

**Rockingham County Public Schools**  
**Local Policies and Procedures Governing Special Education Programs**  
**2008-2009**

**8 VAC 20-80-40. Responsibility of the Local Education Agency and State-Operated Programs**

**A. The Rockingham County Public School division ensures that all children with disabilities, aged two to 21, inclusive, residing in the jurisdiction have a right to a free appropriate public education, including:**

1. Children with disabilities who are migrant;
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;
4. Children with disabilities who are served in a charter school in accordance with the Code of Virginia;
5. Children with disabilities who have been suspended or expelled from school, in accordance with this chapter;
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;
7. Children with disabilities who are residents of Rockingham County and who are on house arrest, as ordered by a court of competent jurisdiction; services shall be provided at a mutually agreed upon location;
8. Children with disabilities who are in foster care and residents of Virginia, but not residents of Rockingham County Public Schools, under the following conditions:
  - a. The child has been placed in foster care or other custodial care within the geographical boundaries of Rockingham County Public Schools, 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 Rockingham County; and
  - 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 agency (Rockingham County Public Schools) that is a 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);
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 Services Act team that places the child in the private residential placement for noneducational reasons shall ensure, to the extent reasonable, a free appropriate public education;
10. Children with disabilities who are placed for noneducational reasons and are not physically present in Rockingham County, but whose parent or parents continue to reside in Rockingham County 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 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, parent's, 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 Rockingham County;

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 Rockingham County, 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 the guardian resides in Rockingham County, 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.
13. When implementing the requirements of the IDEA, 2004 with respect to homeless students, the requirements of Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.) must be met. Central office staff will provide trainings to school personnel regarding the requirements of the McKinney-Vento Homeless Assistance Act.
14. Policies and procedures will be in effect which are designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children with disabilities, including children with disabilities with a particular impairment. The school division will periodically review minority representation and develop appropriate corrective action plans.
15. A student with a disability will not be required to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation, or receiving services. However, teachers and other school personnel may consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.
16. All reasonable steps are taken to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time that students without disabilities receive instructional materials.

#### **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 to 21, inclusive) children.**

1. Grouping. When children with disabilities are removed from the general education classroom for special education and related services, they may receive services with children with the same disability or with children with different disabilities. Each child must receive 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. Special education and related service personnel, including paraprofessionals, have the content knowledge and skills to serve children with disabilities. This includes:
  - a. Ensuring that each person employed as a special education teacher for K – 12 instruction is "highly qualified" by July 1, 2006; and

- b. Rockingham County Public Schools is engaged in a process to recruit, employ, train, and retain highly qualified personnel to provide special education and related services to students with disabilities.
- 3. Personnel assignment.
  - a. Personnel assignment requirements are 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 special education services from personnel assigned in accordance with Figure A.
  - c. Personnel providing services to a child who has more than one disability are not required to be endorsed in all areas of the child's disabilities. The child shall receive some services for each disability from appropriately endorsed personnel.
- 4. Caseload standards.
  - a. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. 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. 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 3d 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 licenses and endorsements for such assignments.
  - d. When special education personnel are assigned to provide services for children who do not have a disability under this chapter or are assigned to administrative duties, a reduction in the caseload specified in the Virginia Appropriation Act 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 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 aged (two to five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's individualized education program team. A full 5.5-hour day shall be provided if determined appropriate by the IEP team.
- 2. Staffing requirements.
  - a. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.
  - b. Personnel assignment standards are listed in Figure B.
  - c. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. 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.**

1. 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.**

1. Rockingham County Public 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 school division plans to implement a different staffing pattern from those specified in this chapter, the superintendent shall 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.

**Figure A. Special education personnel assignment requirements for school-aged children, ages five to 21, inclusive, in Rockingham County Public Schools.**

Disability Category	Endorsement
Autism	any special education endorsement, as appropriate to student needs
Deaf-blindness	Severe disabilities K-12 or any other special education endorsement, as appropriate to student needs
Developmental Delay: ages 5- 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 personnel assignment requirements for preschool children, ages two to five, inclusive, in Rockingham County Public Schools.**

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
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 meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics.

2. Personnel who provide interpreting services for children who use sign language or cued speech or cued language and who do not hold the required qualifications may be employed in accordance with all of the following criteria:

a. 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. Personnel shall achieve the qualification requirements by the third anniversary of their hiring date with Rockingham County Public Schools; and

c. Rockingham County Public Schools 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 requirements for personnel providing interpreting services.

a. Conditions for requesting a waiver.

(1) Rockingham County Public Schools superintendent shall request a waiver of the qualification requirements for personnel who do not meet the qualification requirements for providing interpreting services. The request shall include a statement certifying that Rockingham County Public Schools 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 personnel who do not hold 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 Rockingham County Public Schools receives the notice of equivalency of the out-of-state credential or of the attainment of the VQAS level. 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 in subdivision 2 b of this subsection and who hold a VQAS Level II. This waiver may be provided for 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 qualification requirements 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. Child find.**

### **A. Target ages.**

1. Rockingham County Public Schools shall maintain an active and continuing child find program designed to identify, locate, evaluate, and render a determination of eligibility status (regardless of current eligibility status) to children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who:

a. Are highly mobile, such as migrant and homeless children;

b. Attend private schools, including children who are home-instructed or home-tutored;

c. Are suspected of being children with disabilities under this chapter and in need of special education, even though they are advancing from grade to grade;

d. Are under age 18 who are suspected of having a disability who need special education and related services and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days;

e. Reside within the jurisdiction of the local education agency, including wards of the state, who are not home-schooled or attending a private school; and

- f. Attend a home-school or private school which is located within the geographic boundaries of the local education agency.
2. Rockingham County Public Schools will coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council.
3. Rockingham County Public Schools 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 Rockingham County, 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. Rockingham County Public Schools shall consult with appropriate representatives of private school children with disabilities on how to carry out the child find and evaluation activities.

**B. Public awareness.**

1. Rockingham County Public Schools 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.
2. Procedures for informing the community shall show evidence of the use of a variety of materials and media including:
  - a. Contacts with community groups, public and private agencies, and organizations. Contacts may include print materials such as brochures, signs, pamphlets, and public service announcements. Informational materials are distributed to churches, synagogues and mosques as well as clinics and doctors offices. Material is distributed on an annual basis. Local agencies, including the Department of Health and Human Services, the Association for Retarded Citizens (ARC), the Harrisonburg/Rockingham County Community Services Board, and the Juvenile Court Service Unit are contacted on an annual basis. The Rockingham County Partners for Student Success Consortium is utilized to inform local business and collegiate professionals of the availability of special education programs and services. Pupil personnel and special education endorsed staff are available to serve as speakers on topics related to children with disabilities.
  - b. Provision of information in the person's native language or primary mode of communication as appropriate. Informational materials include notices informing the public to contact the office of pupil personnel services if information is needed in a language other than that of English.
3. Rockingham County Public Schools shall show evidence of involvement of parents and community members in the required child find and community awareness campaign.

**C. Screening.**

1. The screening process for all children enrolled in Rockingham County Public Schools, including transfers from out of state, is as follows:
  - a. All children (through grade three), within 60 business days of initial enrollment in a public school, shall be screened in speech, voice, and language to determine if a referral for an evaluation for special education and related services is indicated.
  - b. All children, within 60 business days of initial enrollment, shall be screened in the areas of vision and hearing to determine if 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.
  - c. All children (through grade three), within 60 business days of initial enrollment, shall be screened for fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.
  - d. The screening may take place up to 60 business days prior to the start of school. The 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. 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 60 business days if the original results are not considered valid.

g. Children shall be referred to the special education administrator or designee no more than five business days after screening or rescreening if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.

2. Rockingham County Public Schools shall establish and maintain screening procedures to assure the identification of children with suspected disabilities residing within its jurisdiction and requiring special education. Rockingham County Public Schools provides for the mass screening of children as described in section VAC 20-80-50 C.1, 2, and 3.

These procedures provide the following:

- a. Providing a written notice to parents of the scheduled screening and, if the child fails the screening, a written report of the results of the screening;
  - b. Confidentiality and maintenance of the students scholastic records are met following the requirements as outlined in the Virginia regulations governing special education at 20-80-70 g.11 and Federal Family Education Rights and Privacy Act.
  - c. Screening of children for special education is accomplished via the mass screening required under §20-80-50 C. 1. (screening) and §20-80-50 C. 3. (procedures for the child study committee).
  - d. A description of any additional mass screening for special education.
3. A child study committee shall be established in each school to review records and other performance evidence of the children referred through a screening process, or by school staff, the parent or parents, or other individuals.
    - a. All referrals to the child study committee shall be made to the principal or designee. The committee shall include:
      - (1) The referring source, as appropriate (except if inclusion of referring source would breach the confidentiality of the child);
      - (2) The principal or designee;
      - (3) At least one teacher; and
      - (4) At least one specialist.
    - b. The child study committee shall meet within 10 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.
    - c. Actions by the committee shall be documented in writing and shall include information upon which a decision was based.

#### **8 VAC 20-80-52. Referral for evaluation.**

**A. All children, aged two to 21, inclusive, whether enrolled in public school or not, 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 child study committee, school staff, a parent or parents, the Local Education Agency, the Virginia Department of Education (or any other state agency), or other individuals.
2. If the referral is from a child study committee, it shall be made within 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 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 in oral or written form.

## **B. Procedures for referral for evaluation.**

1. Upon receipt of the referral, the special education administrator, or designee, shall:
  - a. Record the date, reason for referral, and names of the person or agency making the referral;
  - b. Implement procedures for maintaining the confidentiality of all data; and
  - c. Provide procedural safeguards to inform the parent or parents 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.
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.
7. If the decision is to conduct an evaluation, the special education administrator or designee shall:
  - a. Secure informed consent from the parent or parents for the evaluation.
    - (1) Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.
    - (2) If the parent or parents refuse consent for an initial evaluation, Rockingham County Public Schools may continue to pursue 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.

## **8 VAC 20-80-54. Evaluation.**

**A. Rockingham County Public Schools shall ensure that all children, aged two to 21 inclusive, within its jurisdiction, who may have disabilities, and who may need special education and related services, are evaluated, including children who:**

1. Are highly mobile, such as migrant and homeless children;
2. Are residing within the jurisdiction of Rockingham County Public Schools, including wards of the state, who are not home-schooled or attending a private school;
3. Are attending a home-school or private school which is located within the geographic boundaries of Rockingham County;

4. Are suspected of being children with disabilities and are in need of special education, even though they are advancing from grade to grade; and
5. Are under age 18, suspected of having a disability and in need of special education, and who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction.
6. If a child is a ward of the state and is not residing with a parent, the school division is not required to obtain informed consent from a parent for an initial evaluation to determine whether a child is a child with a disability if:
  - Despite reasonable efforts, the school division cannot discover the parent's whereabouts;
  - The parent's rights have been terminated; or
  - The rights of the parent to make educational decisions have been subrogated under state law and consent for the initial evaluation has been given by the individual appointed by the judge to represent the child.

