 2000 - 10 a.m. -- Open Meeting
110 S. 7th Street, Suite 135, Richmond Conference Room, Richmond, Virginia. 

A meeting of the Executive Board.

Contact: Conor Powell, Virginia Information Providers Network Authority, 110 South 7th Street, Suite 135, Richmond, VA 23219, telephone (804) 786-4583, e-mail cpowell@vipnetboard.state.va.us.


† November 27, 2000 - 1 p.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. 

A regular meeting of the full authority.

Contact: Conor Powell, Virginia Information Providers Network Authority, 110 South 7th Street, Suite 135, Richmond, VA 23219, telephone (804) 786-4583, e-mail cpowell@vipnetboard.state.va.us.

LIBRARY BOARD

January 19, 2001 - 8:15 a.m. -- Open Meeting

† March 19, 2001 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

A meeting to discuss matters pertaining to The Library of Virginia and the Library Board. Committees of the board will meet as follows:


8:15 a.m. -- Public Library Development Committee, Orientation Room
Publications and Educational Services Committee, Conference Room B
Records Management Committee, Conference Room C

9:30 a.m. -- Archival and Information Services Committee, Orientation Room
Collection Management Services Committee, Conference Room B


Legislative and Finance Committee, Conference Room C

10:30 a.m. The full board will meet in the Conference Room on 2M.


Public comments will be received at approximately 11 a.m.

Contact: Jean H. Taylor, Executive Secretary to the Librarian of Virginia, The Library of Virginia, Richmond, VA 23219, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY , e-mail jtaylor@lva.lib.va.us.


MARINE RESOURCES COMMISSION

December 19, 2000 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia.  (Interpreter for the deaf provided upon request)


The commission will hear and decide the following marine environmental matters beginning at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues. The commission will hear and decide the following fishery management items beginning at approximately noon: regulatory proposals, fishery management plans, fishery conservation issues, licensing, and shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing.

Contact: LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TTY 

BOARD OF MEDICINE

December 1, 2000 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

The Executive Committee will meet to review disciplinary files requiring administrative action, adopt amendments and approve for promulgation regulations as presented, interview applicants, and act on other issues that come before the board. The chairman will entertain public comments on agenda items for 15 minutes following adoption of the agenda.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail wharp@dhp.state.va.us.

December 1, 2000 - 8 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia.

January 5, 2001 - Public comments may be submitted until
this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of
the Code of Virginia that the Board of Medicine intends to
amend regulations entitled: **18 VAC 85-40-10 et seq.**
Regulations Governing the Practice of Respiratory
Care Practitioners. The purpose of the proposed
amendments is to establish an inactive license for
respiratory care practitioners.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until January 5, 2001, to
Elaine J. Yeatts, Department of Health Professions, 6606
West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: William L. Harp, M.D., Executive Director, Board of
Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA
23230-1717, telephone (804) 662-9908 or FAX (804) 662-
9943.

December 1, 2000 - 8 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia.

January 5, 2001 - Public comments may be submitted until
this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of
the Code of Virginia that the Board of Medicine intends to
amend regulations entitled: **18 VAC 85-50-10 et seq.**
Regulations Governing the Practice of Physician
Assistants. The purpose of the proposed amendments
is to establish an inactive license for practitioners who do
not intend to actively practice in Virginia.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until January 5, 2001, to
Elaine J. Yeatts, Department of Health Professions, 6606
West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: William L. Harp, M.D., Executive Director, Board of
Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA
23230-1717, telephone (804) 662-9908 or FAX (804) 662-
9943.

December 1, 2000 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Fifth Floor, Conference Room 3, Richmond, Virginia.☎

A meeting of the Credentials Committee will be held in
open and closed session to conduct general business,
interview and review medical credentials of applicants
applying for licensure in Virginia, and discuss any other
items which may come before the committee. The
committee will receive public comments of those persons
appearing on behalf of candidates.

Contact: William L. Harp, M.D., Executive Director, Board of
Medicine, Southern States Bldg., 6606 W. Broad St., 4th
Floor, Richmond, VA 23230-1717, telephone (804) 662-9908,
FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail
wharp@dhp.state.va.us.

Informal Conference Committee

† **November 30, 2000 - 10 a.m.** -- Open Meeting
† **December 1, 2000 - 1:30 p.m.** -- Open Meeting
† **December 6, 2000 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia.☎

† **December 14, 2000 - 9 a.m.** -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg,
Virginia.

December 15, 2000 - 9 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg,
Virginia.

A meeting to inquire into allegations that certain
practitioners may have violated laws and regulations
governing the practice of medicine and other healing arts
in Virginia. The committee will meet in open and closed
sessions pursuant to § 2.1-344 of the Code of Virginia.
Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Board of Medicine,
6606 West Broad Street, 4th Floor, Richmond, VA 23230,
telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-
7197/TTY ☎

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **December 13, 2000 - 4 p.m.** -- Public Hearing
Southwest Virginia Higher Education Center, Virginia
Highlands Community College Campus, 1 Partnership Circle,
Abingdon, Virginia.☎ (Interpreter for the deaf provided upon
request)

† **December 13, 2000 - 5 p.m.** -- Public Hearing
Fairfax County Government Center, 12000 Government
Center Parkway, Fairfax, Virginia.☎ (Interpreter for the deaf
provided upon request)

† **December 14, 2000 - 4 p.m.** -- Public Hearing
Augusta County Government Center, 4801 Lee Highway,
Verona, Virginia.☎ (Interpreter for the deaf provided upon
request)

† **January 10, 2001 - 5 p.m.** -- Public Hearing
Hollins Branch Library, 6624 Peters Creek Road, Roanoke,
Virginia.☎ (Interpreter for the deaf provided upon request)

† **January 10, 2001 - 5:30 p.m.** -- Public Hearing
Richmond Housing Development Authority, 601 South
Belvidere Street, Conference Room 1, Richmond, Virginia.☎
(Interpreter for the deaf provided upon request)

Calendar of Events

† January 11, 2001 - 5 p.m. -- Public Hearing

Chesapeake City Hall Council Chamber, 306 Ceder Road, Chesapeake, Virginia. (Interpreter for the deaf provided upon request)

A public hearing to consider 12 VAC 35-115-10 et seq., Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.

