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SENATE BILL NO. 678

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 5, 2026)

(Patron Prior to Substitute—Senator Pekarsky)

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, and 22.1-274.02 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 22.1-213.1:1, 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.*

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, and 22.1-274.02 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 22.1-213.1:1, 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.

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

"Board" or "State Board" means the Board of Education.

"Department" means the Department of Education.

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60 "Division superintendent" means the division superintendent of schools of a school division.

61 "Dual enrollment" means the enrollment of a qualified high school student in a postsecondary course that
 62 is creditable toward high school completion and a career certificate or an associate or baccalaureate degree at
 63 a public institution of higher education. "Dual enrollment" does not include the enrollment of a qualified high
 64 school student in a postsecondary course that is not creditable toward high school completion.

65 "Elementary" includes kindergarten.

66 "Elementary and secondary" and "elementary or secondary" include elementary, middle, and high school
 67 grades.

68 "Evidence-based literacy instruction" means structured instructional practices, including sequential,
 69 systematic, explicit, and cumulative teaching, that (i) are based on reliable, trustworthy, and valid evidence
 70 consistent with science-based reading research; (ii) are used in core or general instruction, supplemental
 71 instruction, intervention services, and intensive intervention services; (iii) have a demonstrated record of
 72 success in adequately increasing students' reading competency, vocabulary, oral language, and
 73 comprehension and in building mastery of the foundational reading skills of phonological and phonemic
 74 awareness, alphabetic principle, phonics, spelling, and text reading fluency; and (iv) are able to be
 75 differentiated in order to meet the individual needs of students. "Evidence-based literacy instruction" does not
 76 include practices that instruct students to gain meaning from print through the use of (a) three-cueing, which
 77 includes semantic, syntactic, and graphophonic cues; (b) meaning, structure, and visual cues; or (c) visual
 78 memory for word recognition.

79 "Governing body" or "local governing body" means the board of supervisors of a county, council of a city,
 80 or council of a town, responsible for appropriating funds for such locality, as the context may require.

81 "*Individualized education program*" or "*IEP*" means a written statement for each child with a disability
 82 that is developed, reviewed, and revised in accordance with § 22.1-215.4.

83 "Middle school" means separate schools for early adolescents and the middle school grades that might be
 84 housed at elementary or high schools.

85 "Parent" or "parents" means any parent, guardian, legal custodian, or other person having control or
 86 charge of a child.

87 "Person of school age" means a person who will have reached his fifth birthday on or before September
 88 30 of the school year and who has not reached ~~twenty~~ 20 years of age on or before August 1 of the school
 89 year.

90 "School board" means the school board that governs a school division.

91 "Science-based reading research" means research that (i) applies rigorous, systematic, and objective
 92 observational or experimental procedures to obtain valid knowledge relevant to reading development, reading
 93 instruction, and reading and writing difficulties and (ii) explains how proficient reading and writing develop,
 94 why some children have difficulties developing key literacy skills, and how schools can best assess and
 95 instruct early literacy, including the use of evidence-based literacy instruction practices to promote reading
 96 and writing achievement.

97 "Superintendent" means the Superintendent of Public Instruction.

98 "Textbooks and other high-quality instructional materials" means systematic print or digital curricula that
 99 serve as the primary curriculum basis for a grade-level subject or course and that provide (i) adequate content
 100 and materials for student mastery of corresponding Standards of Learning; (ii) instructional practices that are
 101 aligned with general and discipline-specific research evidence; (iii) assessments to monitor student mastery of
 102 curriculum content; (iv) guidance for meeting student needs including enrichment for above-grade-level
 103 students and intensification for students who are at-risk of not mastering curriculum content, including
 104 English language learners and students with disabilities; and (v) resources for teachers that develop content
 105 knowledge, support implementation of instructional practices that are based on reliable, trustworthy, and
 106 valid evidence and have a demonstrated record of success, and build understanding of the rationale for
 107 curricula components.

108 § 22.1-213. Definitions.

109 As used in this article, *unless the context requires a different meaning*:

110 "*Assistive technology device*" means any item, piece of equipment, or product system, whether acquired
 111 commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional
 112 capabilities for a child with a disability. "*Assistive technology device*" does not include a medical device that
 113 is surgically implanted, or the replacement of such a device.

114 "*Assistive technology service*" means any service that directly assists a child with a disability in the
 115 selection, acquisition, or use of an assistive technology device.

116 "*Children with disabilities a disability*" means ~~those persons~~ any person (i) who ~~are~~ is age two to
 117 21, inclusive, having reached the age of two by the date specified in § 22.1-254; (ii) who ~~have~~ (a) has an
 118 intellectual disability or serious emotional disturbance, ~~are physically disabled~~ disability; (b) has orthopedic
 119 impairments; (c) is speech or language impaired, ~~deaf or hard of~~; (d) has hearing impairments, including
 120 deafness; ~~visually~~; (e) is visually impaired; ~~or~~; (f) has multiple disabled, ~~are otherwise health impaired~~
 121 disabilities; ~~including those who have~~; (g) has autism spectrum disorder ~~or~~; (h) has a specific learning

disability; (i) has a traumatic brain injury; (j) has other health impairments; or ~~are~~ (k) otherwise disabled qualifies as having disabilities, as defined by the Board of Education; and (iii) who because of such impairments need, by reason thereof, needs special education and related services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184 assistive technology devices.

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

187 **§ 22.1-213.1:1. Construction and applicability of article.**

188 A. The provisions of this article shall be liberally construed to effectuate the purposes and provisions
189 thereof, consistent with the IDEA and its implementing regulations. The enumeration or express inclusion of
190 any particular object, purpose, power, authority, or duty shall not be construed to exclude, limit, or restrict
191 any like or similar object, purpose, power, authority, or duty set forth in applicable federal or state law or
192 regulation. Nothing in this article shall be construed to:

193 1. Modify, limit, impair, abridge, or preclude the applicability or operation of the IDEA and its
194 implementing regulations;

195 2. Modify, limit, supersede, abridge, or preclude any authority, power, duty, or function of the Board, the
196 Department, or any school board in accordance with the IDEA or its implementing regulations or any other
197 applicable federal or state law or regulation; or

198 3. Limit, supersede, abridge, preclude, or invalidate the authority of the Board to adopt, amend, repeal, or
199 maintain, any regulations as necessary to implement, enforce, and effectuate the provisions and purposes of
200 the IDEA and its implementing regulations or any other federal or state law. Any regulations established by
201 the Board under the IDEA and its implementing regulations or any other federal or state law shall remain in
202 full force and effect until revised or revoked by the Board.

203 B. Nothing in this article shall be construed to restrict or limit the rights, procedures, and remedies
204 available under the United States Constitution, the Americans with Disabilities Act of 1990 (42 U.S.C. §
205 12101 et seq.), Title V of the Rehabilitation Act of 1973 (29 U.S.C. § 790 et seq.), or any other federal law
206 protecting the rights of children with a disability, except that prior to the filing of a civil action under such
207 laws seeking relief that is also available under the IDEA, the due process procedures described in
208 subsections C, D, and E shall be exhausted to the same extent as would be required had the action been
209 brought under the IDEA.

210 **§ 22.1-213.2. Educational rights and protections of children with disabilities; free appropriate public
211 education; least restrictive environment.**

212 For the purposes of preparing children with disabilities for postsecondary education, employment, and
213 independent living, the Department, in accordance with the Board's regulations, shall:

214 1. Consistent with 20 U.S.C. § 1412(a)(1) of the IDEA and its implementing regulations, provide a free
215 appropriate public education to each child with a disability residing in the Commonwealth, including any
216 child with a disability who has been suspended or expelled from school, except as otherwise provided in 20
217 U.S.C. § 1412(a)(1)(B) and (C) of the IDEA;

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

220 3. Consistent with 20 U.S.C. § 1412(a)(3) of the IDEA and its implementing regulations, (i) that each
221 child with a disability residing in the Commonwealth, including any child with a disability who is a homeless
222 child or ward of the state or attending a private school, regardless of the severity of his disabilities, who is in
223 need of special education and related services, is identified, located, and evaluated; and (ii) that a practical
224 method is developed and implemented to determine which children with disabilities are currently receiving
225 needed special education and related services;

226 4. Ensure that for each child with a disability, an individualized education program is developed,
227 reviewed, revised, and implemented in accordance with the Board's regulations and consistent with
228 § 22.1-215.4;

229 5. Provide each child with a disability residing in the Commonwealth an education in the least restrictive
230 environment, consistent with 20 U.S.C. § 1414(a)(5) of the IDEA and its implementing regulations, including
231 by ensuring that:

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

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

237 6. Ensure that, consistent with the IDEA and its implementing regulations:

238 a. Each child with a disability and his parents are afforded the procedural safeguards required by the
239 Board's regulations, consistent with the provisions of § 22.1-215.5; and

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

7. Ensure that each child with a disability is evaluated consistent with the IDEA and its implementing regulations and § 22.1-215.1;

8. Comply with and ensure that each local educational agency complies with the Board's regulations relating to the confidentiality of records and information, consistent with the IDEA and its implementing regulations;

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

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

11. Consistent with 20 U.S.C. § 1412(a)(14) of the IDEA and its implementing regulations, establish and maintain qualifications to ensure that personnel necessary to carry out the IDEA and this article are appropriately and adequately prepared and trained and have the content knowledge and skills to serve children with disabilities, including:

a. Qualifications for related services personnel and paraprofessionals that (i) are consistent with any Board-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which such personnel are providing special education and related services; (ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of this subdivision and have not had any certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with applicable state law, regulation, or written policy, and who meet the requirements of this article and applicable federal law, to assist in the provision of special education and related services to children with disabilities; and

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

12. Establish:

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

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

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

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

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

14. Use and ensure that each local educational agency uses, to the extent feasible, universal design principles in developing and administering any assessment pursuant to subdivision 13;

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

16. Establish and maintain a special education advisory committee or panel in accordance with the Board's regulations and consistent with 20 U.S.C. § 1412(a)(21) of the IDEA and its implementing regulations;

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

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

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

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

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

22. Adopt and maintain written procedures, pursuant to the Board's regulations and consistent with applicable federal regulations, for (i) resolving any complaint, including a complaint filed by an organization or individual from another state that meets the applicable requirements of state and federal regulation, and (ii) widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, such state complaint procedures;

23. Carry out the duties set forth in § 22.1-214.4; and

24. Ensure that each local educational agency complies with the Board's regulations, consistent with the provisions of this article and the IDEA and its implementing regulations.