**B. Rockingham County Public Schools shall conduct a full, individual, 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.**

**C. Rockingham County Public Schools shall establish procedures for the initial evaluation and reevaluation of referred children which include the following:**

1. Provides written prior notice (in the parent's or parents' native language or mode of communication unless it is clearly not feasible to do so) in accordance with §20-80-70 C;
2. Provides notice of procedural safeguards in accordance with §20-80-70 D;
3. Provides an opportunity for independent educational evaluation in accordance with §20-80-70 B;
4. Secures informed parental consent per §20-80-70 E;
5. Provides for the assignment of surrogate parent when necessary in accordance with §20-80-80;
6. Providing an opportunity for an impartial due process hearing (§20-80-76);
7. Ensures confidentiality (20-80-70 G. 11);
8. Provides an opportunity for examination of records; and
9. Ensures nondiscriminatory testing (20-80-54 E);
10. Secures consent for eligibility;
11. Evaluations are to be completed within the mandated requirements, unless:
  - a. A student transfers from another local education agency within the state of Virginia to Rockingham County Public Schools after the evaluation process has been initiated by the previous agency, but prior to an eligibility determination being made. In some cases, if "sufficient progress" is being made to ensure a "prompt completion" of the evaluation, the parent and the student's new Local Education Agency may agree to a specific time by which the evaluation will be completed, which may be beyond the 65 business day timeframe. However, the prior and subsequent Local Education Agencies are required to coordinate their efforts, as "expeditiously as possible," to ensure "prompt completion" of the evaluations.
  - b. The parent "repeatedly fails or refuses" to produce the child for evaluation;

The IEP team, in consultation with central office special education administration personnel, will determine whether or not to grant an extension to the evaluation timeline, and the case manager will document that the parent's consent was obtained.

12. Each student with a disability will be reevaluated at least once every three years unless the parent and the school division agree that a reevaluation is unnecessary;
13. Each student with a disability will not be reevaluated more than once each year unless the school division and a parent agree otherwise;

14. No single measure or assessment may be the sole criterion for determining whether or not a student is eligible for special education and related services, or for determining an appropriate educational program for a child with a disability;
15. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information, including information provided by the parent, to determine whether the child is a child with a disability, and the content of the child's IEP, including information related to enabling the child to be involved with and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;
16. Each assessment and other evaluation material must be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
17. As part of the evaluation or reevaluation, the following will occur:
  - a. A review of existing data, including evaluations and information provided by the parent, current classroom-based, local or State assessments, classroom-based observations, and observations by teachers and related service providers; and
  - b. A determination, based on the information review and parental input, what, if any, additional data is necessary to determine:
    - i. Whether the child is, or continues to be, a child with a disability;
    - ii. The educational needs of the child; and
    - iii. The child's present levels of academic achievement and related developmental needs;
18. If no additional data is needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the school division must notify the child's parents of that determination, and its basis, and the right of the parent to request an assessment to determine whether the child continues to be a student with a disability and to determine the child's educational needs.

#### **D. Determination of needed evaluation data.**

1. Review of existing evaluation data. As part of an initial evaluation, if appropriate, a group that 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, identify what additional data, if any, are needed to determine:
    - (1) Whether the child has a particular 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. Rockingham County Public Schools shall provide notice to ensure that the parent or parents have the opportunity to participate in the review. If there is a meeting, Rockingham County Public Schools 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. Rockingham County Public Schools shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

4. This process shall be considered the evaluation if no additional data are needed.

**E. Rockingham County Public Schools shall establish policies and procedures to ensure that the following requirements are met through the training of all staff charged with the responsibility of testing and evaluation of children suspected or eligible for special education and related services. Supervisory staff will monitor personnel to ensure nondiscrimination in the selection, administration, reporting, and use of test results. Supervisory staff will monitor the evaluation process to ensure all required components selected for use in assessing a student under §20-80-54 D 1, 2, 3, and 4 meet the standards outlined below:**

1. Tests and other evaluation materials used to assess a child under this chapter:
  - a. Are selected and administered so as not to be discriminatory on a racial or cultural basis; and
  - 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. The assessment tools and strategies used 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:
  - a. Have been validated for the specific purpose for which they are used; and
  - b. Are administered by trained personnel in accordance with the instructions provided by the producer of the tests.
6. If an 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.
8. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
9. Tests are selected and administered so as to best ensure that if a test is administered to a child with impaired sensory, motor, or 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, motor, or communication skills (except where those skills are the factors 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.
12. No single procedure 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.
13. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.
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.
15. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance,

communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.

- a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to 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, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.
17. 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. Additionally, the student study chairperson presiding over the selection of evaluation components for the student will inform the parent or parents of the location where the written evaluation reports can be secured two business days prior to the meeting to determine eligibility.

#### **F. Reevaluation.**

1. A reevaluation shall be conducted:
  - a. If conditions warrant a reevaluation (but not more than once each year unless the school division and the parent agree otherwise);
  - b. If the child's parent, parents, or teacher requests a reevaluation;
  - c. At least once every three years (unless the parent and the school division agree that a reevaluation is unnecessary); or
  - d. If it is determined that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation.

The special education administrator, or designee, will document the decisions relative to reevaluations, including obtaining parental consent.

2. Review of existing evaluation data. As part of a reevaluation, Rockingham County Public Schools shall ensure that a group 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. 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.
3. Conduct of review. The group may conduct its review without a meeting.
4. Need for additional data. Rockingham County Public Schools shall administer tests and other evaluation materials, in accordance with subsection E of this section, as may be needed to produce the data identified in subdivision 2 b of this subsection.
5. Requirements if additional data are not needed.
  - a. If the determination identified in subdivision 2 of this subsection is that no additional data are needed to determine whether the child continues to be a child with a disability, Rockingham County Public Schools 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.

- b. Rockingham County Public Schools 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.
- c. This process shall be considered the evaluation if no additional data are needed.

**G. Notice and parental consent.**

- 1. Rockingham County Public Schools shall provide notice in accordance with 8 VAC 20-80-70 C.
- 2. Parental consent is required before gathering new evaluation data.
  - a. If for a reevaluation Rockingham County Public Schools can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent or parents have failed to respond, Rockingham County Public Schools 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).
  - b. If the parent or parents refuse consent for an evaluation or reevaluation, Rockingham County Public Schools may continue to pursue those evaluations by using due process or mediation procedures.
- 3. Parental consent is not required before:
  - a. Review of existing data as part of an evaluation or reevaluation; or
  - b. A teacher's or related service provider's observations or ongoing classroom evaluations.

**H. Timelines.**

- 1. Evaluations shall be completed within 65 business days of the receipt of the referral by the special education administrator or designee.
- 2. If the reevaluation is the evaluation required every three years, the evaluation shall be 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.

**8 VAC 20-80-56. Eligibility.**

**A. The director of pupil personnel services maintains a record of the date of referral for evaluation, projected dates for reevaluations and the date(s) the parent(s)/surrogate/guardian(s) are notified of the decision not to reevaluate is made. Rockingham County Public Schools shall establish procedures to ensure that the decision regarding eligibility for special education and related services is made:**

- 1. Within 65 business days after the referral for evaluation is received for an initial evaluation;
- 2. No later than the third anniversary of the date the child was last found eligible for special education and related services; or
- 3. Within 65 business days after the parent or parents are notified of the decision not to reevaluate, made in accordance with 8 VAC 20-80-54 F.

**B. Upon completion of an evaluation, a group of qualified professionals and the parent of the child determine whether the child is, or continues to be, a child with a disability and the educational needs of the child.**

- 1. The group shall include, but not be limited to, Rockingham County Public Schools personnel representing the disciplines providing assessments, the special education administrator or designee, and the parent or parents.
- 2. At least one Rockingham County Public Schools representative in the group must have either assessed or observed the child.
- 3. The 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 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 group shall include:
  - a. The child's regular teacher:
    - (1) If the child does not have a regular teacher, (1) 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 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.

5. A copy of the evaluation report and documentation of the eligibility determination is made available to the parent at no cost.

**C. Procedures for determining eligibility.**

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, Rockingham County Public Schools 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.

2. The group shall provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.

3. A child may not be determined to be eligible under this chapter if the determinant factor is lack of instruction in math or due to limited English proficiency and the child does not otherwise meet the eligibility criteria.

4. A child will not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in reading, including the essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency, oral reading skills, and reading comprehension strategies).

5. A child is not determined to be a child with a disability if the determinant factor is a lack of appropriate instruction in math.

6. The group making the decision regarding the child's eligibility shall work toward consensus. Rockingham County Public Schools shall obtain parental consent for the initial eligibility determination. Thereafter, parental consent shall be secured for any change in identification. The group shall have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. This summary shall be signed by each group member present. The written summary shall be maintained in the child's scholastic record.

7. Rockingham County Public Schools shall provide a copy of the documentation of the determination of eligibility to the parent or parents.

8. The summary statement of the group's essential deliberations shall be forwarded to the IEP team upon determination of eligibility. The summary statement may include other recommendations.

a. Each group member shall certify in writing whether the report reflects his conclusions. If the group does not reach consensus and the report does not reflect a particular member's conclusion, then the group member must submit a separate statement presenting that member's conclusions.

b. No changes shall be made to a child's eligibility for special education and related services without parental consent.

9. For a child suspected of having a specific learning disability, the documentation of the group's determination of eligibility must also include a statement of:

a. Whether the child has a specific learning disability;

b. The basis for making the determination;

c. The relevant behavior noted during the observation of the child;

d. The relationship of the behavior to the child's academic functioning;

e. The educationally relevant medical findings, if any;

f. Whether there is a severe discrepancy between the child's achievement and ability that is not correctable without special education and related services; and

g. The determination of the group concerning the effects of any environmental, cultural, or economic disadvantage.

#### **D. Eligibility for related services.**

1. 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.**

1. A child, aged two, previously participating in early intervention 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 of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

#### **F. Eligibility as a child with a developmental delay.**

1. Rockingham County Public Schools 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. Rockingham County Public Schools may include developmental delay as one of the disability categories when determining whether a school-aged child, aged five through eight, inclusive, is eligible under this chapter.

