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SENATE BILL NO. 678

Offered January 14, 2026

Prefiled January 14, 2026

A *BILL to amend and reenact §§ 2.2-5300, 22.1-1, as it shall become effective, 22.1-213, 22.1-214, 22.1-214.4, 22.1-215, 22.1-215.1, 22.1-217, 22.1-217.02, 22.1-217.03, 22.1-253.13:2, as it shall become effective, 22.1-253.13:3, as it shall become effective, 22.1-253.13:4, 22.1-269.1, 22.1-273, 22.1-274.02, and 22.1-274.6 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 22.1-213.2, 22.1-213.3, 22.1-215.4 through 22.1-215.7, and 22.1-274.7:1; and to repeal §§ 22.1-214.1 and 22.1-214.2 of the Code of Virginia, relating to Department of Education; special education and related services; children with disabilities; educational rights, protections, and duties; requirements.*

Patrons—Pekarsky, Favola, Aird and Hashmi

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-5300, 22.1-1, as it shall become effective, 22.1-213, 22.1-214, 22.1-214.4, 22.1-215, 22.1-215.1, 22.1-217, 22.1-217.02, 22.1-217.03, 22.1-253.13:2, as it shall become effective, 22.1-253.13:3, as it shall become effective, 22.1-253.13:4, 22.1-269.1, 22.1-273, 22.1-274.02, and 22.1-274.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 22.1-213.2, 22.1-213.3, 22.1-215.4 through 22.1-215.7, and 22.1-274.7:1 as follows:

§ 2.2-5300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Council" means the Virginia Interagency Coordinating Council created pursuant to § 2.2-2664.

"Early intervention services" means *developmental services that (i) are provided through Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1431 et seq.), as amended, under public supervision and at no cost, except where federal or state law provides for a system of payments by families, including a schedule of sliding fees; (ii) are designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development and provided to children from birth to age three who have (i) a 25 percent developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay infant or child with a disability, as identified by the individualized family service plan team, in any one or more of the following areas: (a) physical development, (b) cognitive development, (c) communication development, (d) social or emotional development, or (e) adaptive development; (iii) meet the standards set forth in applicable state law and regulation and the requirements of Part C of the IDEA; (iv) include the services enumerated pursuant to Part C of the IDEA; (v) are provided by qualified personnel, in accordance with applicable federal and state law and regulation; (vi) are, to the maximum extent appropriate, provided in natural environments, including the home, and community settings in which children without disabilities participate; and (vii) are provided in conformity with an individualized family service plan adopted in accordance with 20 U.S.C. § 1436. Early intervention services provided in the child's home and in accordance with this chapter shall not be construed to be home health services as referenced in § 32.1-162.7.*

"Infant or toddler with a disability" means an individual under three years of age who needs early intervention services because such individual (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development or (ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. "Infant or toddler with a disability" may include, at the Commonwealth's discretion and pursuant to applicable state law or regulation, (a) at-risk infants and toddlers and (b) children with disabilities who are eligible for services under 20 U.S.C. § 1419 and who previously received services under Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1431 et seq.) until such children enter, or are eligible under state law to enter, kindergarten or elementary school, as appropriate, provided that any programs provided under Part C of the IDEA serving such children shall meet the requirements set forth in applicable law and regulation.

"Participating agencies" means the Departments of Health, of Education, of Medical Assistance Services, of Behavioral Health and Developmental Services, and of Social Services; the Departments for the Deaf and Hard-of-Hearing and for the Blind and Vision Impaired; and the Bureau of Insurance within the State Corporation Commission.

§ 22.1-1. (Effective July 1, 2026) Definitions.

59 As used in this title, unless the context requires a different meaning:
60 "Board" or "State Board" means the Board of Education.
61 "Department" means the Department of Education.
62 "Division superintendent" means the division superintendent of schools of a school division.
63 "Dual enrollment" means the enrollment of a qualified high school student in a postsecondary course that
64 is creditable toward high school completion and a career certificate or an associate or baccalaureate degree at
65 a public institution of higher education. "Dual enrollment" does not include the enrollment of a qualified high
66 school student in a postsecondary course that is not creditable toward high school completion.
67 "Elementary" includes kindergarten.
68 "Elementary and secondary" and "elementary or secondary" include elementary, middle, and high school
69 grades.
70 "Evidence-based literacy instruction" means structured instructional practices, including sequential,
71 systematic, explicit, and cumulative teaching, that (i) are based on reliable, trustworthy, and valid evidence
72 consistent with science-based reading research; (ii) are used in core or general instruction, supplemental
73 instruction, intervention services, and intensive intervention services; (iii) have a demonstrated record of
74 success in adequately increasing students' reading competency, vocabulary, oral language, and
75 comprehension and in building mastery of the foundational reading skills of phonological and phonemic
76 awareness, alphabetic principle, phonics, spelling, and text reading fluency; and (iv) are able to be
77 differentiated in order to meet the individual needs of students. "Evidence-based literacy instruction" does not
78 include practices that instruct students to gain meaning from print through the use of (a) three-cueing, which
79 includes semantic, syntactic, and graphophonic cues; (b) meaning, structure, and visual cues; or (c) visual
80 memory for word recognition.
81 "Governing body" or "local governing body" means the board of supervisors of a county, council of a city,
82 or council of a town, responsible for appropriating funds for such locality, as the context may require.
83 "*Individualized education program*" or "*IEP*" means a written statement for each child with a disability
84 that is developed, reviewed, and revised in accordance with § 22.1-215.4.
85 "Middle school" means separate schools for early adolescents and the middle school grades that might be
86 housed at elementary or high schools.
87 "Parent" or "parents" means any parent, guardian, legal custodian, or other person having control or
88 charge of a child.
89 "Person of school age" means a person who will have reached his fifth birthday on or before September
90 30 of the school year and who has not reached ~~twenty~~ 20 years of age on or before August 1 of the school
91 year.
92 "School board" means the school board that governs a school division.
93 "Science-based reading research" means research that (i) applies rigorous, systematic, and objective
94 observational or experimental procedures to obtain valid knowledge relevant to reading development, reading
95 instruction, and reading and writing difficulties and (ii) explains how proficient reading and writing develop,
96 why some children have difficulties developing key literacy skills, and how schools can best assess and
97 instruct early literacy, including the use of evidence-based literacy instruction practices to promote reading
98 and writing achievement.
99 "Superintendent" means the Superintendent of Public Instruction.
100 "Textbooks and other high-quality instructional materials" means systematic print or digital curricula that
101 serve as the primary curriculum basis for a grade-level subject or course and that provide (i) adequate content
102 and materials for student mastery of corresponding Standards of Learning; (ii) instructional practices that are
103 aligned with general and discipline-specific research evidence; (iii) assessments to monitor student mastery of
104 curriculum content; (iv) guidance for meeting student needs including enrichment for above-grade-level
105 students and intensification for students who are at-risk of not mastering curriculum content, including
106 English language learners and students with disabilities; and (v) resources for teachers that develop content
107 knowledge, support implementation of instructional practices that are based on reliable, trustworthy, and
108 valid evidence and have a demonstrated record of success, and build understanding of the rationale for
109 curricula components.

110 **§ 22.1-213. Definitions.**
111 As used in this article, *unless the context requires a different meaning:*
112 "*Assistive technology device*" means any item, piece of equipment, or product system, whether acquired
113 commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional
114 capabilities for a child with a disability. "*Assistive technology device*" does not include a medical device that
115 is surgically implanted, or the replacement of such a device.
116 "*Assistive technology service*" means any service that directly assists a child with a disability in the
117 selection, acquisition, or use of an assistive technology device.
118 "~~Children~~ Child with disabilities a disability" means ~~those persons~~ any person (i) who ~~are~~ is age two to
119 21, inclusive, having reached the age of two by the date specified in § 22.1-254; (ii) who ~~have~~ (a) has an
120 intellectual ~~disability~~ or serious emotional disturbance, ~~are physically disabled~~ disability, (b) has a physical

121 disability including orthopedic impairments, (c) is speech or language impaired, (d) is deaf or hard of
 122 hearing, ~~visually~~ (e) is vision impaired, ~~or~~ (f) has multiple ~~disabled~~, ~~are otherwise health impaired~~ disabilities,
 123 including those who have (g) has autism spectrum disorder ~~or~~, (h) has a specific learning disability, (i) has a
 124 traumatic brain injury, (j) has other health impairments, ~~or are~~ (k) otherwise ~~disabled~~ qualifies as having
 125 disabilities, as defined by the Board of Education; and (iii) who ~~because of such impairments need~~, by reason
 126 thereof, needs special education and related services.

127 "Early intervention services" means the same as that term is defined in § 2.2-5300.

128 "Free appropriate public education" means special education and related services that (i) are provided at
 129 public expense, under public supervision and direction, and without charge; (ii) meet the standards of the
 130 Department; (iii) include an appropriate preschool, elementary school, or secondary school education; and
 131 (iv) are provided in conformity with an individualized education program required under 20 U.S.C. §
 132 1414(d) and in accordance with § 22.1-215.4.

133 "Homeless child or youth" has the same meaning as that term is defined in 42 U.S.C. § 11434a(2).

134 "Individuals with Disabilities Education Act" or "IDEA" means the federal Individuals with Disabilities
 135 Education Act, as codified in 20 U.S.C. § 1400 et seq.

136 "Infant or toddler with a disability" means the same as that term is defined in § 2.2-5300.

137 "Instructional practices to support specially designed instruction in inclusive settings" means structured
 138 instructional practices, including sequential, systematic, explicit, and cumulative teaching, that (i) are based
 139 on reliable, trustworthy, and valid evidence; (ii) provide access to grade-level content in core or general
 140 instruction, supplemental instruction, intervention services, and intensive intervention services; (iii) are
 141 developed based on reliable data collection and progress monitoring from both valid and reliable assessments
 142 and tracking of progress toward individual goals and objectives; (iv) are able to be differentiated in order to
 143 meet the individual needs of students; and (v) align with student need based on special education eligibility,
 144 present level of performance, and related goals and objectives.

145 "Local educational agency" or "LEA" means a public board of education or other public authority legally
 146 constituted within the Commonwealth for either administrative control or direction of, or to perform a
 147 service function for, public elementary or secondary schools in a city, county, township, school division, or
 148 other political subdivision of the Commonwealth, or for such combination of school divisions or counties as
 149 are recognized in the Commonwealth as an administrative agency for its public elementary or secondary
 150 schools. "Local educational agency" or "LEA" includes any school board.

151 "Participating agencies" means the same as that term is defined in § 2.2-5300.

152 "Related services" means transportation and such developmental, corrective, and other supportive services
 153 as are required to assist a child with a disability to benefit from special education, including speech pathology
 154 and audiology, psychological services, physical and occupational therapy, recreation, early identification and
 155 assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation
 156 purposes. "Related services" also includes school health services, social work services in schools, and parent
 157 counseling and training.

158 "Special education" means specially designed instruction at no cost to the parent to meet the unique needs
 159 of a child with a disability, including classroom instruction, home instruction, instruction provided in
 160 hospitals and institutions, instruction in physical education, and instruction in career and technical education.

161 "Specially designed instruction" means instruction for which the content, methodology, or delivery is
 162 adapted, as appropriate to the needs of an eligible child, to (i) address the unique needs of the child that result
 163 from the child's disability and (ii) ensure that the child has access to the general curriculum so that the child
 164 can meet the educational standards that apply to all children within the jurisdiction of the local educational
 165 agency.

166 "Specific learning disability" means a disorder in one or more of the basic psychological processes
 167 involved in understanding or using language, spoken or written, which may manifest itself in an imperfect
 168 ability to listen, think, speak, read, write, spell, or do mathematical calculations. "Specific learning disability"
 169 does not include children who have a learning ~~problems~~ problem that ~~are~~ is primarily the result of visual,
 170 hearing, motor, or intellectual disability, or of environmental, cultural, or economic disadvantage.

171 "Supplementary aids and services" means aids, services, and other supports that are provided in regular
 172 education classes or other education-related settings to enable a child with a disability to be educated with
 173 children without disabilities to the maximum extent appropriate pursuant to § 22.1-213.2.

174 "Transition services" means a coordinated set of activities for a child with a disability that (i) is designed
 175 as a results-oriented process focused on improving the academic and functional achievement of a child with
 176 a disability in order to facilitate the child's movement from school to post-school activities, including
 177 postsecondary education, vocational education, integrated and supported employment, continuing and adult
 178 education, independent living, community participation, or other adult services; (ii) is based on the
 179 individual child's needs, taking into account the child's strengths, preferences, and interests; and (iii)
 180 includes instruction, related services, community experiences, the development of employment and other
 181 postsecondary adult living objectives, and, when appropriate, the acquisition of daily living skills and
 182 functional vocational evaluation.

183 "Universal design" means a concept or philosophy for designing and delivering products or services that
 184 are usable by people and that have the widest possible range of functional activities, including products and
 185 services that are directly accessible and products and services that require and are interoperable with
 186 assistive technology devices.

187 "Vision impaired" means the same as that term is defined by the Board and the Virginia Department for
 188 the Blind and Vision Impaired.

189 **§ 22.1-213.2. Educational rights and protections of children with disabilities; free appropriate public**
 190 **education; least restrictive environment.**

191 For the purposes of preparing children with disabilities for postsecondary education, employment, and
 192 independent living, the Department shall:

193 1. Provide a free appropriate public education to each child with a disability residing in the
 194 Commonwealth, including any child with a disability who has been suspended or expelled from school,
 195 except as otherwise provided in 20 U.S.C. § 1412(a)(1)(B) and (C) of the IDEA;

196 2. Establish a goal of providing full educational opportunity to each student with a disability in the
 197 Commonwealth and a detailed timetable for accomplishing such goal;

198 3. Ensure that (i) each child with a disability residing in the Commonwealth, including any child with a
 199 disability who is a homeless child or ward of the state or attending a private school, regardless of the severity
 200 of his disabilities, who is in need of special education and related services, is identified, located, and
 201 evaluated and (ii) a practical method is developed and implemented to determine which children with
 202 disabilities are currently receiving needed special education and related services;

203 4. Ensure that for each child with a disability, an individualized education program is developed,
 204 reviewed, revised, and implemented in accordance with § 22.1-215.4;

205 5. Provide each child with a disability residing in the Commonwealth an education in the least restrictive
 206 environment by ensuring that:

207 a. To the maximum extent appropriate, children with disabilities are educated with students without
 208 disabilities; and

209 b. Special classes, separate schooling, or any other removal of a child with a disability from the regular
 210 educational environment occurs only if the nature or severity of the disability is such that education in
 211 regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;

212 6. Ensure that:

213 a. Each child with a disability and his parents are afforded the procedural safeguards required by 20
 214 U.S.C. § 1415 of the IDEA and set forth in § 22.1-215.5; and

215 b. Procedures are established and implemented to ensure that testing and evaluation materials and
 216 procedures utilized for the purposes of evaluation and placement of children with disabilities for services
 217 under this article are selected and administered so as not to be racially or culturally discriminatory. Such
 218 materials or procedures shall be provided and administered in the child's native language or mode of
 219 communication, unless it clearly is not feasible to do so, and no single procedure shall be used as the sole
 220 criterion for determining an appropriate educational program for a child;

221 7. Ensure that each child with a disability is evaluated in accordance with § 22.1-215.1;

222 8. Comply with and ensure that each local educational agency complies with 20 U.S.C. § 1417(c) of the
 223 IDEA, relating to the confidentiality of records and information;

224 9. Ensure that (i) children participating in early intervention programs assisted under Part C of the IDEA
 225 (20 U.S.C. § 1431 et seq.), and who will participate in preschool programs assisted under the IDEA,
 226 experience a smooth and effective transition to those preschool programs in a manner consistent with
 227 applicable provisions of the IDEA and its implementing regulations; (ii) by the third birthday of any child
 228 described in clause (i), an individualized education program or, if consistent with applicable federal law, an
 229 individualized family service plan, has been developed and is being implemented for the child; and (iii) the
 230 local educational agency participates in transition conferences arranged by the designated lead agency
 231 under applicable federal law;

232 10. Ensure that (i) the requirements of this article and the IDEA and its implementing regulations are
 233 met; (ii) educational programs for children with disabilities in the Commonwealth, including any such
 234 programs administered by any other agency of the Commonwealth, (a) are under the general supervision of
 235 individuals in the Commonwealth who are responsible for educational programs for children with disabilities
 236 and (b) meet the educational standards of the Department; and (iii) in carrying out the provisions of the
 237 IDEA and this article with respect to homeless children, the requirements of Subtitle B of Title VII of the
 238 McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.) are met;

239 11. Establish and maintain qualifications to ensure that personnel necessary to carry out the IDEA and
 240 this article are appropriately and adequately prepared and trained and have the content knowledge and skills
 241 to serve children with disabilities, including:

242 a. Qualifications for related services personnel and paraprofessionals that (i) are consistent with any
 243 Board-approved or recognized certification, licensing, registration, or other comparable requirements that
 244 apply to the professional discipline in which such personnel are providing special education and related

245 services; (ii) ensure that related services personnel who deliver services in their discipline or profession meet
 246 the requirements of this subdivision and have not had any certification or licensure requirements waived on
 247 an emergency, temporary, or provisional basis; and (iii) allow paraprofessionals and assistants who are
 248 appropriately trained and supervised, in accordance with applicable state law, regulation, or written policy,
 249 and who meet the requirements of this article and applicable federal law, to assist in the provision of special
 250 education and related services to children with disabilities; and

251 b. Qualifications for special education teachers employed in the Commonwealth to teach elementary or
 252 secondary school that ensure each special education teacher (i) has, consistent with Board regulations for
 253 special education teacher licensure and certification, (a) obtained full certification as a special education
 254 teacher, including through participation in an alternate route to certification as a special educator, provided
 255 that such alternate route meets the minimum requirements set forth in applicable federal regulation, or (b)
 256 passed the special education teacher licensing examination approved by the Board; (ii) holds a license to
 257 teach in the Commonwealth as a special education teacher, except in the case of any teacher teaching in a
 258 public charter school, who shall meet the requirements set forth in applicable state law relating to public
 259 charter schools; (iii) has not had any special education certification or licensure requirements waived on an
 260 emergency, temporary, or provisional basis; and (iv) holds at least a bachelor's degree;

261 12. Establish:

262 a. Goals for the performance of children with disabilities that (i) promote the purpose of this article and
 263 the IDEA; (ii) are the same as the Department's long-term performance goals and measurements of interim
 264 progress for children with disabilities established under 20 U.S.C. § 6311(c)(4)(A)(i) of Elementary and
 265 Secondary Education Act of 1965 (ESEA), as amended by the federal Every Student Succeeds Act of 2015
 266 (P.L. 114-95); (iii) address graduation rates, dropout rates, and such other factors as the Department may
 267 deem appropriate; and (iv) are consistent, to the extent appropriate, with any other goals and standards for
 268 children established by the Department; and

269 b. Performance indicators to evaluate the progress of children with disabilities toward achieving the
 270 goals established pursuant to subdivision a, including measurements of interim progress for children with
 271 disabilities pursuant to 20 U.S.C. § 6311(c)(4)(A)(i) of ESEA;

272 13. Ensure that each child with a disability is included in all Standards of Learning assessments or any
 273 other assessments administered as a part of a statewide or divisionwide assessment program pursuant to
 274 § 22.1-253.13:3, with appropriate accommodations and alternate assessments where necessary and as
 275 indicated in the child's IEP. The Department shall develop and implement guidelines:

276 a. For the provision of appropriate accommodations for each child with a disability when participating in
 277 any such assessment. For the purposes of this subdivision, appropriate accommodations include providing
 278 any child with a disability, if determined appropriate by such child's IEP team pursuant to § 22.1-215.4, any
 279 such assessment in a paper-based, nondigital format on which such child may complete such assessment, in
 280 whole or in part, through handwritten answers and responses; and

281 b. For the participation of children with disabilities in alternate assessments for any such child who
 282 cannot participate in any regular statewide or divisionwide assessment with accommodations as indicated in
 283 his IEP. Such guidelines shall provide for alternate assessments that (i) are aligned with the Department's
 284 academic content standards established under 20 U.S.C. § 6311(b)(1) of ESEA and (ii) if the Department has
 285 adopted alternate achievement standards permitted under 20 U.S.C. § 6311(b)(1)(E) of ESEA, measure the
 286 achievement of children with disabilities against those standards;

287 14. Use and ensure that each local educational agency uses, to the extent feasible, universal design
 288 principles in developing and administering any assessment pursuant to subdivision 12;

289 15. Ensure that, prior to the adoption or amendment of any policies and procedures needed to comply
 290 with this article and the IDEA, public hearings, adequate notice of such hearings, and an opportunity for
 291 comment are made available to the general public, including individuals with disabilities and the parents of
 292 children with disabilities;

293 16. Examine data, including data disaggregated by race and ethnicity, to determine if significant
 294 discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities
 295 (i) among local educational agencies or (ii) compared to such rates for children without disabilities among
 296 local educational agencies. If the Department finds such discrepancies, it shall review and, if appropriate,
 297 revise, or require the applicable agency to revise, its policies, procedures, and practices relating to the
 298 development and implementation of IEPs, the use of positive behavioral interventions and supports, and
 299 procedural safeguards, to ensure that such policies, procedures, and practices comply with this article and
 300 the IDEA;

301 17. Adopt the National Instructional Materials Accessibility Standard for the purposes of providing
 302 instructional materials to blind persons or other persons with print disabilities in a timely manner and in
 303 accordance with the provisions of applicable federal and state law and regulation;

304 18. Have in effect policies and procedures designed to prevent the inappropriate overidentification or
 305 disproportionate representation by race and ethnicity of children with disabilities, including children with
 306 disabilities with a particular impairment, in accordance with the purposes of the IDEA and this article;

307 19. Prohibit any Department or local educational agency personnel from requiring a child to obtain a
 308 prescription for a substance covered by the Controlled Substances Act (21 U.S.C. § 801 et seq.) as a
 309 condition of attending school, receiving an evaluation under 20 U.S.C. § 1414(a) or (c) of the IDEA or this
 310 article, or receiving services under the IDEA or this article;

311 20. Coordinate with the other participating agencies in the provision of early intervention services to each
 312 infant or toddler with a disability in accordance with Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2. and Part C
 313 of the IDEA (20 U.S.C. § 1431 et seq.); and

314 21. Ensure that each local educational agency complies with the provisions of this article and the
 315 provisions of the IDEA and its implementing regulations.