Contact: Marlene Butler, Executive Secretary, State Mental Health, Mental Retardation and Substance Abuse Services Board, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-7945, FAX (804) 371-2308, e-mail mbutler@dmhmrsas.state.va.us

DEPARTMENT OF MINES, MINERALS AND ENERGY

† November 28, 2000 - 10 a.m. -- Open Meeting

Department of Mines, Minerals and Energy, Department of Forestry Training Room, 900 Natural Resources Drive, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Board of Mineral Mining Examiners to discuss issues that are developing on felony background checks possibly being required for certified mineral mining blasters.

Contact: Ronald Mullins, Safety Engineer, Department of Mines, Minerals and Energy, P.O. Box 3727, 900 Natural Resources Dr., Charlottesville, VA 22903, telephone (804) 951-6315, FAX (804) 951-6325, (800) 828-1120/TTY, e-mail rdm@mme.state.va.us.

BOARD OF NURSING

January 5, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-50-10 et seq. Regulations Governing the Certification of Massage Therapists.** The purpose of the proposed amendments is to increase application, renewal and other fees charged to applicants and regulated entities in order to cover the expenditures for the regulatory and disciplinary functions of the board.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until January 5, 2001.

Contact: Nancy K. Durrett, Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

December 8, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-30-10 et seq. Regulations Governing the Licensure of Nurse Practitioners.** The purpose of the proposed action is to increase application, renewal and other fees charged to applicants and regulated entities in order to cover the expenditures for the regulatory and disciplinary functions of the board.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

December 8, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-40-10 et seq. Regulations for Prescriptive Authority for Nurse Practitioners.** The purpose of the proposed action is to increase application, renewal and other fees charged to applicants and regulated entities in order to cover the expenditures for the regulatory and disciplinary functions of the board.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

Special Conference Committee

November 30, 2000 - 8:30 a.m. -- Open Meeting

December 4, 2000 - 8:30 a.m. -- Open Meeting

December 5, 2000 - 8:30 a.m. -- Open Meeting

December 11, 2000 - 8:30 a.m. -- Open Meeting

December 14, 2000 - 8:30 a.m. -- Open Meeting

† January 4, 2001 - 8:30 a.m. -- Open Meeting

† February 12, 2001 - 8:30 a.m. -- Open Meeting

† February 13, 2001 - 8:30 a.m. -- Open Meeting

† February 15, 2001 - 8:30 a.m. -- Open Meeting

† February 22, 2001 - 8:30 a.m. -- Open Meeting

† February 23, 2001 - 8:30 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will

conduct informal conferences with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

† **January 22, 2001 - 8:30 a.m.** -- Open Meeting

† **January 24, 2001 - 8:30 a.m.** -- Open Meeting

† **January 25, 2001 - 8:30 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A panel of the board will conduct formal hearings with licensees and/or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

BOARD OF NURSING HOME ADMINISTRATORS

† **December 14, 2000 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An informal conference committee will convene to hear possible violations of the regulations governing the practice of nursing home administrators. No public comment will be heard.

Contact: Marcia J. Miller, Executive Director, Board of Nursing Home Administrators, 6606 West Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-7457, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail mjmillar@dhp.state.va.us

OLD DOMINION UNIVERSITY

December 7, 2000 - 2:30 p.m. -- Open Meeting

Old Dominion University, Webb University Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting of the Board of Visitors to discuss business of the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Assistant to the Vice President for Administration and Finance, Old Dominion University, 225 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

January 22, 2001 - 3 p.m. -- Open Meeting

† **February 19, 2001 - 3 p.m.** -- Open Meeting

† **March 19, 2001 - 3 p.m.** -- Open Meeting

Old Dominion University, Webb University Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the executive committee of the governing board of the institution to discuss business of

the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Assistant to the Vice President for Administration and Finance, Old Dominion University, 225 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

BOARD OF OPTOMETRY

† **December 8, 2000 - 8:30 a.m.** -- Open Meeting

Department of Health Professions, 6606 W. Broad St., 5th Floor, Conference Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A formal hearing. This is a public meeting; however, public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail cstamey@dhp.state.va.us

† **December 8, 2000 - 2 p.m.** -- Open Meeting

Department of Health Professions, 6606 W. Broad St., 5th Floor, Conference Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Informal conference hearings. This is a public meeting; however, public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail cstamey@dhp.state.va.us

VIRGINIA OUTDOORS FOUNDATION

December 5, 2000 - 10 a.m. -- Open Meeting

December 6, 2000 - 9 a.m. -- Open Meeting

State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees to discuss business of the foundation and to accept conservation easements. Public input will be accepted after the regular business meeting.

Contact: Tamara A. Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor Street, Richmond, VA 23219, telephone (804) 225-2147.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

December 5, 2000 - 9 a.m. -- Open Meeting

General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Disability Commission.

Contact: Brian S. Parsons, Director of Virginia Board for People with Disabilities, 202 N. 9th Street, 9th Floor,

Calendar of Events

Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY ☎

BOARD OF PHARMACY

November 27, 2000 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia ☎

A general business meeting to include adoption of final amended regulations for 18 VAC 110-20 (robot technology), 19 VAC 110-30 (physicians selling drugs), and 18 VAC 110-40 (collaborative practice agreements). The board may also consider disciplinary matters and conduct disciplinary proceedings. Public comment on agenda items will be received following approval of the agenda and acceptance of minutes.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY ☎, e-mail erussell@dhp.state.va.us.

† **November 29, 2000 - 9 a.m.** -- Open Meeting
† **December 5, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Conference Room, Richmond, Virginia ☎

Special Conference Committee to conduct informal conferences. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail esr1@dhp.state.va.us.

BOARD OF PHYSICAL THERAPY

November 20, 2000 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia ☎

The Informal Conference Committee will conduct an informal disciplinary proceeding. Public comment will not be received.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Physical Therapy, Southern States Bldg., 4th Floor, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail etisdale@dhp.state.va.us.

November 20, 2000 - 2 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia ☎

A meeting of the Legislative/Regulatory Committee to consider issues related to the regulations and laws governing physical therapy.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Physical Therapy, Southern States Bldg., 4th Floor, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-

9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail etisdale@dhp.state.va.us.

December 15, 2000 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia ☎

A meeting to receive a report from the Credentials and Legislative/Regulatory Committees and to consider other board business. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Physical Therapy, Southern States Bldg., 4th Floor, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail etisdale@dhp.state.va.us.

DEPARTMENT OF STATE POLICE

January 5, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to amend regulations entitled: **19 VAC 30-40-10 et seq. Standards and Specifications for the Stickers or Decals Used by Cities, Counties, and Towns in Lieu of Licensure Plates.** The proposed amendment relates to the placement of stickers used by counties, cities, and towns in lieu of license plates.