2. Other disability categories may be used for any child with a disability aged two through 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 group may determine that a child has a specific learning disability if:**

1. The child does not achieve adequately for the child's age or to meet VDOE-approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or VDOE-approved grade level standards:

- Oral expression;
- Listening comprehension;
- Written expression;
- Basic reading skills;
- Reading fluency skills;
- Reading comprehension;
- Mathematics calculation; and
- Mathematics problem solving

2. The child does not make sufficient progress to meet age or VDOE-approved grade-level standards in one or more of the above eight areas when using a process based the child's response to intervention; or

3. The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, VDOE-approved grade level standards, or intellectual development, that is determined by the eligibility group to be relevant to the identification of a specific learning disability, using appropriate assessments.

4. Prior to determining that a student is eligible for special education and related services as a student with a specific learning disability, to ensure that the underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the eligibility group considers , as part of the evaluation:

5. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

6. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

7. By mutual written agreement with the parent, the eligibility group may extend the evaluation and eligibility timeline to obtain additional data.

A child suspected of having a specific learning disability is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. For this observation, the eligibility group either:

- Uses information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
  - Has at least one member of the eligibility group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.
  - If the child is less than school age or out-of-school, an eligibility group member observes the child in an environment appropriate for a child of that age.
8. In addition to the requirements outlined in the Virginia Regulations for a child suspected of having a specific learning disability, the documentation of the eligibility determination contains a statement of:
- Whether the child does not achieve adequately for the child's age or to meet VDOE-approved grade-level standards; and whether the child does not make sufficient progress to meet age or VDOE-approved grade-level standards, or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, VDOE-approved grade level standards or intellectual development;
  - The determination of the eligibility group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
  - If the child has participated in a process that assures the child's response to scientific, research-based intervention,
    - a. The instructional strategies used and the student-centered data collected; and
    - b. The documentation that the child's parents were notified about Virginia's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

The 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 impairment;
- b. Mental retardation;
- c. Emotional disturbance;
- d. Environmental, cultural, or economic disadvantage; or
- e. Limited English proficiency.

Note: These Policies and Procedures, which are consistent with the Virginia Department of Education's (VDOE) state criteria, are in place for determining whether or not a student is eligible for special education and related services as a student with a specific learning disability. The school division is not required to determine a student's eligibility as a student with a specific learning disability based upon the presence or absence of a "severe discrepancy" between sample academic achievement and intellectual ability in one of the following areas:

- a. oral expression;
- b. listening comprehension;
- c. written expression;
- d. basic reading skill;
- e. reading comprehension;
- f. mathematical calculation; or
- g. mathematical reasoning.

Rather, the school division may opt to use a process that determines whether or not the student responds to scientific, research-based intervention methods as part of the evaluation proceedings. Albeit the "response-to-intervention" model

will provide important information for the committee to consider, the process of determining the presence or absence of a severe discrepancy will continue to require an analysis of a child's cognitive profile and remain integral to eligibility consideration.

**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.**

**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.**

**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.**

1. If a child with a disability has been receiving special education from one local education agency in Virginia and transfers to Rockingham County Public Schools, then the school system is responsible for ensuring that the child has available special education and related services in conformity with the existing IEP.

a. Rockingham County Public Schools 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. Rockingham County Public Schools may provide interim services agreed to by both the parent or parents and the school system.

b. If the parent or parents and Rockingham County Public Schools are unable to agree on interim services, Rockingham County Public Schools must implement the 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 Rockingham County Public Schools in Virginia from another state, Rockingham County Public Schools must decide whether it will adopt the most recent evaluation and IEP developed for the child by the local educational agency in the previous state. Rockingham County Public Schools 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 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. If Rockingham County Public Schools 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, Rockingham County Public Schools must provide notice to the child's parent or parents in accordance with 8 VAC 20-80-70.

b. If Rockingham County Public Schools 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, Rockingham County Public Schools 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 Rockingham County Public Schools believes the IEP is appropriate for the child; or

(2) Conduct an IEP meeting without undue delay if the parent or parents and Rockingham County Public Schools 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 Rockingham County Public Schools 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 Rockingham County Public Schools does not adopt the previous state's evaluation of the transferring child or does not receive a copy of the evaluation, Rockingham County Public Schools shall provide proper notice, initiate evaluation procedures, and conduct the evaluation in accordance with this chapter.

(1) During the evaluation, the child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter. Rockingham County Public Schools 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 Rockingham County Public School'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 Rockingham County Public Schools. 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, Rockingham County Public Schools are 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 who was placed in a private residential school under the Comprehensive Services Act transfers to Rockingham County Public Schools, Rockingham County Public Schools 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 Comprehensive Services Act team shall be responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in the new locality from the former Comprehensive Services Act team.

#### **8 VAC 20-80-58. Termination of special education and related services.**

**A. A Rockingham County Public Schools 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 reaching the age of 22.**

**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 Rockingham County Public Schools 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, Rockingham County Public Schools 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 will not result in the withdrawal of a necessary free appropriate public education for the child.

4. The school division must ensure that, prior to a child's graduation with an advanced or standard diploma, or exceeding the age of eligibility, the student will receive a "summary of the child's academic achievement and functional performance," including recommendations on how to assist the child in meeting post-secondary goals. The IEP team will document the development of the Summary and the provision of the Summary to the student.

#### **8 VAC 20-80-60. Free appropriate public education.**

**A. Age of eligibility.**

1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, residing within the jurisdiction of Rockingham County Public Schools, even though the child has not failed or been retained in a course or grade, and is achieving grade-to-grade. Rockingham County Public Schools shall establish a goal of providing a full educational opportunity for all children with disabilities from two to 21, inclusive, residing within its jurisdiction.

- 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.
- c. A child with a disability's FAPE entitlement is not terminated by the child's receipt of an alternative degree that is not fully aligned with Virginia's academic standards. For example, an age eligible child

may continue to be entitled to FAPE as a student with a disability, even if the student has received a general educational development credential (GED), a modified standard diploma, or a special diploma.

- d. A child with a disability is not entitled to FAPE who is eligible to receive special education and related services in accordance with Section 619 of Part B of IDEA'04 but who instead receives early intervention services under part C of IDEA '04.
- e. A child with a disability is entitled to the provision of supplementary aids and services, as determined appropriate and necessary by a child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford the child an equal opportunity to participate in those services and activities.
- f. A child with a disability's FAPE entitlement includes the provision of physical education (PE) services, specially designed if necessary, unless PE is not offered to students without disabilities in the same grade as the student with a disability. However, if PE is required by a student's IEP, those services are provided in accordance with the student's IEP.
- g. The external components of a student's surgically implanted device are ensured to be functioning properly; however, the Rockingham County Public School division is not responsible for the post-surgical maintenance, programming, or replacement of the medical device.

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. Children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.

#### **B. Program options.**

1. Rockingham County Public Schools shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by Rockingham County Public Schools, including art, music, industrial arts, consumer and homemaking education, and vocational education.

#### **C. Residential placement.**

1. 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.**

1. Rockingham County Public Schools shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

#### **E. Assistive technology.**

1. Rockingham County Public Schools 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.

## **F. Transportation.**

1. Each child with a disability placed in an education program, including private special education day or residential placements, by Rockingham County Public Schools shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the same transportation unless a child's IEP requires specialized transportation.
2. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications 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.
3. If a Rockingham County Public Schools enters an agreement with another local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent or parents.
4. If a child with a disability is placed in a 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 Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, Rockingham County Public Schools shall be responsible for the provision of transportation services to and from school.

## **G. Nonacademic and extracurricular services and activities.**

1. Rockingham County Public Schools shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
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 Rockingham County Public Schools, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by Rockingham County Public Schools and assistance in making outside employment available.

## **H. Extended school year services.**

1. Rockingham County Public Schools 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, Rockingham County Public Schools 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.

## **I. Children with disabilities in public charter schools.**

1. Children with disabilities who attend charter schools must be served by Rockingham County Public Schools in the same manner as children with disabilities in its other schools.
2. Rockingham County Public Schools ensures that all requirements of this chapter are met.

## **J. Length of school day.**

1. 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.

## **8 VAC 20-80-62. Individualized education program.**

**A. Responsibility.** Rockingham County Public Schools ensures that an IEP is developed and implemented for each child with a disability served by Rockingham County Public Schools, including a child placed in a private special education school by:

1. Rockingham County Public Schools; or

2. A noneducational placement by a Comprehensive Services Act team that includes Rockingham County Public Schools. Rockingham County Public School's responsibility is limited to special education and related services.

**B. Accountability.**

1. At the beginning of each school year, Rockingham County Public Schools shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue.
2. Rockingham County Public Schools ensure that an IEP:
  - a. Is in effect before special education and related services are provided to an eligible child; and
  - b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services, and is implemented as soon as possible following the IEP meeting;
  - c. Includes all components that are required by the federal and state special education regulations.
3. Rockingham County Public Schools 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.
4. Rockingham County Public Schools is responsible for initiating and conducting meetings to develop, review and revise the IEP of a child with a disability.
5. Rockingham County Public Schools 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. Rockingham County Public Schools 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.
6. Rockingham County Public Schools ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address:
  - 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.
7. Rockingham County Public Schools provide special education and related services to a child with a disability in accordance with the child's IEP.
8. Rockingham County Public Schools must make a good faith effort to assist the child to achieve the goals, including benchmarks or objectives listed in the IEP.
9. This chapter does not require that Rockingham County Public Schools, or other person be held accountable if a child does not achieve the growth projected in the annual goals, 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.
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.
11. All IEPs developed, reviewed, or revised on or after July 1, 1998, must meet the requirements of this section.

**C. IEP team.**

1. General. Rockingham County Public Schools ensure that the IEP team for each child with a disability includes:

- 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 only disability is speech-language impairment, the special education provider shall be the speech-language pathologist.
- d. A representative of Rockingham County Public Schools who is:
  - (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
  - (2) Knowledgeable about the general curriculum; and
  - (3) Knowledgeable about the availability of resources of Rockingham County Public Schools.

A Rockingham County Public Schools 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 Rockingham County Public Schools, 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 Rockingham County Public Schools) 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 the caseworker.
- i. Each IEP team includes all currently required individuals, including the parent, unless:
  - (1) The Rockingham County Public School division and the parent agree in writing that the member's attendance is not necessary because the member's area of the curriculum or related service is not being modified or discussed during the meeting; or
  - (2) The school division and the parent consent in writing to excuse the member from the IEP meeting, in whole or in part, because even though the member's area of the curriculum or related service is being modified or discussed during the IEP meeting, the member has submitted written input regarding the development of the student's IEP prior to the meeting.
- j. If a child was previously served under part C, for an initial IEP team meeting, and at the request of the parent, the Part C service coordinator or other representative(s) is invited to the IEP meeting to assist with the smooth transition of services.