316 **22.1-213.3. Policies and procedures for oversight and enforcement.**

317 The Board shall develop and implement policies and procedures for overseeing and enforcing the
 318 compliance of each local educational agency with the provisions of this article. Such policies and procedures
 319 shall be implemented in addition to, and not as a replacement of, the policies, procedures, and processes
 320 relating to oversight of local educational agencies in implementing the provisions of this article required
 321 pursuant to § 22.1-214.4. Such policies and procedures for addressing instances of LEA noncompliance shall
 322 include a system of progressive sanctions and enforcement mechanisms that range in severity that shall apply
 323 to any LEA that remains in noncompliance for more than one school year, including an opportunity, after
 324 receipt by the LEA of notice of noncompliance, for such LEA to submit to the Board a corrective action plan
 325 for the following school year, at the end of which the Board shall conduct a site visit of the schools under
 326 such LEA to ensure effective implementation of such corrective action plan. The system of sanctions may also
 327 include, pursuant to subsection C of § 22.1-214, the withholding of all special education moneys to any
 328 school division that the Board, in its discretion, determines has failed to establish and maintain programs of
 329 free appropriate public education in accordance with this article and the regulations of the Board.

330 **§ 22.1-214. Board to prepare special education program for children with disabilities.**

331 A. The Board of Education shall, in accordance with the IDEA and its implementing regulations and
 332 consistent with this article, promulgate regulations for, prepare, and supervise the implementation by each
 333 school division local educational agency of a program of special education designed to educate and train
 334 children with disabilities between the ages defined in § 22.1-213 and. The Board may prepare and place in
 335 operation such program for such individuals of other ages. The program developed by the Board of Education
 336 shall be designed to ensure that all children with disabilities have available to them a free and appropriate
 337 education, including specially designed instruction to meet the unique needs of such children. The program
 338 shall require (i) that the hearing of each disabled child with a disability be tested prior to placement in a
 339 special education program and (ii) that a complete audiological assessment, including tests that will assess
 340 inner and middle ear functioning, be performed on each child who is deaf or hard of hearing or who fails the
 341 test required in clause (i). The school boards of the several school divisions, the Department for the Blind and
 342 Vision Impaired, the Department for the Deaf and Hard-of-Hearing, the Department of Health, and other state
 343 and local agencies that can or may be able to could assist in providing educational special education and
 344 related services shall assist and cooperate with the Board of Education in the development of such program.

345 B. The Board of Education shall prescribe procedures establish procedural safeguards for children with
 346 disabilities and their parents, in accordance with 20 U.S.C. § 1415 of the IDEA and §§ 22.1-215.5 and
 347 22.1-215.6, including procedures to afford due process to children each child with disabilities a disability and
 348 their parents or guardians his parents and to school divisions local educational agencies in resolving disputes
 349 as to program placements, individualized education programs, tuition eligibility, and other matters as defined
 350 in state or federal statutes law or regulations. These procedures shall encourage the use of mediation as an
 351 informal means of resolving such disputes. Mediation shall not, however, be used to deny or delay the due
 352 process rights of parents or guardians. The procedures shall require that all testimony be given under oath or
 353 affirmation administered by the hearing officer regulation.

354 C. The Board of Education may provide for final decisions to be made by a hearing officer. The parents
 355 and the school division shall have the right to be represented by legal counsel or other representative before
 356 such hearing officer without being in violation of the provisions of § 54.1-3904.

357 D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant
 358 to subsections B and C may, within 180 days of such findings and decision, bring a civil action in the circuit
 359 court for the jurisdiction in which the school division is located. In any such action, the court shall receive the
 360 records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing
 361 its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

362 D1. In any action brought pursuant to subsection D, the court, in its discretion, may award reasonable
 363 attorney fees as part of the costs (i) to a prevailing party who is the parent of a child with a disability; (ii) to a
 364 prevailing party who is the Board of Education or a local school division against the attorney of a parent who
 365 files a complaint or a subsequent cause of action that is frivolous, unreasonable, or without foundation, or
 366 against the attorney of a parent who continued to litigate after the litigation clearly became frivolous,
 367 unreasonable, or without foundation; or (iii) to a prevailing party who is the Board of Education or a local
 368 school division against the attorney of a parent, or against the parent, if the parent's complaint or subsequent

369 cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to
 370 needlessly increase the cause of litigation.

371 Attorney fees may not be awarded relating to any meeting of the individualized education program (IEP)
 372 team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the
 373 discretion of the State, for a mediation described in subsection B.

374 E. Whenever the Board of Education, in its discretion, determines that a school ~~division~~ board fails to
 375 establish and maintain programs of free and appropriate public education that ~~comply~~ in accordance with this
 376 article and the regulations established by the Board, the Board may withhold all special education moneys
 377 from the school ~~division~~ board and may use the payments that would have been available to such school
 378 ~~division~~ board to provide special education, directly or by contract, to eligible children with disabilities in
 379 such manner as the Board considers appropriate.

380 F. D. The Board of Education shall supervise educational programs for children with disabilities by other
 381 public agencies and shall ensure that the identification, evaluation, and placement of children with disabilities
 382 and youth in education programs by other public agencies, as appropriate, are consistent with the provisions
 383 of § 22.1-215.1 and the Board of Education's special education Board's regulations. As used in this
 384 subsection, "supervise" means to provide active support in (i) designing mechanisms for maintaining
 385 constant direct contact and the sharing of ideas, approaches, and innovations between the Department of
 386 Behavioral Health and Developmental Services and the facility staff responsible for providing educational
 387 services; (ii) providing consistent oversight, with particular attention to the mental health programs, to
 388 ensure that the availability of educational resources and the distribution of funds clearly reflect the needs of
 389 the different student populations residing in the various facilities; (iii) developing guidelines, in cooperation
 390 with the Department of Behavioral Health and Developmental Services, for the evaluation of the performance
 391 of the education directors or other education supervisors employed by the Department of Behavioral Health
 392 and Developmental Services; (iv) developing and implementing, in cooperation with the Department of
 393 Behavioral Health and Developmental Services, programs to ensure that the educational and treatment needs
 394 of dually diagnosed children in state facilities are met; and (v) ensuring that the expertise of the Department
 395 is utilized through the provision of technical assistance to the education programs provided for or by the
 396 Department of Behavioral Health and Developmental Services in the areas of selection and acquisition of
 397 educational materials, curriculum development, including career and technical education, when appropriate,
 398 and applications for federal grants.

399 G. E. The Board of Education shall prescribe regulations to provide a range of assessment procedures for
 400 the evaluation of children with disabilities in accordance with the IDEA and its implementing regulations.
 401 These regulations shall include provision for parents to participate, if they so request, in the consideration of
 402 the assessment components to be used. However, such regulations shall not require any local school board to
 403 exceed the requirements of federal law or regulations for the identification and evaluation of children with
 404 disabilities.

405 **§ 22.1-214.4. Certain duties of Department.**

406 The Department shall:

407 1. Provide training and guidance documents to each local school divisions educational agency on the
 408 development of individualized education programs (IEPs) for children with disabilities, consistent with the
 409 provisions of § 22.1-215.4, that incorporate specific examples of high-quality present level of performance
 410 descriptions, annual goals, and postsecondary transition sections.

411 2. Develop a required training module for each individual who participates in an IEP meeting that
 412 comprehensively addresses and explains in detail (i) each IEP team member's respective role in the IEP
 413 meeting, (ii) the IEP development process, and (iii) required components of IEPs, and (iv) additional
 414 components of effective IEPs. The training module shall be consistent with the IDEA and its implementing
 415 regulations and the provisions of § 22.1-215.4. The training module shall be required for all IEP participants,
 416 with the exception of parents, prior to participating in an IEP meeting and at such regular intervals thereafter
 417 as the Department deems appropriate.

418 3. Annually conduct structured reviews of a sample of IEPs from a sufficiently large sample of local
 419 school divisions to verify that the IEPs are in compliance with state and federal laws and regulations
 420 governing IEP content, and provide a summary report of the findings of such reviews and recommendations
 421 regarding any necessary corrective actions to the reviewed divisions' superintendents, special education
 422 directors, school board chairs and vice-chairs, and local special education advisory committees. In reviewing
 423 local school divisions' IEPs, the Department shall determine whether the special education and related
 424 services, supplementary aids and services, and program modifications that will be provided to enable students
 425 with disabilities to participate in nonacademic and extracurricular activities are sufficient, and include its
 426 findings and corrective actions in the summary reports it provides to the reviewed local school divisions'
 427 superintendents, special education directors, and school board members. Nothing in this ~~section~~ subdivision
 428 shall be construed to (i) direct the Department to make determinations regarding whether a particular IEP
 429 provides a free appropriate public education to any individual student or (ii) authorize the Department to
 430 override a parent's consent to proposed revisions to an individual student's IEP or otherwise deny a parent

431 *any of the procedural safeguards set forth in § 22.1-215.4 or 22.1-215.5 relating to parental notice, consent,*
 432 *or participation in matters relating to the development, modification, or implementation of an individual*
 433 *student's IEP or the provision of free appropriate public education to an individual student pursuant to the*
 434 *student's IEP. In determining corrective actions, the Department shall make recommendations to the relevant*
 435 *school ~~division~~ board regarding, among other things, those individual IEPs for which the IEP team should*
 436 *convene to consider revisions necessary to incorporate content required by special education regulations. For*
 437 *those individual IEPs for which the Department recommends that the IEP team should convene to consider*
 438 *such revisions, the relevant school ~~division~~ board shall notify the relevant parents or caregivers of the*
 439 *recommendations issued in the summary report of the structured review conducted pursuant to this*
 440 *subdivision.*

441 4. Develop and maintain a statewide plan for improving (i) its ongoing oversight of local practices related
 442 to transition planning and services for children with disabilities and (ii) technical assistance and guidance
 443 provided for postsecondary transition planning and services for children with disabilities. At a minimum,
 444 such plan shall articulate how the Department will reliably and comprehensively assess the compliance and
 445 quality of transition plans for children with disabilities on an ongoing basis and communicate findings to
 446 local school division staff and ~~local~~ school boards. The Department shall, no later than December 1 of each
 447 year, update the ~~Chairmen~~ Chairs of the Senate Committee on Education and Health and the House
 448 Committee on Education on its progress in implementing such plan.

449 5. Develop and maintain a statewide strategic plan for recruiting and retaining special education teachers.
 450 At a minimum, such plan shall (i) use data analyses to determine the specific staffing needs of each local
 451 school division on an ongoing basis; (ii) evaluate the potential effectiveness of strategies for addressing
 452 recruitment and retention challenges, including tuition assistance, differentiated pay for special education
 453 teachers, and the expansion of special education teacher mentorships; and (iii) estimate the costs of
 454 implementing each such strategy, including the extent to which federal funds could be used to support
 455 implementation. The Department shall, no later than November 1 of each year, update the ~~Chairmen~~ Chairs
 456 of the Senate Committee on Education and Health and the House Committee on Education on its progress in
 457 implementing such plan.

458 6. In order to (i) address variation in rates of determinations of student eligibility for special education and
 459 related services both across local school divisions in the Commonwealth and based on specific student
 460 disabilities, (ii) promote consistency in such eligibility determinations, ~~and~~ (iii) ensure equal access to special
 461 education and related services across local school divisions, *and (iv) ensure compliance with § 22.1-215.1, (a)*
 462 *review and update all forms and worksheets relating to referral, evaluation, reevaluation, and eligibility,*
 463 *including clarifying any ambiguity or vagueness in the standard for providing an initial evaluation or in*
 464 *eligibility criteria; (b) review and update guidance on the implementation of such referral, evaluation,*
 465 *reevaluation, and eligibility forms and worksheets and the legal obligations of local school boards to conduct*
 466 *initial evaluations and make eligibility determinations for special education and related services; and (c)*
 467 *develop high-quality professional development to support the implementation of such referral, evaluation,*
 468 *reevaluation, and eligibility guidance, forms, and worksheets.*

469 7. (i) Develop criteria for what constitutes "exceptional circumstances" that warrant extension of the ~~60-~~
 470 ~~calendar day~~ 60-calendar-day regulatory timeline for complaint investigations and include the criteria in its
 471 publicly available complaint resolution procedures, (ii) consistently track the Department's receipt of each
 472 sufficient complaint and its issuance of the respective letter of findings, and (iii) require staff to report at least
 473 quarterly to the Superintendent on the specific reasons for granting an extension due to "exceptional
 474 circumstances" and the amount of time it took to complete each investigation beyond the ~~60-calendar day~~ 60-
 475 ~~calendar-day~~ regulatory timeline.

476 8. Develop policies and procedures for considering and addressing credible allegations of local ~~education~~
 477 ~~educational agency (LEA)~~ noncompliance with the requirements of the Individuals with Disabilities
 478 Education Act (~~P.L. 101-476~~) that do not meet the current regulatory standard for state complaints. Such
 479 policies and procedures shall include expectations and mechanisms for collaboration between the Office of
 480 Dispute Resolution and Administrative Services and the Office of Special Education Program Improvement
 481 in the Division of Special Education and Student Services at the Department to investigate and resolve such
 482 credible allegations of noncompliance that do not qualify for state complaint investigations.

483 9. Elevate the position of State Parent Ombudsman for Special Education. The State Parent Ombudsman
 484 for Special Education shall (i) report to the Superintendent; (ii) systematically track and report to the
 485 Department questions and concerns raised by parents to the State Parent Ombudsman for Special Education
 486 and special education family support centers established pursuant to § 22.1-214.5; (iii) coordinate with the
 487 Parent Training and Information Center on the activities of the special education family support centers
 488 established pursuant to § 22.1-214.5; and (iv) develop a one-page comprehensive summary of the roles and
 489 responsibilities of the State Parent Ombudsman for Special Education and such special education family
 490 support centers, the specific supports the State Parent Ombudsman for Special Education and such special
 491 education family support centers can provide to parents, and how to contact the State Parent Ombudsman for
 492 Special Education and such special education family support centers. The Department shall make the

493 summary available in multiple languages on its website and as part of the Virginia IEP established pursuant
494 to subdivision 11.

495 10. Develop and implement a process for systematically auditing and verifying school ~~divisions'~~ *boards'*
496 self-determinations of compliance with all ~~Individuals with Disabilities Education Act (P.L. 101-476)~~
497 performance indicators *required pursuant to the IDEA and in accordance with subdivision 12 of*
498 *§ 22.1-213.2*. The verification process shall include a random sample of school ~~divisions~~ *boards* each year
499 and ensure that all school ~~divisions'~~ *boards'* self-determinations are reviewed and verified no less frequently
500 than once every five years.

501 11. (Effective July 1, 2027) Develop, establish, review and update as necessary at least once every five
502 years, and make available to each local school board an IEP writing, facilitation, tracking, and transfer system
503 to be referred to as the Virginia IEP that includes, at a minimum, an IEP template component and a data
504 system component. The Department shall ensure that such data system component allows for secure transfer
505 of data from division student information systems to the Department. The Department shall also develop and
506 make available to each local school board guidance on the utilization of the Virginia IEP and high-quality
507 professional development to support (i) the effective utilization of the Virginia IEP and (ii) the
508 implementation of instructional practices to support the provision of specially designed instruction in
509 inclusive settings.

510 12. Develop and publish a data dashboard for the annual public reporting, on a date to be determined by
511 the Superintendent, of state-level, division-level, and school-level special education data, disaggregated by
512 disability type and by subgroups of students with disabilities, including by race, ethnicity, economic
513 disadvantage, English learner status, foster care status, and unhouse status, except when such disaggregation
514 would result in the disclosure of any student's personally identifiable information in violation of relevant
515 federal and state law. Such data dashboard shall include disaggregated (i) results on the early literacy screener
516 provided by the Department, the Virginia Kindergarten Readiness Program, and Standards of Learning
517 assessments and (ii) college and career readiness and learning climate measures.

518 **§ 22.1-215. School boards to provide special education; plan to be submitted to Board.**

519 A. Each school ~~division~~ *board* shall provide a free ~~and~~ appropriate education, including special education,
520 for (i) the children with disabilities residing within its jurisdiction and (ii) the children with disabilities who
521 do not reside within its jurisdiction but reside in the Commonwealth and are enrolled in a full-time virtual
522 school program provided by the school ~~division~~ *board*, in accordance with regulations of the Board of
523 ~~Education~~. A school ~~division~~ *board* that is required to provide a free ~~and~~ appropriate education, including
524 special education, for a nonresident student who is enrolled in its full-time virtual school program pursuant to
525 this section shall be entitled to any federal and state funds applicable to the education of such student. In the
526 case of a student who is a resident of the Commonwealth but does not reside in the school division in which
527 he is enrolled in a full-time virtual school program, the *school board of the* school division in which the
528 student resides shall be released from the obligation to provide a free ~~and~~ appropriate education, including
529 special education, for such student.

530 For the purposes of this section, "children with disabilities; residing within its jurisdiction" shall include:
531 (a) those individuals of school age (~~and~~) identified as appropriate to be placed in public school programs who
532 are residing in a state facility operated by the Department of Behavioral Health and Developmental Services
533 located within the school division; or (b) ~~those individuals of school age~~ who are ~~Virginia~~ residents *of the*
534 *Commonwealth* and are placed and living in a foster care home or child-caring institution or group home
535 located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of
536 Title 63.2 as a result of being in the custody of a local department of social services or welfare or being
537 privately placed, not solely for school purposes.

538 B. The Board of ~~Education~~ shall promulgate regulations to identify those children placed within facilities
539 operated by the Department of Behavioral Health and Developmental Services who are eligible to be
540 appropriately placed in public school programs.

541 C. The cost of the education provided to children residing in state facilities who are appropriate to place
542 within the public schools shall remain the responsibility of the Department of Behavioral Health and
543 Developmental Services. The cost of the education provided to children who are not residents of the
544 Commonwealth and are placed and living in a foster care home or child-caring institution or group home
545 located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of
546 Title 63.2 shall be billed to the sending agency or person by the school ~~division~~ *board* as provided in
547 subsection C of § 22.1-5. No school ~~division~~ *board* shall refuse to educate any such child or charge tuition to
548 any such child.

549 D. Each school ~~division~~ *board* shall submit:

550 1. *Submit* to the Board of ~~Education~~ in accordance with the schedule and by the date specified by the
551 Board, a plan acceptable to the Board for such education for the period following and a report indicating the
552 extent to which the plan required by law for the preceding period has been implemented. However, the
553 schedule specified by the Board shall not require plans to be submitted more often than annually unless
554 changes to the plan are required by federal or state law or regulation-

555 ~~Each local school division shall complete; and~~

556 2. Complete a self-assessment and action planning instrument addressing inclusion practices, as developed
557 by the Department, once every three years and report the results of the assessment and plans for improvement
558 to the Department, the division's superintendent, the division's special education director, and the chairs of the
559 local school board and local special education advisory committee.

560 **§ 22.1-215.1. Special education evaluation, eligibility determination, placement, and withdrawal;**
561 **procedures and rights; dissemination of information to parents required.**

562 A. Consistent with 20 U.S.C. § 1414(a)(1) of the IDEA, the initial evaluation of any child suspected of
563 having a disability to determine eligibility for special education and related services shall be conducted in
564 accordance with the following requirements:

565 1. Each local educational agency shall conduct a full and individual initial evaluation for each child with
566 a disability before the initial provision of special education and related services. Such initial evaluation may
567 be initiated by a special education administrator or designee;

568 2. A request for an initial evaluation may be initiated by the parent of a child, the Department, a local
569 educational agency, another agency, or any other individual or group of individuals permitted pursuant to
570 the Board's regulations and federal regulation;

571 3. Each initial evaluation shall consist of procedures to determine:

572 a. Whether a child is a child with a disability within (i) 65 business days of the receipt of the referral by
573 the special education administrator or his designee or (ii) if the Board establishes another timeframe within
574 which such evaluation shall be conducted, such timeframe established by the Board; and

575 b. The educational needs of the child; and

576 4. The relevant timeframe in subdivision 3 a shall not apply to a local educational agency if:

577 a. A child enrolls in a school served by the local educational agency after the relevant timeframe
578 described in subdivision 3 has begun and prior to the determination by the child's previous local educational
579 agency as to whether such child is a child with a disability and if (i) the subsequent local educational agency
580 is making sufficient progress to ensure a prompt completion of the evaluation and (ii) the parent and the
581 subsequent educational agency agree to a specific time when the evaluation will be completed; or

582 b. The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

583 B. Consistent with 20 U.S.C. § 1414(a)(1)(d) of the IDEA, each local educational agency shall ensure its
584 procedures for evaluations, eligibility determinations, and placements of children with disabilities under this
585 section meet the following requirements for parental consent:

586 1. Each local educational agency proposing to conduct an initial evaluation to determine if a child
587 qualifies as a child with a disability pursuant to subsection A shall obtain informed consent from the parent
588 of such child before conducting the evaluation;

589 2. Parental consent for evaluation shall not be construed as consent for placement for receipt of special
590 education and related services;

591 3. Each local educational agency or other agency responsible for making a free appropriate public
592 education available to a child with a disability shall seek to obtain informed consent from the parent of such
593 child before providing special education and related services to the child;

594 4. If the parent of such child refuses to provide or fails to respond to a request to provide consent for an
595 initial evaluation under subdivision 1, the local educational agency may pursue the initial evaluation of the
596 child by utilizing the procedures described in 20 U.S.C. § 1415 of the IDEA and § 22.1-215.5, except to the
597 extent inconsistent with applicable state law;

598 5. If the parent of such child refuses to provide or fails to respond to a request to provide consent to the
599 initial provision of special education and related services under subdivision 2, the local educational agency
600 shall not:

601 a. Provide special education and related services to the child by utilizing the procedures described in 20
602 U.S.C. § 1415 of the IDEA and § 22.1-215.5;

603 b. Be considered to be in violation of the requirement to make available a free appropriate public
604 education to the child for the failure to provide such child with special education and related services for
605 which the local educational agency requests such consent; and

606 c. Be required to convene an IEP meeting or develop an individualized education program under this
607 article for the child for the special education and related services for which the local educational agency
608 requests such consent;

609 6. If the child is a ward of the state and is not residing with the child's parent, the Department, local
610 educational agency, or other agency shall make reasonable efforts to obtain informed consent from the
611 parent of the child for an initial evaluation pursuant to subdivision 1, provided, however, that the agency
612 shall not be required to obtain such informed consent if:

613 a. Despite reasonable efforts to do so, the Department or agency cannot discover the whereabouts of the
614 parent of the child;

615 b. The rights of the parents of the child have been terminated in accordance with applicable state law; or

616 c. The rights of the parent to make educational decisions have been subrogated by a judge in accordance

617 with applicable state law and consent for an initial evaluation has been given by an individual appointed by
618 the judge to represent the child; and

619 7. Any other requirements relating to parental consent set forth in the Board's regulations and consistent
620 with the IDEA and its implementing regulations.

