

**Loudoun County Public Schools’  
Procedures for Implementation of  
the Virginia Regulations  
Governing Special Education  
Programs for Children with  
Disabilities**



**Department of Student Services**

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## INTRODUCTION

To receive federal funds available under the Individuals with Disabilities Education Act of 2004 (IDEA), local school boards must adopt and implement special education policies and procedures consistent with federal and state regulations to ensure a free appropriate public education (FAPE) to all students who are eligible for special education. This document does not address additional operational procedures and practices that Loudoun County Public Schools (LCPS) may develop which are not required to be approved by the Virginia Department of Education (VDOE), and generally, are not required to be reviewed and/or approved by the local school board.

### Regulations

[\*Individuals with Disabilities Education Act of 2004 \(IDEA\)\*](#)

[\*Regulations Governing Special Education Programs for Children with Disabilities in Virginia, July 7, 2009, reissued January 25, 2010 \(Virginia Regulations\)\*](#)

### Definitions

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

**“Business day”** means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8VAC20-81-150 B 4 a (2)). (34 CFR 300.11)

**“Calendar days”** means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

**“Child”** means any person who shall not have reached his 22nd birthday by September 30 of the current year.

**“Consent”** means: (34 CFR 300.9)

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent’s(s’) or eligible student’s native language, or other mode of communication;
2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.
  - a. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.).
  - b. If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the local educational agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.

**“Evaluation”** means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (34 CFR 300.15)

**“Free appropriate public education” or “FAPE”** means special education and related services that: (34 CFR 300.17)

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include an appropriate preschool, elementary school, middle school or secondary school education in Virginia; and
4. Are provided in conformity with an individualized education program.

**“Individualized education program” or “IEP”** means a written statement for a child with a disability that is developed, reviewed, and revised in a IEP team meeting. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child’s educational needs. (34 CFR 300.22)

**“Individualized education program team”** means a group of individuals that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (34 CFR 300.23), [8VAC20-81-110](#)

**“Parent”** means: (§ 20-124.6 and § 22.1-213.1 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

1. Persons who meet the definition of “parent”:
  - a. A biological or adoptive parent of a child;
  - b. A foster parent, even if the biological or adoptive parent’s rights have not been terminated, but subject to subdivision 8 of this subsection;
  - c. A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not a guardian ad litem, or the state if the child is a ward of the state);
  - d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare;
  - e. If no party qualified under subdivisions 1a through 1d of this subsection can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220; or
  - f. A minor who is emancipated under § 16.1-333 of the Code of Virginia.
2. If a judicial decree or order identifies a specific person(s) under subdivisions 1 a through 1 e of this subsection to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person(s) shall be determined to be the “parent” for purposes of this definition.
3. “Parent” does not include local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency.
4. The biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent(s)’ authority to make educational decisions on the child’s behalf has been extinguished pursuant to § 16.1-277.01, 16.1-277.02, or 16.1-283 of the Code of Virginia or a comparable law in another state.
5. Noncustodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child’s records.
6. Custodial stepparents have the right to access the child’s record. Noncustodial step parents do not have the right to access the child’s record.
7. A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor’s marriage record and, thus, assumes responsibilities of “parent” under this chapter.
8. The local educational agency shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent under this section, and the local educational agency is entitled to rely upon the actions of the foster parent under this section until such time that the biological or adoptive parent attempts to

act as the parent. “

**“Reevaluation”** means completion of a new evaluation in accordance with this chapter. (34 CFR 300.303)

**“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. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device.

**“Screening”** means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.

**“Special education”** means specially designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education: (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;
2. Vocational education; and
3. Travel training.

**“Surrogate parent”** means a person appointed in accordance with procedures to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education. (34 CFR 300.519)

### **General Policy Statement**

*8 VAC 20-81-30(A); 8 VAC 20-81-230(B)(1)(a)*

It is the policy of the LCPS to adhere to federal and state regulations as they have been promulgated by the United States Department of Education and the Virginia Board of Education to implement special education programs for children with disabilities, consistent with the IDEA. Specifically, these mandates are detailed in the Virginia Administrative Code and any additional documents that the VDOE publishes to address federal and state statutes and regulations for delivering special education and related services to children.