Statutory Authority: § 46.2-1052 of the Code of Virginia.

Public comments may be submitted until January 5, 2001, to Major Jerry S. Conner, P.O. Box 27472, Richmond, VA 23261-7472.

Contact: Dennis W. Robertson, Captain, Department of State Police, P.O. Box 27472, Richmond, VA 23472-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

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January 5, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to amend regulations entitled: **19 VAC 30-150-10 et seq. Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.** The proposed amendments make the regulation consistent with the Society of Automotive Engineers (SAE) Standards J575, J578, J579, and J845, upon which the standards and specifications are based.

Statutory Authority: §§ 46.2-1005 and 46.2-1026 of the Code of Virginia.

Public comments may be submitted until January 5, 2001, to Major Jerry S. Conner, P.O. Box 27472, Richmond, VA 23261-7472.

Contact: Dennis W. Robertson, Captain, Department of State Police, P.O. Box 27472, Richmond, VA 23472-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

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January 5, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to amend regulations entitled: **19 VAC 30-160-5 et seq. Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.** The proposed amendments make the regulation consistent with the Society of Automotive Engineers (SAE) Standards J575 and J974, upon which the standards and specifications are based.

Statutory Authority: §§ 46.2-1005 and 46.2-1102 of the Code of Virginia.

Public comments may be submitted until January 5, 2001, to Major Jerry S. Conner, P.O. Box 27472, Richmond, VA 23261-7472.

Contact: Dennis W. Robertson, Captain, Department of State Police, P.O. Box 27472, Richmond, VA 23472-7472, telephone (804) 378-3472 or FAX (804) 378-3487.

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January 5, 2001 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **19 VAC 30-165-10 et seq. Regulations Relating to Standards and Specifications for Purple Warning Lights Used by Vehicles Leading or Escorting Funeral Processions.** The proposed regulation was promulgated in response to an amendment during the 1999 Session of the General Assembly to § 46.2-1025 of the Code of Virginia, which authorizes flashing purple warning lights on vehicles used to lead or provide escorts for funeral processions.

Statutory Authority: §§ 46.2-1005 and 46.2-1025 of the Code of Virginia.


Public comments may be submitted until January 5, 2001, to Major Jerry S. Conner, P.O. Box 27472, Richmond, VA 23261-7472.

Contact: Dennis W. Robertson, Captain, Department of State Police, P.O. Box 27472, Richmond, VA 23472-7472, telephone (804) 378-3472 or FAX (804) 378-3487.


POLYGRAPH EXAMINERS ADVISORY BOARD

December 13, 2000 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail polygraph@dpor.state.va.us.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

December 13, 2000 - 11 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A regular meeting.

Contact: Judith A. Spiller, Administrative Staff Assistant, Board for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537, e-mail spiller@dpor.state.va.us.

BOARD OF PSYCHOLOGY

November 29, 2000 - 12:30 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia.

January 19, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed amendment is to establish a temporary license with an 18-month term limit for residents in clinical psychology and residents in school psychology who have achieved a passing score on the Examination for Professional Practice in Psychology. Upon passing the state examinations and successful completion of the residency requirements, the temporary license will be replaced with a permanent license.

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Calendar of Events

Contact: Janet Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575 or FAX (804) 662-9943.

REAL ESTATE BOARD

† **December 6, 2000 - 4 p.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting of the Real Estate Education Committee.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA, telephone (804) 367-2406, FAX (804) 367-2475, e-mail oneal@dpor.state.va.us.

† **December 7, 2000 - 8 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting of the Fair Housing Committee.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA, telephone (804) 367-8552, FAX (804) 367-2475, e-mail oneal@dpor.state.va.us.

† **December 7, 2000 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting of the full board.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA, telephone (804) 367-8552, FAX (804) 367-2475, e-mail oneal@dpor.state.va.us.

DEPARTMENT OF REHABILITATIVE SERVICES

December 4, 2000 - 4 p.m. -- Public Hearing
Department of Rehabilitative Services, Lee Building, 8004 Franklin Farms Drive, Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

December 7, 2000 - 4 p.m. -- Public Hearing
Fairfax County Government Center, Pennino Human Services Center, 2011 Government Center Parkway, Fairfax, Virginia. (Interpreter for the deaf provided upon request)

December 11, 2000 - 4 p.m. -- Public Hearing
Woodrow Wilson Rehabilitation Center, Fishersville, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Department of Rehabilitative Services and the State Rehabilitation Council invite public comment for use in the development of the FY 2000-2001 State Plan for Vocational Rehabilitation and Supported Employment. This notice is for the public hearings to be held across the state during the 2000-2001 public comment period which lasts until March 9, 2001. Input to the state plan may be submitted by mail, telephone, FAX, or e-mail.

Consumer input to the department's planning efforts is welcomed at any time.

Contact: Gloria O'Neal, Program Support Technician, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7611, FAX (804) 662-7696, toll-free (800) 552-5019, (800) 464-9950/TTY, e-mail onealgb@drs.state.va.us.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

November 28, 2000 - 10 a.m. -- Open Meeting
Department of Business Assistance, 707 East Main Street, 3rd Floor, Main Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Board of Directors to review applications for loans submitted to the authority for approval and for general business of the board. Contact the authority for confirmation of meeting time.

Contact: Cathleen M. Surface, Executive Director, Virginia Small Business Financing Authority, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254 or FAX (804) 225-3384.

STATE BOARD OF SOCIAL SERVICES

January 19, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 63.1-25 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-230-10 et seq. Agency Placement Adoptions - Preplacement Services.** The purpose of the proposed action is to repeal this regulation. The requirement for development of an adoptive placement plan will be incorporated into foster care policies and procedures to be implemented at the point in time that adoption is selected as the goal for the child.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Contact: Brenda Kerr, Adoption Policy Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1290.

January 19, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 63.1-25 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-480-10 et seq. Relocation Assistance General Relief Program.** This regulation provides information to local departments of social services on relocation assistance for general relief recipients. This assistance

has not been used in at least five years and is unnecessary and recommended for repeal.

Statutory Authority: §§ 63.1-25 and 63.1-106 of the Code of Virginia.

Contact: Joy Duke, Adult Protective Services Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1260.

BOARD OF SOCIAL WORK

November 30, 2000 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

The Special Conference Committee will hear possible violations of the regulations and statutes that governing the practice of social work. No public comment will be heard.