621 C. The screening of a student by a teacher or specialist to determine appropriate instructional strategies
622 for curriculum implementation shall not be considered to be an evaluation for eligibility for special education
623 and related services.

624 D. The reevaluation of any child with a disability shall be subject to the following requirements:

625 1. Each local educational agency shall ensure that a reevaluation of each child with a disability is
626 conducted in accordance with subsections E and F if:

627 a. The local educational agency determines that the educational or related service needs, including
628 improved academic achievement and functional performance, of the child warrant a reevaluation; or

629 b. The child's parents or teacher requests a reevaluation;

630 2. A reevaluation shall occur (i) not more frequently than once a year, unless the parent and the local
631 educational agency agree otherwise and (ii) at least once every three years, unless the parent and the local
632 educational agency agree that a reevaluation is unnecessary; and

633 3. Each local educational agency shall obtain informed parental consent in accordance with subsection B
634 prior to conducting any reevaluation of a child with a disability, except that such informed parental consent
635 need not be obtained if the local educational agency can demonstrate that it took reasonable measures to
636 obtain such parental consent and the child's parent failed to respond.

637 E. Each local educational agency, for the initial evaluation of a child suspected of having a disability and
638 the reevaluation of a child with a disability, shall:

639 1. Provide prior written notice, in accordance with subdivision B 3 of this section and subsection C of
640 § 22.1-215.5, to the parents of a child with a disability that describes any evaluation procedures such local
641 educational agency proposes to conduct;

642 2. In conducting the evaluation:

643 a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and
644 academic information, including information provided by the parent, that may assist in determining:

645 (1) Whether the child is a child with a disability; and

646 (2) The content of the child's individualized education program, including information relating to
647 enabling such child to be involved and progress in the general education curriculum;

648 b. Not use any single measure or assessment as the sole criterion for determining whether a child is a
649 child with a disability or determining an appropriate educational program for the child; and

650 c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral
651 factors, in addition to physical or developmental factors; and

652 3. Ensure that:

653 a. Any assessments and other evaluation materials used to assess a child under this section are:

654 (1) Selected and administered so as to be nondiscriminatory and without a racial or cultural bias;

655 (2) Provided and administered in the language and form most likely to yield accurate information on what
656 the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so
657 provide or administer;

658 (3) Used for purposes for which the assessments or measures are valid and reliable;

659 (4) Administered by trained and knowledgeable personnel; and

660 (5) Administered in accordance with any instructions provided by the producer of such assessments;

661 b. The child is assessed in all areas of suspected disability;

662 c. Assessment tools and strategies that provide relevant information that directly assists the determination
663 of the educational needs of the child are provided; and

664 d. Assessments of children with disabilities who transfer from one school division to another school
665 division in the same academic year are coordinated with the child's prior and subsequent schools, as
666 necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

667 F. Upon completion of the administration of assessments and other evaluation measures pursuant to
668 subsection E:

669 1. The determination of whether the child is a child with a disability and the educational needs of the
670 child shall be made by a team of qualified professionals and the parent of the child in accordance with
671 subsection G; and

672 2. A copy of the evaluation report and the documentation of the determination of eligibility shall be
673 provided to the parent.

674 G. In making a determination of whether a child is a child with a disability pursuant to subsection F, a
675 child shall not be determined to be a child with a disability if the determining factor for such determination
676 is:

677 1. Lack of appropriate instruction in reading;

678 2. Lack of instruction in math; or

- 679 3. Limited English proficiency.
- 680 H. The determination of whether a child has a specific learning disability shall be made in accordance
- 681 with the following procedures:
- 682 1. Each local educational agency:
- 683 a. Shall not be required to take into consideration whether a child has a severe discrepancy between
- 684 achievement and intellectual ability in oral expression, listening comprehension, written expression, basic
- 685 reading skill, reading comprehension, mathematical calculation, or mathematical reasoning; and
- 686 b. May use a process that determines if the child responds to scientific, research-based intervention as a
- 687 part of the evaluation procedures described in in subsection E;
- 688 2. The determination shall be made by the parents of such child and a team of qualified professionals,
- 689 which shall include:
- 690 a. The child's regular education teacher or (i) if the child does not have a regular educational teacher, a
- 691 regular classroom teacher qualified to teach a child of his age or (ii) if the child is less than school age, an
- 692 individual qualified by the Board to teach a child of his age; and
- 693 b. At least one individual qualified to conduct an individual diagnostic examination of children, such as a
- 694 school psychologist, speech-language pathologist, or remedial reading teacher;
- 695 3. The group described in subdivision 2 shall determine that a child is a child with a specific learning
- 696 disability if:
- 697 a. The child does not achieve adequately for such child's age or meet Board-approved grade-level
- 698 standards in one or more of the following areas when provided with learning experiences and instruction
- 699 appropriate for such child's age or Board-approved grade-level standards: (i) oral expression, (ii) listening
- 700 comprehension, (iii) written expression, (iv) basic reading skill, (v) reading fluency skills, (vi) reading
- 701 comprehension, (vii) mathematics calculation, and (viii) mathematics problem solving;
- 702 b. The child (i) does not make sufficient progress to meet age or Board-approved grade-level standards in
- 703 one or more of the areas identified in subdivision a when using a process based on such child's response to
- 704 scientific, research-based intervention or (ii) exhibits a pattern of strengths and weaknesses in performance,
- 705 achievement, or both, relative to age, Board-approved grade-level standards, or intellectual development,
- 706 that is determined by the group to be relevant to the identification of a specific learning disability, using
- 707 appropriate assessments consistent with this section; and
- 708 c. The group determines that its findings under subdivisions a and b are not primarily the results of (i) a
- 709 visual, hearing, or motor disability; (ii) an intellectual disability; (iii) emotional disturbance; (iv) cultural
- 710 factors; (v) environmental or economic disadvantage; or (vi) limited English proficiency;
- 711 4. To ensure that underachievement in a child suspected of having a specific learning disability is not due
- 712 to lack of appropriate instruction in reading or math, the group described in subdivision 2 shall consider, as
- 713 a part of the evaluation:
- 714 a. Data that demonstrates that prior to, or as a part of, the referral process, the child was provided
- 715 appropriate instruction in regular education settings, delivered by qualified personnel; and
- 716 b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting
- 717 formal assessment of student progress during instruction, which was provided to such child's parents;
- 718 5. The local educational agency shall ensure that the child suspected of having a specific learning
- 719 disability is observed in such child's learning environment, including the regular classroom setting, to
- 720 document the child's academic performance and behavior in the areas of difficulty. In the case of a child
- 721 suspected of having a specific learning disability who is less than school age or out of school, a member of
- 722 the group described in subdivision 2 shall observe such child in an environment appropriate for a child of
- 723 that age. The group described in subdivision 2 shall, as a part of its determination, decide to:
- 724 a. Use information from an observation in routine classroom instruction and monitoring of the child's
- 725 performance that was done before the child was referred for an evaluation; or
- 726 b. Have at least one member of the group conduct an observation of the child's academic performance in
- 727 the regular classroom after the child has been referred for an evaluation and parental consent has been
- 728 obtained in accordance with the provisions of this section;
- 729 6. The documentation of the determination of eligibility required pursuant to subsection F shall, for each
- 730 child suspected of having a specific learning disability, include a statement of:
- 731 a. Whether such child has a specific learning disability;
- 732 b. The basis for making the determination, including an assurance that the determination has been made
- 733 in accordance with the provisions of this section;
- 734 c. The relevant behavior, if any, noted during the observation of the child and the relationship of that
- 735 behavior to such child's academic functioning;
- 736 d. Any educationally relevant medical findings;
- 737 e. Whether the child, consistent with subdivision 3, (i) does not achieve adequately for the child's age or
- 738 meet Board-approved grade-level standards and (ii) either (a) does not make sufficient progress to meet age
- 739 or Board-approved grade-level standards or (b) exhibits a pattern of strengths and weaknesses in
- 740 performance, achievement, or both, relative to age appropriate, Board-approved grade-level standards or

741 intellectual development;

742 f. The determination of the group concerning the effects on such child's achievement level of a visual,
743 hearing, motor, or intellectual disability; emotional disturbance; cultural factors; environmental or economic
744 disadvantage; or limited English proficiency; and

745 g. If such child has participated in a process that assesses the child's response to scientific, research-
746 based intervention, (i) the instructional strategies used and the student-centered data collected and (ii)
747 documentation that the child's parents were notified about (a) the Board's policies relating to the amount and
748 nature of student performance data that would be collected and the general education services that would be
749 provided, (b) strategies for increasing the child's rate of learning, and (c) the parent's right to request an
750 evaluation; and

751 7. Each member of the group described in subdivision 2 shall certify in writing whether the
752 documentation described in subdivision 6 reflects such member's conclusion. If the documentation does not
753 reflect such member's conclusion, the member shall submit a separate statement presenting such member's
754 conclusions.

755 I. As a part of an initial evaluation conducted pursuant to subsection A, if appropriate, and as a part of
756 any reevaluation conducted pursuant to subsection C:

757 1. The IEP team and other qualified professionals, as appropriate, shall:

758 a. Review existing evaluation data or other additional data, including (i) evaluations and information
759 provided by the parents of the child; (ii) current classroom-based, local, or statewide assessments and
760 classroom-based observations; and (iii) observations by teachers and related services providers; and

761 b. On the basis of such review and any input from the child's parents, identify what additional data, if any,
762 is needed to determine:

763 (1) Whether the child is a child with a disability and the educational needs of the child or, in the case of
764 reevaluation, whether the child continues to have such a disability and such educational needs;

765 (2) Present levels of academic achievement and related developmental needs of the child;

766 (3) Whether the child needs special education and related services or, in the case of a reevaluation,
767 continues to need special education and related services; and

768 (4) Whether any additions or modifications to the special education and related services are needed to
769 enable the child to meet the measurable annual goals set out in the individualized education program of the
770 child and to participate as appropriate in the general education curriculum;

771 2. If the IEP team and other qualified professionals, as appropriate, identify additional data that is
772 needed pursuant to subdivision 1 b, the local educational agency shall administer such assessments and other
773 evaluation measures as may be needed to produce such data; and

774 3. If the IEP team and other qualified professionals, as appropriate, determinate pursuant to subdivision
775 1 b that no additional data is needed to determine whether the child continues to be a child with a disability
776 and to determine the child's educational needs, the local educational agency shall:

777 a. Notify the child's parents of (i) the determination and the reasons for the determination and (ii) the
778 right of such parents to request an assessment to determine whether the child continues to be a child with a
779 disability and to determine the child's educational needs; and

780 b. Not be required to conduct any assessments unless requested by the child's parents.

781 J. Each local educational agency shall evaluate a child with a disability in accordance with this section
782 prior to determining that such child is no longer a child with a disability. However, no evaluation shall be
783 required before termination of any child's eligibility if such termination is a result of the child graduating
784 from secondary school with a regular diploma or the child exceeding 21 years of age, provided that for any
785 such child the local educational agency shall provide a summary of the child's academic achievement and
786 functional performance, including recommendations on how to assist the child in meeting the child's
787 postsecondary goals.

788 K. Each local educational agency shall ensure that the parents of each child with a disability are
789 members of any group that makes decisions on the educational placement of their child.

790 L. The Board shall publicize and disseminate to parents of students who are enrolled in special education
791 programs or for whom a special education placement has been recommended information regarding current
792 federal law and regulation addressing procedures and rights related to the placement and withdrawal of
793 children in special education.

794 **§ 22.1-215.4. Individualized education program; required contents; development, review, and revision**
795 **procedures; implementation.**

796 A. An individualized education program shall be developed, implemented, reviewed, and revised for each
797 child with a disability in accordance with the provisions of this section and consistent with 20 U.S.C. §
798 1414(d) of the IDEA.

799 B. The IEP for each child with a disability shall include:

800 1. A statement of the child's present levels of academic achievement and functional performance,
801 including:

802 a. How the child's disability affects the child's involvement and progress in the general education

803 curriculum; and
804 b. For any child with a disability who takes alternative assessments aligned to alternate achievement
805 standards pursuant to subdivision 13 of § 22.1-213.2, a description of benchmarks or short-term objectives;
806 2. A statement of measurable annual goals, including academic and functional goals, designed to meet:
807 a. The child's needs to enable the child to be involved and make progress in the general education
808 curriculum; and
809 b. Each of the child's other educational needs that result from the child's disability;
810 3. A description of how the child's progress toward meeting the annual goals described in subdivision 2
811 will be measured and when periodic reports on the child's progress toward making such annual goals will be
812 provided;
813 4. A statement of the special education and related services and supplementary aids and services that will
814 be provided to the child and a statement of any program modifications or supports for school personnel that
815 will be provided for the child to:
816 a. Advance appropriately toward attaining the annual goals;
817 b. Be involved in and make progress in the general education curriculum and participate in
818 extracurricular and other nonacademic activities; and
819 c. Be educated and participate with other children with disabilities and children without disabilities in the
820 activities described in this subdivision 4;
821 5. An explanation of the extent, if any, to which the child will not participate with children without
822 disabilities in regular classes or the general education curriculum and in any activities described in
823 subdivision 4;
824 6. A statement of any individual appropriate accommodations that are necessary to measure the academic
825 achievement and functional performance of the child on state and divisionwide assessments and, if the IEP
826 team determines that the child shall take an alternate assessment on a particular state or districtwide
827 assessment, a statement of why (i) the child cannot participate in the regular assessment and (ii) the
828 particular alternative assessment selected is appropriate for the child;
829 7. The projected date for the beginning of the services and modifications described in subdivision 4 and
830 the anticipated frequency, location, and duration of those services and modifications;
831 8. Beginning not later than with the first IEP to be in effect when the child reaches 14 years of age, and to
832 be updated annually thereafter:
833 a. Appropriate measurable postsecondary goals based upon age appropriate transition assessments
834 related to training, education, employment, and, where appropriate, independent living skills; and
835 b. The transition services, including any applicable courses of study, needed to assist the child in reaching
836 those goals; and
837 c. Beginning not later than one year before the child reaches the age of majority under state law, a
838 statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to
839 the child on reaching the age of majority pursuant to subsection F of § 22.1-215.5.
840 C. Nothing in subsection B shall be construed to require:
841 1. That additional information be included in a child's IEP beyond what is explicitly required pursuant to
842 this subsection; and
843 2. The IEP team to include information under one component of a child's IEP if such information is
844 already included under another component of the child's IEP.
845 D. The IEP team for each child with a disability shall be responsible for developing, reviewing, and
846 revising the IEP for such child and shall participate in such other decisions relating to the educational
847 placement of and provision of a free appropriate public education to such child as provided in this article
848 and pursuant to federal law and regulation. Each IEP team shall include:
849 1. The parents of a child with a disability;
850 2. At least one:
851 a. Regular education teacher of the child, if the child is or may be participating in the regular education
852 environment; and
853 b. Special education teacher or, where appropriate, special education provider of the child;
854 3. A representative of the local educational agency who is (i) qualified to provide, or supervise the
855 provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii)
856 knowledgeable about the general education curriculum; and (iii) knowledgeable about the availability of
857 resources of the local educational agency;
858 4. An individual who can interpret the instructional implications of evaluation results, who may be one of
859 the individuals described in subdivisions 2 and 3;
860 5. At the discretion of the parent or the local educational agency other individuals who have knowledge or
861 special expertise regarding the child, including related services personnel as appropriate; and
862 6. Whenever appropriate, the child with a disability.
863 E. A member of the IEP team described in subsection D:
864 1. Shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a

865 disability and the local educational agency agree that attendance of the member is not necessary because the
 866 member's area of the curriculum or related services is not being modified or discussed in the meeting. For
 867 the purposes of this subdivision, the parent's agreement shall be obtained in writing; and

868 2. May be excused from attending an IEP meeting, in whole or in part, when the meeting involves a
 869 modification to or discussion of the member's area of the curriculum or related services, if (i) the parent and
 870 the local educational agency consent to the excusal and (ii) the member submits, in writing, to the parent and
 871 the IEP team, input into the development of the IEP prior to the meeting. For the purposes of this subdivision,
 872 the parent's consent shall be obtained in writing.

873 F. In the case of a child who was previously served under Part C of the IDEA (20 U.S.C. § 1431 et seq.),
 874 an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the early intervention
 875 service coordinator or other representatives of the early intervention system to assist with the smooth
 876 transition of services.

877 G. Each local educational agency shall have in effect an individualized education program for each child
 878 with a disability at the beginning of the school year, except in the case of:

879 1. A child with a disability who transfers school divisions within the same academic year, enrolls in a new
 880 school division, and who had an IEP that was in effect in the Commonwealth, the local educational agency
 881 shall provide the child with a free appropriate public education, including services comparable to those
 882 described in the previously held IEP, in consultation with the child's parents, until such time as the local
 883 educational agency (i) adopts the IEP in effect in the previous school division or (ii) develops, adopts, and
 884 implements a new IEP in accordance with state and federal law;

885 2. A child with a disability who transfers school divisions within the same academic year, enrolls in a new
 886 school division, and who had an IEP that was in effect in another state, the local educational agency shall
 887 provide the child a free appropriate public education, including services comparable to those described in
 888 the previous IEP, in consultation with the child's parents, until such time as the local educational agency
 889 conducts an evaluation in accordance with § 22.1-215.1, if determined to be necessary by the local
 890 educational agency, and develops a new IEP, if appropriate, in accordance with state and federal law; and

891 3. A child with a disability who transfers school divisions pursuant to subdivision 1 or 2, to facilitate the
 892 transition for the child, (i) the new school in which the child enrolls shall take reasonable steps to promptly
 893 obtain the child's records, including the IEP and supporting documents and any other records relating to the
 894 provision of special education or related services to the child, from the previous school in which the child
 895 was enrolled and (ii) the previous school shall take reasonable steps to promptly respond to such request
 896 from the new school.

897 H. In developing an IEP for each child in accordance with this section:

898 1. The IEP team shall consider:

- 899 a. The strengths of the child;
- 900 b. The concerns of the parents for enhancing the education of their child;
- 901 c. The results of the initial evaluation or most recent evaluation of the child; and
- 902 d. The academic, developmental, and functional needs of the child;

903 2. The IEP team shall consider the following special factors:

904 a. In the case of a child whose behavior impedes the child's learning or that of others, the use of positive
 905 behavioral interventions and supports, or other strategies, to address that behavior;

906 b. In the case of a child with limited English proficiency, the language needs of the child as such needs
 907 relate to the child's IEP;

908 c. In the case of a child who is blind or vision impaired, whether it is appropriate to provide for
 909 instruction in Braille and the use of Braille which, pursuant to § 22.1-217, shall be provided unless the IEP
 910 team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading
 911 and writing media, that instruction in Braille or the use of Braille is not appropriate for the child;

912 d. The communication needs of the child and, in the case of a child who is deaf or hard of hearing, the
 913 considerations set forth in subsection A of § 22.1-217.02;

914 e. Whether the child needs assistive technology devices and services;

915 f. The needs of the child for age-appropriate and developmentally appropriate instruction relating to
 916 sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others,
 917 pursuant to subsection A of § 22.1-217.03; and

918 g. The needs of the child relating to specialized evacuation procedures, individualized accommodations,
 919 and supports during emergency situations and evacuations pursuant to § 22.1-274.7; and

920 3. A regular education teacher of a child with a disability, as a member of the IEP team, shall, to the
 921 extent appropriate, participate in the development of the IEP, including the determination of (i) appropriate
 922 positive behavioral interventions and supports and other strategies and (ii) supplementary aids and services,
 923 program modifications, and support for school personnel.