## 2. Transition service participants.

- a. Rockingham County Public Schools shall invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:
  - (1) The student's transition services needs;
  - (2) The needed transition services for the student; or
  - (3) Both.
- b. If the student does not attend the IEP meeting, Rockingham County Public Schools will take other steps to ensure that the student's preferences and interests are considered.
- c. If a purpose of the IEP meeting is to consider the child's postsecondary goals and the transition services needed to assist the child in reaching these postsecondary goals, then, to the extent appropriate, and with the consent of the parents, a representative of any participating agency that is likely to be responsible for providing or paying for the transition services is invited to the IEP meeting. If an agency invited to send a representative to a

meeting does not do so, Rockingham County Public Schools will take other steps to obtain the participation of the other agency in the planning of any transition services.

#### **D. Parent participation.**

1. Rockingham County Public Schools will 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:
  - a. Notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to attend; and
  - b. Scheduling the meeting at a mutually agreed on time and place.
2. Notice.
  - a. General notice. The notice given the parent or parents:
    - (1) Should be in writing, 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.
  - b. Additional notice requirements are provided if transition services are under consideration.
    - (1) For a student with a disability beginning at age 16 (or younger, if appropriate), the notice must also:
      - (a) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and
      - (b) Indicate that Rockingham County Public Schools will invite the student.
    - (2) For a student with a disability beginning at age 16 (or younger, if appropriate), the notice must:
      - (a) Indicate that a purpose of the meeting will be the consideration of needed transition services for the student;
      - (b) Indicate that Rockingham County Public Schools will invite the student; and
      - (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. In addition to the other requirements outlined in the Virginia Regulations at 8 VAC 20-80-62 D. 2., an IEP meeting notice informs the parents of the right to have the Part C service coordinator or other representative(s) participate in the initial IEP team meeting for a child who was previously served under Part C.
3. If neither parent can attend, Rockingham County Public Schools will use other methods to ensure parent participation, including individual or conference telephone calls.
4. A meeting may be conducted without a parent or parents in attendance if Rockingham County Public Schools is unable to convince the parent or parents that they should attend. In this case, Rockingham County Public Schools must have a record of the attempts to arrange a mutually agreed on time and place, such as:
  - a. Detailed records of telephone calls made or attempted and the results of those calls;
  - b. Copies of correspondence sent to the parent or parents and any responses received; or
  - c. Detailed records of visits made to the parent or parents' home or place of employment and the results of those visits.
5. Rockingham County Public Schools shall take whatever action is necessary to ensure that the parent or parents understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
6. Rockingham County Public Schools permits the use of audio recording devices at IEP meetings. The parent or parents shall inform Rockingham County Public Schools 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 Rockingham County Public Schools, the parent or parents shall provide Rockingham County Public Schools with a copy of the

audio recording. The parent or parents shall provide their own audio equipment and materials for audio recording. If Rockingham County Public Schools 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.

7. Rockingham County Public Schools may prohibit, limit or otherwise regulate the use of video recording devices at IEP meetings. If Rockingham County Public Schools video records the meetings, the video recording becomes part of the child's educational record. If Rockingham County Public Schools 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. Rockingham County Public Schools 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 E1 and E2 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.

9. Rockingham County Public Schools will give the parent or parents 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 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:

- 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 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. 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.

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.
- c. Each IEP team includes all currently required individuals, including the parent, unless:

- The school division and the parent agree in writing that the member's attendance is not necessary because the member's area of the curriculum or related service is not being modified or discussed during the IEP meeting; or
  - The school division and the parent agree in writing to excuse the member from the IEP meeting, in whole or in part, because even though the member's area of the curriculum or related service is being modified or discussed during the IEP meeting, the member has submitted written input regarding the development of the student's IEP prior to the meeting.
  - The building level administrator present at the IEP team meeting, or designee, will document the excusal(s) of the IEP team member(s) and that parental consent was obtained.
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.
  6. During the development of a child's IEP, the IEP team must consider, in part, the academic, developmental and functional needs of the student.
  7. To the extent possible, the LEA will encourage the consolidation of meetings convened on the child's behalf.
  8. Each child's IEP is reviewed at least annually. However, an IEP may be amended during the year, after the annual review, without a new meeting if the parent and the school division agree to do so. However, the amendment or modification must be in writing, and the school division should document the amendment did not necessitate an IEP meeting. The building level administrator, or designee, will determine and document these provisions and obtain parental consent.
  9. Following a request to do so, a parent must be provided with a revised copy of a student's IEP with the amendments incorporated.
  10. If a student with a disability transfers to the Rockingham County Public School division, reasonable attempts will promptly be initiated to obtain all of the child's educational records, including the IEP, from the previous school district; and the sending school district must take reasonable steps to promptly respond to such requests for records.
  11. If neither parent can attend an IEP meeting, the school division must use other methods to ensure parent participation, including videoconferencing, or individual or conference telephone calls.
  12. The IEP team shall consider all factors identified under a free appropriate public education in 8 VAC 20-80-60, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, Rockingham County Public Schools will provide the parent or parents with prior written notice of Rockingham County Public School's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8 VAC 20-80-70.
  13. Whenever a child's IEP is amended, the members of the child's IEP team are informed of the changes.

**F. Content of the individualized education program.**

The IEP for each child with a disability will include:

1. A statement of the child's present levels of educational and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum; and for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
  - 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.
  - b. The present level of performance should directly relate to the other components of the IEP.
2. A statement of measurable annual goals, including academic and functional goals, designed 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; and
  - c. Meeting each of the child's other educational needs that result from the child's disability.

Note: For children with disabilities who participate in the Virginia Alternate Assessment Program (VAAP), a description of benchmarks or short-term objectives must be included.

3. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child, as currently required:
  - 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. The following information concerning 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, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;
  - b. If the IEP team determines that the child will not participate in a particular 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 for those students who meet the criteria for the alternate assessment; and
    - (3) 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.
6. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. 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, 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.
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 with Disabilities Education Act (20 USC § 1400 et seq.), Rockingham County Public Schools will develop an IEP.
9. Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter:
  - a. 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

b. A statement of the needed transition services for the student, including, if appropriate, a statement of interagency responsibilities or any needed linkages. Transition services shall be based on the individual student's needs, taking into account the student's preferences and interests, and include:

- a. Instruction;
- b. Related services;
- c. Community experiences;
- d. The development of employment and other post-school adult living objectives; and
- e. If appropriate, acquisition of daily living skills and functional vocational evaluation; and

c. Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills.

10. 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.

#### **G. Agency responsibilities for transition services.**

1. If a participating agency, other than Rockingham County Public Schools, fails to provide the transition services described in the IEP of a student with a disability, Rockingham County Public Schools will reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

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

#### **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 state assessments, including alternate assessments, do not apply. Assessment requirements to graduate with a modified standard, standard, or advanced studies diploma shall apply.

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

### **8 VAC 20-80-64. Least restrictive environment and placements.**

#### **A. General least restrictive environment requirements.**

1. Rockingham County Public Schools 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, Rockingham County Public Schools shall ensure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability.

3. For children placed by Rockingham County Public Schools in public or private institutions, Rockingham County Public Schools will, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8 VAC 20-80-66.)

#### **B. Continuum of alternative placements.**

1. Rockingham County Public Schools will 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, including Woodrow Wilson Rehabilitation Center and other state facilities); and

b. Make provision for supplementary 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, which occurs when some or all goals, including benchmarks and objectives, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions must be based on the individual needs of each child.

4. Rockingham County Public Schools will document 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 unless it can be shown that for a particular child with a disability, the alternative placement is appropriate as documented by the IEP.

6. Each child with a disability has the supplementary aids and services, as determined appropriate and necessary by a child's IEP team, for the child to participate in nonacademic settings.

#### **C. Placements.**

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, Rockingham County Public Schools shall ensure that:

a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter.

b. The child's placement is:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Home-based instruction shall be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. Homebound instruction shall be made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team must revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

**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 will be made by Rockingham County Public Schools, 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, Rockingham County Public Schools will be responsible for ensuring compliance with the requirements of this chapter.**

**C. A contractual agreement will be established between the Virginia schools and Rockingham County Public Schools 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 Rockingham County Public Schools will 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 Rockingham County Public Schools is responsible for transportation to and from the school.

**8 VAC 20-80-66. Private school placement.**

**A. Private school placement by Rockingham County Public Schools or Comprehensive Services Act team.**

1. When a child with a disability is placed by Rockingham County Public Schools or is placed for noneducational reasons by a Comprehensive Services Act team that includes Rockingham County Public Schools in a private special education school or facility that is licensed or has a certificate to operate, Rockingham County Public Schools shall be responsible for ensuring compliance with the requirements of this chapter, including participation in state and division-wide assessments. Rockingham County Public Schools will 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 Rockingham County Public Schools places a child with a disability in a private special education school or facility that is licensed or has a certificate to operate, the  
  
Rockingham County Public Schools will initiate and conduct a meeting in accordance with 8 VAC 20-80-62 to develop an IEP for the child. Rockingham County Public Schools will ensure that a representative of a private special education school or facility attends the meeting. If the representative cannot attend, Rockingham County Public Schools will use other methods to ensure participation by a private school or facility, including individual or conference telephone calls.
3. 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, Rockingham County Public Schools will ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, Rockingham County Public Schools will 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 Rockingham County Public Schools.
5. If the private special education school or facility initiates and conducts these meetings, Rockingham County Public Schools will ensure that the parent or parents and Rockingham County Public Schools 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. If 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 Rockingham County Public Schools.

7. When a child with a disability is placed by Rockingham County Public Schools or a Comprehensive Services Act team in a private special education school or facility that is licensed or has a certificate to operate, all rights and protections under this chapter will be 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 Rockingham County Public Schools prior to placement by the Comprehensive Services Act team.

9. When a child with a disability is placed in a private special education school or facility that is out of state, the placement will be processed through the Interstate Compact on the Placement of Children, 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 Rockingham County Public Schools 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 Rockingham County Public Schools 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 Rockingham County Public Schools regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of 8 VAC 20-80-76.

3. If the parent or parents of a child with a disability, who previously received special education and related services under the authority of Rockingham County Public Schools, enroll the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the Rockingham County Public Schools, a court or a hearing officer may require Rockingham County Public Schools to reimburse the parent or parents for the cost of that enrollment if the court or hearing officer finds that Rockingham County Public Schools had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a 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 Rockingham County Public Schools.

4. The cost of reimbursement described in this section may be reduced or denied:

a. If 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 Rockingham County Public Schools to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense or (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 Rockingham County Public Schools of the information described above;

b. If, prior to the parent's or parents' removal of the child from the public school, Rockingham County Public Schools 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

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 Rockingham County Public Schools if:

a. The parent is illiterate or cannot write in English;

b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent or parents from providing the notice; or

d. The parent or parents had not received notice of the notice requirement in this section.