Contact: Rai Minor, Administrative Assistant, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail Rminor@dhp.state.va.us.

December 15, 2000 - 9 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

January 5, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Work intends to amend regulations entitled: **18 VAC 140-20-10 et seq. Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to comply with a statutory mandate to develop regulations to implement continuing education requirements for licensure renewal.

Statutory Authority: §§ 54.1-2400 and 54.1-3705.

Contact: Janet Delorme, Deputy Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

VIRGINIA SOIL AND WATER CONSERVATION BOARD

December 6, 2000 - 9 a.m. -- Open Meeting
Wyndham Roanoke Airport, 2801 Hershberger Road, Roanoke, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting. The board will meet first in joint session with the Board of Directors of the Virginia Association of Soil and Water Conservation District Directors, then move to the regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

January 18, 2001 - 9 a.m. -- Open Meeting
Natural Resources Conservation Service, 1606 Santa Rosa Road, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

December 11, 2000 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss changes to proposed regulations.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail soilscientist@dpor.state.va.us.

BOARD OF VETERINARY MEDICINE

November 29, 2000 - 2 p.m. -- Public Hearing
Northern Virginia Community College, 1000 Harry Byrd Highway, Classroom 144, Sterling, Virginia. ♿

A meeting to receive public comment on regulations governing the practice of veterinary medicine and veterinary technology, particularly issues related to practice by unlicensed assistants, facility regulations, and educational standards.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915, FAX (804) 662-9504, (804) 662-7197/TTY ☎, e-mail ecarter@dhp.state.va.us.


† **December 5, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, Southern States Bldg., 6606 W. Broad St., 5th Floor, Conference Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Informal Conference Committee (disciplinary hearings). This is a public meeting, but public comment will not be received.


Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail tbehr@dhp.state.va.us.

Calendar of Events

† December 5, 2000 - 2 p.m. -- Open Meeting


Department of Health Professions, Southern States Bldg., 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 

The board will consider oral and written comments received related to the periodic review of regulations and adopt a report with recommendations for amendments. Other business may be conducted as necessary. Public comment will be received during the first 15 minutes of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915, FAX (804) 662-9504, (804) 662-7197/TTY , e-mail ecarter@dhp.state.va.us.

VIRGINIA MILITARY INSTITUTE


December 1, 2000 - 7:30 a.m. -- Open Meeting

Virginia Military Institute, Smith Hall, Moody Hall, Lexington, Virginia. 

Committee meetings of the Board of Visitors, and annual visits to the academic departments.

Contact: Colonel Edwin L. Dooley, Jr., Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

December 2, 2000 - 8:30 a.m. -- Open Meeting

Virginia Military Institute, Turman Room, Preston Library, Lexington, Virginia. 


A regular meeting of the Board of Visitors to hear committee reports and remarks of the superintendent. The Board of Visitors will not provide an opportunity for public comment at this meeting. Public comment is received at the first meeting of the academic year, usually in August.

Contact: Colonel Edwin L. Dooley, Jr., Secretary, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

DEPARTMENT FOR THE VISUALLY HANDICAPPED


Statewide Rehabilitation Council for the Blind

December 2, 2000 - 10 a.m. -- Open Meeting

Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A meeting to advise the Department for the Visually Handicapped on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond VA 23227, telephone (804) 371-

3111, FAX (804) 371-3351, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail taylorjg@dvh.state.va.us.

VIRGINIA WASTE MANAGEMENT BOARD

December 4, 2000 - 9 a.m. -- Public Hearing

Main Street Centre, Lower Level Conference Room, 600 East Main Street, Richmond, Virginia

A public hearing to receive comments on proposed Regulation for Dispute Resolution, 9 VAC 5-210-10 et seq. See notice under State Air Pollution Control Board.

Contact: Kathleen Sands, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, (804) 698-4021/TTY , e-mail klsands@deq.state.va.us

December 6, 2000 - 10:30 a.m. -- Public Hearing

James City County Government Center, 101-C Mounts Bay Road, Building C, 1st Floor, Board of Supervisors Room, Williamsburg, Virginia.

December 12, 2000 - 1 p.m. -- Public Hearing

Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

December 14, 2000 - 11 a.m. -- Public Hearing

Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia.


January 5, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-130-10 et seq. Regulations for the Development of Solid Waste Management Plans.** The purpose of the proposed amendments requires counties, cities and towns to develop complete, revised solid waste management plans.


Statutory Authority: § 10.1-1411 of the Code of Virginia.

Contact: Daniel S. Gwinner, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218 or FAX (804) 698-4327, email dsgwinner@deq.state.va.us.

† December 19, 2000 - 10 a.m. -- Public Hearing

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)

† January 9, 2001 - 11 a.m. -- Public Hearing

Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia.  (Interpreter for the deaf provided upon request)

† **January 11, 2001 - 1 p.m.** -- Public Hearing
Department of Environmental Quality, West Central Regional
Office, 2019 Peters Creek Road, Roanoke, Virginia. ☎
(Interpreter for the deaf provided upon request)

February 2, 2001 - Public comments may be submitted
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of
the Code of Virginia that the Virginia Waste Management
Board intends to amend regulations entitled: **9 VAC 20-
140-10 et seq. Regulations for the Certification of
Recycling Machinery and Equipment for Tax
Exemption Purposes.** The proposed amendments
remove requirements for submittal of proof of purchase
price and for equipment to be in a fixed location to qualify
for state income tax credit and clarify what is not covered
by the regulation.

Statutory Authority: §§ 58.1-338, 58.1-439.7, 58.1-439.8 and
58.1-3661 of the Code of Virginia.

Contact: Daniel S. Gwinner, Virginia Waste Management
Board, Department of Environmental Quality, P.O. Box
10009, Richmond, VA 23240, telephone (804) 698-4218,
e mail dsgwinner@deq.state.va.us.

STATE WATER CONTROL BOARD

November 27, 2000 - 7 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

December 7, 2000 - 7 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive,
Board of Supervisors Meeting Room, Roanoke, Virginia.

December 22, 2000 - Public comments may be submitted
until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of
the Code of Virginia that the State Water Control Board
intends to amend regulations entitled: **9 VAC 25-110-10
et seq. General Virginia Pollutant Discharge
Elimination System (VPDES) Permit for Domestic
Sewage Discharges of Less Than or Equal to 1,000
Gallons Per Day.** The proposed regulation will replace
the general permit VAG40 which expires August 1, 2001.
The regulation sets forth guidelines for the permitting of
discharges of treated wastewaters from small volume
sources of domestic sewage.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Contact: Lily Choi, Department of Environmental Quality,
P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-
4054 or FAX (804) 698-4032.