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

The Board shall develop and implement policies and procedures for overseeing and enforcing the compliance of each local educational agency with the provisions of this article. Such policies and procedures shall be implemented in addition to, and not as a replacement of, the policies, procedures, and processes relating to oversight of local educational agencies in implementing the provisions of this article required pursuant to § 22.1-214.4. Such policies and procedures for addressing instances of LEA noncompliance shall include a system of progressive sanctions and enforcement mechanisms that range in severity that shall apply to any LEA that remains in noncompliance for more than one school year, including an opportunity, after receipt by the LEA of notice of noncompliance, for such LEA to submit to the Board a corrective action plan for the following school year, at the end of which the Board shall conduct a site visit of the schools under such LEA to ensure effective implementation of such corrective action plan. The system of sanctions may also include, pursuant to subsection C of § 22.1-214, the withholding of all special education moneys to any

school division that the Board, in its discretion, determines has failed to establish and maintain programs of free appropriate public education in accordance with this article and the regulations of the Board, provided, however, that prior to making a final determination that an LEA is not eligible for assistance under the IDEA or otherwise relating to special education without first affording the LEA reasonable notice and an opportunity for a hearing.

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

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

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

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

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

D1. In any action brought pursuant to subsection D, the court, in its discretion, may award reasonable 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 prevailing party who is the Board of Education or a local school division against the attorney of a parent who files a complaint or a subsequent cause of action that is frivolous, unreasonable, or without foundation; or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (iii) to a prevailing party who is the Board of Education or a local school division against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cause of litigation.

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

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

F. D. The Board of Education shall supervise educational programs for children with disabilities by other public agencies and shall ensure that the identification, evaluation, and placement of children with disabilities and youth in education programs by other public agencies, as appropriate, are consistent with the provisions of § 22.1-215.1 and the Board of Education's special education Board's regulations. As used in this subsection, "supervise" means to provide active support in (i) designing mechanisms for maintaining

constant direct contact and the sharing of ideas, approaches, and innovations between the Department of Behavioral Health and Developmental Services and the facility staff responsible for providing educational services; (ii) providing consistent oversight, with particular attention to the mental health programs, to ensure that the availability of educational resources and the distribution of funds clearly reflect the needs of the different student populations residing in the various facilities; (iii) developing guidelines, in cooperation with the Department of Behavioral Health and Developmental Services, for the evaluation of the performance of the education directors or other education supervisors employed by the Department of Behavioral Health and Developmental Services; (iv) developing and implementing, in cooperation with the Department of Behavioral Health and Developmental Services, programs to ensure that the educational and treatment needs of dually diagnosed children in state facilities are met; and (v) ensuring that the expertise of the Department is utilized through the provision of technical assistance to the education programs provided for or by the Department of Behavioral Health and Developmental Services in the areas of selection and acquisition of educational materials, curriculum development, including career and technical education, when appropriate, and applications for federal grants.

G. E. The Board of Education shall prescribe regulations to provide a range of assessment procedures for the evaluation of children with disabilities, consistent with subdivision 7 of § 22.1-213.2 and the IDEA and its implementing regulations. These regulations shall include provision for parents to participate, if they so request, in the consideration of the assessment components to be used. However, such regulations shall not require any local school board to exceed the requirements of federal law or regulations for the identification and evaluation of children with disabilities.

§ 22.1-214.4. Certain duties of Department.

The Department shall:

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

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

3. Annually conduct structured reviews of a sample of IEPs from a sufficiently large sample of local school divisions to verify that the IEPs are in compliance with state and federal laws and regulations governing IEP content, and provide a summary report of the findings of such reviews and recommendations regarding any necessary corrective actions to the reviewed divisions' superintendents, special education directors, school board chairs and vice-chairs, and local special education advisory committees. In reviewing local school divisions' IEPs, the Department shall determine whether the special education and related services, supplementary aids and services, and program modifications that will be provided to enable students with disabilities to participate in nonacademic and extracurricular activities are sufficient, and include its findings and corrective actions in the summary reports it provides to the reviewed local school divisions' superintendents, special education directors, and school board members. Nothing in this section subdivision shall be construed to (i) direct the Department to make determinations regarding whether a particular IEP provides a free appropriate public education to any individual student or (ii) authorize the Department to override a parent's consent to proposed revisions to an individual student's IEP or otherwise deny a parent any of the procedural safeguards set forth in § 22.1-215.4 or 22.1-215.5 or required pursuant to the Board's regulations relating to parental notice, consent, or participation in matters relating to the development, modification, or implementation of an individual student's IEP or the provision of free appropriate public education to an individual student pursuant to the student's IEP. In determining corrective actions, the Department shall make recommendations to the relevant school division board regarding, among other things, those individual IEPs for which the IEP team should convene to consider revisions necessary to incorporate content required by special education regulations. For those individual IEPs for which the Department recommends that the IEP team should convene to consider such revisions, the relevant school division board shall notify the relevant parents or caregivers of the recommendations issued in the summary report of the structured review conducted pursuant to this subdivision.

4. Develop and maintain a statewide plan for improving (i) its ongoing oversight of local practices related to transition planning and services for children with disabilities and (ii) technical assistance and guidance provided for postsecondary transition planning and services for children with disabilities. At a minimum, such plan shall articulate how the Department will reliably and comprehensively assess the compliance and quality of transition plans for children with disabilities on an ongoing basis and communicate findings to local school division staff and local school boards. The Department shall, no later than December 1 of each

year, update the ~~Chairmen~~ *Chairs* of the Senate Committee on Education and Health and the House Committee on Education on its progress in implementing such plan.

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

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

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

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

9. Elevate the position of State Parent Ombudsman for Special Education. The State Parent Ombudsman for Special Education shall (i) report to the Superintendent; (ii) systematically track and report to the Department questions and concerns raised by parents to the State Parent Ombudsman for Special Education and special education family support centers established pursuant to § 22.1-214.5; (iii) coordinate with the Parent Training and Information Center on the activities of the special education family support centers established pursuant to § 22.1-214.5; and (iv) develop a one-page comprehensive summary of the roles and responsibilities of the State Parent Ombudsman for Special Education and such special education family support centers, the specific supports the State Parent Ombudsman for Special Education and such special education family support centers can provide to parents, and how to contact the State Parent Ombudsman for Special Education and such special education family support centers. The Department shall make the summary available in multiple languages on its website and as part of the Virginia IEP established pursuant to subdivision 11.

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

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

inclusive settings.

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

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

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

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

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

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

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

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

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

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

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

A. *The initial evaluation, reevaluation, eligibility determination, and placement of and provision of special education and related services to each child with a disability in the Commonwealth shall be conducted in accordance with the provisions of this section, consistent with the provisions of 20 U.S.C. § 1414 of the IDEA and its implementing regulations.*

B. *The initial evaluation of any child suspected of having a disability to determine eligibility for special education and related services shall be conducted in accordance with the following requirements, consistent with 20 U.S.C. § 1414(a)(1) of the IDEA and its implementing regulations:*

1. *Each local educational agency shall conduct a full and individual initial evaluation for each child with a disability before the initial provision of special education and related services. Such initial evaluation may*

be initiated by a special education administrator or designee;

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

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

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

b. The educational needs of the child; and

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

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

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

C. Any evaluations, eligibility determinations, and placements and the provision of special education and related services to children with disabilities under this section and the IDEA and its implementing regulations shall be subject to the following requirements relating to parental consent:

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

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

3. Each local educational agency or other agency responsible for making a free appropriate public education available to a child with a disability shall (i) seek to obtain informed consent from the parent of such child before the initial provision of special education and related services to the child; (ii) obtain parental consent before any revision of special education or related services provided pursuant to the child's IEP in accordance with subsection L of § 22.1-215.4; and (iii) obtain parental consent before any partial or complete termination of eligibility for special education and related services, except as provided in subsection K;

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

5. If the parent of such child refuses to provide or fails to respond to a request to provide consent to the initial provision of special education and related services under subdivision 3, the local educational agency shall not:

a. Provide special education and related services to the child by utilizing the procedures described in § 22.1-215.5;

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

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

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

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

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

c. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with applicable state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child;

7. Each local educational agency shall seek to obtain written parental consent for (i) the initial eligibility determination for a child pursuant to subsection G and (ii) any change in categorical identification in the child's disability;

8. Each local educational agency shall, with respect to a child with a disability who transfers school divisions pursuant to subsection G of § 22.1-215.4, seek to obtain informed parental consent before the (i)

680 adoption and implementation of any such child's IEP that was in effect in the school division from which he is
681 transferring; (ii) development and implementation of a new IEP for such child; or (iii) the development and
682 implementation of an interim IEP for such child while obtaining and reviewing such information as necessary
683 to develop a new IEP; and

684 9. Any other requirements relating to parental consent set forth in the Board's regulations, consistent with
685 the IDEA and its implementing regulations, including any parental consent requirements for other services
686 and activities under this article and the IDEA, provided that the Board shall ensure that each local
687 educational agency in the Commonwealth establishes and implements effective procedures to ensure that a
688 parent's refusal to consent does not result in a failure to provide the child with a free appropriate public
689 education.

690 D. The screening of a student by a teacher or specialist to determine appropriate instructional strategies
691 for curriculum implementation shall not be considered to be an evaluation for eligibility for special education
692 and related services.

693 E. Each child with a disability shall be reevaluated in accordance with the following requirements:

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

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

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

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

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

706 F. Each local educational agency, for the initial evaluation of a child suspected of having a disability and
707 the reevaluation of a child with a disability, shall:

708 1. Provide prior written notice, in accordance with subsection C of § 22.1-215.5, to the parents of a child
709 with a disability that describes any evaluation procedures such local educational agency proposes to
710 conduct;

711 2. In conducting the evaluation:

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

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

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

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

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

721 3. Ensure that:

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

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

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

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

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

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

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

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

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

736 G. Upon completion of the administration of assessments and other evaluation measures pursuant to
737 subsection F:

738 1. The determination of whether the child is a child with a disability and the educational needs of the
739 child shall be made by a team of qualified professionals and the parent of the child in accordance with
740 subsection H; and

741 2. A copy of the evaluation report and the documentation of the determination of eligibility shall be

provided to the parent.