## **CHILD FIND PROCEDURES**

8 VAC 20-81-50

### **Child Find**

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

LCPS shall locate, identify, and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools.

- A. Strategies to identify children who are parentally placed in private schools will be designed after consultation with representatives of those settings.
- B. These efforts will ensure an accurate count of these children.
- C. The cost of carrying out the child find requirements, including individual evaluation, may not be considered in determining if a local educational agency has met its obligation for calculation of its expenditures under federal and state regulations governing special education.
- D. If the location of the administration of the private school in which the child attends is within Loudoun County and the child lives outside of Loudoun County, LCPS will be responsible for the child find activities.
- E. LCPS will consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, and representatives of parents of parentally placed private school children with disabilities, on how to implement the child find and evaluation activities.

### **Screening**

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

included and documented on the physical examination form.

- B. Those conducting each area of screening will document results on a screening form and ensure that it is filed in a confidential manner in the student's scholastic record. After the screening is conducted, the assigned professional will inform parents of the results of the screening. In addition, those responsible for the screening will follow-up on failed screenings by scheduling re-screenings or making referrals for special education evaluations as appropriate.
- C. Screening timelines and additional procedures will be implemented as follows:
  - 1. Hearing and vision screenings will be conducted within 60 business days of the opening of the school year for all children in grades K, 3, 7, and 10.
  - 2. Speech, voice, language, and fine and gross motor will be screened within 60 business days of the opening of school for all new enrollees including those in kindergarten and those who transfer into LCPS for the first time. LCPS will also screen children in the areas of speech, voice, language, and fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.
  - 3. LCPS will provide educational information on scoliosis to parents of students in grades 5 through 10 within 60 business days after the opening of each school year.
  - 4. Scoliosis educational information will include the following additional information:
    - a. A definition of scoliosis;
    - b. A description of how scoliosis is identified;
    - c. A statement describing why it is important to screen for scoliosis;
    - d. A description of the types of screening procedures for scoliosis;
    - e. A description of potential treatments for scoliosis; and
    - f. Information on where screenings may be obtained.
- D. LCPS will designate persons responsible for ensuring that children are referred to the special education administrator or designee if results from the screening suggest that a referral for evaluation for special education and related services is indicated. The designated persons will ensure that the referral includes the screening results.

## **Referrals**

- A. Referrals will be accepted in written, electronic, or oral form by each school's principal or designee for children aged two to 21, suspected of having a disability, regardless of whether the child is enrolled in public school. Referrals will be received from any source including parents, school staff, the school-based team, the VDOE, any other state agency, or other



individuals regarding children who are residents of the locality or who attend a private school that is located within the locality. Once a referral is received, the principal or designee will ensure that the referral is documented on a referral form which includes the child's name, the reason for the referral and efforts made to address the concerns, the date the referral was received, the name of the person or agency making the referral, the parents' name, and contact information for the parents.

- B. Within 10 business days following its receipt, the referral will be reviewed by the school-based team which includes the referring source, as appropriate, the principal or designee, at least one teacher, at least one specialist, and one member who is knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs. Additional professionals may be included as appropriate and based on the reason for the referral.
- C. The school-based team will review the reason for the referral and review the child's record and any other performance evidence or data that will be used to make recommendations for educational and/or behavioral needs. The team may determine that: (1) the referral for special education evaluation is not needed for the student, noting that the child is performing adequately; (2) recommend interventions with prescribed review dates; or (3) refer the child for a special education evaluation. All decisions of this team will be documented in writing and include information upon which a decision was based. Such documentation will be maintained in the student's scholastic record.
- D. The school-based team may use a Response to Intervention ("RTI") approach for identifying recommended strategies which are scientifically based and will gather data documenting the student's response to the applied intervention. The team will schedule regular meetings to discuss the data and the student's progress and to determine whether additional interventions are needed. The use of these strategies will not delay or interfere with the appropriate referral for special education evaluation which may be administered concurrently with team recommended interventions. Referrals from the team for a special education and related services evaluation will be forwarded to the special education administrator or designee within 3 days of their decision.
- E. If the team decides not to refer the student for a special education and related services evaluation, the parents will be provided with prior written notice indicating that the request for a special education evaluation was refused, the reasons for the decision, a description of other options the team considered and reasons why they were not accepted, a description of the evaluation information (each evaluation procedure, assessment, record or report) used to make the decision, and any other factors that were relevant to the team's decision, and their right to appeal the decision through a due process hearing. The parents will be given a copy of the procedural safeguards.