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November 27, 2000 - 7 p.m. -- Public Hearing
Williamsburg Municipal Building, Williamsburg City Council,
401 Lafayette Street, Williamsburg, Virginia.

November 28, 2000 - 7 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

December 7, 2000 - 3 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive,
Board of Supervisors Meeting Room, Roanoke, Virginia.

December 22, 2000 - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of
the Code of Virginia that the State Water Control Board
intends to amend regulations entitled: **9 VAC 25-260-5
et seq. Water Quality Standards.** The proposed
amendments change the state's approach to assessment
of dissolved oxygen water quality criteria in certain
waters that are naturally low in dissolved oxygen
concentration. In addition to any other comments, the
board is seeking comments on the costs and benefits of
the proposal. Also, the proposed regulation states that a
determination of natural water quality should be based
upon an evaluation of aquatic life uses, habitat, available
monitoring data, available computer modeling results or
other accepted scientific principles. The board requests
comments on how the board should use these
parameters to make the determination of natural water
quality.

Anyone wishing to submit written comments for the public
comment file may do so at the public hearing or by mail.
Written comments should be signed by the commenter
and include the name and address of the commenter. In
order to be considered, the comments must be received
by the close of the comment period. Oral comments may
be submitted at the public hearing.

Opportunity for formal hearing: The board will hold a
formal hearing at a time and place to be established if a
petition for such a hearing is received and granted.
Affected persons may petition for a formal hearing
concerning any issue of fact directly relevant to the legal
validity of the proposed action. Petitions must meet the
requirements of the board's Procedural Rule No. 1 (9
VAC 25-230-130 B) and must be received by the contact
person no later than November 22, 2000.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Contact: Elleanore Daub, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4378.

December 4, 2000 - 9 a.m. -- Public Hearing
Main Street Centre, Lower Level Conference Room, 600 East
Main Street, Richmond, Virginia

A public hearing to receive comments on proposed
Regulation for Dispute Resolution, 9 VAC 5-210-10 et
seq. See notice under State Air Pollution Control Board.

Contact: Kathleen Sands, State Water Control Board,
Department of Environmental Quality, P.O. Box 10009
Richmond, VA 23240, telephone (804) 698-4413, FAX (804)
698-4510, (804) 698-4021/TTY ☎, e-mail
klsands@deq.state.va.us.

Calendar of Events

December 6, 2000 - 2 p.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ♿

December 12, 2000 - 2 p.m. -- Open Meeting
Roanoke County Administration Center, 5204 Bernard Drive, Roanoke, Virginia. ♿

A public meeting to discuss the State Water Control Board's proposal to adopt a Virginia Total Maximum Daily Load Regulation for water quality management planning and repeal the existing regulatory water quality management plans (but maintain them as planning documents).

Contact: Charles H. Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4462, FAX (804) 698-4136, e-mail chmartin@deq.state.va.us.

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December 12, 2000 - 10 a.m. -- Public Hearing
Bank of Lancaster, 432 North Main Street, Conference Room, Kilmarnock, Virginia.

January 8, 2001 - Public comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-115-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Seafood Processing Facilities.** The purpose of the proposed amendment is to reissue general permit VAG52 which will expire on July 24, 2001. This general permit regulation sets forth guidelines for the permitting of wastewater discharges from seafood processing facilities.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065 or FAX (804) 698-4032, e-mail mbgregory@deq.state.va.us.

December 13, 2000 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A regular meeting.

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.state.va.us.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

December 9, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators intends to amend regulations entitled: **18 VAC 160-20-10 et seq. Board for Waterworks and Wastewater Works Operators Regulations.** The proposed amendments will implement the "Environmental Protection Agency Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Notice" (1999), by creating a new Class VI waterworks operator license and requiring continuing professional education for all licensed waterworks operators. In addition, the text of the regulations have been reorganized and revised for clarity and ease of use.

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Contact: Joseph Kossan, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-6128 or (804) 367-9753/TTY ☎

December 21, 2000 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting. This meeting was rescheduled from December 14, 2000.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail waterwasteoper@dpor.state.va.us.

VIRGINIA WORKFORCE COUNCIL

† **December 6, 2000 - 10 a.m.** -- Open Meeting
Virginia Commonwealth University, University Student Commons, 907 Floyd Avenue, Commonwealth Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting of the council. Major agenda items include: One Stop Service Delivery System; policies on Chartering Virginia Workforce Systems, incentives and sanctions, and the Governor's discretionary 30% the Workforce Investment Act (WIA) youth and adult funds. Local strategic planning guidance for 2001 and a report by the Department of Education and the Virginia Community College System to study Tech Prep and apprenticeship programs will also be presented.

Public comment will be at 11 a.m. Five minutes will be allowed for comment and a written copy of comments must be provided.

Contact: Gail Robinson, Virginia Workforce Council Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 225-2190 or (804) 828-1120/TTY ☎

INDEPENDENT

VIRGINIA RETIREMENT SYSTEM

December 20, 2000 - Noon -- Open Meeting
† February 13, 2001 - Noon -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia.

A regular meeting of the Investment Advisory Committee.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.

December 21, 2000 - 1 p.m. -- Open Meeting
† February 15, 2001 - 1 p.m. -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia.

A regular meeting of the Board of Trustees.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.

† February 15, 2001 - 10 a.m. -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia.

The following committees will meet:

Benefits and Actuarial Committee - 10 a.m.
Audit and Compliance Committee - 11 a.m.
Administration and Personnel Committee - Noon

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.

VIRGINIA WORKERS' COMPENSATION COMMISSION

November 28, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Workers' Compensation Commission intends to adopt regulations entitled: **16 VAC 30-100-10 et seq. Regulations for Professional Employer Organizations.** The proposed regulations relate to implementation of the registration and reporting requirements imposed upon professional employer organizations by amendments to Title 65.2 at the 2000 legislative session.

Statutory Authority: §§ 65.2-201 and 65.2-803.1 of the Code of Virginia.