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

1. Lack of appropriate instruction in reading;;

2. Lack of instruction in math; or

3. Limited English proficiency.

I. The determination of whether a child has a specific learning disability shall be made in accordance with the following procedures:

1. Each local educational agency:

- a. Shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning; and

- b. May use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in subsection F;

2. The determination shall be made by the parents of such child and a team of qualified professionals, which shall include:

- a. The child's regular education teacher or (i) if the child does not have a regular educational teacher, a regular classroom teacher qualified to teach a child of his age or (ii) if the child is less than school age, an individual qualified by the Board to teach a child of his age; and

- b. At least one individual qualified to conduct an individual diagnostic examination of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher;

3. The group described in subdivision 2 shall determine that a child is a child with a specific learning disability if:

- a. The child does not achieve adequately for such child's age or meet Board-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for such child's age or Board-approved grade-level standards: (i) oral expression, (ii) listening comprehension, (iii) written expression, (iv) basic reading skill, (v) reading fluency skills, (vi) reading comprehension, (vii) mathematics calculation, and (viii) mathematics problem solving;

- b. The child (i) does not make sufficient progress to meet age or Board-approved grade-level standards in one or more of the areas identified in subdivision a when using a process based on such child's response to scientific, research-based intervention or (ii) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Board-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with this section; and

- c. The group determines that its findings under subdivisions a and b are not primarily the results of (i) a visual, hearing, or motor disability; (ii) an intellectual disability; (iii) an emotional disability; (iv) cultural factors; (v) environmental or economic disadvantage; or (vi) limited English proficiency;

4. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group described in subdivision 2 shall consider, as a part of the evaluation:

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

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

5. The local educational agency shall ensure that the child suspected of having a specific learning disability is observed in such child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty. In the case of a child suspected of having a specific learning disability who is less than school age or out of school, a member of the group described in subdivision 2 shall observe such child in an environment appropriate for a child of that age. The group described in subdivision 2 shall, as a part of its determination, decide to:

- a. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

- b. Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent has been obtained in accordance with the provisions of this section;

6. The documentation of the determination of eligibility required pursuant to subsection F shall, for each child suspected of having a specific learning disability, include a statement of:

- a. Whether such child has a specific learning disability;

- b. The basis for making the determination, including an assurance that the determination has been made in accordance with the provisions of this section;

- c. The relevant behavior, if any, noted during the observation of the child and the relationship of that

behavior to such child's academic functioning;

d. Any educationally relevant medical findings;

e. Whether the child, consistent with subdivision 3, (i) does not achieve adequately for the child's age or meet Board-approved grade-level standards and (ii) either (a) does not make sufficient progress to meet age or Board-approved grade-level standards or (b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age appropriate, Board-approved grade-level standards or intellectual development;

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

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

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

J. As a part of an initial evaluation conducted pursuant to subsection B, if appropriate, and as a part of any reevaluation conducted pursuant to subsection E:

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

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

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

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

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

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

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

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

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

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

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

K. Each local educational agency shall evaluate a child with a disability in accordance with this section prior to determining that such child is no longer a child with a disability. Prior to making any such determination, including a determination relating to the partial or complete termination of a child's eligibility for special education or related services, each local educational agency shall obtain written parental consent in accordance with clause (iii) of subdivision C 3. However, no evaluation shall be required before termination of any child's eligibility if such termination is a result of the child graduating from secondary school with a regular diploma or the child exceeding 21 years of age, provided that for any such child the local educational agency shall provide a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals.

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

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

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

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

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

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

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

b. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

c. For any child with a disability who takes alternative assessments aligned to alternate achievement standards pursuant to subdivision 13 of § 22.1-213.2, a description of benchmarks or short-term objectives;

2. A statement of measurable annual goals, including academic and functional goals, designed to meet:

a. The child's needs to enable the child to be involved and make progress in the general education curriculum; and

b. Each of the child's other educational needs that result from the child's disability;

3. A description of how the child's progress toward meeting the annual goals described in subdivision 2 will be measured and when periodic reports on the child's progress toward making such annual goals will be provided;

4. A statement of the special education and related services and supplementary aids and services that will be provided to the child and a statement of any program modifications or supports for school personnel that will be provided for the child to:

a. Advance appropriately toward attaining the annual goals;

b. Be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities; and

c. Be educated and participate with other children with disabilities and children without disabilities in the activities described in this subdivision 4;

5. An explanation of the extent, if any, to which the child will not participate with children without disabilities in regular classes or the general education curriculum and in any activities described in subdivision 4;

6. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and divisionwide assessments and, if the IEP team determines that the child shall take an alternate assessment on a particular state or districtwide assessment, a statement of why (i) the child cannot participate in the regular assessment and (ii) the particular alternative assessment selected is appropriate for the child;

7. The projected date for the beginning of the services and modifications described in subdivision 4 and the anticipated frequency, location, and duration of those services and modifications;

8. Beginning not later than with the first IEP to be in effect when the child reaches 14 years of age, and to be updated annually thereafter:

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

b. The transition services, including any applicable courses of study, needed to assist the child in reaching those goals; and

c. Beginning not later than one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority pursuant to subsection F of § 22.1-215.5.

C. Nothing in subsection B shall be construed to require:

1. That additional information be included in a child's IEP beyond what is explicitly required pursuant to this section; and

2. The IEP team to include information under one component of a child's IEP if such information is already included under another component of the child's IEP.

D. The IEP team for each child with a disability shall be responsible for developing, reviewing, and revising the IEP for such child and shall participate in such other decisions relating to the educational placement of and provision of a free appropriate public education to such child as provided in this article and pursuant to federal law and regulation. Each IEP team shall include:

1. The parents of a child with a disability;

2. At least one:

a. Regular education teacher of the child, if the child is or may be participating in the regular education environment; and

b. Special education teacher or, where appropriate, special education provider of the child;

928 3. A representative of the local educational agency who is (i) qualified to provide, or supervise the
929 provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii)
930 knowledgeable about the general education curriculum; and (iii) knowledgeable about the availability of
931 resources of the local educational agency;

932 4. An individual who can interpret the instructional implications of evaluation results, who may be one of
933 the individuals described in subdivisions 2 and 3;

934 5. At the discretion of the parent or the local educational agency other individuals who have knowledge or
935 special expertise regarding the child, including related services personnel as appropriate; and

936 6. Whenever appropriate, the child with a disability.

937 E. A member of the IEP team described in subsection D:

938 1. Shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a
939 disability and the local educational agency agree that attendance of the member is not necessary because the
940 member's area of the curriculum or related services is not being modified or discussed in the meeting. For
941 the purposes of this subdivision, the parent's agreement shall be obtained in writing; and

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

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

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

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

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

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

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

972 1. The IEP team shall consider:

973 a. The strengths of the child;

974 b. The concerns of the parents for enhancing the education of their child;

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

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

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

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

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

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

986 d. The communication needs of the child and, in the case of a child who has hearing impairments,
987 including deafness, the considerations set forth in subsection A of § 22.1-217.02;

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

989 f. The needs of the child for age-appropriate and developmentally appropriate instruction relating to

sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others, pursuant to subsection A of § 22.1-217.03; and

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

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

I. In making changes to a child's IEP after the annual IEP meeting for a school year, the parents of a child with a disability and the local educational agency may agree not to convene an additional IEP meeting for the purpose of making such changes and, instead, agree to develop a written document to amend or modify the child's current IEP. However, if any changes are made to a child's IEP in accordance with this subsection, the local educational agency shall ensure that the child's IEP team is informed of such changes.

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

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

L. Each local educational agency shall ensure that:

1. The child's IEP team:

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

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

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

3. The local educational agency seeks to obtain parental consent, consistent with the Board's regulations, before any revision is made to the special education and related services provided pursuant to a child's IEP in accordance with clause (ii) of subdivision C 3 of § 22.1-215.1 .

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

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

1. The requirements set forth in subdivision 13 of § 22.1-213.2 and subdivision B 6, relating to participation of children with disabilities in assessments; and

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

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

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

Q. When conducting IEP team meetings and placement meetings pursuant to the Board's regulations, consistent with this section and 20 U.S.C. § 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 the LEA may agree to use alternative means of meeting participation, including video conferences and conference calls.

§ 22.1-215.5. Procedural safeguards generally.

A. The Department and each local educational agency shall establish and maintain procedures for ensuring each child with a disability and his parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education in accordance with the provisions of this section, consistent with the provisions of 20 U.S.C. § 1415 of the IDEA and its implementing regulations.

B. The procedures described in subsection A shall include:

1. Procedures for ensuring an opportunity for the parents of a child with a disability to (i) examine all records relating to the child; (ii) participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child, consistent with the provisions of subsection H; and (iii) obtain an independent educational evaluation of the

1052 child, consistent with the provisions of subsection I;

1053 2. Procedures to protect the rights of the child when the parents of the child are not known, when after
1054 reasonable efforts, the parents cannot be located, or when the child is a ward of the state, including the
1055 assignment of an individual to act as a surrogate for the parents. The procedures shall include provisions
1056 that (i) the surrogate shall not be an employee of the Department, the local educational agency, or any other
1057 state agency involved in the education or care of the child; (ii) in the case of a child who is a ward of the
1058 state, the surrogate may be appointed by the judge overseeing the child's care; and (iii) in the case of an
1059 unaccompanied homeless youth, the local educational agency shall appoint a surrogate. The Department
1060 shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after a local
1061 educational agency determines that such child needs a surrogate;

1062 3. Prior written notice to the parents of the child, in accordance with subsection C, any time the local
1063 educational agency (i) proposes to initiate or change or (ii) refuses to initiate or change the identification,
1064 evaluation, or educational placement of the child, or the provision of a free appropriate public education to
1065 the child, including procedures to ensure such notice is provided in the native language of the parent, unless
1066 it clearly is not feasible to do so, and written in language understandable to the general public;

1067 4. An opportunity for mediation in accordance with subsection B of § 22.1-215.6;

1068 5. An opportunity for any party to present a complaint:

1069 a. With respect to any matter relating to the identification, evaluation, or educational placement of the
1070 child, or the provision of a free appropriate public education to such child; and

1071 b. Which sets forth an alleged violation that occurred not more than two years before the date the parent
1072 or agency knew or should have known about the alleged actions that form the basis of the complaint or in
1073 such other explicit time limitation for presenting such a complaint as may be established in state law, except
1074 as provided in § 22.1-215.6;

1075 6. Procedures that:

1076 a. Require either party, or the attorney representing a party, to provide a due process complaint notice in
1077 accordance with subsection D, which shall remain confidential:

1078 (1) To the other party, in the complaint filed pursuant to subdivision 5, and to forward a copy of such
1079 notice to the Department; and

1080 (2) That shall include:

1081 (a) The name of the child, the name of the school the child is attending, and the address of the residence
1082 of the child or, in the case of a homeless child or youth, available contact information for the child;

1083 (b) A description of the nature of the problem of the child relating to such proposed initiation or change,
1084 including facts relating to such problem; and

1085 (c) A proposed resolution of the problem to the extent known and available to the party at the time; and

1086 b. Shall include a requirement that a party shall not have a due process hearing pursuant to subsection C
1087 of § 22.1-215.6 until the party, or the attorney representing the party, files a due process complaint notice
1088 that meets the requirements of subdivision a; and

1089 7. Procedures that require the Department to develop a model form to assist parents in filing a due
1090 process complaint and a due process complaint notice pursuant to subdivisions 5 and 6, respectively.