924 1. In making changes to a child's IEP after the annual IEP meeting for a school year, the parents of a
 925 child with a disability and the local educational agency may agree not to convene an additional IEP meeting
 926 for the purpose of making such changes and, instead, agree to develop a written document to amend or

927 *modify the child's current IEP. However, if any changes are made to a child's IEP in accordance with this*
 928 *subsection, the local educational agency shall ensure that the child's IEP team is informed of such changes.*

929 *J. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation*
 930 *meetings for the child and other IEP team meetings for the child.*

931 *K. Changes to a child's IEP may be made either by the entire IEP team at an IEP team meeting or by*
 932 *amending the IEP in accordance with subsection I. The local educational agency shall, upon request, provide*
 933 *the parent a revised copy of the IEP with any amendments incorporated.*

934 *L. Each local educational agency shall ensure that:*

935 *1. The child's IEP team:*

936 *a. Reviews the child's IEP periodically, but not less frequently than annually, to determine whether the*
 937 *annual goals for the child are being achieved; and*

938 *b. Revises the child's IEP as appropriate to address (i) any lack of expected progress toward the annual*
 939 *goals and in the general education curriculum, where appropriate; (ii) the results of any reevaluation*
 940 *conducted under this section; (iii) information about the child provided to, or by, the parents; and (iv) other*
 941 *matters; and*

942 *2. A regular education teacher of the child, as a member of the IEP team, participates in the review and*
 943 *revisions of the IEP of the child.*

944 *M. If a participating agency, other than the local educational agency, fails to provide the transition*
 945 *services described in the IEP in accordance with subdivision B 8, the local educational agency shall*
 946 *reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out*
 947 *in the IEP.*

948 *N. The following requirements shall not apply to children with disabilities who are convicted as adults*
 949 *under state law and incarcerated in adult prisons:*

950 *1. The requirements set forth in subdivision 12 of § 22.1-213.2 and subdivision B 6, relating to*
 951 *participation of children with disabilities in assessments; and*

952 *2. For any such child whose eligibility under this article and the IDEA will end prior to such child's*
 953 *release from prison due to his age, the requirements set forth in subdivisions B 8 a and b , relating to*
 954 *transition planning and services.*

955 *O. If a child with a disability is convicted as an adult under state law and incarcerated in an adult prison*
 956 *and the Commonwealth has demonstrated a bona fide security or compelling penological interest that cannot*
 957 *otherwise be accommodated, the child's IEP team may modify the child's IEP or placement notwithstanding*
 958 *any requirements of federal law or regulation to the contrary.*

959 *P. Each local educational agency or the Department shall ensure that the parents of each child with a*
 960 *disability are members of any group that makes decisions on the educational placement of their child.*

961 *Q. When conducting IEP team meetings and placement meetings pursuant to this section, 20 U.S.C. §*
 962 *1415(e) of the IDEA, and 20 U.S.C. § 1415(f)(1)(B) of the IDEA, the parent of a child with a disability and*
 963 *the LEA may agree to use alternative means of meeting participation, including video conferences and*
 964 *conference calls.*

965 **§ 22.1-215.5. Procedural safeguards generally.**

966 *A. Each local educational agency shall establish and maintain procedures in accordance with this section*
 967 *and consistent 20 U.S.C. § 1415 of the IDEA for the purpose of ensuring each child with a disability and his*
 968 *parents are guaranteed procedural safeguards with respect to the provision of free appropriate public*
 969 *education.*

970 *B. The procedures required pursuant to subsection A shall include:*

971 *1. An opportunity for the parents of a child with a disability to (i) examine all records relating to the*
 972 *child, (ii) to participate in meetings with respect to the identification, evaluation, and educational placement*
 973 *of the child and the provision of a free appropriate public education to the child, and (iii) obtain an*
 974 *independent educational evaluation of the child;*

975 *2. Procedures to protect the rights of the child when the parents of the child are not known, when after*
 976 *reasonable efforts, the parents cannot be located, or when the child is a ward of the state, including the*
 977 *assignment of an individual to act as a surrogate for the parents. The procedures shall include provisions*
 978 *that (i) the surrogate shall not be an employee of the Department, the local educational agency, or any other*
 979 *state agency involved in the education or care of the child; (ii) in the case of a child who is a ward of the*
 980 *state, the surrogate may be appointed by the judge overseeing the child's care; and (iii) in the case of an*
 981 *unaccompanied homeless youth, the local educational agency shall appoint a surrogate. The Department*
 982 *shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after a local*
 983 *educational agency determines that such child needs a surrogate;*

984 *3. Prior written notice to the parents of the child, in accordance with subsection C, any time the local*
 985 *educational agency (i) proposes to initiate or change or (ii) refuses to initiate or change the identification,*
 986 *evaluation, or educational placement of the child, or the provision of a free appropriate public education to*
 987 *the child, including procedures to ensure such notice is provided in the native language of the parent, unless*
 988 *it clearly is not feasible to do so, and written in language understandable to the general public;*

- 989 4. An opportunity for mediation in accordance with subsection B of § 22.1-215.6;
- 990 5. An opportunity for any party to present a complaint:
- 991 a. With respect to any matter relating to the identification, evaluation, or educational placement of the
- 992 child, or the provision of a free appropriate public education to such child; and
- 993 b. Which sets forth an alleged violation that occurred not more than two years before the date the parent
- 994 or agency knew or should have known about the alleged actions that form the basis of the complaint or in
- 995 such other explicit time limitation for presenting such a complaint as may be established in state law, except
- 996 as provided in § 22.1-215.6;
- 997 6. Procedures that:
- 998 a. Require either party, or the attorney representing a party, to provide a due process complaint notice in
- 999 accordance with subsection D, which shall remain confidential:
- 1000 (1) To the other party, in the complaint filed pursuant to subdivision 5, and to forward a copy of such
- 1001 notice to the Department; and
- 1002 (2) That shall include:
- 1003 (a) The name of the child, the name of the school the child is attending, and the address of the residence
- 1004 of the child or, in the case of a homeless child or youth, available contact information for the child;
- 1005 (b) A description of the nature of the problem of the child relating to such proposed initiation or change,
- 1006 including facts relating to such problem; and
- 1007 (c) A proposed resolution of the problem to the extent known and available to the party at the time; and
- 1008 b. Shall include a requirement that a party shall not have a due process hearing pursuant to subsection C
- 1009 of § 22.1-215.6 until the party, or the attorney representing the party, files a due process complaint notice
- 1010 that meets the requirements of subdivision a; and
- 1011 7. Procedures that require the Department to develop a model form to assist parents in filing a due
- 1012 process complaint and a due process complaint notice pursuant to subdivisions 5 and 6, respectively.
- 1013 C. Each local educational agency shall provide prior written notice pursuant to subdivision B 3 to the
- 1014 parents of a child with a disability whenever it (i) proposes to initiate or change or (ii) refuses to initiate or
- 1015 change the identification, evaluation, or educational placement of the child, or the provision of a free
- 1016 appropriate public education to the child. The notice shall include:
- 1017 1. A description of the action proposed or refused by the local educational agency;
- 1018 2. An explanation of why the local educational agency proposes or refuses to take the action and a
- 1019 description of each evaluation procedure, assessment, record, or report the local educational agency is using
- 1020 as a basis for the proposed or refused action;
- 1021 3. A statement that the parents of a child with a disability have protection under this section, § 22.1-215.6,
- 1022 and the IDEA;
- 1023 4. Sources for the parents to contact to obtain assistance in understanding the provisions of this article;
- 1024 5. A description of other options considered by the child's IEP team and the reason why the local
- 1025 educational agency rejected those options; and
- 1026 6. A description of any factors relevant to the local educational agency's proposal or refusal to take the
- 1027 action.
- 1028 D. The following procedures shall apply to the filing, receipt, and amendment of any due process
- 1029 complaint notice required pursuant to subdivision B 6:
- 1030 1. The due process complaint notice shall be deemed sufficient for the purpose of requesting a due process
- 1031 hearing pursuant to subdivision B 6 b unless the party receiving the notice notifies the hearing officer and the
- 1032 other party in writing that the receiving party believes the notice has not met the requirements of subdivision
- 1033 B 6 a;
- 1034 2. If the local educational agency has not sent prior written notice to the parent regarding the subject
- 1035 matter contained in the parent's due process complaint notice, the local educational agency shall, within 10
- 1036 days of receiving the complaint, send to the parent a response that shall include:
- 1037 a. An explanation of why the local educational agency proposed or refused to take the action raised in the
- 1038 complaint;
- 1039 b. A description of other options that the IEP team considered and the reasons why those options were
- 1040 rejected;
- 1041 c. A description of each evaluation procedure, assessment, record, or report the agency used as the basis
- 1042 for the proposed or refused action; and
- 1043 d. A description of any factors that were relevant to the local educational agency's proposal or refusal;
- 1044 3. A response filed by a local educational agency pursuant to subdivision 2 a shall not be construed to
- 1045 preclude the local educational agency from asserting, where appropriate, that the parent's due process
- 1046 complaint notice was insufficient, in accordance with subdivision 1;
- 1047 4. Except as provided in subdivision 2, the party receiving the due process complaint notice shall, within
- 1048 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues
- 1049 raised in the complaint;
- 1050 5. The party providing a hearing officer notification pursuant to subdivision 1 shall provide such

1051 notification within 15 days of receiving the complaint;

1052 6. Within five days of receipt of such notification, the hearing officer shall (i) make a determination on the
1053 face of the notice of whether the notice meets the requirements of subdivision B 6 and (ii) immediately notify
1054 the parties of such determination;

1055 7. A party may amend its due process complaint notice only if (i) the other party consents in writing to
1056 such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to
1057 this section or (ii) the hearing officer grants permission, provided that the hearing officer may only grant
1058 such permission at any time not later than five days before a due process hearing occurs; and

1059 8. In the event a party files an amended complaint under subdivision 7, the applicable timeline for a due
1060 process hearing shall recommence at the time the party files the amended complaint.

1061 E. The parents of a child with a disability shall be provided a copy of the procedural safeguards notice
1062 one time each year, except that the parents shall also be provided an additional copy upon (i) initial referral
1063 or parental request for evaluation, (ii) the first occurrence of the filing of a due process complaint, and (iii)
1064 request by a parent. The local educational agency may post a current copy of the procedural safeguards on
1065 its official website, provided that such notice is reviewed and updated as necessary to ensure the information
1066 therein remains current. Each procedural safeguards notice shall be written in the native language of the
1067 parents, unless it clearly is not feasible to do so, and in an easily understandable manner, and shall include a
1068 full explanation of the procedural safeguards available under 20 U.S.C. § 1415 of the IDEA and its
1069 implementing regulations, including procedural safeguards relating to:

1070 1. An independent educational evaluation;

1071 2. Prior written notice;

1072 3. Parental consent;

1073 4. Access to educational records;

1074 5. The opportunity to present and resolve complaints, including (i) the time period in which to make a
1075 complaint, (ii) the opportunity for the local educational agency to resolve the complaint, and (iii) the
1076 availability of mediation;

1077 6. The child's placement during pendency of due process proceedings;

1078 7. Procedures for students subject to placement in an interim alternative educational setting;

1079 8. Due process hearings, including requirements for disclosure of evaluation results and
1080 recommendations;

1081 9. Civil actions, including the time period in which to file such actions; and

1082 10. Attorney fees.

1083 F. The Department may provide that, except in the case of any child with a disability who has been
1084 determined legally incompetent, when a child with a disability reaches the age of majority:

1085 1. The local educational agency shall provide any notice required under this section to the child and the
1086 parents;

1087 2. All other rights under this section shall be transferred to the child;

1088 3. The local educational agency shall notify the child and the parents of such transfer of rights; and

1089 4. If such child is incarcerated in an adult or juvenile federal, state, or local correctional institution, all
1090 rights of the parent under this section transfer to the child.

1091 G. For any child with a disability who reaches the age of majority but who, for the purposes of the rights
1092 set forth in subsection F, has been determined legally incompetent or otherwise unable to provide informed
1093 consent relating to such child's educational program, the Commonwealth shall establish procedures for
1094 appointing the parent of the child, or if the parent is not available, another appropriate individual, to
1095 represent the child's educational interests until the child reaches 21 years of age.

1096 **§ 22.1-215.6. Procedural safeguards; mediation; due process complaints, notice, hearings, and appeals.**

1097 A. The Department shall establish and maintain procedures that afford due process to children with
1098 disabilities and their parents and to local educational agencies in resolving disputes as to any matter relating
1099 to identification, evaluation, program placements, individualized education programs, or tuition eligibility
1100 and to other matters relating to the provision of a free appropriate public education, in accordance with this
1101 section and the provisions of 20 U.S.C. § 1415 of the IDEA.

1102 B. The procedures described in subsection A shall include procedures that allow parties to disputes
1103 involving any matter, including matters arising prior to the filing of a due process complaint pursuant to
1104 subdivision B 5 of § 22.1-215.5, to resolve disputes through a mediation process and encourage the use of
1105 mediation. Such procedures shall meet the following requirements:

1106 1. The procedures shall ensure that the mediation process is:

1107 a. Voluntary on the part of the parties;

1108 b. Not used to deny or delay a parent's right to a due process hearing under subsection C or to deny any
1109 other rights afforded to parents under this article; and

1110 c. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques;

1111 2. The Department or a local educational agency may establish procedures to offer to parents and schools
1112 that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the

1113 parents, with a disinterested party who is under contract with (i) a parent training and information center or
 1114 community parent resource center in the Commonwealth or (ii) an appropriate alternative dispute resolution
 1115 entity to encourage the use and explain the benefits of the mediation process to the parents;

1116 3. The Department shall maintain a list of individuals who are qualified mediators and knowledgeable in
 1117 laws and regulations relating to the provision of special education and related services;

1118 4. The Commonwealth shall bear the cost of the mediation process, including any meeting held pursuant
 1119 to subdivision 2;

1120 5. Each session in the mediation process shall be scheduled in a timely manner and held in a location that
 1121 is convenient to each party to the dispute;

1122 6. In the case where a resolution is reached to resolve the due process complaint through mediation, the
 1123 parties shall execute a legally binding agreement that sets forth the resolution and (i) states that all
 1124 discussions that occurred during the mediation process shall be confidential and shall not be used as
 1125 evidence in any subsequent due process hearing or civil proceeding, (ii) is signed by both the parent and a
 1126 representative of the local educational agency with the authority to bind such local educational agency, and
 1127 (iii) is enforceable in any court of competent jurisdiction or in a district court of the United States; and

1128 7. Any discussions that occur during the mediation process shall be confidential and shall not be used as
 1129 evidence in any subsequent due process hearing or civil proceeding.

1130 C. The procedures required by subsection A shall provide for an opportunity for an impartial due process
 1131 hearing each time a due process complaint is received under subdivision B 5 of § 22.1-215.5 or § 22.1-215.7
 1132 for the parents or the local educational agency involved in such complaint, which shall be conducted by the
 1133 Department consistent with the IDEA and its implementing regulations and in accordance with the
 1134 requirements set forth in subsections D and E.

1135 D. Prior to the opportunity for an impartial due process hearing pursuant to subsection C, there shall be
 1136 a resolution process during which:

1137 1. The local educational agency, within 15 days of receiving notice of the parents' due process complaint,
 1138 shall convene a meeting with the parents and the relevant member or members of the IEP team with specific
 1139 knowledge of the facts identified in the complaint where the parents of the child discuss their complaint, and
 1140 the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to
 1141 resolve the complaint. Such meeting shall:

1142 a. Include a representative of the local educational agency who has decision-making authority on behalf
 1143 of the local educational agency;

1144 b. Not include an attorney of the local educational agency unless the parent is accompanied by an
 1145 attorney; and

1146 c. Not be required if the parents and the local educational agency agree in writing to waive such meeting
 1147 or agree to use the mediation process described in subsection B;

1148 2. If the local educational agency does not resolve the complaint to the satisfaction of the parents within
 1149 30 days of the receipt of the complaint, the due process hearing may occur and all applicable timelines shall
 1150 commence; and

1151 3. In the case where a resolution is reached to resolve the complaint at the meeting described in
 1152 subdivision 1, the parties shall execute a legally binding agreement that is (i) signed by both the parent and a
 1153 representative of the local educational agency who has the authority to bind such local educational agency
 1154 and (ii) enforceable by any state court of competent jurisdiction or in a district court of the United States. A
 1155 party may void such agreement within three business days of the agreement's execution.

1156 E. The procedures described in subsection C shall meet the following requirements:

1157 1. Not less than five business days prior to an impartial due process hearing, each party shall disclose to
 1158 all other parties all evaluations completed by that date, and recommendations based on the offering party's
 1159 evaluations, that the party intends to use at the hearing. A hearing officer may bar any party that fails to
 1160 comply with this subsection from introducing such relevant evaluation or recommendation at the hearing
 1161 without the consent of the other party;

1162 2. Each impartial due process hearing shall be subject to the following limitations:

1163 a. A hearing officer conducting an impartial due process hearing shall, at a minimum:

1164 (1) Not be (i) an employee of the Department or local educational agency involved in the education or
 1165 care of the child or (ii) a person having a professional or personal interest that conflicts with his objectivity
 1166 in the hearing; and

1167 (2) Possess knowledge of and the ability to (i) understand the provisions the IDEA and its implementing
 1168 regulations, the provisions of this article, and other applicable federal and state regulations and applicable
 1169 legal interpretations by federal and state courts; (ii) conduct hearings in accordance with appropriate,
 1170 standard legal practice; and (iii) render and write decisions in accordance with appropriate, standard legal
 1171 practice;

1172 b. The party requesting the due process hearing shall not be permitted to raise issues at such hearing that
 1173 were not raised in the due process complaint notice filed under subdivision B 6 of § 22.1-215.5, unless the
 1174 other party agrees otherwise;

1175 c. A parent or agency shall request an impartial due process hearing within two years of the date the
 1176 parent or agency knew or should have known about the alleged violation that forms the basis of the
 1177 complaint or within such other explicit time limitation as may be established by state law, except that such
 1178 timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to:

1179 (1) Specific misrepresentations by the local educational agency that it had resolved the problem forming
 1180 the basis of the complaint; or

1181 (2) The local educational agency's withholding of information from the parent the disclosure of which was
 1182 required under this article and the IDEA; and

1183 d. A decision made by a hearing officer shall be made on substantive grounds based on a determination of
 1184 whether the child received a free appropriate public education. However, in any matter alleging a procedural
 1185 violation, a hearing officer may find that a child did not receive a free appropriate public education only if
 1186 the procedural inadequacies:

1187 (1) Impeded the child's right to a free appropriate public education;

1188 (2) Significantly impeded the parents' opportunity to participate in the decision-making process regarding
 1189 the provision of a free appropriate public education to the parents' child; or

1190 (3) Caused a deprivation of educational benefits;

1191 3. The provisions of (i) subdivision 2 d shall not be construed to preclude a hearing officer from ordering
 1192 a local educational agency to comply with the procedural requirements of this section and 20 U.S.C. § 1415
 1193 of the IDEA and (ii) subdivision 2 shall not be construed to affect the right of a parent to file a complaint with
 1194 the Department pursuant to applicable state and federal regulation;

1195 4. In any impartial due process hearing conducted pursuant to subsection C, the Department may provide
 1196 for final decisions to be made by a hearing officer. Any hearing officer appointed pursuant to this section
 1197 shall have the power to issue subpoenas requiring testimony or the production of books, papers, and physical
 1198 or other evidence. Any person so subpoenaed who objects may, if the hearing officer does not quash or
 1199 modify the subpoena at a timely request as illegally or improvidently granted, immediately procure by a
 1200 petition a decision on the validity thereof in the circuit court of the jurisdiction in which the hearing is to be
 1201 held. In any case of refusal or neglect to comply with the hearing officer's subpoena, the hearing officer may
 1202 procure an order of enforcement from such court;

1203 5. Any party to an impartial due process hearing shall be accorded the right to:

1204 a. Be accompanied and advised by legal counsel and by individuals with special knowledge or training
 1205 with respect to the problems of children with disabilities before such hearing officer without being in
 1206 violation of the provisions of § 54.1-3904;

1207 b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

1208 c. Obtain a written or, at the option of the parents, electronic verbatim record of such hearing; and

1209 d. Obtain written or, at the option of the parents, electronic findings of fact and decisions, which findings
 1210 and decisions shall be (i) made available to the public and (ii) transmitted to the advisory panel established
 1211 pursuant to applicable federal or state law or regulation; and

1212 6. A decision made by a hearing officer in an impartial due process hearing conducted pursuant to
 1213 subsection C or § 22.1-215.7 shall be final, except that any party shall have the right to appeal such decision
 1214 pursuant to subsection F.

1215 F. Any party involved in an impartial due process hearing conducted pursuant to subsection C or
 1216 § 22.1-215.7 shall, within 180 days of the date of the decision of the hearing officer, have the right to bring a
 1217 civil action with respect to the complaint in the circuit court for the jurisdiction in which the local
 1218 educational agency is located, without regard to the amount in controversy. In any such action:

1219 1. The court shall:

1220 a. Receive the records of the administrative proceedings;

1221 b. Hear additional evidence at the request of a party; and

1222 c. Basing its decision on the preponderance of the evidence, grant such relief as the court determines is
 1223 appropriate; and

1224 2. The court, in its discretion, may award reasonable attorney fees as part of the costs to a prevailing
 1225 party who is (i) the parent of a child with a disability; (ii) the Department or a local educational agency
 1226 against the attorney of a parent who files a complaint or a subsequent cause of action that is frivolous,
 1227 unreasonable, or without foundation or against the attorney of a parent who continued to litigate after the
 1228 litigation clearly became frivolous, unreasonable, or without foundation; or (iii) the Department or a local
 1229 educational agency against the attorney of a parent, or against the parent, if the parent's complaint or
 1230 subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary
 1231 delay, or to needlessly increase the cost of litigation. Attorney fees may not be awarded relating to any
 1232 meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or
 1233 judicial action or, at the discretion of the Commonwealth, for a mediation described in subsection B.

1234 G. During the pendency of any proceedings conducted in accordance with this section, unless the parent
 1235 of a child and the Department or local educational agency otherwise agrees, each child with a disability
 1236 shall (i) remain in the educational placement of the child prior to the initiation of such proceedings or (ii) if

1237 applying for admission to a public school, be placed in the public school system until all such proceedings
1238 have been completed.