#### **C. Child find for private school, home-instructed, and home-tutored children with disabilities.**

1. Rockingham County Public Schools will locate, identify, and evaluate all private school children with disabilities, including children attending religious schools, who reside in the jurisdiction of Rockingham County Public Schools.

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. Child find activities relative to the private, including religious, elementary and secondary schools located within this jurisdiction, include parentally-placed private school children who reside in a state other than Virginia or a country other than the United States.

2. Rockingham County Public Schools will 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 the number and location of the students with disabilities who are enrolled by their parents in private elementary and secondary schools, which are located within the geographic boundaries of Rockingham County, the school division must provide for the student's participation in special education and related services in accordance with the requirement outline below:

- Rockingham County Public Schools must conduct a “thorough and complete child find process” to determine the exact number of parentally placed private school children, who are attending private schools located within the district. This process must ensure “equitable participation” by each of these students, provide an accurate count of such students, and include activities, which are completed in a comparable time period as, and which are similar to, those undertaken on behalf of public school students. However, the money spent on the child find process, including individual evaluations may not be considered when determining whether or not the school division has expended the proportionate amount, as required by Individual with Disabilities Education Act, 2004.
- Prior to the child find process, and during the design and development of special education and related services for parentally-placed private school students, the school division must complete “timely and meaningful consultation” with representatives of both the private schools, and of the parents of parents of parentally-placed private school students regarding the following:
  - a. The child find process, including how these students can participate equitably in the process, and how parents, teachers, and private school officials will be informed of the process;
  - b. The determination of the proportionate amount of federal funds available to serve these students, including the determination of how the amount was calculated;
  - c. The consultation process, including how the process will operate throughout the school year to ensure that parentally-placed private schoolchildren with disabilities, who are identified through the child find process, can “meaningfully participate” in special education and related services;
  - d. How, where, and by whom special education and related services will be provided to these students, including the types of services (i.e., direct or alternate service delivery mechanisms), and how such services will be apportioned if funds are insufficient to serve all children, including how and when these decisions will be made; and
  - e. If a disagreement arises between the school division and the private school representatives regarding the provision of services, or the types of services provided, the school division will provide the private school representatives with a written explanation of the reasons the school division opted not to provide services either directly or through a contract.
- Once “timely and meaningful consultation” has occurred, the school division must obtain a written affirmation of the process, which has been signed by the participating private school representatives. If the representatives do not provide affirmation within a reasonable period of time, the school division must forward documentation of the consultation to the Virginia Department of Education.
- If the school division does not engage in a timely and meaningful consultation, or if the school division fails to give “due consideration” to the views of the private school representatives, a private school representative may file a State complaint with the Virginia Department of Education. If the private school representative is dissatisfied with the outcome of the State complaint process, the complaint may be submitted to the Secretary of Education at the United States Department of Education for review.
- The services provided by the Rockingham County Public School division to parentally-placed private school students may be provided by either the school division's employees or through contracted providers, and such service, including materials and equipments must be secular, neutral, and nonideological. These services may be provided to the children on the premises of private, including religious, schools to the extent consistent with law.

- Rockingham County Public Schools must maintain for its records, and submit to the Virginia Department of Education the following:
    - a. The number of parentally-placed private school students evaluated;
    - b. The number of students determined eligible for special education and related services; and
    - c. The number of students actually served.
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. Rockingham County Public Schools ensures 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.
  3. Expenditures.
    - a. To meet the requirement of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.), Rockingham County Public Schools will 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 Rockingham County Public School'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 Rockingham County Public Schools 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. Rockingham County Public Schools will 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 Rockingham County Public Schools 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 Rockingham County Public Schools has met the expenditure requirements of the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).
    - d. Rockingham County Public Schools are not prohibited from providing services to private school children with disabilities in excess of those required by this section.
    - e. If a proportionate share of both 611 and 619 funding to provide equitable services to parentally-placed private school children with disabilities has not been expended by the end of the fiscal year for which the funds were appropriated, the remaining funds for special education and related services to parentally-placed private school children with disabilities are obligated during a carry-over period of one additional year.
    - f. State and local funds may supplement, but not supplant, the federal funds required to be expended for parentally-placed private school children with disabilities.
  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) Rockingham County Public Schools will 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) Rockingham County Public Schools will 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 will occur before Rockingham County Public Schools make any decision that affects the opportunities of private school children with disabilities to participate in services.

(4) Rockingham County Public Schools 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 Rockingham County Public Schools, the school system will:

(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, Rockingham County Public Schools 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 Rockingham County Public Schools will provide to the child in light of the services that Rockingham County Public Schools 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 child with a disability may be provided on-site at the child's private school, including a religious school, to the extent consistent with law.

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. Rockingham County Public Schools 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 Rockingham County Public Schools 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 Rockingham County Public Schools has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.

b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that Rockingham County Public Schools 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 Rockingham County Public Schools 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. Rockingham County Public Schools will 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. Rockingham County Public Schools 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. Rockingham County Public Schools will 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. Rockingham County Public Schools 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. Rockingham County Public Schools 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. Rockingham County Public Schools must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the Rockingham County Public Schools 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. Rockingham County Public Schools may place equipment and supplies in a private school for the period of time needed for the program.

c. Rockingham County Public Schools 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. Rockingham County Public Schools will remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.

e. No funds under the 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 Rockingham County Public School's disciplinary policies and procedures.**

Note: The school division is deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- The child's parent expressed concern in writing to supervisory or administrative personnel, or a teacher of the child, that the child is in need of special education and related services;
- The child's parent requested an evaluation of the child; or
- The teacher of the child, or other school division personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the Director of Pupil Personnel Services of Rockingham County Public Schools or to other supervisory personnel of the division.

## **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 a student without a disability.
2. A student with a disability 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.

## **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. A series of removals constitutes a pattern because the removals cumulate to more than 10 school days in a school year and 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. School personnel are permitted to consider any unique circumstances on a case-by-case basis when deciding whether or not to remove a student with a disability long term from a current educational placement as a result of a violation of the code of conduct.
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 student without a disability would be subject to discipline, but for not more than 45 school days, regardless of whether or not the behavior is a manifestation of the student's disability, if:
    - (1) The student carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of Rockingham County Public Schools 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 Rockingham County Public Schools 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 weapon defined as a dangerous weapon in the Code of Virginia.
    - (3) The student, while at school, on school premises, or at a school function, inflicts "serious bodily injury" upon another student.
  - 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. Rockingham County Public Schools 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 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 Rockingham County Public Schools 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.

(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.

(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 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 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. Rockingham County Public Schools 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 a student without a disability who has been similarly removed.

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, Rockingham County Public Schools will 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.

c. The procedures for determining services under subdivision 3 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. Rockingham County Public Schools may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a student with a disability for not more than 45 school days if Rockingham County Public Schools 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 school days if Rockingham County Public Schools 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 Rockingham County Public Schools 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 meets the requirements of subdivision 2 c of this subsection.

c. Rockingham County Public Schools may ask the hearing officer for an extension of 45 school 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 Rockingham County Public Schools is contemplating a removal that 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 Rockingham County Public Schools that applies to all students. Rockingham County Public Schools 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 of other relevant information supplied by the parents of the student;

(b) Observations of the student; and

(c) The student's IEP and placement.

(2) The IEP team and other qualified personnel shall then determine if:

- The conduct was caused by, or had a "direct and substantial relationship" to, the child's disability; or

- The conduct was the "direct result" of the school division's failure to implement the student's IEP.

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.

(3) A functional behavioral assessment (FBA) is completed, and a behavioral intervention plan (BIP) is developed, if necessary, because a child's behavior is impeding this child's learning or that of others.

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 Rockingham County Public Schools notified the parent or parents of the purposes of the meeting.

e. If the IEP team and other qualified personnel determine deficiencies in the student's IEP or placement, Rockingham County Public Schools 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 a student without a disability may be applied to the student with a disability in the same manner in which the procedures would be applied to a student without a disability.

(1) If Rockingham County Public Schools initiates disciplinary procedures, providing due process rights that are applicable to all students, Rockingham County Public Schools 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 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 or parents' request. In reviewing the decision with respect to the manifestation determination, the hearing officer shall determine whether Rockingham County Public Schools 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.
- c. During an expedited hearing in which a parent disagrees with the determination that the student's behavior was not a manifestation of the student's disability, or with any decision regarding the student's disciplinary placement, the student must remain in the disciplinary placement pending the decision of the hearing officer, or the expiration of the disciplinary removal, whichever occurs first, unless the parent and the school division agree otherwise.
- d. An expedited due process hearing must occur within 20 school days of the date the hearing is requested, and the determination must be issued within 10 school days following the hearing.

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 school days, unless the parent or parents and Rockingham County Public Schools 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, Rockingham County Public Schools may request an expedited due process hearing under the procedures contained in subdivision 4 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 b of this subsection.
- e. A placement ordered by the hearing officer under the procedures for an expedited due process hearing may not be longer than 45 school days. If Rockingham County Public Schools believes that it is dangerous for the student to return to the current placement, Rockingham County Public Schools may request of the hearing officer to extend the placement for longer than 45 calendar days, in accordance with subdivision 4 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 Rockingham County Public Schools, including behavior described in subdivisions 2 and 4 of this subsection, may assert any of the protections provided in this chapter if Rockingham County Public Schools had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
- b. Rockingham County Public Schools shall be deemed to have knowledge that a student may be 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 parent or parents of the student have requested an evaluation of the student to be determined eligible for special education and related services; or
  - (3) A teacher of the student or school personnel have expressed concern about the behavior or performance of the student to the director of special education of Rockingham County Public Schools or to other personnel in accordance with Rockingham County Public School's child find or special education referral system.

c. Rockingham County Public Schools would not be deemed to have knowledge that a student is a student with a disability if Rockingham County Public Schools:

- (1) Conducted an evaluation and determined that the student was not a student with a disability;
- (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;
- (3) The parent has not allowed the student to be evaluated to determine eligibility for special education and related services; and
- (4) The parent has refused to consent for the child's receipt of special education and related services.

d. If Rockingham County Public Schools 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 a student without a disability who engages 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 Rockingham County Public Schools and information provided by the parent or parents, Rockingham County Public Schools shall provide special education and related services as required for a student with a disability who is disciplined.