1091 C. Each local educational agency shall provide prior written notice pursuant to subdivision B 3 to the
1092 parents of a child with a disability whenever it (i) proposes to initiate or change or (ii) refuses to initiate or
1093 change the identification, evaluation, or educational placement of the child, or the provision of a free
1094 appropriate public education to the child. The notice shall include:

1095 1. A description of the action proposed or refused by the local educational agency;

1096 2. An explanation of why the local educational agency proposes or refuses to take the action and a
1097 description of each evaluation procedure, assessment, record, or report the local educational agency is using
1098 as a basis for the proposed or refused action;

1099 3. A statement that the parents of a child with a disability have protection under this section, § 22.1-215.6,
1100 and the IDEA;

1101 4. Sources for the parents to contact to obtain assistance in understanding the provisions of this article;

1102 5. A description of other options considered by the child's IEP team and the reason why the local
1103 educational agency rejected those options; and

1104 6. A description of any factors relevant to the local educational agency's proposal or refusal to take the
1105 action.

1106 D. The following procedures shall apply to the filing, receipt, and amendment of any due process
1107 complaint notice required pursuant to subdivision B 6:

1108 1. The due process complaint notice shall be deemed sufficient for the purpose of requesting a due process
1109 hearing pursuant to subdivision B 6 b unless the party receiving the notice notifies the hearing officer and the
1110 other party in writing that the receiving party believes the notice has not met the requirements of subdivision
1111 B 6 a;

1112 2. If the local educational agency has not sent prior written notice to the parent regarding the subject
1113 matter contained in the parent's due process complaint notice, the local educational agency shall, within 10

1114 days of receiving the complaint, send to the parent a response that shall include:

1115 a. An explanation of why the local educational agency proposed or refused to take the action raised in the

1116 complaint;

1117 b. A description of other options that the IEP team considered and the reasons why those options were

1118 rejected;

1119 c. A description of each evaluation procedure, assessment, record, or report the agency used as the basis

1120 for the proposed or refused action; and

1121 d. A description of any factors that were relevant to the local educational agency's proposal or refusal;

1122 3. A response filed by a local educational agency pursuant to subdivision 2 shall not be construed to

1123 preclude the local educational agency from asserting, where appropriate, that the parent's due process

1124 complaint notice was insufficient, in accordance with subdivision 1;

1125 4. Except as provided in subdivision 2, the party receiving the due process complaint notice shall, within

1126 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues

1127 raised in the complaint;

1128 5. The party providing a hearing officer notification pursuant to subdivision 1 shall provide such

1129 notification within 15 days of receiving the complaint;

1130 6. Within five days of receipt of such notification, the hearing officer shall (i) make a determination on the

1131 face of the notice of whether the notice meets the requirements of subdivision B 6 and (ii) immediately notify

1132 the parties of such determination;

1133 7. A party may amend its due process complaint notice only if (i) the other party consents in writing to

1134 such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to

1135 this section or (ii) the hearing officer grants permission, provided that the hearing officer may only grant

1136 such permission at any time not later than five days before a due process hearing occurs; and

1137 8. In the event a party files an amended complaint under subdivision 7, the applicable timeline for a due

1138 process hearing shall recommence at the time the party files the amended complaint.

1139 E. The parents of a child with a disability shall be provided a copy of the procedural safeguards notice

1140 one time each year, except that the parents shall also be provided an additional copy upon (i) initial referral

1141 or parental request for evaluation, (ii) the first occurrence of the filing of a due process complaint, and (iii)

1142 request by a parent. The local educational agency may post a current copy of the procedural safeguards on

1143 its official website, provided that such notice is reviewed and updated as necessary to ensure the information

1144 therein remains current. Each procedural safeguards notice shall be written in the native language of the

1145 parents, unless it clearly is not feasible to do so, and in an easily understandable manner, and shall include a

1146 full explanation of the procedural safeguards available under 20 U.S.C. § 1415 of the IDEA and its

1147 implementing regulations, including procedural safeguards relating to:

1148 1. An independent educational evaluation;

1149 2. Prior written notice;

1150 3. Parental consent;

1151 4. Access to educational records;

1152 5. The opportunity to present and resolve complaints, including (i) the time period in which to make a

1153 complaint, (ii) the opportunity for the local educational agency to resolve the complaint, and (iii) the

1154 availability of mediation;

1155 6. The child's placement during pendency of due process proceedings;

1156 7. Procedures for students subject to placement in an interim alternative educational setting;

1157 8. Due process hearings, including requirements for disclosure of evaluation results and

1158 recommendations;

1159 9. Civil actions, including the time period in which to file such actions; and

1160 10. Attorney fees.

1161 F. The Department may provide that, except in the case of any child with a disability who has been

1162 determined legally incompetent, when a child with a disability reaches the age of majority:

1163 1. The local educational agency shall provide any notice required under this section to the child and the

1164 parents;

1165 2. All other rights under this section shall be transferred to the child;

1166 3. The local educational agency shall notify the child and the parents of such transfer of rights; and

1167 4. If such child is incarcerated in an adult or juvenile federal, state, or local correctional institution, all

1168 rights of the parent under this section transfer to the child.

1169 G. For any child with a disability who reaches the age of majority but who, for the purposes of the rights

1170 set forth in subsection F, has been determined legally incompetent or otherwise unable to provide informed

1171 consent relating to such child's educational program, the Commonwealth shall establish procedures for

1172 appointing the parent of the child, or if the parent is not available, another appropriate individual, to

1173 represent the child's educational interests until the child reaches 21 years of age.

1174 H. Consistent with the procedures described in subdivision B 1, each local educational agency, in order

1175 to ensure that the parent of each child with a disability has an opportunity to participate in meetings with

1176 respect to the identification, evaluation, and educational placement of the child and the provision of a free
1177 appropriate public education to the child, shall:

1178 1. Ensure the parents of each child with a disability are members of any group that makes decisions on
1179 the educational placement of their child, consistent with subsection L of § 22.1-215.1 and subsection P of
1180 § 22.1-215.4;

1181 2. Provide the parents of each child with a disability an opportunity to use alternative means of meeting
1182 participation, including video conferences and conference calls, in accordance with subsection Q of
1183 § 22.1-215.4;

1184 3. Provide advance notice of any such meeting to the parent of each child with a disability which shall
1185 indicate the purpose, date, time, and location of the meeting, and who will be in attendance at the meeting,
1186 and shall include such other information as required pursuant to the Board's regulations; and

1187 4. Take such actions as are necessary to ensure that the parent of any child with a disability understands
1188 and is able to participate in any group discussions relating to the educational placement of such child,
1189 including by, if necessary, arranging for an interpreter for a parent with hearing impairments, including
1190 deafness, or a parent whose native language is other than English.

1191 I. The parents of each child with a disability shall have the right to obtain an independent educational
1192 evaluation of the child, in accordance with the provisions of the Board's regulations and the IDEA's
1193 implementing regulations, including in accordance with the following requirements:

1194 1. Each local educational agency shall provide to the parent of any child with a disability, upon request
1195 for an independent educational evaluation, information about where such an evaluation may be obtained and
1196 the agency criteria applicable for an independent educational evaluation;

1197 2. Each parent of a child with a disability shall have the right to an independent educational evaluation at
1198 public expense if the parent disagrees with an evaluation obtained by the local educational agency,
1199 consistent with the provisions of federal and state regulation and the provisions of subdivision 3;

1200 3. If a parent requests an independent educational evaluation at the public expense pursuant to
1201 subdivision 2, the local educational agency shall, without unnecessary delay, either (i) file a due process
1202 complaint to request a due process hearing to show that its evaluation is appropriate or (ii) ensure that an
1203 independent educational evaluation is provided at public expense, unless the local educational agency
1204 demonstrates in accordance with applicable federal and state regulation that the evaluation obtained by the
1205 parent does not meet the applicable agency criteria; and

1206 4. If the local educational agency files a due process complaint pursuant to clause (i) of subdivision 3 and
1207 the final decision of the due process hearing is that the local educational agency's evaluation is appropriate,
1208 the parent shall maintain the right to an independent educational evaluation, but not at public expense.

1209 **§ 22.1-215.6. Procedural safeguards; mediation; due process complaints, notice, hearings, and appeals.**

1210 A. The Department shall establish and maintain procedures that afford due process to children with
1211 disabilities and their parents and to local educational agencies in resolving disputes as to any matter relating
1212 to identification, evaluation, program placements, individualized education programs, or tuition eligibility
1213 and to other matters relating to the provision of a free appropriate public education in accordance with the
1214 provisions of this section, consistent with the provisions of 20 U.S.C. § 1415 of the IDEA and its
1215 implementing regulations.