*If the referral is made to the special education administrator or designee, within three business days, the special education administrator or designee will initiate the evaluation- eligibility process, forward the referral to the school team to review and respond to the request, or deny the request. If the referral is made by the child's parents, the parents will be notified of the decision.*

*If the request is denied, the parents will be provided prior written notice as already described and as is required pursuant to 8 VAC 20-81-170 of the Virginia Administrative Code.*

## **REFERRAL FOR INITIAL EVALUATION FOR SPECIAL EDUCATION**

8 VAC 20-81-60

- A. LCPS will ensure that these referral procedures apply to all children, aged two to 21, inclusive, who are residents in accordance with the Virginia Administrative Code, whether enrolled in public school or not, who are suspected of having a disability.
- B. All referrals for initial special education evaluations will be processed using the referral procedures detailed above. Referrals from a school-based team or referrals accepted and initiated by the special education administrator/designee will result in the start of the process of determining eligibility for special education and related services. The special education administrator/designee will ensure to record the date the referral was received, reason for referral, and names of the person or agency making the referral. Referrals will be accepted in written, electronic, or oral form by each school's principal or designee for children aged two to 21 suspected of having a disability, regardless of whether the child is enrolled in LCPS.
- C. Once the referral for a special education evaluation is made by a school-based team or accepted by the special education administrator/designee, prior written notice indicating that the child has been referred for an evaluation and the purpose of the evaluation along with the procedural safeguards notice will be provided to the parents. Parents will also be informed of the procedures used to determine what evaluation data is needed and request any evaluation information that the parents may have on the child.
- D. Evaluations to be administered will be identified and will be included to enable LCPS to gather relevant functional, developmental, or academic information about the child so the eligibility team will be able to determine if the child is a child with a disability in need of special education and related services. The evaluation process will be sufficiently comprehensive to enable LCPS to determine, if the child is eligible, the child's special education and related services needs, as well as educational needs. The principal/designee or special education administrator/designee will secure informed consent in writing for the evaluation process prior to initiating the evaluations.
- E. Professionals will be assigned to complete evaluations consistent with their expertise and will be provided with a deadline for completion to ensure that eligibility decisions are made within 65 business days from the receipt of the referral for the special education evaluation. The 65 - day timeline may be extended if the parents and eligibility team agree in writing that additional time is needed to obtain data. This timeline does not apply in the following circumstances for:
  - 1. Those students whose parents repeatedly fail to produce the child for the evaluation; or
  - 2. A child that enrolls in LCPS after the 65 business days has begun in a previous school

division, but prior to a determination by the child's previous school and/or school division as to whether the child is a child with a disability, LCPS will work to complete the evaluation expediently. This exception only applies if LCPS is making sufficient progress to ensure a prompt completion of the evaluation and the parents and LCPS agree to a specific time when the evaluation will be completed.

F. The staff will comply with all requirements related to confidentiality of student records throughout the evaluation and eligibility process.

G. LCPS acknowledges the following parental consent requirements:

1. Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.
2. Parental consent for an initial evaluation will not be construed as consent for initial provision of special education and related services.
3. LCPS will make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability
4. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parents, LCPS is not required to obtain parental consent to determine whether the child is a child with a disability if:
  - a. Despite reasonable efforts to do so, LCPS cannot discover the whereabouts of the parents of the child;
  - b. The rights of the parents of the child have been terminated in accordance with Virginia law; or
  - c. The rights of the parents to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

LCPS will then proceed with evaluating the child without finalizing the appointment of surrogate parents.