9. Expedited due process hearing.

a. Under subdivision 4 of this subsection, Rockingham County Public Schools 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 issuing of the decision consistent with the requirements found in 8 VAC 20-80-76; and

(2) 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 Rockingham County Public Schools from reporting a crime by a student with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability to the extent such action applies to a student without a disability.

b. In reporting the crime, Rockingham County Public Schools will 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 will be 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. Opportunity to examine records; parent participation.**

1. Procedural safeguards. Rockingham County Public Schools shall establish, maintain, and implement procedural safeguards as follows:

a. The parent or parents of a child with a disability shall be afforded an opportunity to:

(1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child as set forth in the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.)

(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) Rockingham County Public Schools will provide notice to ensure that the parent or parents of a child with a disability 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 participate. The notice must: (i) indicate the purpose, date, 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 Rockingham County Public Schools, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child; 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 Rockingham County Public Schools personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that Rockingham County Public Schools personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions. Rockingham County Public Schools ensure that the parent or parents of each child with a disability are members of:

(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.

**B. Independent educational evaluation.**

1. General.

a. The parent or parents of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. Rockingham County Public Schools will 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.

a. The parent or parents have the right to an independent educational evaluation at public expense if the parent or parents disagree with an evaluation obtained by Rockingham County Public Schools.

b. If the parent or parents request an independent educational evaluation at public expense, Rockingham County Public Schools will, 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 Rockingham County Public Schools demonstrates in a hearing that the evaluation obtained by the parent or parents does not meet Rockingham County Public Schools criteria.

c. If Rockingham County Public Schools initiates a hearing and the final decision is that Rockingham County Public School's evaluation 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, Rockingham County Public Schools may ask the reasons for the parent's or parents' objection to the public evaluation. However, the explanation by the parent or parents may not be required and Rockingham County Public Schools may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which Rockingham County Public Schools 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 Rockingham County Public Schools may not impose conditions or timelines related to obtaining an independent educational evaluation.

3. Parent-initiated evaluations. The results of an independent educational evaluation whether or not at public expense:

- a. Must be considered by Rockingham County Public Schools, if it meets Rockingham County Public Schools criteria, in any decision regarding a free appropriate public education for the child; and
- b. May be presented as evidence at a hearing under 8 VAC 20-80-76.

**C. Prior notice by Rockingham County Public Schools; content of notice.**

1. Written notice must be given to the parent or parents of a child with a disability within a reasonable time before Rockingham County Public Schools:

- a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or
- b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of free appropriate public education for the child.

2. If the notice relates to an action proposed by Rockingham County Public Schools that also requires parental consent, Rockingham County Public Schools may give notice at the time it requests parental consent.

3. The notice shall include:

- a. A description of the action proposed or refused by Rockingham County Public Schools;
- b. An explanation of Rockingham County Public School's proposal or refusal to take the action;
- c. A description of any other options Rockingham County Public Schools considered and the reasons for the rejection of those options;
- d. A description of each evaluation procedure, test, record, or report Rockingham County Public Schools used as a basis for the proposed or refused action;
- e. A description of any other factors that are relevant to Rockingham County Public School'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 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.

4. The notice shall be (i) written in language understandable to the general public 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 If the native language or other mode of communication of the parent or parents is not a written language, Rockingham County Public Schools shall take steps to ensure that:

- a. The notice is translated orally or by other means to the parent or parents in their native language or other mode of communication;
- b. The parent or parents understand the content of the notice; and
- c. There is written evidence that the requirements of subdivisions a and b of this subdivision have been met.

**D. Procedural safeguards notice.**

1. A copy of the procedural safeguards must be provided to a parent of a child with a disability as follows:

- At least one time a year;
- Upon initial referral or parental request for evaluation;
- Upon receipt of the first state complaint in a school year;
- When a request for a due process hearing in a school year is filed;
- If a student's disciplinary removal constitutes a change in placement; and
- Upon parental request.

2. The procedural safeguards notice shall include a full explanation of the following procedural safeguards, written in the native language of the parents (unless not feasible to do so), relating to:

- a. Independent educational evaluation;
  - b. Prior written notice;
  - c. Parental consent;
  - d. Access to educational records;
  - e. Opportunity to present and resolve complaints, including the time period in which to make a complaint, the opportunity for the agency to resolve the complaint, and the availability of mediation, 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. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
  - j. Civil actions, including the time period in which to file such actions;
  - k. Attorneys' fees; and
  - l. 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 subsection must meet the prior notice requirements regarding understandable language in subsection C of this section.

**E. Parental consent.**

1. General. Informed parental consent shall be obtained before:
- a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting;
  - b. Any change in identification of a child with a disability;
  - c. Initial provision of special education and related services to a child with a disability and any revision to the child's IEP services;
  - d. Any partial or complete termination of special education and related services, except for graduation with a standard or advanced studies diploma; and
  - e. Accessing a parent or parents' private insurance proceeds in accordance with this chapter.
- f. If the parent of a child who is enrolled in the school division, or who is seeking enrollment in the division, refuses consent for an initial evaluation, or fails to respond to the school division's request for consent for an initial evaluation, the division may, but is not required to, pursue the evaluation via mediation or due process. If the parent refuses consent for a reevaluation, the school division may, but is not required to, pursue the evaluation via mediation or due process. If the school division opts not to pursue the initial evaluation or the reevaluation, the division does not violate its eligibility determination obligations.
- g. If a parent fails to respond or refuses to consent to the initial provision of special education and related services, the school division may not use mediation or due process to secure parental consent.
- h. If a parent of a child who is home-schooled, or who is parentally-placed in a private school, refuses consent for either an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, the school division may not use mediation or a due process hearing to secure parental consent. However, if the parent fails to provide consent, the school division is not required to consider the child eligible for equitable services.
- i. To document that the school division has made reasonable efforts to obtain parental consent, when required, the school division must document its attempts to obtain consent using the same procedures outlined in the Virginia Regulations, at 8 VAC 20-80-62 D.4 a. through D.4.c.
- j. A parent is entitled to only one independent educational evaluation at public expense each time the school division conducts an evaluation with which the parent disagrees. If an independent educational evaluation is obtained at public expense, either the parent or school division may present the results at a due process hearing.
2. Consent for initial evaluation may not be construed as consent for initial placement. (Note: If a parent fails to provide consent for the initial provision of services, a due process hearing cannot be used to secure parental

consent. However, if a parent does not provide consent for the provision of services, the school division will not be considered to have failed to provide FAPE to the child, and will not be required to convene an IEP meeting).

3. 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).

4. If a child is a ward of the state and is not residing with a parent, a school division must make "reasonable efforts" to obtain informed consent from a parent for an initial evaluation to determine the child's eligibility for special education and related services, unless:

- Despite reasonable efforts, the school division cannot discover the parent's whereabouts;
- The parent's rights have been terminated; or
- The rights of the parent to make educational decisions have been subrogated under state law and consent for the initial evaluation has been given by the individual appointed by the judge to represent the child.

5. Parental consent is not required before:

- a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment;
- b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent or parents of all children;
- d. Administration of a test or other evaluation that is used to measure progress on the child's goals and benchmarks or objectives and is included in the IEP; or
- e. A teacher's or related service provider's observations or ongoing classroom evaluations.
- f. A teacher or specialist conduct a screening to determine appropriate instructional strategies for curriculum implementation, as such a screening is not considered an evaluation.

6. If a parent fails to provide consent for an initial evaluation, or to respond to a request to provide consent, the school division may use a due process hearing to pursue the initial evaluation.

7. Failure to respond to request for reevaluation.

- a. Informed parental consent need not be obtained for reevaluation if Rockingham County Public Schools 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, Rockingham County Public Schools must 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 or parents' home or place of employment and the results of those visits.

8. Rockingham County Public Schools may not use a parent or parents' refusal to consent to one service or activity to deny the parent, parents, or child any other service, benefit, or activity of Rockingham County Public Schools, except as provided by this chapter.

#### **F. Parental rights regarding use of public or private insurance.**

1. Rockingham County Public Schools 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;
  - (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) Rockingham County Public Schools 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 parental consent to release educational records to the public insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

2. Rockingham County Public Schools using private insurance to pay for services required under this chapter shall:

a.. Parental consent is obtained each time the the school division seeks to access public benefits or insurance to provide special education and related services to a child with a disability. Consent to access Medicaid funds must be obtained on an annual basis. The child's parents are also notified that the parent's refusal to allow access to their public benefits or insurance does not relieve the school division of its responsibility to ensure that all required services are provided at no cost to the parents.

b. 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 Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

### **G. Confidentiality of information.**

1. Access rights.

a. Rockingham County Public Schools shall permit a parent or parents to inspect and review any education records relating to their children that are collected, maintained, or used by Rockingham County Public Schools under this chapter. Rockingham County Public Schools 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 Rockingham County Public Schools to reasonable requests for explanations and interpretations of the records;

(2) The right to request that Rockingham County Public Schools provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c. Rockingham County Public Schools may presume that a parent has authority to inspect and review records relating to his children unless Rockingham County Public Schools 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. Rockingham County Public Schools shall keep a record of parties, except parents and authorized employees of Rockingham County Public Schools, 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. Rockingham County Public Schools shall provide on request to a parent or parents a list of the types and locations of education records collected, maintained, or used by Rockingham County Public Schools.

5. Fees.

a. Rockingham County Public Schools 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. Rockingham County Public Schools 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 Rockingham County Public Schools that maintains the information to amend the information.

- b. Rockingham County Public Schools shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
  - c. If Rockingham County Public Schools 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. Rockingham County Public Schools shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.
8. Results of hearing.
- a. If, as a result of the hearing, Rockingham County Public Schools decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.
  - b. If, as a result of the hearing, Rockingham County Public Schools decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
  - c. Any explanation placed in the records of the child under this section must:
    - (1) Be maintained by Rockingham County Public Schools as part of the records of the child as long as the record or contested portion is maintained by Rockingham County Public Schools; 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;
    - (2) Released to officials of participating agencies providing or paying for transition services; or
    - (3) Used for any purpose other than meeting a requirement of this chapter.
  - b. Rockingham County Public Schools 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. If a child, who is a resident of Rockingham County, is enrolled, or is going to enroll in a private school that is not located in Rockingham County, parental consent is obtained before any personally identifiable information about the child is released between the school division and the division where the provate school is located.
  - d. In the event that a parent refuses to provide consent under this section, Rockingham County Public Schools shall use established policies and procedures.
11. Safeguards.
- a. Rockingham County Public Schools shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
  - b. One official at Rockingham County Public Schools 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. Rockingham County Public Schools shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

12. Destruction of information.

a. Rockingham County Public Schools shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.

b. 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. Rockingham County Public Schools 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. Rockingham County Public Schools 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. Rockingham County Public Schools 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. Rockingham County Public Schools 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. Rockingham County Public Schools 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.