1216 B. The procedures described in subsection A shall include procedures that allow parties to disputes
1217 involving any matter, including matters arising prior to the filing of a due process complaint pursuant to
1218 subdivision B 5 of § 22.1-215.5, to resolve disputes through a mediation process and encourage the use of
1219 mediation. Such procedures shall meet the following requirements:

1220 1. The procedures shall ensure that the mediation process is:

1221 a. Voluntary on the part of the parties;

1222 b. Not used to deny or delay a parent's right to a due process hearing under subsection C or to deny any
1223 other rights afforded to parents under this article; and

1224 c. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques;

1225 2. The Department or a local educational agency may establish procedures to offer to parents and schools
1226 that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the
1227 parents, with a disinterested party who is under contract with (i) a parent training and information center or
1228 community parent resource center in the Commonwealth or (ii) an appropriate alternative dispute resolution
1229 entity to encourage the use and explain the benefits of the mediation process to the parents;

1230 3. The Department shall maintain a list of individuals who are qualified mediators and knowledgeable in
1231 laws and regulations relating to the provision of special education and related services;

1232 4. The Commonwealth shall bear the cost of the mediation process, including any meeting held pursuant
1233 to subdivision 2;

1234 5. Each session in the mediation process shall be scheduled in a timely manner and held in a location that
1235 is convenient to each party to the dispute;

1236 6. In the case where a resolution is reached to resolve the due process complaint through mediation, the
1237 parties shall execute a legally binding agreement that sets forth the resolution and (i) states that all

discussions that occurred during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding, (ii) is signed by both the parent and a representative of the local educational agency with the authority to bind such local educational agency, and (iii) is enforceable in any court of competent jurisdiction or in a district court of the United States; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1300 *the procedural inadequacies:*

1301 (1) Impeded the child's right to a free appropriate public education;

1302 (2) Significantly impeded the parents' opportunity to participate in the decision-making process regarding
1303 the provision of a free appropriate public education to the parents' child; or

1304 (3) Caused a deprivation of educational benefits;

1305 3. The provisions of (i) subdivision 2 d shall not be construed to preclude a hearing officer from ordering
1306 a local educational agency to comply with the procedural requirements of this section and 20 U.S.C. § 1415
1307 of the IDEA and (ii) subdivision 2 shall not be construed to affect the right of a parent to file a complaint with
1308 the Department pursuant to applicable state and federal regulation;

1309 4. In any impartial due process hearing conducted pursuant to subsection C, the Department may provide
1310 for final decisions to be made by a hearing officer. Any hearing officer appointed pursuant to this section
1311 shall have the power to issue subpoenas requiring testimony or the production of books, papers, and physical
1312 or other evidence. Any person so subpoenaed who objects may, if the hearing officer does not quash or
1313 modify the subpoena at a timely request as illegally or improvidently granted, immediately procure by a
1314 petition a decision on the validity thereof in the circuit court of the jurisdiction in which the hearing is to be
1315 held. In any case of refusal or neglect to comply with the hearing officer's subpoena, the hearing officer may
1316 procure an order of enforcement from such court;

1317 5. Any party to an impartial due process hearing shall be accorded the right to:

1318 a. Be accompanied and advised by legal counsel and by individuals with special knowledge or training
1319 with respect to the problems of children with disabilities before such hearing officer without being in
1320 violation of the provisions of § 54.1-3904;

1321 b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

1322 c. Obtain a written or, at the option of the parents, electronic verbatim record of such hearing; and

1323 d. Obtain written or, at the option of the parents, electronic findings of fact and decisions, which findings
1324 and decisions shall be (i) made available to the public and (ii) transmitted to the advisory panel established
1325 pursuant to applicable federal or state law or regulation;

1326 6. A decision made by a hearing officer in an impartial due process hearing conducted pursuant to
1327 subsection C or § 22.1-215.7 shall be final, except that any party shall have the right to appeal such decision
1328 pursuant to subsection F; and

1329 7. All testimony shall be given under oath or affirmation administered by the hearing officer.

1330 F. Any party involved in an impartial due process hearing conducted pursuant to subsection C or
1331 § 22.1-215.7 shall, within 180 days of the date of the decision of the hearing officer, have the right to bring a
1332 civil action with respect to the complaint in the circuit court for the jurisdiction in which the local
1333 educational agency is located, without regard to the amount in controversy. In any such action:

1334 1. The court shall:

1335 a. Receive the records of the administrative proceedings;

1336 b. Hear additional evidence at the request of a party; and

1337 c. Basing its decision on the preponderance of the evidence, grant such relief as the court determines is
1338 appropriate; and

1339 2. The court, in its discretion, may award reasonable attorney fees as part of the costs to a prevailing
1340 party who is (i) the parent of a child with a disability; (ii) the Department or a local educational agency
1341 against the attorney of a parent who files a complaint or a subsequent cause of action that is frivolous,
1342 unreasonable, or without foundation or against the attorney of a parent who continued to litigate after the
1343 litigation clearly became frivolous, unreasonable, or without foundation; or (iii) the Department or a local
1344 educational agency against the attorney of a parent, or against the parent, if the parent's complaint or
1345 subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary
1346 delay, or to needlessly increase the cost of litigation. Attorney fees may not be awarded relating to any
1347 meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or
1348 judicial action or, at the discretion of the Commonwealth, for a mediation described in subsection B.

1349 G. During the pendency of any proceedings conducted in accordance with this section, unless the parent
1350 of a child and the Department or local educational agency otherwise agrees, each child with a disability
1351 shall (i) remain in the educational placement of the child prior to the initiation of such proceedings or (ii) if
1352 applying for admission to a public school, be placed in the public school system until all such proceedings
1353 have been completed.

1354 **§ 22.1-215.7. Procedural safeguards; disciplinary procedures; changes in placement; placement in**
1355 **alternative educational setting.**

1356 A. The Department and each local educational agency shall establish and maintain procedures for
1357 changes in placement for a child with a disability who violates a student code of conduct in accordance with
1358 the provisions of this section, consistent with the provisions of 20 U.S.C. § 1415(k) of the IDEA and its
1359 implementing regulations.

1360 B. School personnel may:

1361 1. Consider any unique circumstances on a case-by-case basis when determining whether to order a

change in placement for a child with a disability who violates a student code of conduct;

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the Department or a local educational agency; or

2. While at school, on school premises, or at a school function under the jurisdiction of the Department or a local educational agency:

a. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or

b. Has inflicted serious bodily injury upon another person.

G. The local educational agency shall notify the parent of any child with a disability for whom a decision to take a disciplinary action is made pursuant to this section not later than the date on which such decision was made of that decision and of all procedural safeguards accorded to the child and the parents under this section.

H. In the case of any child with a disability who is removed from his current placement pursuant to subdivision B 3 or subsection F, the child's IEP team shall determine the interim alternative educational setting.

I. An appeal to request an expedited due process hearing may be made by (i) the parent of a child with a disability who disagrees with a decision relating to the child's placement or the manifestation determination made pursuant to this section or (ii) a local educational agency that believes maintaining the current placement of the child is substantially likely to result in injury to the child or to others. Whenever an appeal

1424 is requested under this section:

1425 1. The parents or the local educational agency shall have the opportunity for an expedited due process
1426 hearing, which shall occur within 20 school days of the date the appeal is requested and shall result in a
1427 determination by a hearing officer within 10 school days after the hearing. The local educational agency
1428 shall be responsible for arranging such expedited due process hearing in accordance with the Board's
1429 regulations;

1430 2. In an expedited due process hearing pursuant to subdivision 1, the hearing officer shall hear and make
1431 a determination regarding the issue. In making such determination, the hearing officer may:

1432 a. Return a child with a disability to the placement from which the child was removed; or

1433 b. Order a change in placement of a child with a disability to an appropriate interim alternative
1434 educational setting for not more than 45 school days if the hearing officer determines that maintaining the
1435 current placement of the child is substantially likely to result in injury to the child or to others;

1436 3. The child shall remain in the interim alternative educational setting pending the decision of the hearing
1437 officer pursuant to subdivision 2 or until the expiration of the applicable time period specified in subdivision
1438 B 3, whichever occurs first, unless the parent and the Department or local educational agency agree
1439 otherwise; and

1440 4. The decision of a hearing officer in the expedited due process hearing pursuant to subdivision 2 may be
1441 appealed pursuant to subsection F of § 22.1-215.6 and in accordance with the Board's regulations.

1442 J. Disciplinary decisions with respect to a child who has not yet been determined to be eligible for special
1443 education and related services pursuant to this article and the IDEA and who has engaged in behavior that
1444 violates a student conduct shall meet the following requirements:

1445 1. Any such child may assert any of the protections set forth in this article and available pursuant to the
1446 IDEA if the local educational agency had knowledge that the child was a child with a disability before the
1447 occurrence of the behavior that resulted in the disciplinary action;

1448 2. The local educational agency shall be deemed to have knowledge that the child was a child with a
1449 disability pursuant to subdivision 1 if, before the occurrence of the behavior that resulted in the disciplinary
1450 action:

1451 a. The parent of the child expressed concern in writing to supervisory or administrative personnel of the
1452 appropriate educational agency, or a teacher of the child, that the child is in need of special education and
1453 related services;

1454 b. The parent of the child requested an evaluation pursuant to § 22.1-215.1 and 20 U.S.C. § 1414 of the
1455 IDEA; or

1456 c. The teacher of the child, or other personnel of the local educational agency, expressed specific
1457 concerns about a pattern of behavior demonstrated by the child, directly to the director of special education
1458 of such agency or to other supervisory personnel of such agency;

1459 3. The local educational agency shall not be deemed to have knowledge that the child was a child with a
1460 disability before the occurrence of the behavior that resulted in the disciplinary action if (i) the parent of the
1461 child has not allowed an evaluation of the child pursuant to § 22.1-215.1 and 20 U.S.C. § 1414 of the IDEA
1462 or has refused services under this article or (ii) if the child has been evaluated and such evaluation resulted
1463 in a determination that such child is not a child with a disability; and

1464 4. If, pursuant to subdivision 3, a local educational agency does not have knowledge that the child was a
1465 child with a disability:

1466 a. The child may be subjected to disciplinary measures applied to children without disabilities who
1467 engaged in comparable behaviors; and

1468 b. If a request is made for an evaluation during the time period in which the child is subject to
1469 disciplinary measures pursuant to subdivision a, the evaluation shall be conducted in an expedited manner.
1470 Pending the results of the evaluation, the child shall remain in the educational placement determined by
1471 school personnel. If the child is determined to be a child with a disability, taking into consideration
1472 information from the evaluation and information provided by the parents, the local educational agency shall
1473 provide special education and related services to such child pursuant to this article and the IDEA and its
1474 implementing regulations.

1475 K. Nothing in this section shall be construed to (i) prohibit school or local educational agency personnel
1476 from reporting certain acts to appropriate authorities in accordance with § 22.1-279.3:1 or (ii) prevent law
1477 enforcement or other authorities from exercising their responsibilities in accordance with applicable state
1478 and federal law.

1479 **§ 22.1-217. Visually impaired children.**

1480 A. Special education for visually impaired children provided by a school ~~division~~ board shall be
1481 established, maintained, and operated jointly by the school board and the Virginia Department for the Blind
1482 and Vision Impaired subject to the regulations of the Board of Education. Braille instruction shall be included
1483 in the student's Individualized Education Plan (IEP) IEP, whenever appropriate. When developing the IEP for
1484 students with visual impairment, the presumption shall be that proficiency in literacy is essential for such
1485 student to achieve satisfactory educational progress. However, use of Braille shall not be required if other

special education services are more appropriate to the student's educational needs, and the provision of other appropriate services shall not preclude Braille instruction.