5. If the parents do not provide consent for the initial evaluation or fail to respond to a request to provide consent, LCPS may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. LCPS does not violate its obligation under child find or other FAPE provisions if it declines to pursue the evaluation.
6. If parents of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at the parents' own expense, do not provide consent for initial evaluation, or the parents fail to respond to a request to provide consent, LCPS may not use mediation or due process to pursue the initial evaluation.

## EVALUATION AND REEVALUATION

8 VAC 20-81-70

- A. The school-based team, consistent with the make-up of an Individualized Education Program (IEP) team, will determine which evaluation components are needed to provide data required for the eligibility team to make a decision. In order to make this determination, the team will meet to review existing evaluation data, including evaluations and information provided by the parents and current classroom-based, local, and/or state assessments and classroom-based observations, and observations by teachers and related services providers. The parents will be provided written notice of the meeting at least five business days prior to the meeting to ensure that the parents will have an opportunity to participate in the review. The notice will include the purpose, date, time, and location of the meeting and who will be in attendance, and it will inform the parents that both LCPS and the parents may invite to the meeting other individuals, including related services personnel, who have knowledge or expertise about their child, if appropriate.
- B. Based on the information available, the team, including the parents, will identify what additional data is needed, if any, to determine the following:
1. Whether the child is (or continues to be) a child with a disability;
  2. The present educational needs of the child; and
  3. The child's Present Level of Academic Achievement and Functional Performance ("PLAAFP"), specifically with respect to:
    - a. Whether the child needs (or continues to need) special education and related services; and
    - b. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals included in the child's IEP and to participate, as appropriate, in the general education curriculum.
- C. If it is determined that additional data is needed, school personnel will ensure that tests and other evaluation materials will be completed, as necessary, to obtain the data to address issues B.1-3, above.
- D. If no additional data is needed to address the issues above, the school-based team will provide the parents with prior written notice of the decision. The prior written notice will meet all requirements detailed in the Virginia Administrative Code at 8 VAC 20-81-170. The notice will include information regarding the determination, the reasons for such determination, and the right of the parents to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. In addition, the school-based team will document that the parents were informed of the following:

1. LCPS is not required to conduct an evaluation if the team has determined that it has enough information to determine whether the child is or continues to be a child with a disability and to determine the child's educational needs, unless the parents request an evaluation for these specific purposes;
  2. A review of the information that conforms with the required process will be considered the evaluation if no additional data are needed; and
  3. The parents have the right to appeal the decision through the use of mediation or due process proceedings.
- E. If the school-based team determines not to evaluate a child suspected of a disability, it must provide the parents with a prior written notice that meets all requirements detailed in the Virginia Administrative Code at 8 VAC 20-81-170, including the parents' rights to appeal the decision through due process proceedings.
- F. School personnel will obtain informed written parental consent before conducting any evaluations or reevaluations. For a reevaluation, if LCPS can demonstrate reasonable measures to obtain consent and that the child's parents failed to respond, LCPS will proceed with the evaluation as if consent has been received. To demonstrate reasonable measures, LCPS will have provided notice to the parents in writing at least twice and will have contacted the parents by phone if the parents have a phone.
1. If the parents refuse consent, LCPS may pursue those evaluations by using due process hearing procedures or mediation, but LCPS is not required to do so.
  2. Parental consent is not required before:
    - a. Review of existing data as part of an evaluation or reevaluation;
    - b. A teacher's or related service provider's observations or ongoing classroom evaluations; or
    - c. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- G. A variety of evaluation or assessment tools and strategies, sufficiently comprehensive to identify all of the child's special education and related services' needs (whether or not commonly linked to the disability category used for the child's classification), will be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parents, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities).
1. This information will be used to determine whether the child is a child with a disability, the child's educational needs, and the content of the child's IEP. No single measure will be used as a sole criterion for determining whether a child is a child with a disability

and for determining an appropriate educational program for a child.