**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 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. Rockingham County Public Schools shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;

3. The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures:

a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:

(1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.

(2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for the adult student.

b. The individuals who provide the certification in subdivision 3 a of this subsection may not be employees of Rockingham County Public Schools currently serving the adult student or be related by blood or marriage to the adult student.

c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:

(1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(2) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(3) Communicate such understanding in any meaningful way.

d. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.

e. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

f. The adult student's ability to provide informed consent 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 Rockingham County Public School's administrator of special education who then must notify the adult student and current appointed representative.

(1) Upon receipt of a written challenge to the certification by the adult student, Rockingham County Public Schools may not rely on an educational representative, appointed pursuant to subsection D of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;

(2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, Rockingham County Public Schools may not rely on an educational representative, appointed pursuant to subsection D of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. Rockingham County Public Schools 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.

**D. If Rockingham County Public Schools receives written notification of the action in subdivision C 3 of this section or if the state-operated program receives the judicial certification in subdivision C 4 of this section, Rockingham County Public Schools 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 and competent to give informed consent, the administrator of special education or designee shall designate a competent individual from among the following:

a. An adult brother or sister;

- b. An adult aunt or uncle; or
- c. A grandparent.

2. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by Rockingham County Public Schools.

**8 VAC 20-80-74. Mediation.**

**A. Rockingham County Public Schools shall ensure that the parent or parents of a child with a disability are informed of the option of mediation to resolve disputes involving Rockingham County Public School'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. Rockingham County Public Schools shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is:**

- Voluntary on the part of both Rockingham County Public Schools and parent;
- 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
- Conducted by a qualified and impartial mediator 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. Parties are allowed to resolve disputes regarding special education and related services, including matters arising prior to the filing of a request for a due process hearing, through the mediation process.

D. If a resolution is reached via the mediation process, a written mediation agreement will be developed, which will be legally binding, and enforceable in any State court of competent jurisdiction or in a federal district court.

**E. Rockingham County Public Schools 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 a parent training and information center 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 an appropriate alternative dispute resolution entity.**

- 1. The purpose of the meeting is to explain the benefits of and encourage the parents to use the process.
- 2. Rockingham County Public Schools 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.

Note: At present, the Rockingham County Public School system does not have a policy requiring parents to choose to use the mediation process to resolve disputes related to a proposal or refusal 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.

**F. 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.

**G. 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.

**H. An individual who serves as a mediator:**

- 1. May not be an employee of any Rockingham County Public Schools or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process;

2. Must not have a personal or professional conflict of interest and
3. Is not an employee of Rockingham County Public Schools 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, Rockingham County Public Schools 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 Rockingham County Public Schools 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. Rockingham County Public Schools 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 (with the exception of the implementation of the initial IEP) to a student who has been identified as a student with a disability or who is suspected of having a disability.
3. In circumstances involving disciplinary actions, 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. A determination that the child's behavior was not a manifestation of the child's disability; or
  - b. Any decision regarding placement under the disciplinary procedures.
4. Rockingham County Public Schools may request an expedited hearing if Rockingham County Public Schools 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 shall be made in writing to Rockingham County Public Schools, 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 shall immediately notify Rockingham County Public Schools by telephone or by facsimile and forward a copy of the request to Rockingham County Public Schools 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 Rockingham County Public Schools and the Virginia Department of Education. A party filing a request for a due process hearing may, but is not required to, use VDOE's model request for due process hearing form. However, to be considered sufficient, the due process hearing request must contain all required elements.
2. Within two years of the date that the parent or the school division knew or should have known about an alleged action, a parent or LEA may request a due process hearing based on the action, unless the parent was prevented from requesting the due process hearing due to specific misrepresentations made by the school division that the problem, which is the basis of the due process request, had been resolved, or the school division withheld information from the parent that the school division was required to provide to the parent.
3. A notice requesting a due process hearing must be provided to the other party and to the Virginia Department of Education, and it must include the following elements:
  - The name and address of the child, or in the case of a homeless child or youth, available contact information;
  - The name of the school the child is attending;

- A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time of the due process request.

Note: The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the due process complaint notice, unless the other agrees otherwise.

4. The party requesting the due process hearing may not have a hearing until a notice with all required elements is filed. However, the due process complaint notice is deemed to be sufficient unless, within 15 days of receiving the notice, the non-complaining party notifies the hearing officer and the complaining party in writing that the notice is insufficient. A challenge to the sufficiency of the notice suspends the timeline for completion of a due process hearing. Once the non-complaining party notifies the hearing officer that the notice is insufficient, the hearing officer must make a determination regarding the notice's sufficiency within five days, and notify the parties immediately in writing. If the notice is sufficient, the applicable timeline recommences.

5. The complaining party may amend its due process complaint notice only if:

- The other party provides written consent to the amendment and is given the opportunity to resolve the complaint via the "resolution session;" or
- The hearing officer grants permission not later than five days before the due process hearing occurs.

Once an amended notice is filed, the applicable timelines for the due process hearing will recommence.

6. Within 10 days of receiving the due process complaint notice, the non-complaining party must provide a response that specifically addresses the issues raised in the notice. However, if the school division has not sent the parent prior written notice regarding the subject matter contained in the parent's due process complaint notice, the school division must, within 10 days, send to the parent a response that includes the following:

- An explanation of why the agency proposed or refused to take the action raised in the complaint;
- A description of other options that the IEP team considered and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report the school division used as the basis for the proposed or refused action; and
- A description of the factors that are relevant to the agency's proposal or refusal.

7. Within 15 days of receiving the due process complaint notice, the school division must convene a "resolution session" with the parents and the relevant members of the student's IEP team who have specific knowledge of the facts identified in the due process complaint notice. This group must include a representative of the school division who has decision-making authority. The school division's attorney may not be included unless the parent is accompanied by an attorney. The purpose of the meeting is to discuss the issues raised in the due process complaint notice, and to provide the school division the opportunity to resolve the complaint.

8. If, during the "resolution session" an agreement to resolve the complaint is achieved, the parties must execute a legally binding agreement which is signed by both the parent and a representative of the school of the school division who has the authority to bind the division; and which is enforceable in any Virginia court of competent jurisdiction or in federal district court. Either party may void the agreement within three business days.

9. The "resolution session" may be waived if both parties agree to do so in writing, or agree to participate in mediation. If it is waived, the applicable timeline continues. Otherwise, the applicable timeline is suspended. Unless the school division and the parent jointly agree to waive the resolution meeting or to use mediation, the failure of a parent filing the request for a due process hearing to participate in the resolution meeting will delay the timelines for convening a due process hearing until the resolution meeting is held.

10. If the school division is unable to obtain parental participation in the resolution session meeting after reasonable efforts have been made and documented, the school division may, at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's request for due process.

11. If the school division fails to hold a resolution session within 15 days of receiving notice of a parent's request for a due process hearing, or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the due process hearing timeline.

12. If the school division has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint notice, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

13. The 45-day timeline for the due process hearing starts the day after one of the following events:
  - The parties agree in writing to waive the resolution session;
  - The parties agree in writing that no agreement is possible after the initiation of the resolution meeting or mediation, but before the conclusion of the resolution period; or
  - If, at the end of the 30-day resolution period, the parties agree in writing to continue the resolution period to continue with mediation but, later, either party withdraws from the mediation process.
14. Rockingham County Public Schools 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 available in the area. Rockingham County Public Schools must also provide the parent or parents with a procedural safeguards notice.
15. Rockingham County Public Schools shall appoint the hearing officer within five business days of the request for a hearing. Rockingham County Public Schools 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, Rockingham County Public Schools must appoint the hearing officer within three business days of the request for a hearing.
16. If the request for a due process hearing involves an application for initial services for a child who is transitioning from Part C to Part B, but who is no longer eligible for Part C services because the child has turned three, the school division is not required to provide the services that the child had been receiving under Part C. However, if the child is found eligible for special education and related services, and the parent consents to the initial provision of those services, the school division must provide the special education and related services that are not in dispute between the division and the parent.

**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 Rockingham County Public Schools, the Supreme Court identifies a hearing officer from its list and provides the name to Rockingham County Public Schools. If the first person selected is unavailable or disqualified, Rockingham County Public Schools 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 Rockingham County Public Schools, and either party has two business days to object to the appointment on the basis of conflict of interest.
4. A hearing shall not be conducted by a person 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 Rockingham County Public Schools that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a 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, Rockingham County Public Schools shall ensure that another hearing officer is promptly appointed.
6. The school division complies with the Virginia Department of Education's responsibilities for the following:
  - Appointment of an approved hearing officer; and
  - Ensuring the hearing officer's decision and the management of the hearing comports with the federal and state mandates.

**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 Rockingham County Public Schools 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 Rockingham County Public Schools 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 Rockingham County Public Schools 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:
    - (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 Rockingham County Public Schools discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;
3. Develop and disseminate a model form to be used by the parent or parents to give notice of the following when filing a request for due process 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 Rockingham County Public Schools 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. Maintain and ensure that Rockingham County Public Schools maintains a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each officer;
6. 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. Decide whether the hearing will be open to the public;
2. 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. Provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
5. Provide documents and exhibits necessary for the hearing within required timelines; and
6. Comply with timelines, orders, and requests of the hearing officer.