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

C. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. For the purposes of this section, "communication mode or language *mode*" means one or more of the following systems or methods of communication applicable to children identified as deaf or ~~hard-of-hearing~~ *hard of hearing*: (i) American Sign Language; (ii) English-based manual or sign systems; (iii) oral, aural, or speech-based training; (iv) spoken and written English, including speech reading, lip reading, or cued speech; (v) *cued language transliteration*; and ~~(v)~~ (vi) *other* communication with assistive technology devices to facilitate language and learning.

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

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

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

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

1548 A. The Board shall establish requirements for the licensing of teachers, principals, superintendents, and
1549 other professional personnel.

1550 B. School boards shall employ licensed instructional personnel qualified in the relevant subject areas.

1551 C. Each school board shall assign licensed instructional personnel in a manner that produces divisionwide
1552 ratios of students in average daily membership to full-time equivalent teaching positions, excluding special
1553 education teachers, principals, assistant principals, school counselors or certain other licensed individuals as
1554 set forth in subdivision H 4, and librarians, that are not greater than the following ratios: (i) 24 to one in
1555 kindergarten with no class being larger than 29 students; if the average daily membership in any kindergarten
1556 class exceeds 24 pupils, a full-time teacher's aide shall be assigned to the class; (ii) 24 to one in grades one,
1557 two, and three with no class being larger than 30 students; (iii) 25 to one in grades four through six with no
1558 class being larger than 35 students; and (iv) 24 to one in English classes in grades six through 12. After
1559 September 30 of any school year, anytime the number of students in a class exceeds the class size limit
1560 established by this subsection, the local school division shall notify the parent of each student in such class of
1561 such fact no later than 10 days after the date on which the class exceeded the class size limit. Such
1562 notification shall state the reason that the class size exceeds the class size limit and describe the measures that
1563 the local school division will take to reduce the class size to comply with this subsection.

1564 Within its regulations governing special education programs, the Board shall seek to set pupil/teacher
1565 ratios for pupils with intellectual disability that do not exceed the pupil/teacher ratios for self-contained
1566 classes for pupils with specific learning disabilities.

1567 Further, school boards shall assign instructional personnel in a manner that produces schoolwide ratios of
1568 students in average daily memberships to full-time equivalent teaching positions of 21 to one in middle
1569 schools and high schools. School divisions shall provide all middle and high school teachers with one
1570 planning period per day or the equivalent, unencumbered of any teaching or supervisory duties.

1571 D. Each local school board shall employ with state and local basic, special education, gifted, and career
1572 and technical education funds a minimum number of licensed, full-time equivalent instructional personnel for
1573 each 1,000 students in average daily membership (ADM) as set forth in the appropriation act.

1574 E. In addition to the positions supported by basic aid and in support of regular school year programs of
1575 prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided
1576 to fund certain full-time equivalent instructional positions for each 1,000 students in grades K through 12
1577 who are identified as needing prevention, intervention, and remediation services. State funding for
1578 prevention, intervention, and remediation programs provided pursuant to this subsection and the
1579 appropriation act may be used to support programs for educationally at-risk students as identified by the local
1580 school boards.

1581 To provide algebra readiness intervention services required by § 22.1-253.13:1, school divisions may
1582 employ mathematics teacher specialists to provide the required algebra readiness intervention services.
1583 School divisions using the Standards of Learning Algebra Readiness Initiative funding in this manner shall
1584 only employ instructional personnel licensed by the Board.

1585 F. In addition to the positions supported by basic aid and those in support of regular school year programs
1586 of prevention, intervention, and remediation, state funding, pursuant to the general appropriation act, shall be
1587 provided to support ratios of instructional positions to English language learner students, based on each such
1588 student's English proficiency level, as established in the general appropriation act, which positions may
1589 include dual language teachers who provide instruction in English and in a second language.

1590 To provide flexibility in the instruction of English language learners who have limited English proficiency
1591 and who are at risk of not meeting state accountability standards, school divisions may use state and local
1592 funds from the Standards of Quality Prevention, Intervention, and Remediation account to employ additional
1593 English language learner teachers or dual language teachers to provide instruction to identified limited
1594 English proficiency students. Using these funds in this manner is intended to supplement the instructional
1595 services provided in this section. School divisions using the SOQ Prevention, Intervention, and Remediation
1596 funds in this manner shall employ only instructional personnel licensed by the Board.

1597 G. In addition to the full-time equivalent positions required elsewhere in this section, each local school
1598 board shall employ one reading specialist for each 550 students in kindergarten through grade five and one
1599 reading specialist for each 1,100 students in grades six through eight. Each such reading specialist shall have
1600 training in science-based reading research and evidence-based literacy instruction practices. In addition, each
1601 such reading specialist shall have training in the identification of and the appropriate interventions,
1602 accommodations, and teaching techniques for students with dyslexia or a related disorder and shall serve as
1603 an advisor on dyslexia and related disorders. Such reading specialist shall have an understanding of the
1604 definition of dyslexia and a working knowledge of (i) techniques to help a student on the continuum of skills
1605 with dyslexia; (ii) dyslexia characteristics that may manifest at different ages and grade levels; (iii) the basic
1606 foundation of the keys to reading, including multisensory, explicit, systemic, and structured reading
1607 instruction; and (iv) appropriate interventions, accommodations, and assistive technology supports for
1608 students with dyslexia.

1609 To provide reading intervention services required by § 22.1-253.13:1, school divisions may employ

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

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

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

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

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

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

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

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

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

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

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

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

M. School boards shall, however, annually, on or before December 31, report to the public (i) the actual

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

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

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

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

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

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

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

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

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

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

5. Technology professional positions not included in subsection J;

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

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

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

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

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

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

R. Each local school board shall designate a faculty member to serve as a special education parent/family liaison. The special education parent/family liaison shall serve as a resource to parents and families to

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

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

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

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

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

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

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

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

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

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

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

1796 B. The Superintendent shall develop, subject to revision by the Board, criteria for determining and
1797 recognizing educational performance in the Commonwealth's local school divisions and public schools. The
1798 portion of such criteria that measures individual student growth shall become an integral part of the
1799 accreditation process for schools in which any grade level in the grade three through eight range is taught.
1800 The Superintendent shall annually report to the Board on the accreditation status of all school divisions and
1801 schools. Such report shall include an analysis of the strengths and weaknesses of public education programs
1802 in the various school divisions in ~~Virginia~~ *the Commonwealth* and recommendations to the General Assembly
1803 for further enhancing student learning uniformly across the Commonwealth. In recognizing educational
1804 performance and individual student growth in the school divisions, the Board shall include consideration of
1805 special school division accomplishments, such as numbers of dual enrollments and students in Advanced
1806 Placement and International Baccalaureate courses, and participation in academic year Governor's Schools.

1807 The Superintendent shall assist local school boards in the implementation of action plans for increasing
1808 educational performance and individual student growth in those school divisions and schools that are
1809 identified as not meeting the approved criteria, including, when applicable, providing assistance with the
1810 review, grant, and monitoring process set forth in subdivision K 4 of § 22.1-253.13:1. The Superintendent
1811 shall monitor the implementation of and report to the Board on the effectiveness of the corrective actions
1812 taken to improve the educational performance in such school divisions and schools.

1813 C. With such funds as are available for this purpose, the Board shall prescribe assessment methods to
1814 determine the level of achievement of the Standards of Learning objectives by all students in grades three
1815 through 12. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and
1816 skills related to the Standards of Learning being assessed. In prescribing such assessment methods, the Board
1817 shall:

1818 1. With the assistance of independent testing experts, conduct a regular analysis and validation process for
1819 these assessments;

1820 2. In lieu of a one-time end-of-year assessment, establish, for the purpose of providing measures of
1821 individual student growth over the course of the school year, a through-year growth assessment system,
1822 aligned with the Standards of Learning, for the administration of reading and mathematics assessments in
1823 grades three through eight. Such through-year growth assessment system shall include at least one beginning-
1824 of-year, one mid-year, and one end-of-year assessment in order to provide individual student growth scores
1825 over the course of the school year, but the total time scheduled for taking all such assessments shall not
1826 exceed 150 percent of the time scheduled for taking a single end-of-year proficiency assessment. The
1827 Department shall ensure adequate training for teachers and principals on how to interpret and use student
1828 growth data from such assessments to improve reading and mathematics instruction in grades three through
1829 eight throughout the school year. With such funds and content as are available for such purpose, such
1830 through-year growth assessment system shall provide accurate measurement of a student's performance,
1831 through computer adaptive technology, using test items at, below, and above the student's grade level as
1832 necessary;

1833 3. Provide the option of industry certification and state licensure examinations as a student-selected credit;

1834 4. Make available to school divisions Standards of Learning assessments typically administered by high
1835 schools by December 1 of the school year in which such assessments are to be administered or when newly
1836 developed assessments are available, whichever is later;

1837 5. Make publicly available such assessments in a timely manner and as soon as practicable following the
1838 administration of such tests, so long as the release of such assessments does not compromise test security or
1839 deplete the bank of assessment questions necessary to construct subsequent tests, or limit the ability to test
1840 students on demand and provide immediate results in the web-based assessment system;

1841 6. *Ensure that each child with a disability, as that term is defined in § 22.1-213, is included in the*
1842 *administration of assessments under this section for the purposes of measuring student performance and*
1843 *growth. In ensuring that each child with a disability is included in the administration of such assessments, the*
1844 *Board shall:*

1845 a. Prescribe alternative methods of Standards of Learning assessment administration for ~~children~~ *any child*
1846 *with disabilities, as that term is defined in § 22.1-213, a disability who meet meets* criteria established by the
1847 Board to demonstrate achievement of the Standards of Learning. An eligible student's Individual Education
1848 Program IEP team shall make the final determination as to whether an alternative method of administration is
1849 appropriate for the student; and

1850 b. *Develop and implement guidelines in accordance with subdivision 13 of § 22.1-213.2 for (i) ensuring*
1851 *that each child with a disability who participates in a Standards of Learning assessment, including*
1852 *participation through alternative methods of assessment administration pursuant to subdivision a, or in a*
1853 *local alternative assessment, is provided the appropriate accommodations required pursuant to such child's*
1854 *IEP and (ii) providing for the participation in alternate assessments, in accordance with subdivision 13 b of*
1855 *§ 22.1-213.2, for any child with a disability who does not meet criteria to participate in a Standards of*
1856 *Learning assessment or local alternative assessment;*