- H. Initial evaluations and reevaluations other than the triennial will be completed so that the eligibility decision can be made within 65 business days from the receipt of the referral by the designee. If the parents and LCPS agree, the 65-business-day timeline may be extended in order to obtain information that could not be obtained during the 65-business-day timeline. This agreement must be in writing. Triennial reevaluations will be initiated in sufficient time to ensure that an eligibility determination can be completed within three years of the anniversary date of the previous eligibility decision.
- I. All evaluation assessments and materials will be selected and administered to ensure no racial or cultural bias. In addition, evaluations will be provided and administered in the child's native language and in ways that are most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.
  - 1. All assessments will be used for the purposes for which they are valid and reliable and will be administered by personnel that are trained and knowledgeable regarding the instructions provided by the producer of the assessments.
  - 2. Assessment tools will be selected to assess specific areas of educational need rather than produce a single general intelligence quotient.
  - 3. Assessments are selected and administered so as to best ensure that if an assessment is administered to a child with impaired sensory, motor, or communication skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever the test is designed to assess rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test measures).
  - 4. Assessments that are used to assess the relative contribution of cognitive, behavior, physical, or developmental factors will be technically sound.
  - 5. If the child being assessed is limited in English proficiency, assessments will be selected and administered to ensure that they measure the extent that the child has a disability and needs special education, rather than measuring the child's English skills.
- J. If assessments are conducted under non-standard conditions, those conditions, including the extent to which the assessment varied from the standard conditions, will be included in the evaluation report and whether the non-standardized assessment administered by a qualified professional is useful in the determination of whether the child is a child with a disability and is useful in contributing to the contents of the child's IEP.
- K. If the evaluation requires assessments in more than one area relating to the suspected disability, a team of professionals, including at least one teacher or other specialist with knowledge in the areas of the suspected disability, will complete the assessments. A part of

the evaluation process will include an observation focused on academic performance in the general education classroom that will be made by at least one professional on the evaluation team other than the child's teacher. If the child is not school age, the observation will be conducted in an environment appropriate for a child of that age which may include the home or a preschool setting.

- L. All areas related to the suspected disability will be assessed by qualified professionals which may include, as appropriate, health, vision, hearing, social and emotional development, general intelligence, academic performance, communication skills, motor skills, and adaptive behavior. Evaluation components may include educational, medical, sociocultural, psychological, or developmental assessments. Hearing, however, will be screened for all children during an initial eligibility evaluation. If the child is hearing impaired or deaf, or if the child fails two hearing screening tests, a complete audiological evaluation, including tests to assess inner and middle ear functioning will be conducted.
- M. The evaluation reports will be available to parents at the student's school at least two (2) business days prior to the meeting to determine eligibility. A written copy of the reports will be provided to parents prior to or at the meeting where the eligibility team reviews the reports, or immediately following the meeting, but no later than 10 calendar days after the meeting. Copies of the evaluation reports will be provided at no cost to parents.
- N. If a child transfers to LCPS during the evaluation process, LCPS will work with the child's previous school and/or school division to ensure that the child's evaluation and eligibility determination process is promptly completed. In this instance, the 65-business-day timeline for the completion of the evaluation and eligibility process may be extended if the following requirements are met:
  - 1. The parents and the school-based team agree to extend the timeline and set a mutually agreeable date upon which the evaluation and eligibility process will be completed; and
  - 2. Sufficient progress is being made to ensure a prompt completion of the evaluation.
- O. Reevaluations will be conducted at least every three years, unless LCPS and the parents agree that a reevaluation is not necessary.
- P. Reevaluations may be conducted more frequently if LCPS determines that it needs new information to determine a child's educational or related services needs, including improved academic achievement and functional performance, or if the parents or teachers request a reevaluation. Upon the request from parents or teachers, the child's school-based team, consistent with the make-up of the IEP team, will convene to discuss the request and determine what, if any, evaluation components will be conducted. Evaluations will not be conducted more than once per year unless the parents and LCPS agree otherwise. Prior written notice that meets the requirements set forth in the Virginia Administrative Code at 8 VAC 20-81-170(C), will be provided to the parents of the decision regarding the reevaluation request.