Contact: Sam Lupica, Virginia Workers' Compensation Ombudsman, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-8269, FAX (804) 367-9740, toll-free 1-877-664-2566, or (804) 367-3600/TTY

LEGISLATIVE

JOINT SUBCOMMITTEE STUDYING OVERREPRESENTATION OF AFRICAN-AMERICAN STUDENTS IN SPECIAL EDUCATION PROGRAMS

December 1, 2000 - 10 a.m. -- Open Meeting
December 15, 2000 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Rooms C and D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Brenda Edwards, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY

CHESAPEAKE BAY RESTORATION FUND ADVISORY COMMITTEE

November 28, 2000 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 3rd Floor East Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the advisory committee. Individuals requiring interpreter services or other accommodations should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Brian B. Taylor, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY

VIRGINIA CODE COMMISSION

NOTE: CHANGE IN MEETING DATE

November 27, 2000 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regularly scheduled meeting to review the final draft of Titles 2.1 and 9, continue the review of Title 63.1, and conduct any other business that may come before the commission. A brief public comment period will be scheduled at the end of the meeting.

Calendar of Events

Contact: Jane D. Chaffin, Registrar of Regulations, Division of Legislative Services, General Assembly Building, 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

December 13, 2000 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regularly scheduled meeting. Public comment will be scheduled.

Contact: Jane D. Chaffin, Registrar of Regulations, Division of Legislative Services, General Assembly Building, 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

HOUSE COMMITTEE ON CORPORATIONS, INSURANCE AND BANKING

† December 7, 2000 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of Subcommittee 2 to consider HB 1515 regarding payday lending. Questions regarding the meeting should be addressed to Frank Munyan or Maureen Stinger, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Lois V. Johnson, Committee Operations, House of Delegates, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY

† December 7, 2000 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the committee to consider carry over legislation. Questions regarding the meeting should be addressed to Frank Munyan or Maureen Stinger, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Lois V. Johnson, Committee Operations, House of Delegates, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY

EARLY CHILDHOOD AND CHILD DAY CARE PROGRAMS COMMISSION

† November 30, 2000 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general meeting. Questions regarding the meeting should be addressed to Amy Marschean, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Hudaidah Bhimdi, Committee Operations, House of Delegates, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY

JOINT SUBCOMMITTEE STUDYING ECONOMIC INCENTIVES FOR VIRGINIA'S SHIPBUILDING INDUSTRY (SJR 177, 2000)

November 22, 2000 - 1 p.m. -- Open Meeting
Newport News Shipbuilding Carrier Innovation Center, Newport News, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the joint subcommittee. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Brian B. Taylor, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TDD


COMMISSION ON EDUCATIONAL INFRASTRUCTURE AND TECHNOLOGY (HJR 223)

December 5, 2000 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)


A regular meeting. Questions regarding the meeting should be addressed to Norma Szakal, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY


JOINT SUBCOMMITTEE TO EXAMINE THE CURRENT MEANS AND ADEQUACY OF COMPENSATION TO VIRGINIA'S CITIZENS WHOSE PROPERTIES ARE TAKEN THROUGH THE EXERCISE OF EMINENT DOMAIN (SJR 37, 2000)

† **December 5, 2000 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate
Room 4, Richmond, Virginia.  (Interpreter for the deaf
provided upon request)

A regular meeting. Individuals requiring interpreter
services or other special assistance should contact Brian
Taylor at least 10 working days prior to the meeting.

Contact: Brian Taylor, Senate Committee Operations, State
Capitol, P.O. Box 396, Richmond, VA 23218, telephone (804)
698-7450 or (804) 698-7419/TTY 


VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

November 29, 2000 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia.  (Interpreter for the deaf
provided upon request)


A general meeting.

Contact: Maria J.K. Everett, Executive Director, Virginia
Freedom of Information Advisory Council, 910 Capitol St., 2nd
Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX
(804) 371-0169, toll-free (866) 448-4100, e-mail
meverett@leg.state.va.us.


SENATE COMMITTEE ON GENERAL LAWS

December 6, 2000 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate
Room B, Richmond, Virginia.  (Interpreter for the deaf
provided upon request)


A meeting to consider legislation continued to the 2001
Session of the General Assembly.

Contact: John McE. Garrett, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 698-
7450 or (804) 698-7419/TTY 


HOUSE COMMITTEE ON HEALTH, WELFARE AND INSTITUTIONS

December 11, 2000 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room C, Richmond, Virginia.  (Interpreter for the deaf
provided upon request)

A regular meeting to consider carry-over legislation.
Individuals requiring interpreter services or other special
assistance should contact the committee operations
office at least 10 working days prior to the meeting.

Contact: Dawn B. Smith, House Committee Operations,
P.O. Box 406, Richmond, VA 23218, telephone (804) 698-
1540 or (804) 786-2369/TTY 


VIRGINIA HOUSING STUDY COMMISSION

November 28, 2000 - 1 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, Senate
Room A, Richmond, Virginia.  (Interpreter for the deaf
provided upon request)

A public hearing and meeting to address
recommendations of Commission 2000 work groups
relating to SJR/HJR 253 (including 224, 236, 254, 255,
256 and 257), and HB 605, 607, 933, 1083, and 1145;
and SB 721.

Contact: Nancy D. Blanchard, Virginia Housing Study
Commission, 601 S. Belvidere St., Richmond, VA 23220,
telephone (804) 343-5565.


MARTIN LUTHER KING, JR. MEMORIAL COMMISSION

† **November 21, 2000 - 2 p.m.** -- Public Hearing
General Assembly Building, 9th and Broad Streets, House
Room C, Richmond, Virginia.  (Interpreter for the deaf
provided upon request)


Please be advised that the meeting for this Commission
has been rescheduled for November 21, 2000.

Contact: Brenda Edwards, Division of Legislative Services,
telephone (804) 343-5565, e-mail: bedwards@leg.state.va.us.


JOINT SUBCOMMITTEE TO STUDY CREATION OF A NORTHERN VIRGINIA REGIONAL TRANSPORTATION AUTHORITY (SJR 121, 2000)

December 13, 2000 - 9:30 a.m. -- Open Meeting
Northern Virginia Planning District Commission Headquarters,
7535 Little River Turnpike, Suite 100, Annandale, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Please direct all questions regarding
the agenda to Senate Committee Operations. Individuals
requiring interpreter services or other accommodations
should contact the committee operations office at least
10 working days prior to the meeting.

Contact: Thomas G. Gilman, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 698-
7450 or (804) 698-7419/TTY 

SENATE COMMITTEE ON PRIVILEGES AND ELECTIONS

† **December 20, 2000 - 2 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate
Room A, Richmond, Virginia. 