1239 *H. Nothing in this section shall be construed to restrict or limit the rights, procedures, and remedies*
1240 *available under the United States Constitution, the Americans with Disabilities Act of 1990 (42 U.S.C. §*
1241 *12101 et seq.), Title V of the Rehabilitation Act of 1973 (29 U.S.C. § 790 et seq.), or any other federal law*
1242 *protecting the rights of children with a disability, except that prior to the filing of a civil action under such*
1243 *laws seeking relief that is also available under the IDEA, the due process procedures described in*
1244 *subsections C, D, and E shall be exhausted to the same extent as would be required had the action been*
1245 *brought under the IDEA.*

1246 **§ 22.1-215.7. Procedural safeguards; disciplinary procedures; changes in placement; placement in**
1247 **alternative educational setting.**

1248 *A. Disciplinary procedures relating to changes in placement for a child with a disability who violates a*
1249 *student code of conduct shall be consistent with the provisions of this section and 20 U.S.C. §1415(k) of the*
1250 *IDEA and its implementing regulations.*

1251 *B. School personnel may:*

1252 *1. Consider any unique circumstances on a case-by-case basis when determining whether to order a*
1253 *change in placement for a child with a disability who violates a student code of conduct;*

1254 *2. Remove a child with a disability from his current placement to an appropriate interim alternative*
1255 *educational setting, another setting, or suspension for not more than 10 school days, to the extent such*
1256 *alternatives are applied to children without disabilities; and*

1257 *3. For a change in placement that would exceed 10 school days and if the behavior of the child that gave*
1258 *rise to the violation of a student code of conduct is determined not to be a manifestation of the child's*
1259 *disability pursuant to subsection D, apply the relevant disciplinary procedures to a child with a disability in*
1260 *the same manner and for the same duration as such procedures would be applied to children without*
1261 *disabilities, except as provided in subdivision 1 of § 22.1-213.2 although it may be provided in an interim*
1262 *alternative educational setting.*

1263 *C. A child with a disability who is removed from his current placement (i) pursuant to subsection F,*
1264 *regardless of whether the behavior is determined to be a manifestation of the child's disability pursuant to*
1265 *subsection D, or (ii) pursuant to subdivision B 3, shall:*

1266 *1. Continue to receive educational services in accordance with § 22.1-213.2 and the IDEA so as to enable*
1267 *the child to continue to participate in the general educational curriculum, although in a different setting, and*
1268 *to progress toward meeting the goals set out in the child's IEP pursuant to § 22.1-215.4; and*

1269 *2. Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and*
1270 *modifications designed to address the behavior at issue so that it does not recur.*

1271 *D. Except as provided in subdivision B 2, within 10 school days of any decision to change the placement*
1272 *of a child with a disability because of a violation of a code of student conduct, the local educational agency,*
1273 *the child's parents, and relevant members of the IEP team, as determined by the parent and the local*
1274 *educational agency, shall review all relevant information in the child's file, including the child's IEP, any*
1275 *teacher observations, and any other relevant information the parents may provide to determine whether the*
1276 *child's behavior that gave rise to a violation of a student code of conduct was a manifestation of the child's*
1277 *disability. The child's behavior shall be determined to be a manifestation of the child's disability if the local*
1278 *educational agency, the parent, and relevant members of the IEP team determine that either:*

1279 *1. The conduct in question was caused by, or had a direct and substantial relationship to, the child's*
1280 *disability; or*

1281 *2. The conduct in question was a direct result of the local educational agency's failure to implement the*
1282 *child's IEP.*

1283 *E. If the child's behavior that gave rise to the violation of a student code of conduct is determined to be a*
1284 *manifestation of the child's disability pursuant to subsection D, the IEP team shall:*

1285 *1. Conduct a functional behavioral assessment and implement a behavioral intervention plan for the*
1286 *child, provided that the local educational agency did not conduct such assessment prior to such*
1287 *determination before the occurrence of the behavior that resulted in a change in placement described in*
1288 *subdivision B 3 or subsection F;*

1289 *2. If a behavioral intervention plan has already been developed, review the behavioral intervention plan*
1290 *and modify it, as necessary, to address the behavior; and*

1291 *3. Except as provided in subsection F, return the child to the placement from which he was removed,*
1292 *unless the parent and local educational agency agree to a change of placement as part of the modification of*
1293 *the behavioral intervention plan.*

1294 *F. School personnel may remove a child with a disability to an interim alternative educational setting for*
1295 *not more than 45 school days without regard to whether the behavior that gave rise to the violation of a*
1296 *student code of conduct is determined to be a manifestation of the child's disability pursuant to subsection D*
1297 *in cases where the child:*

1298 *1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under*

1299 *the jurisdiction of the Department or a local educational agency; or*
1300 *2. While at school, on school premises, or at a school function under the jurisdiction of the Department or*
1301 *a local educational agency:*
1302 *a. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or*
1303 *b. Has inflicted serious bodily injury upon another person.*
1304 *G. The local educational agency shall notify the parent of any child with a disability for whom a decision*
1305 *to take a disciplinary action is made pursuant to this section not later than the date on which such decision*
1306 *was made of that decision and of all procedural safeguards accorded to the child and the parents under this*
1307 *section.*
1308 *H. In the case of any child with a disability who is removed from his current placement pursuant to*
1309 *subdivision B 3 or subsection F, the child's IEP team shall determine the interim alternative educational*
1310 *setting.*
1311 *I. An appeal may be requested by (i) the parent of a child with a disability who disagrees with a decision*
1312 *relating to the child's placement or the manifestation determination made pursuant to this section or (ii) a*
1313 *local educational agency that believes maintaining the current placement of the child is substantially likely to*
1314 *result in injury to the child or to others. Whenever an appeal is requested under this section:*
1315 *1. The parents or the local educational agency shall have the opportunity for an expedited due process*
1316 *hearing, which shall occur within 20 school days of the date the appeal is requested and shall result in a*
1317 *determination by a hearing officer within 10 school days after the hearing. The local educational agency*
1318 *shall be responsible for arranging such expedited due process hearing in accordance with the Board's*
1319 *regulations;*
1320 *2. In an expedited due process hearing pursuant to subdivision 1, the hearing officer shall hear and make*
1321 *a determination regarding the issue. In making such determination, the hearing officer may:*
1322 *a. Return a child with a disability to the placement from which the child was removed; or*
1323 *b. Order a change in placement of a child with a disability to an appropriate interim alternative*
1324 *educational setting for not more than 45 school days if the hearing officer determines that maintaining the*
1325 *current placement of the child is substantially likely to result in injury to the child or to others;*
1326 *3. The child shall remain in the interim alternative educational setting pending the decision of the hearing*
1327 *officer pursuant to subdivision 2 or until the expiration of the applicable time period specified in subdivision*
1328 *B 3, whichever occurs first, unless the parent and the Department or local educational agency agree*
1329 *otherwise; and*
1330 *4. The decision of a hearing officer in the expedited due process hearing pursuant to subdivision 2 may be*
1331 *appealed pursuant to subsection F of § 22.1-215.6 and in accordance with the Board's regulations.*
1332 *J. Disciplinary decisions with respect to a child who has not yet been determined to be eligible for special*
1333 *education and related services pursuant to this article and the IDEA and who has engaged in behavior that*
1334 *violates a student conduct shall meet the following requirements:*
1335 *1. Any such child may assert any of the protections set forth in this article and available pursuant to the*
1336 *IDEA if the local educational agency had knowledge that the child was a child with a disability before the*
1337 *occurrence of the behavior that resulted in the disciplinary action;*
1338 *2. The local educational agency shall be deemed to have knowledge that the child was a child with a*
1339 *disability pursuant to subdivision I if, before the occurrence of the behavior that resulted in the disciplinary*
1340 *action:*
1341 *a. The parent of the child expressed concern in writing to supervisory or administrative personnel of the*
1342 *appropriate educational agency, or a teacher of the child, that the child is in need of special education and*
1343 *related services;*
1344 *b. The parent of the child requested an evaluation pursuant to § 22.1-215.1 and 20 U.S.C. § 1414 of the*
1345 *IDEA; or*
1346 *c. The teacher of the child, or other personnel of the local educational agency, expressed specific*
1347 *concerns about a pattern of behavior demonstrated by the child, directly to the director of special education*
1348 *of such agency or to other supervisory personnel of such agency;*
1349 *3. The local educational agency shall not be deemed to have knowledge that the child was a child with a*
1350 *disability before the occurrence of the behavior that resulted in the disciplinary action if (i) the parent of the*
1351 *child has not allowed an evaluation of the child pursuant to § 22.1-215.1 and 20 U.S.C. § 1414 of the IDEA*
1352 *or has refused services under this article or (ii) if the child has been evaluated and such evaluation resulted*
1353 *in a determination that such child is not a child with a disability; and*
1354 *4. If, pursuant to subdivision 3, a local educational agency does not have knowledge that the child was a*
1355 *child with a disability:*
1356 *a. The child may be subjected to disciplinary measures applied to children without disabilities who*
1357 *engaged in comparable behaviors; and*
1358 *b. If a request is made for an evaluation during the time period in which the child is subject to*
1359 *disciplinary measures pursuant to subdivision a, the evaluation shall be conducted in an expedited manner.*
1360 *Pending the results of the evaluation, the child shall remain in the educational placement determined by*

1361 school personnel. If the child is determined to be a child with a disability, taking into consideration
 1362 information from the evaluation and information provided by the parents, the local educational agency shall
 1363 provide special education and related services to such child pursuant to this article and the IDEA and its
 1364 implementing regulations.

1365 K. Nothing in this section shall be construed to (i) prohibit school or local educational agency personnel
 1366 from reporting certain acts to appropriate authorities in accordance with § 22.1-279.3:1 or (ii) prevent law
 1367 enforcement or other authorities from exercising their responsibilities in accordance with applicable state
 1368 and federal law.

1369 **§ 22.1-217. Vision impaired children.**

1370 A. Special education for visually impaired children provided by a school ~~division~~ board shall be
 1371 established, maintained, and operated jointly by the school board and the Virginia Department for the Blind
 1372 and Vision Impaired subject to the regulations of the Board of Education. Braille instruction shall be included
 1373 in the student's Individualized Education Plan (IEP) IEP, whenever appropriate. When developing the IEP for
 1374 students with visual impairment, the presumption shall be that proficiency in literacy is essential for such
 1375 student to achieve satisfactory educational progress. However, use of Braille shall not be required if other
 1376 special education services are more appropriate to the student's educational needs, and the provision of other
 1377 appropriate services shall not preclude Braille instruction.

1378 B. The Virginia Department for the Blind and Vision Impaired shall prepare and deliver a program of
 1379 special education services, in addition to the special education provided in the public school system, designed
 1380 to meet the educational needs of visually impaired children between the ages of birth and ~~twenty-one~~ 21 and
 1381 may prepare and deliver such programs for such individuals of other ages. In the development of such a
 1382 program, the Virginia Department for the Blind and Vision Impaired shall cooperate with the Board of
 1383 Education and the school boards of the several school divisions. The Virginia Department for the Blind and
 1384 Vision Impaired shall assist the Board of Education and the school boards of the several school divisions with
 1385 in-service training in Braille for currently employed teachers of students who are blind and visually impaired.

1386 C. As used in this section:

1387 "Braille" means the system of reading and writing through touch and is commonly known as ~~standard~~
 1388 Standard English Braille Grade 2.

1389 "Program" means a modified program which provides special materials or services and may include the
 1390 employment of itinerant teachers or resource room teachers for the visually impaired.

1391 "Visually impaired" shall be defined by the Board of Education and the Virginia Department for the Blind
 1392 and Vision Impaired.

1393 **§ 22.1-217.02. Individualized education programs; children identified as deaf or hard of hearing.**

1394 A. In developing an individualized education program (IEP) for a child identified as deaf or hard of
 1395 hearing, in addition to any other requirements established by the Board of Education, each ~~local~~ school
 1396 ~~division~~ ~~may~~ board shall ensure that IEP teams consider the child's specific communication needs and
 1397 address those needs as appropriate in the child's IEP. In considering the child's needs, the IEP team ~~may~~ shall
 1398 expressly consider the following:

1399 1. The child's individual communication mode or language *mode*;

1400 2. The availability to the child of a sufficient number of age, cognitive, academic, and language peers of
 1401 similar abilities if the parents so desire;

1402 3. The availability to the child of deaf or hard-of-hearing adult models of the child's communication mode
 1403 or language *mode*;

1404 4. The provision of direct and ongoing language access to teachers of the deaf and ~~hard-of-hearing~~ *hard of*
 1405 *hearing*, interpreters, psychologists, educational audiologists, speech-language pathologists, administrators,
 1406 and other special education personnel who are knowledgeable due to specific training and who are proficient
 1407 in the child's primary communication mode or language *mode*;

1408 5. The provision of communication-accessible academic instruction, school services, and direct access to
 1409 all components of the educational process, including recess, lunch, extracurricular social and athletic
 1410 activities, and the equal opportunity to participate in advanced coursework, technical vocational coursework,
 1411 and academic classes as identified by the IEP team;

1412 6. Equipping children identified as deaf or ~~hard-of-hearing~~ *hard of hearing* with appropriate assistive
 1413 technology across a full spectrum; and

1414 7. That the Virginia School for the Deaf and the Blind may be the least restrictive environment for the
 1415 child.

1416 B. No child identified as deaf or ~~hard-of-hearing~~ *may hard of hearing* shall be denied the opportunity for
 1417 instruction in a particular communication mode or language *mode* solely because another communication
 1418 mode or language *mode* was originally chosen for the child.

1419 C. A child may receive instruction in more than one communication mode or language *mode*.

1420 D. For the purposes of this section, "communication mode or language mode" means one or more of the
 1421 following systems or methods of communication applicable to children identified as deaf or ~~hard-of-hearing~~
 1422 *hard of hearing*: (i) American Sign Language; (ii) English-based manual or sign systems; (iii) oral, aural, or

1423 speech-based training; (iv) spoken and written English, including speech reading, lip reading, or cued speech;
 1424 (v) *cued language transliteration*; and ~~(v)~~ (vi) *other* communication with assistive technology devices to
 1425 facilitate language and learning.

1426 **§ 22.1-217.03. Individualized education program teams to consider need for certain age-appropriate**
 1427 **and developmentally appropriate instruction.**

1428 A. The Department of Education shall establish, make available to each school board, and post on its
 1429 website guidelines for individualized education program (IEP) IEP teams to utilize when developing IEPs for
 1430 children with disabilities to ensure that IEP teams consider the need for age-appropriate and developmentally
 1431 appropriate instruction related to sexual health, self-restraint, self-protection, respect for personal privacy, and
 1432 personal boundaries of others.

1433 B. In developing IEPs for children with disabilities, in addition to any other requirements established by
 1434 the Board, each local school board shall ensure that IEP teams consider the guidelines established by the
 1435 Department of Education pursuant to subsection A.

1436 **§ 22.1-253.13:2. (Effective July 1, 2026) Standard 2. Instructional, administrative, and support**
 1437 **personnel.**

1438 A. The Board shall establish requirements for the licensing of teachers, principals, superintendents, and
 1439 other professional personnel.

1440 B. School boards shall employ licensed instructional personnel qualified in the relevant subject areas.

1441 C. Each school board shall assign licensed instructional personnel in a manner that produces divisionwide
 1442 ratios of students in average daily membership to full-time equivalent teaching positions, excluding special
 1443 education teachers, principals, assistant principals, school counselors or certain other licensed individuals as
 1444 set forth in subdivision H 4, and librarians, that are not greater than the following ratios: (i) 24 to one in
 1445 kindergarten with no class being larger than 29 students; if the average daily membership in any kindergarten
 1446 class exceeds 24 pupils, a full-time teacher's aide shall be assigned to the class; (ii) 24 to one in grades one,
 1447 two, and three with no class being larger than 30 students; (iii) 25 to one in grades four through six with no
 1448 class being larger than 35 students; and (iv) 24 to one in English classes in grades six through 12. After
 1449 September 30 of any school year, anytime the number of students in a class exceeds the class size limit
 1450 established by this subsection, the local school division shall notify the parent of each student in such class of
 1451 such fact no later than 10 days after the date on which the class exceeded the class size limit. Such
 1452 notification shall state the reason that the class size exceeds the class size limit and describe the measures that
 1453 the local school division will take to reduce the class size to comply with this subsection.

1454 Within its regulations governing special education programs, the Board shall seek to set pupil/teacher
 1455 ratios for pupils with intellectual disability that do not exceed the pupil/teacher ratios for self-contained
 1456 classes for pupils with specific learning disabilities.

1457 Further, school boards shall assign instructional personnel in a manner that produces schoolwide ratios of
 1458 students in average daily memberships to full-time equivalent teaching positions of 21 to one in middle
 1459 schools and high schools. School divisions shall provide all middle and high school teachers with one
 1460 planning period per day or the equivalent, unencumbered of any teaching or supervisory duties.

1461 D. Each local school board shall employ with state and local basic, special education, gifted, and career
 1462 and technical education funds a minimum number of licensed, full-time equivalent instructional personnel for
 1463 each 1,000 students in average daily membership (ADM) as set forth in the appropriation act.

1464 E. In addition to the positions supported by basic aid and in support of regular school year programs of
 1465 prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided
 1466 to fund certain full-time equivalent instructional positions for each 1,000 students in grades K through 12
 1467 who are identified as needing prevention, intervention, and remediation services. State funding for
 1468 prevention, intervention, and remediation programs provided pursuant to this subsection and the
 1469 appropriation act may be used to support programs for educationally at-risk students as identified by the local
 1470 school boards.

1471 To provide algebra readiness intervention services required by § 22.1-253.13:1, school divisions may
 1472 employ mathematics teacher specialists to provide the required algebra readiness intervention services.
 1473 School divisions using the Standards of Learning Algebra Readiness Initiative funding in this manner shall
 1474 only employ instructional personnel licensed by the Board.

1475 F. In addition to the positions supported by basic aid and those in support of regular school year programs
 1476 of prevention, intervention, and remediation, state funding, pursuant to the general appropriation act, shall be
 1477 provided to support ratios of instructional positions to English language learner students, based on each such
 1478 student's English proficiency level, as established in the general appropriation act, which positions may
 1479 include dual language teachers who provide instruction in English and in a second language.

1480 To provide flexibility in the instruction of English language learners who have limited English proficiency
 1481 and who are at risk of not meeting state accountability standards, school divisions may use state and local
 1482 funds from the Standards of Quality Prevention, Intervention, and Remediation account to employ additional
 1483 English language learner teachers or dual language teachers to provide instruction to identified limited
 1484 English proficiency students. Using these funds in this manner is intended to supplement the instructional

1485 services provided in this section. School divisions using the SOQ Prevention, Intervention, and Remediation
 1486 funds in this manner shall employ only instructional personnel licensed by the Board.

1487 G. In addition to the full-time equivalent positions required elsewhere in this section, each local school
 1488 board shall employ one reading specialist for each 550 students in kindergarten through grade five and one
 1489 reading specialist for each 1,100 students in grades six through eight. Each such reading specialist shall have
 1490 training in science-based reading research and evidence-based literacy instruction practices. In addition, each
 1491 such reading specialist shall have training in the identification of and the appropriate interventions,
 1492 accommodations, and teaching techniques for students with dyslexia or a related disorder and shall serve as
 1493 an advisor on dyslexia and related disorders. Such reading specialist shall have an understanding of the
 1494 definition of dyslexia and a working knowledge of (i) techniques to help a student on the continuum of skills
 1495 with dyslexia; (ii) dyslexia characteristics that may manifest at different ages and grade levels; (iii) the basic
 1496 foundation of the keys to reading, including multisensory, explicit, systemic, and structured reading
 1497 instruction; and (iv) appropriate interventions, accommodations, and assistive technology supports for
 1498 students with dyslexia.

1499 To provide reading intervention services required by § 22.1-253.13:1, school divisions may employ
 1500 reading specialists to provide the required reading intervention services. School divisions using the Early
 1501 Reading Intervention Initiative funds in this manner shall employ only instructional personnel licensed by the
 1502 Board. Local school divisions that employ a sufficient number of reading specialists to meet this staffing
 1503 standard may assign reading specialists to grade levels according to grade levels with greatest need,
 1504 regardless of the individual staffing standards established for grades kindergarten through five and six
 1505 through eight.

1506 H. Each local school board shall employ, at a minimum, the following full-time equivalent positions for
 1507 any school that reports fall membership, according to student enrollment:

1508 1. Principals, one full-time in each elementary school, middle school, and high school, to be employed on
 1509 a 12-month basis;

1510 2. Assistant principals in elementary schools, one half-time at 600 students, one full-time at 900 students;
 1511 assistant principals in middle schools, one full-time for each 600 students; assistant principals in high schools,
 1512 one full-time for each 600 students; and school divisions that employ a sufficient number of assistant
 1513 principals to meet this staffing requirement may assign assistant principals to schools within the division
 1514 according to the area of greatest need, regardless of whether such schools are elementary, middle, or
 1515 secondary;

1516 3. Librarians in elementary schools, one part-time to 299 students, one full-time at 300 students; librarians
 1517 in middle schools, one-half time to 299 students, one full-time at 300 students, two full-time at 1,000
 1518 students; librarians in high schools, one half-time to 299 students, one full-time at 300 students, two full-time
 1519 at 1,000 students. Local school divisions that employ a sufficient number of librarians to meet this staffing
 1520 requirement may assign librarians to schools within the division according to the area of greatest need,
 1521 regardless of whether such schools are elementary, middle, or secondary; and

1522 4. School counselors, one full-time equivalent position per 325 students in grades kindergarten through
 1523 12.

1524 However, in order to meet the staffing requirements set forth in this subdivision, any local school board (i)
 1525 may employ, under a provisional license issued by the Department for three school years with an allowance
 1526 for an additional two-year extension with the approval of the division superintendent, any professional
 1527 counselor licensed by the Board of Counseling, clinical social worker licensed by the Board of Social Work,
 1528 psychologist licensed by the Board of Psychology, or other licensed counseling professional with appropriate
 1529 experience and training, provided that any such individual makes progress toward completing the
 1530 requirements for full licensure as a school counselor during such period of employment or (ii) in the event
 1531 that the school board does not receive any application from a licensed school counselor, professional
 1532 counselor, clinical social worker, or psychologist or another licensed counseling professional with
 1533 appropriate experience and training to fill a school counselor vacancy in the school division, may enter into
 1534 an annual contract with another entity for the provision of school counseling services by a licensed
 1535 professional counselor, clinical social worker, or psychologist or another licensed counseling professional
 1536 with appropriate experience and training. Local school boards that employ a sufficient number of individuals
 1537 to meet the staffing requirements set forth in this subdivision may assign such individuals to schools within
 1538 the division according to the area of greatest need, regardless of whether such schools are elementary, middle,
 1539 or high schools.

1540 I. Local school boards shall employ five full-time equivalent positions per 1,000 students in grades
 1541 kindergarten through five to serve as elementary resource teachers in art, music, and physical education.

1542 J. Local school boards shall employ two full-time equivalent positions per 1,000 students in grades
 1543 kindergarten through 12, one to provide technology support and one to serve as an instructional technology
 1544 resource teacher.

1545 To provide flexibility, school divisions may use the state and local funds for instructional technology

1546 resource teachers to employ a data coordinator position, an instructional technology resource teacher position,
1547 or a data coordinator/instructional resource teacher blended position. The data coordinator position is
1548 intended to serve as a resource to principals and classroom teachers in the area of data analysis and
1549 interpretation for instructional and school improvement purposes, as well as for overall data management and
1550 administration of state assessments. School divisions using these funds in this manner shall employ only
1551 instructional personnel licensed by the Board.

1552 K. Local school boards may employ additional positions that exceed these minimal staffing requirements.
1553 These additional positions may include, but are not limited to, those funded through the state's incentive and
1554 categorical programs as set forth in the appropriation act.

1555 L. A combined school, such as kindergarten through 12, shall meet at all grade levels the staffing
1556 requirements for the highest grade level in that school; this requirement shall apply to all staff, except for
1557 school counselors or certain other licensed individuals as set forth in subdivision H 4, and shall be based on
1558 the school's total enrollment. The Board may grant waivers from these staffing levels upon request from local
1559 school boards seeking to implement experimental or innovative programs that are not consistent with these
1560 staffing levels.

1561 M. School boards shall, however, annually, on or before December 31, report to the public (i) the actual
1562 pupil/teacher ratios in elementary school classrooms in the local school division by school for the current
1563 school year; and (ii) the actual pupil/teacher ratios in middle school and high school in the local school
1564 division by school for the current school year. Actual pupil/teacher ratios shall include only the teachers who
1565 teach the grade and class on a full-time basis and shall exclude resource personnel. School boards shall report
1566 pupil/teacher ratios that include resource teachers in the same annual report. Any classes funded through the
1567 voluntary kindergarten through third grade class size reduction program shall be identified as such classes.
1568 Any classes having waivers to exceed the requirements of this subsection shall also be identified. Schools
1569 shall be identified; however, the data shall be compiled in a manner to ensure the confidentiality of all teacher
1570 and pupil identities.