- Q. For a child who is home-schooled, home-tutored, or who is parentally placed in a private school at the parents' expense, LCPS is not permitted to use mediation or due process to pursue consent from parents who refuse to provide consent for an evaluation or reevaluation, or who fails to respond to a request for consent. In this instance, the child will not be evaluated, and will not be eligible for equitable services as a parentally placed student under 8 VAC 20-81-150 of the Virginia Administrative Code.
- R. LCPS will not be required to evaluate a student solely because the student is graduating with a standard or advanced diploma, even though this will be considered a change in placement. Prior written notice, however, will be provided to parents, informing them that, upon graduation, the child will no longer be eligible for special education and related services. In addition, LCPS will ensure that all other requirements of the Virginia Administrative Code at 8 VAC 20-81-170, regarding prior written notice, will be met.

### **ELIGIBILITY DETERMINATION**

#### 8 VAC 20-81-80

- A. Following the completion of the administration of the assessments and other evaluation materials, or after a determination by the school-based team that additional data was not needed, the eligibility team will determine if the child is or continues to be a child with a disability and the child's educational needs. The eligibility decision must be made on an individual basis.
- B. The eligibility team will, at a minimum, meet the team composition of an IEP team. This team must include personnel representing the disciplines providing the assessments, the school principal or assistant principal (serving as the special education administrator's designee), the parents; a special education teacher; at least one general education teacher of the child (or someone qualified to teach the child of that age if the child does not have a teacher or if the child is a preschooler); at least one person qualified to conduct individual diagnostic examination (such as a school psychologist, speech pathologist, or remedial reading teacher). This team will be qualified to conduct individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, and social-emotional development, as appropriate, interpret the assessment and intervention data, apply critical analysis to the data, and develop appropriate educational and transitional recommendations based on the assessment data. The eligibility team will provide the parents with procedural safeguards in accordance with the Virginia Administrative Code, as set forth in 8 VAC 20-81-170, including the notice requirements, when determining eligibility and in ensuring the confidentiality of records.
- C. When interpreting data to determine whether or not a child is a child with a disability and to determine the child's educational needs, the team will carefully consider and document its use of information from a variety of sources, including all of the assessments prescribed by the school-based team for the evaluation, aptitude and achievement tests, parental input and teacher recommendations, as well as information about the child's physical condition, social



or cultural background, and adaptive behavior. The team may also use information obtained as a result of the child's participation in LCPS's response to an intervention process.

- D. Prior to determining a child's eligibility, the eligibility team must also review information from an observation of the child. The observation must have occurred in the child's learning environment (including the general education classroom setting), and it must have documented the child's academic performance and behavior in the area of difficulty. The observation may have occurred in routine classroom instruction and monitoring of the child's performance before the child was referred for an evaluation. In the alternative, at least one member of the eligibility team must conduct an observation of the child's academic performance in the general education classroom after the child was referred for an evaluation and parental consent was obtained. For preschool children, or a student out of school, the team member will observe the child in an environment appropriate for a child of that age.
- E. The team will analyze the data against the eligibility criteria. The team will only find a child eligible for special education and related services if the child meets the eligibility criteria to be a child with a disability, and if the team finds that there is documented evidence that, as a result of the child's disability, the child needs special education and related services. Lack of appropriate instruction in the essential components of reading instruction (including phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills, and reading comprehension strategies), a lack of appropriate instruction in math, or a child's limited English proficiency will be considered and, if these are determining factors, the child will not be found eligible.
- F. The eligibility team will consider, as part of the evaluation, data that demonstrates that, prior to, or as part of the referral process, the child was provided appropriate high-quality, scientifically based instruction in general education settings, consistent with the requirements set forth in §1111(b)(8)(D) and (E) of the Elementary and Secondary Education Act of 1965, including that the instruction was delivered by qualified personnel. There must be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction, was provided to the child's parents.
- G. The team will work toward consensus in reaching its decision. If the team does not reach consensus, and if the decision does not reflect a member's conclusion, then the team member will be required to submit a written statement indicating the member's conclusion. Written parental consent will be secured for the initial eligibility determination and any change in categorical identification.
- H. A child, aged two, who was previously served by Part C, must meet the criteria of Part B in order to be provided special education and related services. For a child served by Part C after age two, and whose third birthday occurs during the summer, the IEP team for an eligible child will determine when the child will begin to receive Part B services, thus transitioning from Part C to Part B.