Calendar of Events

A meeting to consider legislation continued to the 2001 Session. Patrons of continued legislation should contact Mary Spain, Division of Legislative Services, (804) 786-3591, if they do not wish their bill to be considered at this meeting. Individuals requiring interpreter services or other accommodations should contact the committee operations office at least seven working days prior to the meeting.

Contact: Patricia J. Lung, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 225-4749/TTY ☎

JOINT REAPPORTIONMENT COMMITTEE

† **December 4, 2000 - 2 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A regular meeting. Questions regarding the agenda should be directed to Mary Spain or Jack Austin, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should contact the committee operations office at least seven working days prior to the meeting.

Contact: Patricia J. Lung, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

HOUSE COMMITTEE ON GENERAL LAWS' SUBCOMMITTEE STUDYING REDEEMABLE BEVERAGE CONTAINERS (HB 659)

† **December 7, 2000 - 2 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Maria Everett, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

RURAL VIRGINIA PROSPERITY COMMISSION

† **November 27, 2000 - 1:30 p.m.** -- Public Hearing
Carrington Center, Danville, Virginia. ♿

1:30 p.m. -- Executive Committee meeting.
2:30 p.m. -- Commission meeting.
5:30 p.m. -- Working dinner.
7:00 p.m. -- Public hearing.

Contact: Scott Maddrea, Committee Operations Office, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

JOINT SUBCOMMITTEE STUDYING SATELLITE CHIP MILLS (HJR 730)

NOTE: CHANGE IN MEETING DATE

December 6, 2000 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A regular meeting. Questions regarding the retreat or the agenda should be directed to Marty Farber, Division of Legislative Services, (804) 786-3591. The meeting scheduled for December 14, 2000, has been canceled.

Contact: Barbara Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

STANDING SUBCOMMITTEE ON SCHOOL DROP OUT AND WAYS TO PROMOTE THE DEVELOPMENT OF SELF-ESTEEM AMONG YOUTH AND ADULTS

November 29, 2000 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speakers Conference Room, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Brenda Edwards, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

Contact: Dawn B. Smith, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

COMMISSION ON VIRGINIA'S STATE AND LOCAL TAX STRUCTURE FOR THE 21ST CENTURY

NOTE: CHANGE IN MEETING DATE


November 30, 2000 - 9 a.m. -- Open Meeting
University of Virginia, Zehmer Hall, Conference Center, Charlottesville, Virginia. ♿

A regular meeting of the commission devoted to the discussion and consideration of issues concerning the adequacy of Virginia's state and local tax structure to address the needs of the Commonwealth in the 21st Century.

Contact: Leisa Steele, Executive Assistant, Weldon Cooper Center for Public Service, 700 E. Franklin St., Suite 700, Richmond, VA 23219-2318, telephone (804) 786-4273, FAX (804) 371-0234, e-mail leisasteele@erols.com.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE


Advisory Committee 2 (Economic Development)


December 5, 2000 - 1 p.m. – Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Continuing discuss on economic development issues facing Virginia's high technology sectors.


Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail JJung@leg.state.va.us.

JOINT SUBCOMMITTEE STUDYING THE FEASIBILITY OF DEVELOPING A CENTER FOR CONTINUING AND VOCATIONAL EDUCATION (SJR 242, 2000)

† **November 29, 2000 - 10 a.m.** – Open Meeting
Center for Science and Technology, Chesapeake, Virginia  (Interpreter for the deaf provided upon request)

† **December 13, 2000 - 10 a.m.** – Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Continuing discuss on economic development issues facing Virginia's high technology sectors.

Contact: Thomas C. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY 

CHRONOLOGICAL LIST

OPEN MEETINGS

November 20

- Education, Board of
 - Advisory Board of Teacher Education and Licensure
- Hearing Aid Specialists, Board for
 - Committee for Consumer Awareness
- Physical Therapy, Board of
 - Informal Conference Committee
 - Legislative/ Regulatory Committee

November 21

- † Alzheimer's Disease and Related Disorders Commission
- Environmental Quality, Department of
 - Ground Water Protection Steering Committee, Virginia
- Higher Education for Virginia, State Council of

- † Information Providers Network Authority, Virginia
- † Martin Luther King, Jr., Memorial Commission

November 22

- † Economic Incentives for Virginia's Shipbuilding Industry, Joint Subcommittee Studying

November 27

- Code Commission, Virginia
- † Information Providers Network Authority, Virginia
- Pharmacy, Board of
- † Rural Virginia Prosperity Commission

November 28

- † Agriculture and Consumer Services, Department of
 - Virginia Seed Potato Board
- Chesapeake Bay Restoration Fund Advisory Committee
- Compensation Board
- † Competition Council, Commonwealth
- Housing Study Commission, Virginia
- † Mines, Minerals and Energy, Department of
 - Board of Mineral Mining Examiners
- Small Business Financing Authority, Virginia

November 29

- Air Pollution Control Board
- At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council
- † Education, Board of
 - Task Force on Adult Education and Literacy
- Environmental Quality, Department of
- Freedom of Information Advisory Council, Virginia
- Funeral Directors and Embalmers, Board of
 - Legislative Committee
- † Health, Department of
 - AIDS Drug Advisory Committee
- † Pharmacy, Board of
- † School Drop Out and Ways to Promote the Development of Self-Esteem Among Youth and Adults, Standing Subcommittee on
- † Vocational Education, Joint Subcommittee Studying the Feasibility of Developing a Center for Continuing and

November 30

- † Early Childhood and Child Day Care Programs Commission
- Education, Board of
- † Medicine, Board of
 - Informal Conference Committee
- Nursing, Board of
 - Special Conference Committee
- Social Work, Board of
 - Special Conference Committee
- † State and Local Tax Structure for the 21st Century, Commission on Virginia's

December 1

- African-American Students in Special Education Programs, Joint Subcommittee Studying Overrepresentation of
- Art and Architectural Review Board
- † Dentistry, Board of
 - Informal Conference Committee
- † Health Professions, Department of

Calendar of Events

Medicine, Board of
- Credentials Committee
- Executive Committee
- Informal Conference Committee
Virginia Military Institute
- Board of Visitors

December 2

Virginia Military Institute
- Board of Visitors
Visually Handicapped, Department for the
- Statewide Rehabilitation Council for the Blind

December 4

Barbers and Cosmetology, Board for
Nursing, Board of
- Special Conference Committee
† Reapportionment Committee, Joint