1571 N. Students enrolled in a public school on a less than full-time basis shall be counted in ADM in the
1572 relevant school division. Students who are either (i) enrolled in a nonpublic school or (ii) receiving home
1573 instruction pursuant to § 22.1-254.1, and who are enrolled in public school on a less than full-time basis in
1574 any mathematics, science, English, history, social science, career and technical education, fine arts, foreign
1575 language, or health education or physical education course shall be counted in the ADM in the relevant
1576 school division on a pro rata basis as provided in the appropriation act. Each such course enrollment by such
1577 students shall be counted as 0.25 in the ADM; however, no such nonpublic or home school student shall be
1578 counted as more than one-half a student for purposes of such pro rata calculation. Such calculation shall not
1579 include enrollments of such students in any other public school courses.

1580 O. Each school board shall provide at least three specialized student support positions per 1,000 students.
1581 For purposes of this subsection, specialized student support positions include school social workers, school
1582 psychologists, school nurses, licensed behavior analysts, licensed assistant behavior analysts, and other
1583 licensed health and behavioral positions, which may either be employed by the school board or provided
1584 through contracted services.

1585 In order to fill vacant school psychologist positions, any local school board may employ, under a
1586 provisional license issued by the Department for three school years with an allowance for an additional two-
1587 year extension with the approval of the division superintendent, clinical psychologists licensed by the Board
1588 of Psychology, provided that any such individual makes progress toward completing the requirements for full
1589 licensure as a school psychologist during such period of employment.

1590 P. Each local school board shall provide those support services that are necessary for the efficient and
1591 cost-effective operation and maintenance of its public schools.

1592 For the purposes of this title, unless the context otherwise requires, "support services positions" shall
1593 include the following:

1594 1. Executive policy and leadership positions, including school board members, superintendents and
1595 assistant superintendents;

1596 2. Fiscal and human resources positions, including fiscal and audit operations;

1597 3. Student support positions, including (i) social work administrative positions not included in subsection
1598 O; (ii) school counselor administrative positions not included in subdivision H 4; (iii) homebound
1599 administrative positions supporting instruction; (iv) attendance support positions related to truancy and
1600 dropout prevention; and (v) health and behavioral administrative positions not included in subsection O;

1601 4. Instructional personnel support, including professional development positions and library and media
1602 positions not included in subdivision H 3;

1603 5. Technology professional positions not included in subsection J;

1604 6. Operation and maintenance positions, including facilities; pupil transportation positions; operation and
1605 maintenance professional and service positions; and security service, trade, and laborer positions;

1606 7. Technical and clerical positions for fiscal and human resources, student support, instructional personnel
1607 support, operation and maintenance, administration, and technology; and

1608 8. School-based clerical personnel in elementary schools; part-time to 299 students, one full-time at 300
 1609 students; clerical personnel in middle schools; one full-time and one additional full-time for each 600
 1610 students beyond 200 students and one full-time for the library at 750 students; clerical personnel in high
 1611 schools; one full-time and one additional full-time for each 600 students beyond 200 students and one full-
 1612 time for the library at 750 students. Local school divisions that employ a sufficient number of school-based
 1613 clerical personnel to meet this staffing requirement may assign the clerical personnel to schools within the
 1614 division according to the area of greatest need, regardless of whether such schools are elementary, middle, or
 1615 secondary.

1616 Pursuant to the appropriation act, support services shall be funded from basic school aid.

1617 School divisions may use the state and local funds for support services to provide additional instructional
 1618 services.

1619 Q. Notwithstanding the provisions of this section, when determining the assignment of instructional and
 1620 other licensed personnel in subsections C through J, a local school board shall not be required to include full-
 1621 time students of approved virtual school programs.

1622 R. Each local school board shall designate a faculty member to serve as a special education parent/family
 1623 liaison. The special education parent/family liaison shall serve as a resource to parents and families to
 1624 understand and engage in (i) the referral, evaluation, reevaluation, and eligibility process, *pursuant to*
 1625 *§ 22.1-215.1*, if they suspect that their child has a disability ~~and~~; (ii) the IEP process *in accordance with*
 1626 *§ 22.1-215.4*; and (iii) *the rights, protections, and procedural safeguards relating to the provision of a free*
 1627 *appropriate public education that each child with a disability and his parents are guaranteed pursuant to*
 1628 *Article 2 (§ 22.1-213 et seq.) of Chapter 13. The special education parent/family liaison shall work in*
 1629 *collaboration with the special education family support centers established pursuant to § 22.1-214.5. Each*
 1630 *school board shall post the name of the designated special education parent/family liaison publicly on its*
 1631 *website.*

1632 S. Each local school board shall designate a faculty member to serve as the high-quality instructional
 1633 materials liaison. Such liaison shall receive support from the Department to serve as a resource for the
 1634 division and its schools to select and implement textbooks and other high-quality instructional materials and
 1635 aligned professional learning resources.

1636 **§ 22.1-253.13:3. (Effective July 1, 2026) Standard 3. Accreditation, other standards, assessments,**
 1637 **and releases from state regulations.**

1638 A. The Board shall promulgate regulations establishing standards for accreditation pursuant to the
 1639 Administrative Process Act (§ 2.2-4000 et seq.), which shall include (i) student outcome and growth
 1640 measures, *including student performance and growth indicators for children with disabilities in accordance*
 1641 *with subdivisions 12 and 13 of § 22.1-213.2*; (ii) requirements and guidelines for instructional programs and
 1642 for the integration of educational technology into such instructional programs; (iii) administrative and
 1643 instructional staffing levels and positions, including staff positions for supporting educational technology; (iv)
 1644 student services; (v) auxiliary education programs such as library and media services; (vi) requirements
 1645 for graduation from high school; (vii) community relations; and (viii) the philosophy, goals, and objectives
 1646 of public education in the Commonwealth.

1647 The Board shall promulgate regulations establishing standards for accreditation of public virtual schools
 1648 under the authority of the local school board that enroll students full time.

1649 The Board's regulations establishing standards for accreditation shall ensure that the accreditation process
 1650 is transparent and based on objective measurements and that any appeal of the accreditation status of a school
 1651 is heard and decided by the Board.

1652 The Board shall review annually the accreditation status of all schools in the Commonwealth. The Board
 1653 shall review the accreditation status of a school once every three years if the school has been fully accredited
 1654 for three consecutive years. Upon such triennial review, the Board shall review the accreditation status of the
 1655 school for each individual year within that triennial review period. If the Board finds that the school would
 1656 have been accredited every year of that triennial review period the Board shall accredit the school for another
 1657 three years. The Board may review the accreditation status of any other school once every two years or once
 1658 every three years, provided that any school that receives a multiyear accreditation status other than full
 1659 accreditation shall be covered by a Board-approved multiyear corrective action plan for the duration of the
 1660 period of accreditation. Such multiyear corrective action plan shall include annual written progress updates to
 1661 the Board. A multiyear accreditation status shall not relieve any school or division of annual reporting
 1662 requirements.

1663 Each local school board shall maintain schools that are fully accredited pursuant to the standards for
 1664 accreditation as prescribed by the Board. Each local school board shall report the accreditation status of all
 1665 schools in the local school division annually in public session.

1666 The Board shall establish a review process to assist any school that does not meet the standards
 1667 established by the Board. The relevant school board shall report the results of such review and any annual
 1668 progress reports in public session and shall implement any actions identified through such review and utilize
 1669 them for improvement planning.

1670 The Board shall establish a corrective action plan process for any school that does not meet the standards
1671 established by the Board. Such process shall require (a) each school board to submit a corrective action plan
1672 for any school in the local school division that does not meet the standards established by the Board and (b)
1673 any school board that fails to demonstrate progress in developing or implementing any such corrective action
1674 plan to enter into a memorandum of understanding with the Board.

1675 When the Board determines through its review process that the failure of schools within a division to meet
1676 the standards established by the Board is related to division-level failure to implement the Standards of
1677 Quality or other division-level action or inaction, the Board may require a division-level academic review.
1678 After the conduct of such review and within the time specified by the Board, each school board shall enter
1679 into a memorandum of understanding with the Board and shall subsequently submit to the Board for approval
1680 a corrective action plan, consistent with criteria established by the Board setting forth specific actions and a
1681 schedule designed to ensure that schools within its school division meet the standards established by the
1682 Board. If the Board determines that the proposed corrective action plan is not sufficient to enable all schools
1683 within the division to meet the standards established by the Board, the Board may return the plan to the local
1684 school board with directions to submit an amended plan pursuant to Board guidance. Such corrective action
1685 plans shall be part of the relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

1686 B. The Superintendent shall develop, subject to revision by the Board, criteria for determining and
1687 recognizing educational performance in the Commonwealth's local school divisions and public schools. The
1688 portion of such criteria that measures individual student growth shall become an integral part of the
1689 accreditation process for schools in which any grade level in the grade three through eight range is taught.
1690 The Superintendent shall annually report to the Board on the accreditation status of all school divisions and
1691 schools. Such report shall include an analysis of the strengths and weaknesses of public education programs
1692 in the various school divisions in ~~Virginia~~ *the Commonwealth* and recommendations to the General Assembly
1693 for further enhancing student learning uniformly across the Commonwealth. In recognizing educational
1694 performance and individual student growth in the school divisions, the Board shall include consideration of
1695 special school division accomplishments, such as numbers of dual enrollments and students in Advanced
1696 Placement and International Baccalaureate courses, and participation in academic year Governor's Schools.

1697 The Superintendent shall assist local school boards in the implementation of action plans for increasing
1698 educational performance and individual student growth in those school divisions and schools that are
1699 identified as not meeting the approved criteria, including, when applicable, providing assistance with the
1700 review, grant, and monitoring process set forth in subdivision K 4 of § 22.1-253.13:1. The Superintendent
1701 shall monitor the implementation of and report to the Board on the effectiveness of the corrective actions
1702 taken to improve the educational performance in such school divisions and schools.

1703 C. With such funds as are available for this purpose, the Board shall prescribe assessment methods to
1704 determine the level of achievement of the Standards of Learning objectives by all students in grades three
1705 through 12. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and
1706 skills related to the Standards of Learning being assessed. In prescribing such assessment methods, the Board
1707 shall:

1708 1. With the assistance of independent testing experts, conduct a regular analysis and validation process for
1709 these assessments;

1710 2. In lieu of a one-time end-of-year assessment, establish, for the purpose of providing measures of
1711 individual student growth over the course of the school year, a through-year growth assessment system,
1712 aligned with the Standards of Learning, for the administration of reading and mathematics assessments in
1713 grades three through eight. Such through-year growth assessment system shall include at least one beginning-
1714 of-year, one mid-year, and one end-of-year assessment in order to provide individual student growth scores
1715 over the course of the school year, but the total time scheduled for taking all such assessments shall not
1716 exceed 150 percent of the time scheduled for taking a single end-of-year proficiency assessment. The
1717 Department shall ensure adequate training for teachers and principals on how to interpret and use student
1718 growth data from such assessments to improve reading and mathematics instruction in grades three through
1719 eight throughout the school year. With such funds and content as are available for such purpose, such
1720 through-year growth assessment system shall provide accurate measurement of a student's performance,
1721 through computer adaptive technology, using test items at, below, and above the student's grade level as
1722 necessary;

1723 3. Provide the option of industry certification and state licensure examinations as a student-selected credit;

1724 4. Make available to school divisions Standards of Learning assessments typically administered by high
1725 schools by December 1 of the school year in which such assessments are to be administered or when newly
1726 developed assessments are available, whichever is later;

1727 5. Make publicly available such assessments in a timely manner and as soon as practicable following the
1728 administration of such tests, so long as the release of such assessments does not compromise test security or
1729 deplete the bank of assessment questions necessary to construct subsequent tests, or limit the ability to test
1730 students on demand and provide immediate results in the web-based assessment system;

1731 6. *Ensure that each child with a disability, as that term is defined in § 22.1-213, is included in the*

1732 administration of assessments under this section for the purposes of measuring student performance and
 1733 growth. In ensuring that each child with a disability is included in the administration of such assessments, the
 1734 Board shall:

1735 a. Prescribe alternative methods of Standards of Learning assessment administration for ~~children~~ any child
 1736 with disabilities, as that term is defined in § 22.1-213, a disability who meet meets criteria established by the
 1737 Board to demonstrate achievement of the Standards of Learning. An eligible student's Individual Education
 1738 Program IEP team shall make the final determination as to whether an alternative method of administration is
 1739 appropriate for the student; and

1740 b. Develop and implement guidelines in accordance with subdivision 13 of § 22.1-213.2 for (i) ensuring
 1741 that each child with a disability who participates in a Standards of Learning assessment, including
 1742 participation through alternative methods of assessment administration pursuant to subdivision a, or in a
 1743 local alternative assessment, is provided the appropriate accommodations required pursuant to such child's
 1744 IEP and (ii) providing for the participation in alternate assessments, in accordance with subdivision 13 b of
 1745 § 22.1-213.2, for any child with a disability who does not meet criteria to participate in a Standards of
 1746 Learning assessment or local alternative assessment;

1747 7. To assess the educational progress of students, (i) develop appropriate assessments, which may include
 1748 criterion-referenced tests and other assessment instruments that may be used by classroom teachers; (ii) select
 1749 appropriate industry certification and state licensure examinations; and (iii) prescribe and provide measures,
 1750 which may include nationally normed tests to be used to identify students who score in the bottom quartile at
 1751 selected grade levels;

1752 8. Not include in its calculation of the passage rate for a Standards of Learning assessment or the level of
 1753 achievement of the Standards of Learning objectives for an individual student growth assessment for the
 1754 purposes of state accountability any student whose parent has decided to not have his child take such
 1755 Standards of Learning assessment, unless such exclusions would result in the school's not meeting any
 1756 required state or federal participation rate;

1757 9. Permit any teacher providing instruction in a Standards of Learning subject area who scores any such
 1758 Standards of Learning assessments to earn professional development points toward renewal of his license for
 1759 his time spent scoring such assessments;

1760 10. Require each assessment, including each Standards of Learning assessment administered as a part of
 1761 the through-year growth assessment system established pursuant to subdivision 2, each mandatory local
 1762 alternative assessment implemented by a school board pursuant to subdivision E 1 a (2), and each permissive
 1763 local alternative assessment administered by a school board pursuant to subdivision E 3 b, to be scored on a
 1764 100-point scale in accordance with statewide scoring rubrics;

1765 11. Make available to each student and his parents within 45 days of any state assessment window closing
 1766 for any such assessment administration an individualized student score report for each such assessment,
 1767 developed in accordance with the Board's guidelines, that shall include, at a minimum: (i) a description of the
 1768 applicable assessment; (ii) individualized data on such student's assessment performance; (iii) a comparison
 1769 of such student's performance on such assessment with the performance of the student's school, school
 1770 division, and the Commonwealth; and (iv) guidance to assist the student and his parents in interpreting such
 1771 student's assessment results; and

1772 12. Publicly release the statewide Standards of Learning assessment results and any associated data no
 1773 later than the date on which individual Standards of Learning assessment scores for the applicable assessment
 1774 administration period are released to individual students and parents.

1775 For any period during which the Standards of Learning contents or assessments in a specific content area
 1776 are being revised or phased in, the Board may adopt special provisions related to the administration and use
 1777 of any Standards of Learning test or tests in such content area as applied to accreditation ratings for such
 1778 period. Prior to statewide administration of such tests, the Board shall provide notice to local school boards
 1779 regarding such special provisions. The Department shall develop processes for informing school divisions of
 1780 changes in the Standards of Learning requirements, including any revisions to Standards of Learning contents
 1781 or assessments.

1782 D. The Board shall include in the student outcome and growth measures that are required by the standards
 1783 of accreditation the required assessments for various grade levels and classes, including the completion of the
 1784 mandatory local alternative assessments implemented by each local school board pursuant to subdivision E 1
 1785 a (2), in accordance with the Standards of Learning. These assessments shall include end-of-course tests for
 1786 English, mathematics, science, and history and social science and may be integrated to include multiple
 1787 subject areas.

1788 E. All assessment methods prescribed by the Board to determine the level of achievement of the Standards
 1789 of Learning objectives, pursuant to subsections C and D, shall be developed, implemented, and administered
 1790 in accordance with the following:

1791 1. The assessments administered to students in grades three through eight, except for those students with
 1792 disabilities any student who is a child with a disability, as that term is defined in § 22.1-213, who participate
 1793 participates in an alternative method of Standards of Learning assessment administration or in an alternate

1794 *assessment* pursuant to subdivision C 6, shall:

1795 a. Consist of:

1796 (1) Standards of Learning assessments, including end-of-year assessments administered as part of the
1797 through-year growth assessment system established pursuant to subdivision C 2. The Standards of Learning
1798 assessments shall not exceed (i) reading and mathematics in grades three and four; (ii) reading, mathematics,
1799 and science in grade five; (iii) reading and mathematics in grades six and seven; (iv) reading, writing, and
1800 mathematics in grade eight; (v) science after the student receives instruction in the grade six science, life
1801 science, and physical science Standards of Learning and before the student completes grade eight; and (vi)
1802 Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each local
1803 school board. The reading and mathematics assessments administered to students in grades three through
1804 eight shall be through-year growth assessments pursuant to subdivision C 2.

1805 The Department shall award recovery credit to any student in grades three through eight who performs
1806 below grade level on a Standards of Learning assessment in English reading or mathematics, receives
1807 remediation, and subsequently retakes and performs at or above grade level on such an assessment, including
1808 any such student who subsequently retakes such an assessment on an expedited basis; and

1809 (2) Local alternative assessments, including any permissive local alternative assessments administered in
1810 accordance with subdivision 3 b and mandatory local alternative assessments administered by each school
1811 board in each Standards of Learning subject area in which a Standards of Learning assessment is not
1812 available for administration during the school year. Each school board shall annually certify that it has
1813 provided instruction and administered each mandatory local alternative assessment in accordance with this
1814 subdivision and Board guidelines. Such guidelines shall (i) incorporate options for age-appropriate, authentic
1815 performance assessments and portfolios with rubrics and other methodologies designed to ensure that
1816 students are making adequate academic progress in the subject area and that the Standards of Learning
1817 content is being taught; (ii) permit and encourage integrated assessments that include multiple subject areas;
1818 (iii) establish criteria for mandatory local alternative assessments, including the core content, concepts, and
1819 skills that shall be prioritized on each such assessment and specific parameters for any performance
1820 assessment administered by a school board in accordance with this subdivision, relating to the structure and
1821 format of and content and items that shall be included in such assessments; (iv) include a comprehensive
1822 grading rubric for each mandatory local alternative assessment that (a) clearly defines student performance
1823 objectives and achievement targets, (b) provides scoring criteria that emphasizes student performance and
1824 subject-matter proficiency, and (c) for any performance assessment, includes criteria and student performance
1825 objectives designed to emphasize a student's performance and subject-matter proficiency as demonstrated
1826 through completion of the tested tasks in ways that are authentic to the academic discipline; and (v)
1827 emphasize collaboration between teachers to administer and substantiate the assessments and the professional
1828 development of teachers to enable them to make the best use of mandatory local alternative assessments.

1829 b. With such funds as may be appropriated for such purpose, except as provided in subdivision C 6, be
1830 developed consistent with Board guidelines and in accordance with subdivision 5; and

1831 c. Be used to identify students who show deficiencies or a need for academic support in a specific subject
1832 area or skill for the purpose of ensuring such students receive appropriate remediation or intervention. Local
1833 school divisions shall provide targeted mathematics remediation and intervention to students in grades six
1834 through eight who show computational deficiencies as demonstrated by their individual performance on any
1835 diagnostic test or grade-level Standards of Learning mathematics test that measures non-calculator
1836 computational skills.

1837 2. The assessments administered to students in grades nine through 12, except for ~~those students any~~
1838 *student who is a child with disabilities a disability*, as that term is defined in § 22.1-213, who ~~participate~~
1839 *participates* in an alternative *method of Standards of Learning* assessment *administration or in an alternate*
1840 *assessment* pursuant to subdivision C 6:

1841 a. Shall consist, for each student, of only the end-of-course Standards of Learning assessments necessary
1842 to meet federal accountability requirements established by the federal Elementary and Secondary Education
1843 Act of 1965, P.L. 89-10, as amended, and to meet Virginia high school graduation requirements. For the
1844 purposes of this subdivision, any student who receives a passing score on a permissive local alternative
1845 assessment administered pursuant to subdivision 3 b in lieu of any end-of-course Standards of Learning
1846 assessment corresponding to any graduation requirement shall be deemed to meet the applicable graduation
1847 requirement; and

1848 b. With such funds as may be appropriated for such purpose, except as provided in subdivision C 6, shall
1849 be developed consistent with Board guidelines and in accordance with the provisions of subdivision 5.

1850 3. Any end-of-course Standards of Learning assessment administered to students in grades three through
1851 12, except for ~~those students any student who is a child with disabilities a disability~~, as that term is defined in
1852 § 22.1-213, who ~~participate~~ *participates* in an alternative *method of Standards of Learning* assessment
1853 *administration or in an alternate assessment* pursuant to subdivision C 6, shall be subject to the following
1854 requirements:

1855 a. A school board may, but need not, elect to administer any available end-of-course Standards of

1856 Learning assessment in a specific Standards of Learning subject area to students in a specific grade level the
 1857 administration of which is (i) not necessary to meet federal accountability requirements established by the
 1858 federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended, and (ii) is not required by
 1859 the provisions of subdivision E 1 or 2 or by any other applicable state law or regulation. However, any school
 1860 board that elects to administer such an end-of-course Standards of Learning assessment pursuant to this
 1861 subdivision shall be required to administer such assessment to each student receiving instruction in that
 1862 subject area at that grade level;

1863 b. Any school board may, but need not, administer a permissive local alternative assessment in a specific
 1864 subject area to students in a specific grade level in lieu of any end-of-course Standards of Learning
 1865 assessment the administration of which is not necessary to meet federal accountability requirements
 1866 established by the federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended, but
 1867 which may be required in that subject area and at that grade level pursuant to state law or regulation; and

1868 c. Any student who performs below grade level on any such Standards of Learning assessment or any
 1869 permissive local alternative assessment administered pursuant to subdivision b shall be eligible to retake such
 1870 assessment, provided that (i) no student may retake an assessment after June 30 of the calendar year in which
 1871 the applicable assessment was administered, unless the school board of the school in which the student is
 1872 enrolled grants such student permission to retake such assessment at a later date; (ii) any student who,
 1873 pursuant to applicable Board regulations, is eligible for an expedited retake of an assessment shall retake such
 1874 assessment within two weeks of the date on which scoring was completed for such student's assessment,
 1875 unless it is determined that additional time is necessary in order for such student to complete the
 1876 comprehensive remediation program required to establish eligibility for an expedited retake in accordance
 1877 with Board regulations; and (iii) if applicable, the score any student receives on any assessment retake shall
 1878 not replace the initial score the student received on the assessment taken during the regular assessment
 1879 administration period for the purpose of calculating the student's final grade in the course in accordance with
 1880 subdivision 4.