1857 7. To assess the educational progress of students, (i) develop appropriate assessments, which may include

criterion-referenced tests and other assessment instruments that may be used by classroom teachers; (ii) select appropriate industry certification and state licensure examinations; and (iii) prescribe and provide measures, which may include nationally normed tests to be used to identify students who score in the bottom quartile at selected grade levels;

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

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

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

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

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

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

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

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

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

a. Consist of:

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

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

(2) Local alternative assessments, including any permissive local alternative assessments administered in

1920 accordance with subdivision 3 b and mandatory local alternative assessments administered by each school
1921 board in each Standards of Learning subject area in which a Standards of Learning assessment is not
1922 available for administration during the school year. Each school board shall annually certify that it has
1923 provided instruction and administered each mandatory local alternative assessment in accordance with this
1924 subdivision and Board guidelines. Such guidelines shall (i) incorporate options for age-appropriate, authentic
1925 performance assessments and portfolios with rubrics and other methodologies designed to ensure that
1926 students are making adequate academic progress in the subject area and that the Standards of Learning
1927 content is being taught; (ii) permit and encourage integrated assessments that include multiple subject areas;
1928 (iii) establish criteria for mandatory local alternative assessments, including the core content, concepts, and
1929 skills that shall be prioritized on each such assessment and specific parameters for any performance
1930 assessment administered by a school board in accordance with this subdivision, relating to the structure and
1931 format of and content and items that shall be included in such assessments; (iv) include a comprehensive
1932 grading rubric for each mandatory local alternative assessment that (a) clearly defines student performance
1933 objectives and achievement targets, (b) provides scoring criteria that emphasizes student performance and
1934 subject-matter proficiency, and (c) for any performance assessment, includes criteria and student performance
1935 objectives designed to emphasize a student's performance and subject-matter proficiency as demonstrated
1936 through completion of the tested tasks in ways that are authentic to the academic discipline; and (v)
1937 emphasize collaboration between teachers to administer and substantiate the assessments and the professional
1938 development of teachers to enable them to make the best use of mandatory local alternative assessments.

1939 b. With such funds as may be appropriated for such purpose, except as provided in subdivision C 6, be
1940 developed consistent with Board guidelines and in accordance with subdivision 5; and

1941 c. Be used to identify students who show deficiencies or a need for academic support in a specific subject
1942 area or skill for the purpose of ensuring such students receive appropriate remediation or intervention. Local
1943 school divisions shall provide targeted mathematics remediation and intervention to students in grades six
1944 through eight who show computational deficiencies as demonstrated by their individual performance on any
1945 diagnostic test or grade-level Standards of Learning mathematics test that measures non-calculator
1946 computational skills.

1947 2. The assessments administered to students in grades nine through 12, except for ~~those students any~~
1948 *student who is a child with disabilities a disability*, as that term is defined in § 22.1-213, who ~~participate~~
1949 *participates* in an alternative method of Standards of Learning assessment administration or in an alternate
1950 assessment pursuant to subdivision C 6:

1951 a. Shall consist, for each student, of only the end-of-course Standards of Learning assessments necessary
1952 to meet federal accountability requirements established by the federal Elementary and Secondary Education
1953 Act of 1965, P.L. 89-10, as amended, and to meet Virginia high school graduation requirements. For the
1954 purposes of this subdivision, any student who receives a passing score on a permissive local alternative
1955 assessment administered pursuant to subdivision 3 b in lieu of any end-of-course Standards of Learning
1956 assessment corresponding to any graduation requirement shall be deemed to meet the applicable graduation
1957 requirement; and

1958 b. With such funds as may be appropriated for such purpose, except as provided in subdivision C 6, shall
1959 be developed consistent with Board guidelines and in accordance with the provisions of subdivision 5.

1960 3. Any end-of-course Standards of Learning assessment administered to students in grades three through
1961 12, except for ~~those students any student who is a child with disabilities a disability~~, as that term is defined in
1962 § 22.1-213, who ~~participate~~ *participates* in an alternative method of Standards of Learning assessment
1963 administration or in an alternate assessment pursuant to subdivision C 6, shall be subject to the following
1964 requirements:

1965 a. A school board may, but need not, elect to administer any available end-of-course Standards of
1966 Learning assessment in a specific Standards of Learning subject area to students in a specific grade level the
1967 administration of which is (i) not necessary to meet federal accountability requirements established by the
1968 federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended, and (ii) is not required by
1969 the provisions of subdivision E 1 or 2 or by any other applicable state law or regulation. However, any school
1970 board that elects to administer such an end-of-course Standards of Learning assessment pursuant to this
1971 subdivision shall be required to administer such assessment to each student receiving instruction in that
1972 subject area at that grade level;

1973 b. Any school board may, but need not, administer a permissive local alternative assessment in a specific
1974 subject area to students in a specific grade level in lieu of any end-of-course Standards of Learning
1975 assessment the administration of which is not necessary to meet federal accountability requirements
1976 established by the federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended, but
1977 which may be required in that subject area and at that grade level pursuant to state law or regulation; and

1978 c. Any student who performs below grade level on any such Standards of Learning assessment or any
1979 permissive local alternative assessment administered pursuant to subdivision b shall be eligible to retake such
1980 assessment, provided that (i) no student may retake an assessment after June 30 of the calendar year in which
1981 the applicable assessment was administered, unless the school board of the school in which the student is

enrolled grants such student permission to retake such assessment at a later date; (ii) any student who, pursuant to applicable Board regulations, is eligible for an expedited retake of an assessment shall retake such assessment within two weeks of the date on which scoring was completed for such student's assessment, unless it is determined that additional time is necessary in order for such student to complete the comprehensive remediation program required to establish eligibility for an expedited retake in accordance with Board regulations; and (iii) if applicable, the score any student receives on any assessment retake shall not replace the initial score the student received on the assessment taken during the regular assessment administration period for the purpose of calculating the student's final grade in the course in accordance with subdivision 4.

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

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

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

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

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

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

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

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

H. To assess the educational progress of students as individuals and as groups, each local school board shall require the use of Standards of Learning assessments, alternative assessments, and other relevant data, such as industry certification and state licensure examinations, to evaluate student progress and to determine educational performance. Each local school board shall require the administration of appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests and shall include the

Standards of Learning assessments, the local school board's alternative assessments, and the National Assessment of Educational Progress state-by-state assessment. Each school board shall provide teachers, parents, principals, and other school leaders with their students' results on any Standards of Learning assessment or Virginia Alternate Assessment Program assessment as soon as practicable after the assessment is administered. Each school board shall analyze and report annually, in compliance with any criteria that may be established by the Board, the results from industry certification examinations and the Standards of Learning assessments to the public.

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

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

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

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

K. As used in this section:

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

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

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

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

through performing a task or creating a project.

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

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

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

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

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

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

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

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

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

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

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

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

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

Each local school board shall provide notification of the right to a free public education for students who

2168 have not reached 20 years of age on or before August 1 of the school year, pursuant to Chapter 1 (§ 22.1-1 et
2169 seq.), to the parent of students who fail to graduate or who have failed to achieve graduation requirements as
2170 provided in the standards for accreditation. If such student who does not graduate or complete such
2171 requirements is a student for whom English is a second language, the local school board shall notify the
2172 parent of the student's opportunity for a free public education in accordance with § 22.1-5.

2173 D. In establishing graduation requirements, the Board shall:

2174 1. Develop and implement, in consultation with stakeholders representing elementary and secondary
2175 education, higher education, and business and industry in the Commonwealth and including parents,
2176 policymakers, and community leaders in the Commonwealth, a Profile of a Virginia Graduate that identifies
2177 the knowledge and skills that students should attain during high school in order to be successful contributors
2178 to the economy of the Commonwealth, giving due consideration to critical thinking, creative thinking,
2179 collaboration, communication, and citizenship.

2180 2. Emphasize the development of core skill sets in the early years of high school.

2181 3. Establish multiple paths toward college and career readiness for students to follow in the later years of
2182 high school. Each such pathway shall include opportunities for internships, externships, and credentialing.

2183 4. Provide for the selection of integrated learning courses meeting the Standards of Learning and approved
2184 by the Board to satisfy graduation requirements, which shall include Standards of Learning testing, as
2185 necessary.

2186 5. Require students to complete at least one course in fine or performing arts or career and technical
2187 education, one course in United States and Virginia history, and two sequential elective courses chosen from
2188 a concentration of courses selected from a variety of options that may be planned to ensure the completion of
2189 a focused sequence of elective courses that provides a foundation for further education or training or
2190 preparation for employment.

2191 6. Require that students (i) complete an Advanced Placement, honors, International Baccalaureate, or dual
2192 enrollment course; (ii) complete a high-quality work-based learning experience, as defined by the Board; or
2193 (iii) earn a career and technical education credential that has been approved by the Board, including its
2194 diploma seal of biliteracy established pursuant to subdivision E 4, except when a career and technical
2195 education credential in a particular subject area is not readily available or appropriate or does not adequately
2196 measure student competency, in which case the student shall receive satisfactory competency-based
2197 instruction in the subject area to earn credit. The career and technical education credential, when required,
2198 could include the successful completion of an industry certification, a state licensure examination, a national
2199 occupational competency assessment, the Armed Services Vocational Aptitude Battery, the Virginia
2200 workplace readiness skills assessment, or, in the case of the diploma seal of biliteracy, any examination set
2201 forth in subdivision E 4. The Department shall develop, maintain, and make available to each local school
2202 board a catalogue of the testing accommodations available to English language learners for each such
2203 certification, examination, assessment, and battery. Each local school board shall develop and implement
2204 policies to require each high school principal or his designee to notify each English language learner of the
2205 availability of such testing accommodations prior to the student's participation in any such certification,
2206 examination, assessment, or battery.

2207 7. Require students to be trained in emergency first aid, cardiopulmonary resuscitation, and the use of
2208 automated external defibrillators, including hands-on practice of the skills necessary to perform
2209 cardiopulmonary resuscitation.

2210 8. Make provision in its regulations for students with disabilities to earn a diploma.

2211 9. Require students to complete one virtual course, which may be a noncredit-bearing course.

2212 10. Provide that students who complete elective classes into which the Standards of Learning for any
2213 required course have been integrated and achieve a passing score on the relevant Standards of Learning test
2214 for the relevant required course receive credit for such elective class.