December 5

† Competition Council, Commonwealth
- Taskforce Studying Commercial Activities of Not-for-Profit Organizations
Educational Infrastructure and Technology, Commission on
† Eminent Domain, Joint Subcommittee To Examine the Current Means and Adequacy of Compensation To Virginia's Citizens Whose Properties Are Taken Through the Exercise of
Hopewell Industrial Safety Council
Nursing, Board of
- Special Conference Committee
Outdoors Foundation, Virginia
- Board of Trustees
People with Disabilities, Virginia Board for
- Disability Commission
† Pharmacy, Board of
- Special Conference Committee
Technology and Science, Joint Commission on
- Advisory Committee 2 (Economic Development)
† Veterinary Medicine, Board of
- Informal Conference Committee

December 6

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Certified Interior Designer Section
Funeral Directors and Embalmers, Board of
General Laws, Senate Committee on
† Historic Resources, Department of
- State Review Board and Historic Resources Board
Human Resource Management, Department of
† Medicine, Board of
- Informal Conference Committee
Outdoors Foundation, Virginia
- Board of Trustees
† Real Estate Board
- Real Estate Education Committee
Satellite Chip Mills, Joint Subcommittee Studying
Soil and Water Conservation Board, Virginia
Water Control Board, State
† Workforce Council, Virginia

December 7

At-Risk Youth and Families, Comprehensive Services for
- State and Local Advisory Team
† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Corporations, Insurance and Banking, House Committee on
- Subcommittee 2
Funeral Directors and Embalmers, Board of
Old Dominion University
- Board of Visitors
† Real Estate Board
- Fair Housing Committee
† Redeemable Beverage Containers, House Committee on General Laws' Subcommittee Studying

December 8

Environmental Quality, Department of
- Virginia Environmental Education Advisory Committee
Health Professions, Department of
- Health Practitioners' Intervention Program
† Optometry, Board of

December 9

Environmental Quality, Department of
- Virginia Environmental Education Advisory Committee

December 11

Air Pollution Control Board, State
Health, Welfare and Institutions, Committee on
Hearing Aid Specialists, Board for
Nursing, Board of
- Special Conference Committee
Soil Scientists, Board for Professional

December 12

† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Branch Pilots, Board for
Higher Education Center, Southwest Virginia
Water Control Board, State

December 13

Branch Pilots, Board for
Code Commission, Virginia
† Conservation and Recreation, Department of
- Board on Conservation and Development of Public Beaches
Northern Virginia Regional Transportation Authority, Joint Subcommittee to Study Creation of a
Polygraph Examiners Advisory Board
Professional and Occupational Regulation, Board for
† Vocational Education, Joint Subcommittee Studying the Feasibility of Developing a Center for Continuing and
Water Control Board, State

December 14

† Agriculture and Consumer Services, Department of
- Virginia Corn Board
† Assistive Technology Loan Fund Authority
† Competition Council, Commonwealth

- Taskforce Studying Commercial Activities of Not-for-Profit Organizations
- Criminal Justice Services Board
 - Committee on Training
- † Medicine, Board of
 - Informal Conference Committee
- Nursing, Board of
 - Special Conference Committee
- † Nursing Home Administrators, Board of
 - Informal Conference Committee

December 15

- African-American Students in Special Education Programs, Joint Subcommittee Studying Overrepresentation of
- Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Medicine, Board of
 - Informal Conference Committee
- Physical Therapy, Board of
- Social Work, Board of

December 19

- Branch Pilots, Board for
- Marine Resources Commission

December 20

- At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council
- † Privileges and Elections, Senate Committee on Retirement System, Virginia
 - Investment Advisory Committee

December 21

- Retirement System, Virginia
 - Board of Trustees
- Waterworks and Wastewater Works Operators, Board for

January 4, 2001

- † Nursing, Board of
 - Special Conference Committee

January 18

- Soil and Water Conservation Board, Virginia

January 19

- Library Board
 - Archival and Information Services Committee
 - Collection Management Services Committee
 - Legislative and Finance Committee
 - Public Library Development Committee
 - Publications and Educational Services Committee
 - Records Management Committee

January 22

- Old Dominion University
 - Executive Committee
- † Nursing, Board of

January 24

- † Nursing, Board of

January 25

- † Nursing, Board of

January 27

- Conservation and Recreation, Department of
 - Cave Board

February 12

- † Nursing, Board of
 - Special Conference Committee

February 13

- † Nursing, Board of
 - Special Conference Committee
- † Retirement System, Virginia
 - Investment Advisory Committee

February 15

- † Nursing, Board of
 - Special Conference Committee
- † Retirement System, Virginia
 - Board of Trustees
 - Administration and Personnel Committee
 - Audit and Compliance Committee
 - Benefits and Actuarial Committee

February 19

- † Old Dominion University
 - Board of Visitors Executive Committee

February 22

- † Nursing, Board of
 - Special Conference Committee

February 23

- † Nursing, Board of
 - Special Conference Committee

March 19

- † Library Board
 - Archival and Information Services Committee
 - Collection Management Services Committee
 - Legislative and Finance Committee
 - Public Library Development Committee
 - Publications and Educational Services Committee
 - Records Management Committee
- † Old Dominion University
 - Board of Visitors Executive Committee

PUBLIC HEARINGS

November 21

- Chesapeake Bay Local Assistance Board

November 27

- Water Control Board, State

November 28

- Water Control Board, State

November 29

- Psychology, Board of
- Veterinary Medicine, Board of

December 1

- Medicine, Board of

December 4

- Air Pollution Control Board, State

Calendar of Events

† Health, Department of
Rehabilitative Services, Department of
Waste Management Board, Virginia
Water Control Board, State

December 6

Waste Management Board, Virginia

December 7

Rehabilitative Services, Department of
Water Control Board, State

December 11

† Health, Department of
Rehabilitative Services, Department of

December 12

Waste Management Board, Virginia
Water Control Board, State

December 13

† Mental Health, Mental Retardation and Substance
Abuse Services Board, State

December 14

† Mental Health, Mental Retardation and Substance
Abuse Services Board, State
Waste Management Board, Virginia

December 15

Social Work, Board of

December 19

† Marine Resources Commission
† Waste Management Board, Virginia

January 9, 2001

† Waste Management Board, Virginia

January 10

† Mental Health, Mental Retardation and Substance
Abuse Services Board, State

January 11

† Mental Health, Mental Retardation and Substance
Abuse Services Board, State
† Waste Management Board, Virginia