1881 4. For students in grades seven through 12, except in the case of any assessments administered as a part of
 1882 a competency-based assessment system *and except for any student who is a child with a disability, as that*
 1883 *term is defined in § 22.1-213, who participates in an alternative method of Standards of Learning assessment*
 1884 *administration or in an alternate assessment pursuant to subdivision C 6*, any Standards of Learning
 1885 assessment or permissive local alternative assessment permitted pursuant to subdivision 3 b or, if any such
 1886 assessment consists of more than one part, each of which has a separate administration period, the final part
 1887 of any such end-of-course assessment shall be administered no earlier than two weeks prior to the last day of
 1888 the school year. No additional end-of-course assessment shall be administered for any such Standards of
 1889 Learning subject area. Each student's score on any such assessment shall account for at least 10 percent of the
 1890 student's final grade in such course.

1891 5. For the purpose of maximizing instructional time, the frequency of assessment administration for any
 1892 assessment administered pursuant to the provisions of this section, including any Standards of Learning
 1893 assessment, mandatory local alternative assessment administered in accordance with subdivision 1 a (2),
 1894 permissive local alternative assessment administered in accordance with subdivision 3 b, or performance
 1895 assessment administered as a part of any school board's mandatory local alternative assessment plan, or any
 1896 combination thereof, for each Standards of Learning subject area in a single school year shall not exceed one
 1897 such assessment per academic quarter, or a total of four assessments per year.

1898 6. For any student awarded a scholarship under the Brown v. Board of Education Scholarship Program,
 1899 pursuant to § 30-231.2, who is enrolled in a preparation program for a high school equivalency examination
 1900 approved by the Board or in an adult basic education program or an adult secondary education program to
 1901 obtain the high school diploma or a high school equivalency certificate, the Standards of Learning
 1902 requirements, including all related assessments, shall be waived.

1903 F. The Board may pursue all available civil remedies pursuant to § 22.1-19.1 or administrative action
 1904 pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of test materials or test
 1905 results.

1906 The Board may initiate or cause to be initiated a review or investigation of any alleged breach in security,
 1907 unauthorized alteration, or improper administration of tests, including the exclusion of students from testing
 1908 who are required to be assessed, by local school board employees responsible for the distribution or
 1909 administration of the tests.

1910 Records and other information furnished to or prepared by the Board during the conduct of a review or
 1911 investigation may be withheld pursuant to subdivision 10 of § 2.2-3705.3. However, this section shall not
 1912 prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of
 1913 permitting such board or superintendent to consider or to take personnel action with regard to an employee or
 1914 (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the
 1915 identity of any person making a complaint or supplying information to the Board on a confidential basis and
 1916 (b) does not compromise the security of any test mandated by the Board. Any local school board or division
 1917 superintendent receiving such records or other information shall, upon taking personnel action against a

1918 relevant employee, place copies of such records or information relating to the specific employee in such
1919 person's personnel file.

1920 Notwithstanding any other provision of state law, no test or examination authorized by this section,
1921 including the Standards of Learning assessments, shall be released or required to be released as minimum
1922 competency tests, if, in the judgment of the Board, such release would breach the security of such test or
1923 examination or deplete the bank of questions necessary to construct future secure tests.

1924 G. With such funds as may be appropriated, the Board may provide, through an agreement with vendors
1925 having the technical capacity and expertise to provide computerized tests and assessments, and test
1926 construction, analysis, and security, for (i) web-based computerized tests and assessments, including
1927 computer-adaptive Standards of Learning assessments, for the evaluation of student progress during and after
1928 remediation and (ii) the development of a remediation item bank directly related to the Standards of Learning.

1929 H. To assess the educational progress of students as individuals and as groups, each local school board
1930 shall require the use of Standards of Learning assessments, alternative assessments, and other relevant data,
1931 such as industry certification and state licensure examinations, to evaluate student progress and to determine
1932 educational performance. Each local school board shall require the administration of appropriate assessments
1933 to students, which may include criterion-referenced tests and teacher-made tests and shall include the
1934 Standards of Learning assessments, the local school board's alternative assessments, and the National
1935 Assessment of Educational Progress state-by-state assessment. Each school board shall provide teachers,
1936 parents, principals, and other school leaders with their students' results on any Standards of Learning
1937 assessment or Virginia Alternate Assessment Program assessment as soon as practicable after the assessment
1938 is administered. Each school board shall analyze and report annually, in compliance with any criteria that
1939 may be established by the Board, the results from industry certification examinations and the Standards of
1940 Learning assessments to the public.

1941 The Board shall include requirements for the reporting of the Standards of Learning assessment data,
1942 regardless of accreditation frequency, as part of the Board's requirements relating to the School Performance
1943 Report Card. Such scores shall be disaggregated for each school by student subgroups on the Virginia
1944 ~~assessment program~~ *Assessment Program* as appropriate and shall be reported to the public within three
1945 months of their receipt. These reports (i) shall be posted on the portion of the Department's website relating to
1946 the School Performance Report Card, in a format and in a manner that allows year-to-year comparisons, and
1947 (ii) may include the National Assessment of Educational Progress state-by-state assessment.

1948 I. Each local school division superintendent shall regularly review the division's submission of data and
1949 reports required by state and federal law and regulations to ensure that all information is accurate and
1950 submitted in a timely fashion. The Superintendent shall provide a list of the required reports and data to
1951 division superintendents annually. The status of compliance with this requirement shall be included in the
1952 Board's annual report to the Governor and the General Assembly as required by § 22.1-18.

1953 J. Any school board may request the Board for release from state regulations or, on behalf of one or more
1954 of its schools, for approval of an Individual School Accreditation Plan for the evaluation of the performance
1955 of one or more of its schools as authorized for certain other schools by the Standards for Accreditation
1956 pursuant to 8VAC20-131-280 C of the Virginia Administrative Code. Waivers of regulatory requirements
1957 may be granted by the Board based on submission of a request from the division superintendent and chairman
1958 of the local school board. The Board may grant, for a period up to five years, a waiver of regulatory
1959 requirements that are not (i) mandated by state or federal law or (ii) designed to promote health or safety. The
1960 school board shall provide in its waiver request a description of how the releases from state regulations are
1961 designed to increase the quality of instruction and improve the achievement of students in the affected school
1962 or schools. The Department shall provide (a) guidance to any local school division that requests releases from
1963 state regulations and (b) information about opportunities to form partnerships with other agencies or entities
1964 to any local school division in which the school or schools granted releases from state regulations have
1965 demonstrated improvement in the quality of instruction and the achievement of students.

1966 The Board may also grant local school boards waivers of specific requirements in § 22.1-253.13:2, based
1967 on submission of a request from the division superintendent and chairman of the local school board,
1968 permitting the local school board to assign instructional personnel to the schools with the greatest needs, so
1969 long as the school division employs a sufficient number of personnel divisionwide to meet the total number
1970 required by § 22.1-253.13:2 and all pupil/teacher ratios and class size maximums set forth in subsection C of
1971 § 22.1-253.13:2 are met. The school board shall provide in its request a description of how the waivers from
1972 specific Standards of Quality staffing standards are designed to increase the quality of instruction and
1973 improve the achievement of students in the affected school or schools. The waivers may be renewed in up to
1974 five-year increments, or revoked, based on student achievement results in the affected school or schools.

1975 K. As used in this section:

1976 "End-of-course Standards of Learning assessment" means any end-of-course, end-of-grade, or end-of-year
1977 Standards of Learning assessment or any Standards of Learning assessment administered at the conclusion of
1978 a course, grade, or school year.

1979 "Local alternative assessment" means (i) an assessment that measures content and skills within a specific

1980 Standards of Learning subject area that is accepted by institutions of higher education as a measure of college
 1981 readiness, including Advanced Placement, International Baccalaureate, or Cambridge assessments, or (ii) any
 1982 mandatory local alternative assessment developed, administered, and scored by a local school board, that is
 1983 approved by the Board as aligned with the rigor of Standards of Learning content, assessments, and the
 1984 Board's definition of proficiency for any Standards of Learning subject area. "Local alternative assessment"
 1985 includes any mandatory local alternative assessment and any permissive local alternative assessment.

1986 "Mandatory local alternative assessment" means any local alternative assessment that each local school
 1987 board is required to develop, administer, and score, consistent with Board guidelines, for any Standards of
 1988 Learning subject area in which a Standards of Learning assessment is not currently available or administered
 1989 on a statewide basis. "Mandatory local alternative assessment" includes any performance assessment
 1990 implemented by a local school board as a part of its local alternative assessment plan in accordance with
 1991 Department guidelines.

1992 "Performance assessment" means an assessment that is approved by the Board as aligned with both the
 1993 rigor of the content of the Standards of Learning and the Board's definition of proficiency and is scored using
 1994 a set rubric or set of criteria and that is designed to measure subject-matter proficiency by requiring students
 1995 to demonstrate learning acquisition and apply content, skills, and processes in the applicable subject area
 1996 through performing a task or creating a project.

1997 "Permissive local alternative assessment" means any local alternative assessment that a local school board
 1998 may, consistent with Board guidelines and in accordance with the provisions of this section, develop,
 1999 administer, and score in lieu of any Standards of Learning assessment that is otherwise administered on a
 2000 statewide basis but the administration of which is not necessary to meet federal accountability requirements.

2001 "Standards of Learning assessment" means those criterion-referenced assessments approved by the Board
 2002 that measure attainment of knowledge and skills required by the Standards of Learning. "Standards of
 2003 Learning assessment" includes any end-of-course standards of learning assessment.

2004 **§ 22.1-253.13:4. Standard 4. Student achievement and graduation requirements.**

2005 A. Each local school board shall award diplomas to all secondary school students, including students who
 2006 transfer from nonpublic schools or from home instruction, who meet the requirements prescribed by the
 2007 Board and meet such other requirements as may be prescribed by the local school board and approved by the
 2008 Board. Provisions shall be made to facilitate the transfer and appropriate grade placement of students from
 2009 other public secondary schools, from nonpublic schools, or from home instruction as outlined in the standards
 2010 for accreditation. The standards for accreditation shall include provisions relating to the completion of
 2011 graduation requirements through Virtual Virginia. Further, reasonable accommodation to meet the
 2012 requirements for diplomas shall be provided for otherwise qualified students with disabilities as needed.

2013 In addition, each local school board may devise, vis-a-vis the award of diplomas to secondary school
 2014 students, a mechanism for calculating class rankings that takes into consideration whether the student has
 2015 taken a required class more than one time and has had any prior earned grade for such required class
 2016 expunged.

2017 Each local school board shall notify the parents of rising eleventh and twelfth grade students of (i) the
 2018 requirements for graduation pursuant to the standards for accreditation and (ii) the requirements that have yet
 2019 to be completed by the individual student.

2020 B. ~~Students~~ Any student identified as ~~disabled~~ *a child with a disability, as that term is defined in*
 2021 *§ 22.1-213, who completes:*

2022 1. ~~Complete alternative~~ *Alternative* requirements, in the form of credit accommodations specified in ~~their~~
 2023 ~~individualized education programs~~ *the child's IEP*, to earn required standard and verified credits shall be
 2024 awarded standard diplomas by local school boards. Such credit accommodations may include (i) approval of
 2025 alternative courses to meet standard credit requirements, (ii) modifications to the requirements for local
 2026 school divisions to award locally awarded verified credits, (iii) approval of additional tests to earn verified
 2027 credits, (iv) adjusted cut scores required to earn verified credits, (v) allowance of work-based learning
 2028 experiences, and (vi) special permission credit accommodations for locally awarded verified credits; and

2029 2. ~~Complete the~~ *The* requirements of ~~their individualized education programs~~ *the child's IEP* and ~~meet~~
 2030 *meets* certain requirements prescribed by the Board pursuant to regulations but ~~do~~ *does* not meet the
 2031 requirements for any named diploma shall be awarded ~~an Applied Studies diploma~~ *diploma* by the local
 2032 school ~~boards~~ *board*. The Board shall develop and implement statewide requirements for earning an Applied
 2033 Studies diploma for implementation at the beginning of the 2022-2023 school year.

2034 The Department shall develop guidance, in multiple languages, for students and parents (i) informing
 2035 them of the alternative path to earn a standard diploma through credit accommodations, including special
 2036 permission credit accommodations for locally awarded verified credits; (ii) conveying (a) the limitations of
 2037 the applied studies diploma, (b) key curriculum and testing decisions that reduce the likelihood that a student
 2038 will be able to obtain a standard diploma, and (c) a statement that the pursuit of an applied studies diploma
 2039 may preclude a student's ability to pursue a standard diploma; and (iii) supporting them to discuss these
 2040 diploma options at the student's ~~individualized education program~~ *IEP* meetings.

2041 Each local school board shall develop a process for awarding locally verified credits to ~~students~~ *any*

2042 *student who is a child with disabilities a disability*, require ~~individualized education program~~ IEP teams to
 2043 consider credit accommodations, including locally awarded verified credits, for ~~students~~ *any student who is a*
 2044 *child with disabilities a disability* to enable ~~them~~ *him* to earn a standard diploma, and provide guidance from
 2045 the Department to ~~parents~~ *the parents of students a student who is a child with disabilities a disability*
 2046 regarding the availability of credit accommodations to earn a standard diploma and the limitations of the
 2047 Applied Studies diploma at a student's annual ~~individualized education program~~ IEP meeting corresponding
 2048 to grades three through 12 when curriculum or statewide assessment decisions are being made that impact the
 2049 type of diploma for which the student can qualify.

2050 Each local school board shall notify the parent of ~~any such students~~ *student who is a child with disabilities*
 2051 *a disability* who ~~have~~ *has* an ~~individualized education program~~ IEP and who ~~fail~~ *fails* to meet the graduation
 2052 requirements of the student's right to a free ~~and~~ appropriate education to age 21, inclusive, pursuant to Article
 2053 2 (§ 22.1-213 et seq.) of Chapter 13.

2054 C. Students who have completed a prescribed course of study as defined by the local school board shall be
 2055 awarded certificates of program completion by local school boards if they are not eligible to receive a Board-
 2056 approved diploma.

2057 Each local school board shall provide notification of the right to a free public education for students who
 2058 have not reached 20 years of age on or before August 1 of the school year, pursuant to Chapter 1 (§ 22.1-1 et
 2059 seq.), to the parent of students who fail to graduate or who have failed to achieve graduation requirements as
 2060 provided in the standards for accreditation. If such student who does not graduate or complete such
 2061 requirements is a student for whom English is a second language, the local school board shall notify the
 2062 parent of the student's opportunity for a free public education in accordance with § 22.1-5.

2063 D. In establishing graduation requirements, the Board shall:

2064 1. Develop and implement, in consultation with stakeholders representing elementary and secondary
 2065 education, higher education, and business and industry in the Commonwealth and including parents,
 2066 policymakers, and community leaders in the Commonwealth, a Profile of a Virginia Graduate that identifies
 2067 the knowledge and skills that students should attain during high school in order to be successful contributors
 2068 to the economy of the Commonwealth, giving due consideration to critical thinking, creative thinking,
 2069 collaboration, communication, and citizenship.

2070 2. Emphasize the development of core skill sets in the early years of high school.

2071 3. Establish multiple paths toward college and career readiness for students to follow in the later years of
 2072 high school. Each such pathway shall include opportunities for internships, externships, and credentialing.

2073 4. Provide for the selection of integrated learning courses meeting the Standards of Learning and approved
 2074 by the Board to satisfy graduation requirements, which shall include Standards of Learning testing, as
 2075 necessary.

2076 5. Require students to complete at least one course in fine or performing arts or career and technical
 2077 education, one course in United States and Virginia history, and two sequential elective courses chosen from
 2078 a concentration of courses selected from a variety of options that may be planned to ensure the completion of
 2079 a focused sequence of elective courses that provides a foundation for further education or training or
 2080 preparation for employment.

2081 6. Require that students (i) complete an Advanced Placement, honors, International Baccalaureate, or dual
 2082 enrollment course; (ii) complete a high-quality work-based learning experience, as defined by the Board; or
 2083 (iii) earn a career and technical education credential that has been approved by the Board, including its
 2084 diploma seal of biliteracy established pursuant to subdivision E 4, except when a career and technical
 2085 education credential in a particular subject area is not readily available or appropriate or does not adequately
 2086 measure student competency, in which case the student shall receive satisfactory competency-based
 2087 instruction in the subject area to earn credit. The career and technical education credential, when required,
 2088 could include the successful completion of an industry certification, a state licensure examination, a national
 2089 occupational competency assessment, the Armed Services Vocational Aptitude Battery, the Virginia
 2090 workplace readiness skills assessment, or, in the case of the diploma seal of biliteracy, any examination set
 2091 forth in subdivision E 4. The Department shall develop, maintain, and make available to each local school
 2092 board a catalogue of the testing accommodations available to English language learners for each such
 2093 certification, examination, assessment, and battery. Each local school board shall develop and implement
 2094 policies to require each high school principal or his designee to notify each English language learner of the
 2095 availability of such testing accommodations prior to the student's participation in any such certification,
 2096 examination, assessment, or battery.

2097 7. Require students to be trained in emergency first aid, cardiopulmonary resuscitation, and the use of
 2098 automated external defibrillators, including hands-on practice of the skills necessary to perform
 2099 cardiopulmonary resuscitation.

2100 8. Make provision in its regulations for students with disabilities to earn a diploma.

2101 9. Require students to complete one virtual course, which may be a noncredit-bearing course.

2102 10. Provide that students who complete elective classes into which the Standards of Learning for any
 2103 required course have been integrated and achieve a passing score on the relevant Standards of Learning test

- 2104 for the relevant required course receive credit for such elective class.
- 2105 11. Establish a procedure to facilitate the acceleration of students that allows qualified students, with the
- 2106 recommendation of the division superintendent, without completing the 140-hour class, to obtain credit for
- 2107 such class upon demonstrating mastery of the course content and objectives and receiving a passing score on
- 2108 the relevant Standards of Learning assessment. Nothing in this section shall preclude relevant school division
- 2109 personnel from enforcing compulsory attendance in public schools.
- 2110 12. Provide for the award of credit for passing scores on industry certifications, state licensure
- 2111 examinations, and national occupational competency assessments approved by the Board.
- 2112 School boards shall report annually to the Board the number of Board-approved industry certifications
- 2113 obtained, state licensure examinations passed, national occupational competency assessments passed, Armed
- 2114 Services Vocational Aptitude Battery assessments passed, and Virginia workplace readiness skills
- 2115 assessments passed, and the number of career and technical education completers who graduated. These
- 2116 numbers shall be reported as separate categories on the School Performance Report Card.
- 2117 For the purposes of this subdivision, "career and technical education completer" means a student who has
- 2118 met the requirements for a career and technical concentration or specialization and all requirements for high
- 2119 school graduation or an approved alternative education program.
- 2120 In addition, the Board may:
- 2121 a. For the purpose of awarding credit, approve the use of additional or substitute tests for the correlated
- 2122 Standards of Learning assessment, such as academic achievement tests, industry certifications, or state
- 2123 licensure examinations; and
- 2124 b. Permit students completing career and technical education programs designed to enable such students
- 2125 to pass such industry certification examinations or state licensure examinations to be awarded, upon obtaining
- 2126 satisfactory scores on such industry certification or licensure examinations, appropriate credit for one or more
- 2127 career and technical education classes into which relevant Standards of Learning for various classes taught at
- 2128 the same level have been integrated. Such industry certification and state licensure examinations may cover
- 2129 relevant Standards of Learning for various required classes and may, at the discretion of the Board, address
- 2130 some Standards of Learning for several required classes.
- 2131 13. Provide for the waiver of certain graduation requirements and the subsequent award of a high school
- 2132 diploma (i) upon the Board's initiative, (ii) at the request of a local school board, or (iii) upon the request of
- 2133 the parent of any high school senior who died in good standing prior to graduation during the student's senior
- 2134 year. Such waivers shall be granted only for good cause and shall be considered on a case-by-case basis.
- 2135 14. Consider all computer science course credits earned by students to be science course credits,
- 2136 mathematics course credits, or career and technical education credits. The Board shall develop guidelines
- 2137 addressing how computer science courses can satisfy graduation requirements.
- 2138 15. Permit local school divisions to waive the requirement for students to receive 140 clock hours of
- 2139 instruction upon providing the Board with satisfactory proof, based on Board guidelines, that the students for
- 2140 whom such requirements are waived have learned the content and skills included in the relevant Standards of
- 2141 Learning.
- 2142 16. Provide for the award of verified units of credit for a satisfactory score, as determined by the Board,
- 2143 on the Preliminary ACT (PreACT) or Preliminary SAT/National Merit Scholarship Qualifying Test
- 2144 (PSAT/NMSQT) examination.
- 2145 17. Permit students to exceed a full course load in order to participate in courses offered by an institution
- 2146 of higher education that lead to a degree, certificate, or credential at such institution.
- 2147 18. Permit local school divisions to waive the requirement for students to receive 140 clock hours of
- 2148 instruction after the student has completed the course curriculum and relevant Standards of Learning end-of-
- 2149 course assessment, or Board-approved substitute, provided that such student subsequently receives
- 2150 instruction, coursework, or study toward an industry certification approved by the local school board.
- 2151 19. Permit any English language learner who previously earned a sufficient score on an Advanced
- 2152 Placement or International Baccalaureate foreign language examination or an SAT II Subject Test in a
- 2153 foreign language to substitute computer coding course credit for any foreign language course credit required
- 2154 to graduate, except in cases in which such foreign language course credit is required to earn an advanced
- 2155 diploma offered by a nationally recognized provider of college-level courses.
- 2156 20. Permit a student who is pursuing an advanced diploma and whose ~~individualized education program~~
- 2157 *IEP* specifies a credit accommodation for world language to substitute two standard units of credit in
- 2158 computer science for two standard units of credit in a world language. For any student that elects to substitute
- 2159 a credit in computer science for credit in world language, his or her school counselor must provide notice to
- 2160 the student and parent or guardian of possible impacts related to college entrance requirements.
- 2161 21. Permit any student to substitute elective credits for completion of any industry-approved workforce
- 2162 credential, provided that such credential is included on the list of credentials that are uniformly accepted as
- 2163 substitutes for such required credits developed and maintained by the Board pursuant to subsection F of
- 2164 § 22.1-253.13:1.
- 2165 E. In the exercise of its authority to recognize exemplary performance by providing for diploma seals:

2166 1. The Board shall develop criteria for recognizing exemplary performance in career and technical
 2167 education programs by students who have completed the requirements for a ~~Board of Education-approved~~
 2168 *Board-approved* diploma and shall award seals on the diplomas of students meeting such criteria.