- I. A child will only be provided related services when found eligible for special education. Once a child is found eligible for special education, the IEP team will make decisions about the child's need for related services, and may request an evaluation, if determined necessary. All information presented will be documented and summarized during the meeting. A summary of deliberations will include the basis for the determination of eligibility and a written statement from any member who disagrees with the team's conclusion. The summary may include other recommendations, will be maintained in the child's scholastic record, and will be forwarded to the IEP team, including the parents, following the eligibility determination.
- J. For a child found not eligible for special education, information relevant to instruction will be provided to the child's teachers or any appropriate committee. In addition, prior written notice, in accordance with 8 VAC 20-81-170, will be given to the parents including the parents' right to appeal the decision through the due process hearing procedures. If the child is parentally placed in a private school within Loudoun County, but the parents reside in a different locality, parental consent will be secured before sharing the information with another local educational agency (LEA).20-81-110
- K. The eligibility team must provide the parents, at no cost, a copy of all of the documentation regarding the eligibility determination. This documentation must include a statement of:
  1. Whether the child has a specific disability;
  2. The basis for making the determination, including an assurance that the eligibility determination was made in accordance with the Virginia Administrative Code regarding determining eligibility and educational need;
  3. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
  4. The educationally relevant medical findings, if any;
  5. If the child participated in the Division's response to intervention process, a statement of the instructional strategies used, and the student-centered data collected during that process. This document must also include:
    - a. Information regarding LCPS's notification of the VDOE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided to the parents;
    - b. The strategies that were used to increase the child's rate of learning; and
    - c. The parents' right to request an evaluation.
  6. If a child is determined eligible as a child with a specific learning disability, a memorialization that the eligibility team's determination was consistent with the requirements of 8 VAC 20-81-80(T)(2).

- L. Within 30 calendar days of an initial determination of eligibility, an IEP must be developed for the child in accordance with the requirements of the Virginia Administrative Code, as provided for in [8VAC20-81-110](#). Following a reevaluation, unless there is a change in the child’s eligibility for special education and related services or a change in the child’s educational needs, or unless the parents request a meeting to review and revise the child’s IEP, the IEP team is not required to convene.

## **SURROGATE PARENTS**

8 VAC 20-81-220

- A. The special education administrator/designee for LCPS will be responsible for identifying those who are willing and qualified to serve as surrogate parents.
- B. To be qualified as surrogate parents, individuals must have no personal or professional interest that conflicts with the interest of the child, have knowledge and skills that will ensure adequate representation of the child, be of the age of majority, and not be an employee of the VDOE, LCPS, or any other agency that is involved in the education or care of the child. If otherwise qualified, persons will not be considered to be an “employee” solely because they are paid to serve as surrogate parents.
- C. If the child is an unaccompanied homeless youth, the special education administrator/designee may permit appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program to be appointed as a temporary surrogate, even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate must meet the other qualifications for surrogate parents and may serve only until surrogate parents meeting all of the qualifications for surrogate parents can be assigned.
- D. While every effort will be made to secure individuals willing to serve as surrogates from within Loudoun County, individuals from outside Loudoun County may be secured if necessary to ensure that someone qualified is available to represent the needs of the students in meetings pertaining to special education eligibility and services. In addition, others may be eligible once a need is identified, such as a child’s relative, depending on the child’s needs, and the availability of qualified persons familiar with the child and who would otherwise qualify. The special education administrator/designee may involve the child in the selection, if appropriate.
- E. When a school cannot identify, or with reasonable efforts locate, someone who qualifies as a “parent” in accordance with the Virginia Administrative Code, the school will contact the special education administrator/designee who will confirm the need for a surrogate and appoint a surrogate within 30 calendar days for the student, if one is needed. Once appointed, the child (as appropriate to the disability), the appointed surrogate parents, and the person charged with the responsibility for the child will be notified in writing that the

appointment has been made. The surrogate parents will be assigned to serve for the duration of the school year unless a shorter period of time is appropriate, given the content of the child's IEP. At the end of each school year, following a review, a determination will be made regarding whether the appointment of surrogate parents will be renewed or not. Appointments may also be extended as needed, if the child requires the services of a surrogate during the summer months.