2215 11. Establish a procedure to facilitate the acceleration of students that allows qualified students, with the
2216 recommendation of the division superintendent, without completing the 140-hour class, to obtain credit for
2217 such class upon demonstrating mastery of the course content and objectives and receiving a passing score on
2218 the relevant Standards of Learning assessment. Nothing in this section shall preclude relevant school division
2219 personnel from enforcing compulsory attendance in public schools.

2220 12. Provide for the award of credit for passing scores on industry certifications, state licensure
2221 examinations, and national occupational competency assessments approved by the Board.

2222 School boards shall report annually to the Board the number of Board-approved industry certifications
2223 obtained, state licensure examinations passed, national occupational competency assessments passed, Armed
2224 Services Vocational Aptitude Battery assessments passed, and Virginia workplace readiness skills
2225 assessments passed, and the number of career and technical education completers who graduated. These
2226 numbers shall be reported as separate categories on the School Performance Report Card.

2227 For the purposes of this subdivision, "career and technical education completer" means a student who has
2228 met the requirements for a career and technical concentration or specialization and all requirements for high

school graduation or an approved alternative education program.

In addition, the Board may:

a. For the purpose of awarding credit, approve the use of additional or substitute tests for the correlated Standards of Learning assessment, such as academic achievement tests, industry certifications, or state licensure examinations; and

b. Permit students completing career and technical education programs designed to enable such students to pass such industry certification examinations or state licensure examinations to be awarded, upon obtaining satisfactory scores on such industry certification or licensure examinations, appropriate credit for one or more career and technical education classes into which relevant Standards of Learning for various classes taught at the same level have been integrated. Such industry certification and state licensure examinations may cover relevant Standards of Learning for various required classes and may, at the discretion of the Board, address some Standards of Learning for several required classes.

13. Provide for the waiver of certain graduation requirements and the subsequent award of a high school diploma (i) upon the Board's initiative, (ii) at the request of a local school board, or (iii) upon the request of the parent of any high school senior who died in good standing prior to graduation during the student's senior year. Such waivers shall be granted only for good cause and shall be considered on a case-by-case basis.

14. Consider all computer science course credits earned by students to be science course credits, mathematics course credits, or career and technical education credits. The Board shall develop guidelines addressing how computer science courses can satisfy graduation requirements.

15. Permit local school divisions to waive the requirement for students to receive 140 clock hours of instruction upon providing the Board with satisfactory proof, based on Board guidelines, that the students for whom such requirements are waived have learned the content and skills included in the relevant Standards of Learning.

16. Provide for the award of verified units of credit for a satisfactory score, as determined by the Board, on the Preliminary ACT (PreACT) or Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) examination.

17. Permit students to exceed a full course load in order to participate in courses offered by an institution of higher education that lead to a degree, certificate, or credential at such institution.

18. Permit local school divisions to waive the requirement for students to receive 140 clock hours of instruction after the student has completed the course curriculum and relevant Standards of Learning end-of-course assessment, or Board-approved substitute, provided that such student subsequently receives instruction, coursework, or study toward an industry certification approved by the local school board.

19. Permit any English language learner who previously earned a sufficient score on an Advanced Placement or International Baccalaureate foreign language examination or an SAT II Subject Test in a foreign language to substitute computer coding course credit for any foreign language course credit required to graduate, except in cases in which such foreign language course credit is required to earn an advanced diploma offered by a nationally recognized provider of college-level courses.

20. Permit a student who is pursuing an advanced diploma and whose individualized education program IEP specifies a credit accommodation for world language to substitute two standard units of credit in computer science for two standard units of credit in a world language. For any student that elects to substitute a credit in computer science for credit in world language, his or her school counselor must provide notice to the student and parent or guardian of possible impacts related to college entrance requirements.

21. Permit any student to substitute elective credits for completion of any industry-approved workforce credential, provided that such credential is included on the list of credentials that are uniformly accepted as substitutes for such required credits developed and maintained by the Board pursuant to subsection F of § 22.1-253.13:1.

E. In the exercise of its authority to recognize exemplary performance by providing for diploma seals:

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

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

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

4. The Board shall establish criteria for awarding a diploma seal of biliteracy to any student who

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

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

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

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

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

§ 22.1-269.1. Alternative attendance programs.

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

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

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

§ 22.1-274.02. Certain memorandum of agreement required.

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

B. The agreement shall include, but need not be limited to, (i) requirements for regular and consistent communications and consultations between the two departments and with school division personnel and officials and school board representatives; (ii) a specific and concise description and history of the federal

Individuals with Disabilities Education Act (IDEA) (*P.L. 101-476*), a summary of school division responsibilities pursuant to the ~~Individuals with Disabilities Education Act~~ *IDEA*, and a summary of any corresponding state law which influences the scope of these responsibilities; (iii) a specific and concise summary of the then-current Department of Medical Assistance Services regulations regarding the special education health services; (iv) assignment of the specific responsibilities of the two state departments for the operation of special education health services; (v) a schedule of issues to be resolved through the regular and consistent communications process, including, but not limited to, ways to integrate and coordinate care between the Department of Medical Assistance Services' managed care providers and special education health services providers; (vi) a process for the evaluation of the services which may be delivered by school divisions participating as special education health services providers pursuant to Medicaid; (vii) a plan and schedule to reduce the administrative and paperwork burden of Medicaid participation on school divisions in ~~Virginia~~ *the Commonwealth*; and (viii) a mechanism for informing primary care providers and other case management providers of those school divisions that are participating as Medicaid providers and for identifying such school divisions as Medicaid providers that are available to receive referrals to provide special education health services.

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

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

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

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

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

A. As used in this section:

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

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

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

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

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

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

3. Otherwise limited in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by

2415 *students without disabilities receiving any educational programs or services.*

2416 *C. Pursuant to subsection B, each qualified student with a disability shall be provided a free appropriate*
2417 *public education through the provision of regular or special education and related services that are designed*
2418 *to meet the educational, academic, and nonacademic needs of the student as adequately as the needs of*
2419 *students without disabilities are met.*

2420 *D. Each qualified student with a disability shall be provided such services, supports, or accommodations*
2421 *that such qualified student with a disability, by virtue of his disability, needs to (i) participate, to the*
2422 *maximum extent possible, in academic, nonacademic, and extracurricular programs, services, and activities*
2423 *available to students without disabilities and in settings with students without disabilities and (ii) to have his*
2424 *needs met to the same extent that those of students without disabilities are met, in accordance with the*
2425 *provisions of this section.*

2426 *E. The provisions of this section may be satisfied for a qualified student with a disability by the*
2427 *development and implementation of a Section 504 Plan in accordance with the Board's policies and*
2428 *procedures for the development and implementation of Section 504 Plans.*

2429 **2. That §§ 22.1-214.1 and 22.1-214.2 of the Code of Virginia are repealed.**

2430 **3. That the provisions of § 22.1-213.3 of the Code of Virginia, as created by this act, shall not become**
2431 **effective unless and until (i) any provision of the Individuals with Disabilities Education Act, 20 U.S.C.**
2432 **§ 1400 et seq., and any of its implementing regulations under 34 C.F.R. Part 300, relating to the**
2433 **provision of a free appropriate public education to each child with disabilities has been repealed,**
2434 **declared invalid, or nullified by the final judgement of a federal court applicable to the Commonwealth**
2435 **or by federal executive or administrative action that nullifies or substantially impairs the effectiveness**
2436 **of 20 U.S.C. § 1400 et seq. in ensuring the provision of a free appropriate public education to each child**
2437 **with disabilities in the Commonwealth, which shall be deemed to include any action of the federal**
2438 **executive or judicial branch that nullifies or substantially impairs the effectiveness of 20 U.S.C. § 1400**
2439 **et seq. in ensuring the provision of a free appropriate public education to each child with disabilities in**
2440 **the Commonwealth, and (ii) an appropriation effectuating the provisions of § 22.1-213.3 of the Code of**
2441 **Virginia, as created by this act, is included in a general appropriation act passed in a subsequent**
2442 **regular or special session of the General Assembly that becomes law. The Department of Education**
2443 **shall determine and certify in writing to the Virginia Code Commission the date on which such event**
2444 **occurs.**

2445 **4. That the (i) provisions of §§ 2.2-5300, 22.1-1, as it shall become effective, 22.1-213, 22.1-214,**
2446 **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**
2447 **effective, 22.1253.13:3, as it shall become effective, 22.1-253.13:4, 22.1-269.1, and 22.1-274.02 of the**
2448 **Code of Virginia, as amended by the first enactment of this act; (ii) provisions of §§ 22.1-213.1:1,**
2449 **22.1-213.2, and 22.1-215.4 through 22.1-215.7 of the Code of Virginia, as created by the first enactment**
2450 **of this act; and (iii) repeal of §§ 22.1-214.1 and 22.1-214.2 of the Code of Virginia pursuant to the**
2451 **second enactment of this act, shall become effective on the earlier of (a) the date on which the event set**
2452 **forth in the third enactment occurs, as determined and certified in writing by the Department of**
2453 **Education to the Virginia Code Commission or (b) July 1, 2027.**

2454 **5. That the provisions of § 22.1-274.7:1 of the Code of Virginia, as created by this act, shall not become**
2455 **effective unless and until (i) any provision of § 504 of the Rehabilitation Act of 1973, codified at 29**
2456 **U.S.C. § 794, and any of its implementing regulations at 34 C.F.R. Part 104, prohibiting discrimination**
2457 **on the basis of disability in federally funded programs or activities has been repealed, declared invalid,**
2458 **or nullified by the final judgment of a federal court applicable to the Commonwealth or by executive or**
2459 **administrative action that nullifies or substantially impairs the effectiveness of 29 U.S.C. § 794 in**
2460 **prohibiting discrimination on the basis of disability in federally funded programs or activities, which**
2461 **shall be deemed to include any action of the federal executive or judicial branch that nullifies or**
2462 **substantially impairs the effectiveness of 29 U.S.C. § 794 in prohibiting discrimination on the basis of**
2463 **disability in federally funded programs or activities and (ii) an appropriation effectuating the**
2464 **provisions of § 22.1-274.7:1 of the Code of Virginia, as created by this act, is included in a general**
2465 **appropriation act passed in a subsequent regular or special session of the General Assembly that**
2466 **becomes law. The Department of Education shall determine and certify in writing to the Virginia Code**
2467 **Commission the date on which such event occurs.**