2169 2. The Board shall establish criteria for awarding a diploma seal for science, technology, engineering, and
 2170 mathematics (STEM) for the Board-approved diplomas. The Board shall consider including criteria for (i)
 2171 relevant coursework; (ii) technical writing, reading, and oral communication skills; (iii) relevant training; and
 2172 (iv) industry, professional, and trade association national certifications.

2173 3. The Board shall establish criteria for awarding a diploma seal for excellence in civics education and
 2174 understanding of our state and federal constitutions and the democratic model of government for the Board-
 2175 approved diplomas. The Board shall consider including criteria for (i) successful completion of history,
 2176 government, and civics courses, including courses that incorporate character education; (ii) voluntary
 2177 participation in community service or extracurricular activities that includes the types of activities that shall
 2178 qualify as community service and the number of hours required; and (iii) related requirements as it deems
 2179 appropriate.

2180 4. The Board shall establish criteria for awarding a diploma seal of biliteracy to any student who
 2181 demonstrates proficiency in English and at least one other language for the Board-approved diplomas. The
 2182 Board shall consider criteria including the student's (i) score on a College Board Advanced Placement foreign
 2183 language examination, (ii) score on an SAT II Subject Test in a foreign language, (iii) proficiency level on an
 2184 ACTFL Assessment of Performance toward Proficiency in Languages (AAPPL) measure or another
 2185 nationally or internationally recognized language proficiency test, or (iv) cumulative grade point average in a
 2186 sequence of foreign language courses approved by the Board.

2187 F. The Board shall establish, by regulation, requirements for the award of a general achievement adult
 2188 high school diploma for those persons who are not subject to the compulsory school attendance requirements
 2189 of § 22.1-254 and have (i) achieved a passing score on a high school equivalency examination approved by
 2190 the Board; (ii) successfully completed an education and training program designated by the Board; (iii)
 2191 earned a Board-approved career and technical education credential such as the successful completion of an
 2192 industry certification, a state licensure examination, a national occupational competency assessment, the
 2193 Armed Services Vocational Aptitude Battery, or the Virginia workplace readiness skills assessment; and (iv)
 2194 satisfied other requirements as may be established by the Board for the award of such diploma.

2195 G. To ensure the uniform assessment of high school graduation rates, the Board shall collect, analyze,
 2196 report, and make available to the public high school graduation and dropout data using a formula prescribed
 2197 by the Board.

2198 H. The Board shall also collect, analyze, report, and make available to the public high school graduation
 2199 and dropout data using a formula that excludes any student who fails to graduate because such student is in
 2200 the custody of the Department of Corrections, the Department of Juvenile Justice, or local law enforcement.
 2201 For the purposes of the Standards of Accreditation, the Board shall use the graduation rate required by this
 2202 subsection.

2203 I. The Board may promulgate such regulations as may be necessary and appropriate for the collection,
 2204 analysis, and reporting of such data required by subsections G and H.

2205 **§ 22.1-269.1. Alternative attendance programs.**

2206 A. The Board of Education shall promulgate regulations for the voluntary participation of school divisions
 2207 in programs to allow each school-age child to receive educational services at another public school, either in
 2208 the division in which the child resides or in another division, as selected by the child's parent or guardian.
 2209 Each public school in a school division participating in an alternative attendance program shall be eligible to
 2210 participate in an alternative attendance program unless exceptional circumstances, as defined by the Board of
 2211 Education, render the participation of the school contrary to public interest.

2212 B. The Board's regulations shall be promulgated under the provisions of the Administrative Process Act
 2213 (§ 2.2-4000 et seq.) and shall include, ~~but shall not be limited to,~~ provisions ~~which~~ that address the following:
 2214 the required acknowledgement by a local school of its decision to participate in an alternative attendance
 2215 program, including school board resolutions for intradistrict programs and agreements between divisions
 2216 participating in interdistrict programs; the equitable allocation of places to accommodate students when there
 2217 are insufficient places to serve such students; transportation and school bus scheduling needs within the local
 2218 school divisions; school enrollment capacity, class size, pupil-teacher ratios, and staffing levels for related
 2219 instructional, administrative, and supervisory personnel as required by the Standards of Quality and the
 2220 Standards for Accrediting Public Schools; the adequacy of school resources to accommodate an increase in
 2221 student enrollment, grade level designations, and course offerings; the enrollment of students whose
 2222 education is subject to an ~~individualized education plan (I.E.P.) as required under P.L. 94-142 as amended~~
 2223 *IEP pursuant to § 22.1-215.4*; the preservation of the uniqueness of schools established for particular
 2224 educational purposes; the fiscal impact of accommodating parental preference on local school divisions; in
 2225 the case of interdistrict attendance programs, the establishment of tuition charges authorized by § 22.1-5; and
 2226 the need to maintain racial balance in the public schools. The regulations shall also establish the value of
 2227 educational services, based on consideration of per pupil expenditures and state aid in the affected school.

2228 Any local school board which has been ordered by a state or federal court to achieve racial balance in its
2229 public schools shall maintain such racial balance when accommodating preference in the assignment of
2230 children to a school.

2231 C. From such funds as may be appropriated, the Board shall provide for the independent evaluation of this
2232 alternative attendance program and shall submit the evaluation to the Governor, the Senate, and the House of
2233 Delegates by January 1 of each year.

2234 **§ 22.1-273. Vision and hearing of student to be tested; exceptions.**

2235 A. As used in this section:

2236 "Comprehensive vision program" means a program that incorporates the following quality-controlled
2237 requirements:

2238 1. Program staff who perform vision screenings and administer and maintain student paperwork and data
2239 related to such screenings are credentialed pursuant to a credentialing process that includes training and
2240 certification on vision screening equipment; documentation of negative tuberculosis risk assessment or
2241 screening, as required by local school boards; and documentation from the employing qualified nonprofit
2242 vision health organization certifying completion of a search of the registry of founded complaints of child
2243 abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515 and a search of
2244 the Central Criminal Records Exchange through the Federal Bureau of Investigation based on fingerprints
2245 and personal descriptive information for the purpose of obtaining criminal history record information;

2246 2. The vision screening program is based on best practices as determined by scientific research and
2247 program performance and is evaluated by an advisory council consisting of (i) representatives of the
2248 ophthalmology and optometry fields and (ii) members from elementary and secondary education and school
2249 health to support the implementation of best practices and administrative policies to ensure compliance with
2250 Department of Education requirements;

2251 3. Vision screening results are communicated to parents in a relevant and informative format that is
2252 designed to increase parental awareness and encourage parental action;

2253 4. Parents receive information on the difference between vision screenings and eye examinations, the
2254 importance of taking action on a referral for an eye examination by taking their child to a licensed optometrist
2255 or ophthalmologist, the identification of potential vision problems beyond the results or scope of the vision
2256 screening, and the importance of vision to a child's education and success;

2257 5. Parents are provided with information regarding follow-up resources related to eye examinations and
2258 eyeglasses; and

2259 6. Vision screening results are managed for the purposes of reporting, outcome measurement, and
2260 program analysis.

2261 "Qualified nonprofit vision health organization" means a nonprofit organization that is exempt from
2262 taxation under § 501(c)(3) or 501(c)(4) of the Internal Revenue Code, has at least 10 years of direct
2263 experience in the delivery of vision and vision education services, and does not directly or indirectly derive
2264 profit from the sale of vision equipment, insurance, medication, merchandise, or vision-related products.

2265 B. The Superintendent of ~~Public Instruction~~ shall prepare or cause to be prepared, with the advice and
2266 approval of the State Health Commissioner, suitable appliances for testing the hearing of the students in the
2267 public schools and necessary instructions for the use thereof. The Department of ~~Education~~ shall furnish the
2268 same free of expense to all schools in a school division upon request of the school board of such division
2269 accompanied by a resolution of the school board directing the use of such appliances in the schools of the
2270 school division.

2271 C. Within the time periods and at the grades provided in regulations promulgated by the Board, the
2272 principal of each such school shall cause the hearing of the relevant students in the school to be tested, unless:

2273 1. Any such student is admitted for the first time to a public elementary school and has been so tested as
2274 part of the comprehensive physical examination required by § 22.1-270;

2275 2. The parents or guardians of any such student object on religious grounds and the student shows no
2276 obvious evidence of any defect or disease of the ears; or

2277 3. Any such student has an ~~Individualized Education Program~~ *IEP* or a Section 504 Plan *pursuant to*
2278 *Article 2 (§ 22.1-213 et seq.) of Chapter 13* that documents a defect of hearing or a disease of the ears and the
2279 principal determines that such a test would not identify any previously unknown defect of hearing or a
2280 disease of the ears.

2281 D. The principal shall keep a record of examinations conducted pursuant to subsection C in accordance
2282 with instructions furnished.

2283 E. Whenever a student is found to have any defect of hearing or a disease of the ears, the principal shall
2284 forthwith notify the parent or guardian, in writing, of such defect or disease. Copies of the report shall be
2285 preserved for the use of the Superintendent of ~~Public Instruction~~ as he may require.

2286 F. The principal of each public elementary school shall cause the vision of students enrolled in
2287 kindergarten and students enrolled in grade two or grade three to be tested, unless:

2288 1. Any such student is admitted for the first time to a public elementary school and produces a written
2289 record of a comprehensive eye examination performed within the preceding 24 months;

2290 2. The parents or guardians of such student object on religious grounds and the student shows no obvious
 2291 evidence of any defect or disease of the eyes; or

2292 3. Any such student has an ~~Individualized Education Program~~ *IEP* or a Section 504 Plan *pursuant to*
 2293 *Article 2 (§ 22.1-213 et seq.) of Chapter 13* that documents a defect of vision or a disease of the eyes and the
 2294 principal determines that such a test would not identify any previously unknown defect of vision or a disease
 2295 of the eyes.

2296 Any such screening may be conducted by a qualified nonprofit vision health organization that uses a
 2297 digital photoscreening method pursuant to a comprehensive vision program or other methods that comply
 2298 with Department of ~~Education~~ requirements. Notwithstanding any other provision of law, such screenings
 2299 may be conducted at any time during the school year; however, the scheduling of such screenings shall be
 2300 completed no later than the sixtieth administrative working day of the school year. The principal shall keep a
 2301 record of such screenings in accordance with instructions furnished. Whenever a student does not receive a
 2302 passing result on such screening and requires referral to an optometrist or ophthalmologist for a
 2303 comprehensive eye examination, the principal shall cause the parent or guardian to be notified in writing.
 2304 Copies of the report shall be preserved for the use of the Superintendent of ~~Public Instruction~~ as he may
 2305 require.

2306 G. The principal of each public middle school and high school shall cause the vision of students enrolled
 2307 in grade seven and grade 10 to be tested, unless:

2308 1. Any such student produces a written record of a comprehensive eye examination performed within the
 2309 preceding 24 months;

2310 2. The parents or guardians of any such student object on religious grounds and the student shows no
 2311 obvious evidence of any defect or disease of the eyes; or

2312 3. Any such student has an ~~Individualized Education Program~~ *IEP* or a Section 504 Plan *pursuant to*
 2313 *Article 2 (§ 22.1-213 et seq.) of Chapter 13* that documents a defect of vision or a disease of the eyes and the
 2314 principal determines that such a test would not identify any previously unknown defect of vision or a disease
 2315 of the eyes.

2316 Any such screening may be conducted by a qualified nonprofit vision health organization that uses a
 2317 digital photoscreening method pursuant to a comprehensive vision program or other methods that comply
 2318 with Department of ~~Education~~ requirements. Notwithstanding any other provision of law, such screenings
 2319 may be conducted at any time during the school year; however, the scheduling of such screenings shall be
 2320 completed no later than the sixtieth administrative working day of the school year. The principal shall keep a
 2321 record of such screenings in accordance with instructions furnished. Whenever a student does not receive a
 2322 passing result on such screening and requires referral to an optometrist or ophthalmologist for a
 2323 comprehensive eye examination, the principal shall cause the parent or guardian to be notified in writing.
 2324 Copies of the report shall be preserved for the use of the Superintendent of ~~Public Instruction~~ as he may
 2325 require.

2326 H. School boards may enter into contracts with qualified nonprofit vision health organizations for the
 2327 purpose of conducting screenings pursuant to subsections F and G.

2328 **§ 22.1-274.02. Certain memorandum of agreement required.**

2329 A. The Superintendent of ~~Public Instruction~~ or his designee and the Director of the Department of
 2330 Medical Assistance Services or his designee shall develop and execute a memorandum of agreement relating
 2331 to special education health services. This memorandum of agreement shall be revised on a periodic basis;
 2332 however, the agreement shall, at a minimum, be revised and executed within six months of the inauguration
 2333 of a new governor in order to maintain policy integrity.

2334 B. The agreement shall include; ~~but need not be limited to~~; (i) requirements for regular and consistent
 2335 communications and consultations between the two departments and with school division personnel and
 2336 officials and school board representatives; (ii) a specific and concise description and history of the federal
 2337 Individuals with Disabilities Education Act (IDEA) (*P.L. 101-476*), a summary of school division
 2338 responsibilities pursuant to the ~~Individuals with Disabilities Education Act~~ *IDEA*, and a summary of any
 2339 corresponding state law which influences the scope of these responsibilities; (iii) a specific and concise
 2340 summary of the then-current Department of Medical Assistance Services regulations regarding the special
 2341 education health services; (iv) assignment of the specific responsibilities of the two state departments for the
 2342 operation of special education health services; (v) a schedule of issues to be resolved through the regular and
 2343 consistent communications process, including, but not limited to, ways to integrate and coordinate care
 2344 between the Department of Medical Assistance Services' managed care providers and special education
 2345 health services providers; (vi) a process for the evaluation of the services which may be delivered by school
 2346 divisions participating as special education health services providers pursuant to Medicaid; (vii) a plan and
 2347 schedule to reduce the administrative and paperwork burden of Medicaid participation on school divisions in
 2348 ~~Virginia~~ *the Commonwealth*; and (viii) a mechanism for informing primary care providers and other case
 2349 management providers of those school divisions that are participating as Medicaid providers and for
 2350 identifying such school divisions as Medicaid providers that are available to receive referrals to provide
 2351 special education health services.

2352 C. The Board of Education shall cooperate with the Board of Medical Assistance Services in developing a
 2353 form to be included with the ~~Individualized Education Plan (IEP)~~ IEP that shall be accepted by the
 2354 Department of Medical Assistance Services as the plan of care (POC) and in collecting the data necessary to
 2355 establish separate and specific Medicaid rates for the IEP meetings and other services delivered by school
 2356 divisions to students.

2357 The POC form shall (i) be consistent with the plan of care required by the Department of Medical
 2358 Assistance Services of other Medicaid providers, (ii) allow for written updates, (iii) be used by all school
 2359 divisions participating as Medicaid providers of special education health services, (iv) document the student's
 2360 progress, and (v) be integrated and coordinated with the Department of Medical Assistance Services'
 2361 managed care providers.

2362 D. The Department of Education shall prepare, upon consultation with the Department of Medical
 2363 Assistance Services, a consent form which (i) is separate from the IEP, (ii) includes a statement noting that
 2364 such form is not part of the student's IEP, (iii) includes a release to authorize billing of school-based health
 2365 services delivered to the relevant student by the school division, and (iv) shall be used by all school divisions
 2366 participating in Medicaid reimbursement. This consent form shall be made available to the parents upon
 2367 conclusion of the IEP meeting. The release shall allow for billing of school-based health services by Virginia
 2368 school divisions *in the Commonwealth* to the Virginia Medicaid program and other programs operated by the
 2369 Department of Medical Assistance Services.

2370 E. The Department of Education and the Department of Medical Assistance Services shall also develop a
 2371 cost-effective, efficient, and appropriate process to allow school divisions access to eligibility data for
 2372 students for whom consent has been obtained.

2373 **§ 22.1-274.6. Seizure management and action plan; training.**

2374 A. The parent or guardian of a student with a diagnosed seizure disorder may submit to the local school
 2375 division a seizure management and action plan developed by the student's treating physician for review by
 2376 school division employees with whom the student has regular contact. The seizure management and action
 2377 plan shall (i) identify the health care services the student may receive at school or while participating in a
 2378 school activity, (ii) identify seizure-related medication prescribed to the student that must be administered in
 2379 the event of a seizure, including those administered in compliance with subdivision H 2 of § 22.1-274.2 and
 2380 subsection BB of § 54.1-3408, (iii) evaluate the student's ability to manage and understand his seizure
 2381 disorder, and (iv) be signed by the student's parent or guardian, the student's treating physician, and the
 2382 school nurse. Each such seizure management and action plan shall state that (a) such plan is separate from
 2383 any ~~individualized education program (IEP)~~ IEP or § Section 504 Plan that is in place for the student
 2384 pursuant to Article 2 (§ 22.1-213 et seq.) of Chapter 13 and (b) nothing in such plan shall be construed to
 2385 abrogate any provision of any IEP or § Section 504 Plan that is in place for the student pursuant to Article 2
 2386 of Chapter 13.

2387 B. Each local school division shall require all school nurses employed by the division to complete, on a
 2388 biennial basis, a ~~Board of Education-approved~~ Board-approved online course of instruction for school nurses
 2389 regarding treating students with seizures and seizure disorders that includes information about seizure
 2390 recognition and related first aid. Approved training programs shall be fully consistent with training programs
 2391 and guidelines developed by the Epilepsy Foundation of America and any successor organization.

2392 C. Each local school division shall require all employees whose duties include regular contact with
 2393 students to complete, on a biennial basis, a ~~Board of Education-approved~~ Board-approved online course of
 2394 instruction for school employees regarding treating students with seizures and seizure disorders that includes
 2395 information about seizure recognition and related first aid. Approved training programs shall be fully
 2396 consistent with training programs and guidelines developed by the Epilepsy Foundation of America and any
 2397 successor organization.

2398 **§ 22.1-274.7:1. Nondiscrimination; accommodations, supports, and services for certain qualified**
 2399 **students with disabilities; documentation; development and implementation; procedures.**

2400 A. As used in this section:

2401 "Free appropriate public education" means the provision of regular or special education and related aids
 2402 and services that are (i) designed to meet individual educational needs of students with disabilities as
 2403 adequately as the needs of students without disabilities are met and (ii) based upon adherence to procedures
 2404 that satisfy the requirements of this section and applicable state and federal law and regulation.

2405 "Qualified student with a disability" means a student who (i) is determined to have a physical or mental
 2406 impairment that substantially limits one or more major life activities and (ii) (a) has a record of such
 2407 impairment or (b) is regarded as having such an impairment.

2408 "Section 504 Plan" means a written plan developed pursuant to subsection E to outline accommodations
 2409 and related aids or services that are necessary, in accordance with § 504 of the Rehabilitation Act of 1973,
 2410 for a student with a disability to access educational programs and services on an equal basis with
 2411 nondisabled peers.

2412 B. No child enrolled in a public elementary or secondary school in the Commonwealth shall be, solely on
 2413 the basis of disability:

2414 1. Excluded from participation in, denied the benefits of, or otherwise subject to discrimination in the
2415 provision of any educational programs or services;

2416 2. Provided or afforded an opportunity to participate in or benefit from any educational programs or
2417 services (i) not equal to those provided or afforded to students without disabilities; (ii) not as effective as
2418 those provided or afforded to students without disabilities; (iii) different or separate from those provided or
2419 afforded to students without disabilities, except when necessary to provide the child with a disability an
2420 opportunity to participate in or benefit from any educational programs or services as effective as those
2421 provided to students without disabilities; or (iv) in a manner that is not equal to those provided or afforded to
2422 students without disabilities; or

2423 3. Otherwise limited in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by
2424 students without disabilities receiving any educational programs or services.

2425 C. Pursuant to subsection B, each qualified student with a disability shall be provided a free appropriate
2426 public education through the provision of regular or special education and related services that are designed
2427 to meet the educational, academic, and nonacademic needs of the student as adequately as the needs of
2428 students without disabilities are met.

2429 D. Each qualified student with a disability shall be provided such services, supports, or accommodations
2430 that such qualified student with a disability, by virtue of his disability, needs to (i) participate, to the
2431 maximum extent possible, in academic, nonacademic, and extracurricular programs, services, and activities
2432 available to students without disabilities and in settings with students without disabilities and (ii) to have his
2433 needs met to the same extent that those of students without disabilities are met, in accordance with the
2434 provisions of this section.

2435 E. The provisions of this section may be satisfied for a qualified student with a disability by the
2436 development and implementation of a Section 504 Plan in accordance with the Board's policies and
2437 procedures for the development and implementation of Section 504 Plans.

2438 **2. That §§ 22.1-214.1 and 22.1-214.2 of the Code of Virginia are repealed.**

2439 **3. That the provisions of § 22.1-213.3 of the Code of Virginia, as created by this act, shall not become**
2440 **effective unless and until any provision of the Individuals with Disabilities Education Act, 20 U.S.C. §**
2441 **1400 et seq., and any of its implementing regulations under 34 C.F.R. Part 300, relating to the**
2442 **provision of a free appropriate public education to each child with disabilities has been repealed or**
2443 **declared invalid or nullified by the final judgement of a federal court applicable to the Commonwealth**
2444 **or by federal executive or administrative action, which shall be deemed to include any action of the**
2445 **federal executive or judicial branch that nullifies the effectiveness of 20 U.S.C. § 1400 et seq. in**
2446 **ensuring the provision of a free appropriate public education to each child with disabilities in the**
2447 **Commonwealth. The Department of Education shall determine and certify in writing to the Virginia**
2448 **Code Commission the date on which such event occurs.**

2449 **4. That the provisions of § 22.1-274.7:1 of the Code of Virginia, as created by this act, shall not become**
2450 **effective unless and until any provision of § 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C.**
2451 **§ 794, and any of its implementing regulations at 34 C.F.R. Part 104, prohibiting discrimination on the**
2452 **basis of disability in federally funded programs or activities has been repealed or declared invalid or**
2453 **nullified by the final judgment of a federal court applicable to the Commonwealth or by executive or**
2454 **administrative action, which shall be deemed to include any action of the federal executive or judicial**
2455 **branch that nullifies the effectiveness of 29 U.S.C. § 794 in prohibiting discrimination on the basis of**
2456 **disability in federally funded programs or activities. The Department of Education shall determine and**
2457 **certify in writing to the Virginia Code Commission the date on which such event occurs.**