- F. Termination of surrogate parents will occur when: the child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed in accordance with the transfer of rights procedures; the child is no longer eligible for special education services and the surrogate parents have consented to the termination of services; legal guardianship has transferred to a persons who can serve as parents in special education matters; the parents whose whereabouts previously were unknown is now known and the parents are available; or the appointed surrogates are no longer qualified.
- G. If a surrogate wants to challenge the surrogate qualifications, or if the surrogate is terminated prior to the end of the appointment and wishes to appeal the decision, a request for a hearing may be made to the Superintendent, who will convene a panel which will include a principal, a School Board member, and the counsel for the School Board, who will hear evidence presented and make a decision on such appeal.

### **AUDIO AND VIDEO RECORDINGS**

8 VAC 20-81-170(J)

In accordance with the Virginia Administrative Code, LCPS will permit the use of audio recording devices at meetings convened to: determine a child's eligibility; to develop, review, or revise a child's IEP; and to review discipline matters. LCPS will provide for exceptions if they are necessary to ensure that the parent understands the IEP, the special education process, or to implement other parental rights guaranteed under 8 VAC 20-81-170 (procedural safeguards). LCPS does **not** allow the use of video recording for situations in which audio recordings are required in the Virginia Administrative Code.

The parents shall inform LCPS before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parents do not inform LCPS, the parents shall provide LCPS with a copy of the audio recording. The parents shall provide their own audio equipment and materials for audio recording. If LCPS audio records meetings or receives a copy of an audio recording from the parents, the audio recording becomes a part of the child's educational record.

## **RESPONSE TO INTERVENTION**

8 VAC 20-81-50(D)(4); 8 VAC 20-81-80(D)(6)

LCPS uses a variety of sources of evidence, including response to scientifically based interventions, to determine the need for a referral for a special education evaluation and as a part of the evaluation information to determine eligibility. LCPS, however, will not needlessly delay the evaluation of a student who is suspected of having a disability while these interventions are being implemented.

## **IEP TEAM MEMBER EXCUSALS**

[8VAC20-81-110\(D\)](#)

LCPS permits required members of the IEP team to be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parents and LCPS consent in writing to the excusal, and if prior to the meeting, the member provides the parents and the IEP team written input into the development of the child's IEP.

## **DISPROPORTIONALITY**

[8VAC20-81-20\(24\)-\(25\)](#)

In the event that LCPS is found to have significant disproportionality based on race and ethnicity in the identification and placement of students with disabilities, it will review and revise its policies, procedures, and practices to ensure compliance with disproportionality requirements. Such changes will be reported publicly. LCPS will respond to the VDOE's reporting requirements for LEAs on local data relative to disproportionality, and as necessary, corrective measures.

## **LONG-TERM REMOVALS**

[8VAC20-81-20\(31\)](#)

In the event that LCPS is found to have discrepancies in the rate of long-term suspensions and expulsions of students with disabilities (including by race or ethnicity), as compared to the rates for children without disabilities, LCPS will review its policies, procedures, and practices related to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that students with disabilities are not inappropriately long-term suspended or expelled. LCPS will respond to the VDOE's reporting requirements for LEAs on local data relative to long-term suspensions and expulsion of students with disabilities, and as necessary, corrective measures.

## **STUDENT RECORDS APPEAL PROCESS**

[8VAC20-81-170\(G\)\(7\)-\(9\)](#)

Upon parental request, to resolve disputes regarding the child's education records, LCPS will convene a hearing, in accordance with applicable LCPS School Board Policy, to ensure that the information included in a child's education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

## **SECTION 504 GRIEVANCE PROCEDURES**

[8VAC20-81-330](#)

LCPS will use the Virginia special education due process hearing officer system specified in [8VAC20-81-210](#) to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a disability under Section 504. Required costs associated with such hearings will be incurred by LCPS.