#### **I. Responsibilities of Rockingham County Public Schools.**

Rockingham County Public Schools shall:

1. Maintain a list of the persons serving as hearing officers. This list shall include a statement of the qualifications of each officer;
2. Provide the parent or parents a form for use to provide notice that they are requesting a due process hearing and a copy of their procedural safeguards;
3. Maintain the confidentiality of the completed notice form and its contents;
4. Ensure that the parent's or parents' right to a hearing is not delayed or denied for failure to complete the notice;
5. Ensure that a hearing officer is appointed within five business days of a request for a nonexpedited hearing and three business days of a request for an expedited hearing;
6. Inform the parent or parents at the time the request is made of the availability of mediation;
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 Rockingham County Public Schools initiates a hearing;
8. Assist the hearing officer, upon request, in securing the location and recording equipment for the hearing;
9. Make timely and necessary responses to the hearing officer;
10. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the hearing officer;
11. Upon request, provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing;
12. Provide documents and exhibits necessary for the hearing within required timelines;
13. Comply with timelines, orders, and requests of the hearing officer;
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;
15. Forward all necessary communications to the Virginia Department of Education and parties as required;

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 Rockingham County Public Schools 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 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 Rockingham County Public Schools 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;

17. Notify the Virginia Department of Education when Rockingham County Public Schools 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 Rockingham County Public Schools; and

18. Forward the record of the due process proceeding to the appropriate court for any case that is appealed.

#### **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 nonexpedited due process hearing and 20 business days if assigned to an expedited hearing;
2. Ensure impartiality, and decline the appointment if the hearing officer is an employee of the Virginia Department of Education or of Rockingham County Public Schools 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 shall complete these responsibilities within two business days of appointment;
5. Ascertain whether 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 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 Rockingham County Public Schools 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 Rockingham County Public Schools 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;
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 nonexpedited due process hearing, a determination of whether 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. Rockingham County Public Schools is providing a free appropriate public education;
18. Maintain an organized and well-documented record and return the official record to Rockingham County Public Schools upon conclusion of the case;
19. Determine in a hearing regarding a manifestation determination whether Rockingham County Public Schools 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) the conduct in question was not a direct result of the local educational agency's failure to implement the IEP; and
    - (2) the conduct in question was not caused by (have a direct and substantial relationship to) the student's disability.
  - 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 Rockingham County Public Schools personnel to change the child's placement to an interim alternative educational placement for up to 45 days:
  - a. Consider whether the child's current placement is appropriate;
  - b. Consider whether Rockingham County Public Schools 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 Rockingham County Public Schools 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 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 any testimony of witnesses who were not identified at 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;
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 shall be noted in writing and 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 orders;
10. Set guidelines regarding media coverage if the hearing is open to the public;
11. Enter a disposition as to every issue presented for decision and identify and determine the prevailing party on each issue that is decided;
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 whether Rockingham County Public Schools 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 whether the child's current placement is appropriate;
  - c. Considering whether Rockingham County Public Schools 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 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 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
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 whether Rockingham County Public Schools 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 whether the child's current placement is appropriate;

c. Consider whether Rockingham County Public Schools 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 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 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;
- (2) Includes services and modifications designed to address the behavior so that it does not recur; and
- (3) Is for not longer than 45 school days and is repeated if proper procedures 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 the request for the hearing is received by Rockingham County Public Schools;
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 send 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 school days after the receipt of the request for the expedited hearing by Rockingham County Public Schools without exceptions or extensions and issue a determination within 10 school days following the hearing; 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.
3. In an expedited due process hearing, unless the school division and the parent agree to waive it, the resolution meeting must be convened within seven days of receiving notice of the request for a due process hearing. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the request for the hearing.

#### **N. Costs of due process hearing and 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 Rockingham County Public Schools and the Virginia Department of Education. Costs for any these services incurred by a party for the specific benefit of that party's case are the responsibility of that party.
2. Rockingham County Public Schools is responsible for its own attorneys' fees.
3. The parent or parents are responsible for their 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 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. As a result of a due process hearing, a court, in its discretion, may award reasonable attorneys' fees to VDOE or the school division:
  - Against the parent's attorney, if either VDOE or the school division are the prevailing party and it is determined that the due process hearing request or subsequent action was frivolous, unreasonable, or without foundation, or the parent's attorney continued to litigate the action after it clearly became frivolous, unreasonable, or without foundation; and
  - Against the parent or the parent's attorney, if either VDOE or the school division are the prevailing party and it is determined that the due process hearing request or subsequent action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

6. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and its implementing regulations and 8 VAC 20-80-155.

**O. Right of appeal.**

1. A decision by the hearing officer in any hearing, including an expedited hearing, shall be final and binding unless the decision is appealed to federal district court within 90 days, or to a Virginia court of competent jurisdiction within one year. 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, shall hear additional evidence 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.

4. In every case within 45 days of the final decision of the hearing officer, an implementation plan must be filed by Rockingham County Public Schools, with copies to the parties, the Virginia Department of Education, and the hearing officer unless Rockingham County Public Schools 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.

5. If Rockingham County Public Schools does not file an implementation plan, Rockingham County Public Schools must notify the Virginia Department of Education within 45 days of the issuance of the decision of the hearing officer that Rockingham County Public Schools is considering appealing the hearing officer's decision or either Rockingham County Public Schools or the parent or parents have appealed the hearing officer's decision.

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.

**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. Complies with all training requirements;
- b. Conducts the hearing in a manner that protects the rights of all parties;
- c. 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.

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.

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.

**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 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 errors of law which are reserved for appellate review.

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.

**R. Nothing in this chapter prohibits or limits rights under other federal 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 designee is responsible for the operation of the 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 and include contact information;

3. Contain a statement that a Rockingham County Public Schools 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.

6. If alleging violations regarding a specific child:

- The name and address of the child;
- The name of the school the child is attending; and
- In case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending.

7. A description of the nature of the problem of the child, including the facts relating to the problem.

8. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

9. A complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received by the Virginia Department of Education.

10. A complainant must forward a copy of the complaint to the school division at the same time the complainant files the complaint with the DOE.

11. The Virginia Department of Education will provide the school division with the opportunity to respond to a complaint, including, at a minimum, at the discretion of the school division, a proposal to resolve the complaint; and an opportunity for a parent who has filed a complaint and the school division to voluntarily engage in mediation.

12. To engage in mediation, the school division and a complainant may agree to extend the 60-day timeline for completing the complaint procedures.

13. A party filing a state complaint may, but is not required to, use the DOE model complaint form. However, to be considered sufficient, the complaint must contain all required elements.

C. Upon receipt of a complaint, the Virginia Department of Education shall initiate an investigation to determine whether Rockingham County Public Schools is in compliance with applicable law and regulations in accordance with the following procedures:

1. Within seven business days of the receipt of the complaint, the Virginia Department of Education shall send written notification in writing to each complainant and Rockingham County Public Schools against which the violation has been alleged, acknowledging receipt of a complaint, and shall send copies to other appropriate Virginia Department of Education personnel.

a. The notification sent to Rockingham County Public Schools shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance in resolving the complaint;

(3) A request that Rockingham County Public Schools 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 Rockingham County Public Schools 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 Rockingham County Public Schools 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, Rockingham County Public Schools 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.

b. The notification sent to the complainant and Rockingham County Public Schools shall provide the complainant and Rockingham County Public Schools with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.

2. If a reply from Rockingham County Public Schools is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to

Rockingham County Public Schools advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.

3. The Virginia Department of Education shall review the complaint and reply filed by Rockingham County Public Schools to determine if further investigation or corrective action needs to be taken.

a. If no further investigation or action is necessary, the Virginia Department of Education shall notify both parties in writing, stating the grounds for such finding.

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 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:

a. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

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 Virginia Department of Education of the exceptional circumstances and 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.

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.

e. Notify the parties in writing of any needed corrective actions and the specific steps that must be taken by Rockingham County Public Schools to bring it into compliance. Rockingham County Public Schools will be given 15 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. 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.

**D. When Rockingham County Public Schools develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.**

**E. If Rockingham County Public Schools does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.**

**F. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that Rockingham County Public Schools has failed to comply with applicable 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 children with disabilities shall not be made available to Rockingham County Public Schools until there is no longer any failure to comply with the applicable law or regulation.**

**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 decision in accordance with procedures established by the Virginia Board of Education.**

**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. Surrogate parent procedures.**

**A. Role of surrogate parent. The surrogate parent 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, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:

- a. The natural parent or parents or guardians 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 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 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 in accordance with § 63.1-206.1 of the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.
- d. If the student is a ward of the state, the surrogate parent may be appointed by the judge overseeing the child's care if the appointed surrogate otherwise meets the requirements.
- e. If the student is an "unaccompanied homeless youth," as defined by the McKinney-Vento Homeless Assistance Act, the school division must appoint a surrogate parent.
- f. Reasonable efforts must be made to ensure the assignment of a surrogate parent not more than 30 days after the determination that a surrogate is needed.

2. A surrogate parent shall be appointed for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when:

- a. No parent, as defined in this chapter, can be identified; or
- b. Rockingham County Public Schools, after reasonable efforts, cannot discover the whereabouts of a parent.

3. A surrogate parent shall be appointed as the educational representative for a child who reaches the age of majority if Rockingham County Public Schools 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.

4. The Director of Pupil Personnel Services or designee will determine if a child referred or eligible for special education needs a surrogate parent. The assignment will be made when a student meets the qualification outlined under §20-80-80 B. 1. and B 2.

5. Rockingham County Public Schools shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by Rockingham County Public Schools superintendent or designee.

a. The appointment having been effected, Rockingham County Public Schools shall notify in writing:

- (1) The child with a disability, 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 custodial state agency charged with responsibility for the child;

b. The surrogate parent shall serve during, or for the duration of, the school year for which 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 the child's IEP.

(2) If the child requires the services of a surrogate parent during the summer months, Rockingham County Public Schools shall extend the appointment as needed, consistent with timelines required by law.

c. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by Rockingham County Public Schools.

6. The Director of Pupil Personnel Services or designee will change the assignment of a surrogate parent before that surrogate parent's appointment has expired if any of the following conditions occur. The student or surrogate parent being removed may 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 and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8VAC 20-80-72;
- b. The child is found no longer eligible for special education services and the surrogate parent has consented to the termination of those services;
- c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;
- d. The parent or parents, whose whereabouts were previously unknown, are now known and available; or
- e. The appointed surrogate parent is no longer eligible according to subsection D of this section.

### **C. Identification and recruitment of surrogate parents.**

1. Rockingham County Public Schools shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for Rockingham County Public Schools to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.

2. Individuals who are not on Rockingham County Public Schools list may be eligible to serve as surrogate parents, subject to Rockingham County Public School'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 Rockingham County Public School's determination of surrogate eligibility. Other factors which warrant Rockingham County Public School'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, or linguistic background as the child; and
- d. The appropriateness of the child's participation in the selection of the surrogate parent.

3. Until a surrogate parent who meets the requirements of the Virginia regulations at 8 VAC 20-80-80 D. can be appointed the school division may appoint appropriate staff from an emergency shelter, transitional shelters, independent living programs, or a street outreach program to serve as a temporary surrogate parent for a child who is an unaccompanied homeless youth, even though the individual is an employee of an agency involved in the education or care of a child, as long as the temporary surrogate meets all other qualifications required for a surrogate parent.

**D. Qualifications of surrogate parents.**

1. Rockingham County Public Schools shall ensure that a person appointed as a surrogate:
  - a. Has no interest that conflicts with the interest of the child;
  - b. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed a Rockingham County Public Schools approved training session prior to representing the child. Thereafter, Rockingham County Public Schools shall provide annual training, 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.
  - c. Is not an employee of the Virginia Department of Education, or any other public agency which is involved in the education or care of the child;
  - d. Is an adult; and
  - e. Resides in the same general geographic area as the child, whenever possible.
2. Rockingham County Public Schools 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 the person is paid by the agency to serve as a surrogate parent.

**E. Rights of surrogate parents.**

The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter.