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Smyth County Public Schools Local Policies and Procedures

It is the policy of Smyth County Public Schools 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 Individuals with Disabilities Education Act (IDEA).

DEVELOPMENTAL DELAYED CLASSIFICATION 8 VAC 20-81-80 M

Smyth County Public Schools does use the classification of developmental delay for the detection of students with disabilities for IDEA eligibility. This group includes the age group of children with disabilities ages two by September 30 through six inclusive who meet the definition of developmental delay. Students within this age range may be classified with a discrete disability other than developmental delay.

PROHIBITION OF HARASSMENT 8 VAC 20-81-100 N

Smyth County Public Schools prohibits the harassment of children with disabilities in its academic and nonacademic settings during the school day and for school-sponsored extracurricular activities.

CHILD FIND PROCEDURES 8 VAC 20-81-50

- A. Smyth County Public Schools will implement on-going and continuous strategies to identify, locate, and evaluate children residing within its jurisdiction who are ages birth to twenty-one or parentally placed in private schools (including those that are home-schooled or home-tutored) within its jurisdiction and need special education and related services as defined in the Virginia Regulations. Child Find strategies will focus on locating: children in typical homes; children who are mobile, including those who are homeless or migrant, who are wards of the state; children who are under 18, who are suspected of having a disability who need special education and related services, who are incarcerated in a regional or local jail in Smyth County for 10 or more days; and children who are suspected of being children with disabilities, even though they are advancing from grade to grade.
- B. The strategies will include at a minimum:

1. Annual notice/description of services is published in the local newspaper one time each year, typically at the start of the school year.
 2. A Child Find brochure is provided to parents who inquire about home schooled procedures or about supportive services.
 3. Screening in each school as required in the Virginia Regulations which includes screening in the areas of speech and language, fine and gross motor, scoliosis, vision, and hearing for new students and at selected grade levels;
 4. An interagency agreement with Part C providers on referrals for Part B services.
 5. Annual letter and Child Find brochures are provided to private school/day care providers, medical providers, local and county government offices, social security administration, hospitals, churches, and rehabilitation providers.
 6. Generally by September 30 of each year the special education administrator or designee will provide information to the private schools operating in the county of the availability of evaluations and services to students currently enrolled in their facilities.
- C. These efforts will assist in ensuring an accurate count of these children, in the generation of referrals and in providing an explanation of the nature of disabilities, the early warning signs, and the need for services to begin early.
- D. These efforts will ensure that the cost associated with carrying out these requirements for parentally-placed private school children, including individual evaluation, will not be considered in determining if Smyth County Public Schools has met its obligations for calculation of its expenditures under federal and state regulations governing special education.

SCREENING PROCEDURES
8 VAC 20-81-50C

- A. Smyth County Public Schools 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 Smyth County Public Schools, including transfers. A student's pre-school physical examination required under the Code of Virginia will 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 the student's confidential scholastic record. The parents must be given advance notice of the screening. After the screening is conducted, the assigned

professional will inform parents of the results of the screening of a student who fails 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. Smyth County Public Schools will ensure 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 referral must include the screening results.
- D. If the results of a screening suggest that parental follow-up is indicated but re-screening and/or special education referral is not indicated, the parent will be informed. The parent(s) is responsible for pursuing any follow-up activities. Smyth County Public Schools is not responsible for any aspect of the follow-up activities including but not limited to financial responsibility.

REFERRAL PROCEDURES

- 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. Unless the referral is made to the Director of Special Education, the referral must be made to the principal or designee of the school that is the catchment area for the child's residence. Referrals will be received from any source including parents, school staff, the school-based team, the Virginia Department of Education, 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, the date the referral was received, the name of the person or agency making the referral, the parent's name, and contact information for the parent.
- B. The school team must meet within 10 business days following the receipt of the referral. The referral will be reviewed by a school 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 based on the reason for the referral. Team members may serve dual roles.
- C. This team will review the reason for the referral, review the child's record, and consider any other performance evidence or data that will be used to make recommendations for educational and/or behavioral needs. The team may: (1) determine that the referral for special education evaluation is not needed for the student; (2) recommend interventions with

prescribed review dates; (3) refer the child for a special education evaluation; or (4) determine that no action is needed. All decisions of this team shall be documented in writing and include information upon which a decision was based. Such documentation shall be maintained in the student's scholastic record.

- D. The team may use a response-to-intervention approach for providing research-based strategies to improve student performance. The use of the designated strategies will not delay or interfere with the appropriate referral for special education evaluation as both may be implemented concurrently.
 - 1. The team will identify specific areas of concern through a careful examination of current data such as state and district-wide assessments, previous evaluations, and documentation of classroom performance.
 - 2. The team will develop a plan of intervention utilizing research-based practices to address the identified concerns.
 - 3. The team will assign staff to monitor the fidelity of implementation of the plan and strategies.
 - 4. The team will establish a timetable of review of the interventions and change or modify as appropriate.
 - 5. The team shall refer any child who has not made adequate progress after an appropriate time of implementation of the interventions to the special education administrator or designee for an evaluation to determine if the child needs special education and related services.
- E. If the team decides not to refer the student for a special education evaluation the parent will be provided with prior written notice and will be given a copy of the procedural safeguards as well as documentation of the child study process.
- F. 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 and forward the referral to the school team to review. The school team will then respond with an approval or denial of the request. If the referral is made by a parent, the parent will be notified of the decision. If the request is denied, the parent will be provided prior written notice as is required at 8 VAC 20-81-170 of the Virginia Regulations.

**REFERRAL FOR INITIAL EVALUATION FOR SPECIAL EDUCATION
8 VAC 20-81-60**

- A. Smyth County Public Schools will ensure that these referral procedures apply to all children, aged two to 21, inclusive, who are residents in accordance with the Virginia Regulations, 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. 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.
- C. Once the referral for a special education evaluation is made by the 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 in their native language or primary mode of communication, unless clearly not feasible. Parents will also be informed of the procedures used to determine what evaluation data is needed and request any evaluation information that the parent may have on the child.
- D. Areas of evaluations will be identified and will be included to enable the school division 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 the school division 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 written informed consent from a parent 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 business day timeline may be extended if the parent and eligibility team agree in writing that additional time is needed to obtain data. This timeline does not apply in the following circumstances:
 - 1. for those students whose parents repeatedly fail to produce the child for the evaluation;
 - or
 - 2. for a child who enrolls in Smyth County Public Schools after the 65 business days has begun in a previous school division, but prior to a determination by the child's previous school division as to whether the child is a child with a disability. Smyth County Public Schools will work to complete the evaluation expeditiously. This exception only applies if Smyth County Public Schools is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and Smyth County Public Schools 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. Smyth County Public Schools acknowledges the following parent 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 initial evaluation shall not be construed as consent for initial provision of special education and related services.

3. Smyth County Public Schools shall 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 parent, Smyth County Public Schools 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, the Smyth County Public Schools 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 Virginia law; or

(c) the rights of the parent 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.

Smyth County Public Schools shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.

5. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, Smyth County Public Schools may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child. Smyth County Public Schools does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.

6. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, Smyth County Public Schools 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 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, no formal meeting is required. The team may convene at the consensus of the members. If no meeting is held, the special education teacher will survey the members 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.
- B. Based on the information available, the team including the parent(s) 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,
 3. the child's present level of academic achievement and related developmental needs,
 - 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 set out 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 parent(s) with prior written notice of the decision. The prior written notice will meet all requirements detailed in the Virginia Regulations at 8 VAC 20-81-170. In addition, the school-based team will document that the parent was informed of the following:
1. Smyth County Public Schools is not required to conduct an evaluation unless the parent(s) 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;
 3. the parent has the right to appeal the decision through the use of mediation or due process proceedings.

4. If the parent still desires an evaluation, one must be conducted.
- E. If the school-based team determines not to evaluate a child suspected of a disability it must provide the parent with a prior written notice that meets all requirements detailed in the Virginia Regulations, at 8 VAC 20-81-170, including the parent's rights to appeal the decision through due process proceedings.
 - F. In the event of an initial evaluation, the school-based team shall appoint a special education teacher to obtain written informed parental consent before conducting any evaluations. The special education case manager shall be responsible for obtaining written informed parental consent for a reevaluation. However in the case of a reevaluation, if Smyth County Public Schools can demonstrate reasonable measures to obtain consent and that the child's parent failed to respond, Smyth County Public Schools will proceed with the evaluation as if consent has been received. To demonstrate reasonable measures, Smyth County Public Schools will have provided notice to the parent in writing at least twice and will have contacted the parent by phone if the parent has a phone.
 - 1 If the parent refuses consent, Smyth County Public Schools may pursue those evaluations by using due process hearing procedures or mediation, but the school division is not required to do so.
 2. Consent will not be required for any of the following: If the team decides that a review of existing data is sufficient; for a teacher or related service provider to report their observations of the child or ongoing classroom evaluations; or before administering a test or evaluation that is administered to all children, unless parental consent is required from all parents prior to the administration of the test.
 - 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 parent(s), 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). 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 shall be completed so that the eligibility decision can be made within 65 business days from the receipt of the referral by Smyth County Public Schools Special Education Director /designee. If the parent and Smyth County Public Schools 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. However, the evaluation and eligibility process cannot take longer than the 65 business days unless agreed to in writing by the parent and school personnel.

- I. All evaluation assessments and materials will be selected and administered will conform to the following guidelines:
 1. Assessments and other evaluation materials used to assess a child under this chapter are:
 - a. Selected and administered so as not to be discriminatory on a racial or cultural basis;
 - b. Provided and administered in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
 - c. Used for the purposes for which the assessments or measures are valid and reliable; and
 - d. Administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.
 2. Materials and procedures used to assess a child with limited English proficiency are elected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
 3. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.
 4. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.
 5. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.
 6. Any nonstandardized assessment administered by qualified personnel may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.

7. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
8. 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 other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).
9. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
10. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
11. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.
12. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.
13. For a child suspected of having a specific learning disability, the evaluation shall include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
14. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.
 - a. The hearing and vision of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.
 - b. A complete audiological assessment, including tests that will assess inner and middle ear functioning, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.

- 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 nonstandardized 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. The observation can be either formal or informal.
- 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 and vision, 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 least two 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 Smyth County Public Schools during the evaluation process, Smyth County Public Schools 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 timeline for the completion of the evaluation and eligibility process may be extended if the following requirements are met:
 - 1. the parent 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 Smyth County Public Schools and the parent agree that a reevaluation is not necessary because sufficient information already exists to make a decision.

- P. Reevaluations may be conducted more frequently if Smyth County Public Schools 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 parent(s) or teacher(s) request a reevaluation. Upon the request from a parent or teacher, 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 parent and Smyth County Public Schools agree otherwise. Prior written notice that meets the requirements in the Virginia Regulations, at 8 VAC 20-81-170 C., will be provided the parent 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 parent's expense, Smyth County Public Schools is not permitted to use mediation or due process to pursue consent from a parent who refuses to provide consent for an evaluation or reevaluation, or who fails to respond to a request for consent to evaluate. 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 Virginia Regulations.
- R. Smyth County Public Schools 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. Generally by May 15 of the year of the student's graduation prior written notice will be provided to the parent(s) and student informing them that upon graduation the student will no longer be eligible for special education and related services. In addition, Smyth County Public Schools will provide a Summary of Performance with information on a student's strengths, weaknesses, experiences, and interests to facilitate transition for the student.
- S. In the event that the parent(s) disagrees with an evaluation component obtained by the Smyth County Schools the parent(s) shall have the right to obtain an independent educational evaluation of the child at public expense.
1. The parent(s) shall notify the Special Education Administrator of the request for an independent educational evaluation.
 2. The Special Education Administrator will provide to the parent:
 - a. information about where an independent educational evaluation may be obtained.
 - b. the applicable criteria for an independent educational evaluation.
 - i. the evaluation shall be conducted by an examiner meeting the same qualifications as a professional examiner employed by Smyth County Public Schools.

ii. the evaluation shall be conducted at offices no further than 150 miles from Smyth County and require no overnight stay.

iii. no payment will be forwarded until the appropriate report is provided to Smyth County Public Schools.

3. Rather than providing an independent educational evaluation, Smyth County Public Schools may initiate a due process hearing to show that its evaluation is appropriate. If the evaluation is found to be appropriate, the parent still has the right to pursue an independent educational evaluation but not at public expense.

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 will be based on the individual circumstances of the child.
- B. The eligibility team will, at a minimum, meet the team composition of the IEP team. This team must include personnel representing the disciplines providing the assessments, the special education administrator/designee, the parent(s); 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. 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 any 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 parent with procedural safeguards in accordance with the Virginia Regulations, at 8 VAC 20-81-170, including the notice requirements, when determining eligibility and in ensuring the confidentiality of records.
- C. The eligibility team will begin each deliberation with a consideration of all disabilities and determine the appropriate ones for discussion. The team will then refer to the corresponding worksheets focusing on the identified disabilities in making the determination of eligibility.
- D. 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, parent 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 the school division's response to intervention process. The team will also consider any information provided by the parent(s).

- E. 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 shall observe the child in an environment appropriate for a child of that age.)
- F. 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.
- G. 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, researched-based instruction in general education settings, consistent with the requirements of the No Child Left Behind Act, at §1111(b)(8)(D) and (E), 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.
- H. 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. If the aforementioned team member is a parent he/she will be asked to submit a written statement. Written parental consent will be secured for the initial eligibility determination and any change in categorical identification.
- I. 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.

- J. 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 parent, following the eligibility determination.
- K. For a child found not eligible, 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 parent(s) including the parent(s)' right to appeal the decision through the due process hearing procedures. If the child is parentally-placed in a private school within Smyth County Public Schools, but the parent resides in a different locality, parent consent will be secured before sharing the information with another local educational agency.
- L. The eligibility team must provide the parent 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 Regulations 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 the school division's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - b) The strategies that were used to increase the child's rate of learning; and
 - (c) The parent's right to request an evaluation.

6. If a child is determined eligible as a child with a specific learning disability, document that the eligibility team's determination was consistent with each of the following requirements:

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

- (1) Oral expression;
- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skills;
- (5) Reading fluency skills;
- (6) Reading comprehension;
- (7) Mathematical calculations; or
- (8) Mathematical problem solving.

b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision 2 a of this subsection when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-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 8VAC20-81-70.

c. The group determines that its findings under subdivisions 2 a and b of this subsection are not primarily the result of:

- (1) A visual, hearing, or motor impairment;
- (2) Intellectual disability;
- (3) Emotional disability;
- (4) Environmental, cultural, or economic disadvantage; or
- (5) Limited English proficiency.

M. Within 30 calendar days of an initial determination of eligibility, an IEP must be developed for the child in accordance with the requirements in the Virginia Regulations, at 8 VAC 20-81-110. 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 parent requests a meeting to review and revise the child's IEP, the IEP team is not required to convene. When an IEP meeting is necessary following a reevaluation, it must be held within 30 calendar days.

DISCIPLINE PROCEDURES
8 VAC 20-81-160

Students with disabilities, who violate the student code of conduct, or engage in conduct for which they may be disciplined, will be disciplined in accordance with the regular disciplinary procedures and the additional guidelines expressed in this policy. School personnel may 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 as a result of discipline.

A. Long-Term Suspensions, Expulsions or Short-Term Suspensions Which Constitute a Pattern—Change in Placement

For the purpose of removing students with disabilities from their current educational placements, a change in placement occurs when:

1. the removal is for more than 10 consecutive school days at a time; or
2. there is a series of removals each of which is for 10 days or less and they cumulate to more than 10 days in a school year and constitute a pattern because of:
 - a. the length of each removal,
 - b. the proximity of the removals,
 - c. the total time the student is removed, and
 - d. the child's behavior is substantially similar to the behavior exhibited in previous incidents.

If the disciplinary action will result in a change of placement for a student with a disability, then that student's parents must be sent notice that same day of the recommendation for discipline and be provided with a copy of the procedural safeguards. The procedures outlined in Section D must also be followed.

B. Short-Term Suspension

A short-term suspension is a suspension of 10 consecutive days or less at a time.

School authorities may remove a student with a disability from his or her current educational setting for up to 10 school days cumulative in a school year to the extent that such removal would be applied to students without disabilities and for additional short-term suspensions provided no pattern exists.

C. Functional Behavior Assessments and Behavior Intervention Plans

If the school administration, the parent, and the relevant Individualized Education Program (IEP) team members determine that a manifestation exists, the IEP team must:

- Conduct a Functional Behavioral Assessment (FBA) and implement a Behavioral Intervention Plan (BIP), if no FBA was conducted previously; or,
- If the student already has a FBA and BIP in place, review and modify the BIP, as necessary to address the behavior.

If a manifestation is found, the school division and the parent may agree to a change in placement when reviewing or modifying the BIP. Without this agreement, the student must return to the placement from which the student was removed except in certain cases as permitted by law and outlined in Section VIII.

D. Educational Services While Disciplined

For the first 10 days of removal in a school year, the School Board is not required to provide educational services to the student with a disability if services are not provided to students without disabilities who have been similarly removed.

After the first 10 days of removal in a school year, the School Board shall provide educational services to the student during the period of removal. The services must enable the student to:

1. Continue to progress in the general curriculum and
2. Progress toward meeting the goals set out in the student's IEP.

The determination of educational services is made by the IEP team for discipline which constitutes a change in placement (See Section A). For discipline which is not a change in placement, the determination is made by school personnel in consultation with the student's special education teacher.

E. Manifestation Determination

When a disciplinary action is proposed that will result in a change of placement, a manifestation determination review shall be conducted within 10 school days after the date on which the decision to take disciplinary action is made. This review shall be conducted by the Manifestation Team which consists of the Director of Special Education or designee, a local educational agency representative, the parent, and relevant members of the IEP team (as determined by the parent and the school division).

The Manifestation Team may determine that the behavior of the student was not a manifestation of such child's disability only if the Team:

1. Considers all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information supplied by the parents; and
2. Determines that:
 - a. The conduct in question was not caused by, or had a direct and substantial relationship to, the student's disability; and

- b. The conduct in question was not the direct result of the school division's failure to implement the IEP.

If a manifestation is found, the student cannot be disciplined beyond any permissible short term removal that may be available. A parent may request an expedited due process hearing if the parent disagrees with the determination that the behavior was not a manifestation of the student's disability or if the parent disagrees with any decision regarding the placement of the student while disciplined. The student will remain in the interim alternative education setting pending the decision of the hearing officer or the expiration of a forty-five school day removal.

F. Disciplinary Action for Behavior that is Determined Not to be a Manifestation

If the behavior is not a manifestation of the student's disability, the disciplinary procedures will be applied in the same manner as applied to nondisabled students. During a removal which constitutes a change in placement, the student must continue to receive the educational services necessary to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. In addition, the special education and disciplinary records of the student must be made available to the person who makes the final decision regarding the discipline.

G. Disciplinary Action and/or Alternative Placement for Behavior That Is Determined To Be a Manifestation

A student with a disability whose behavior is determined to be a manifestation of his or her disability may not be disciplined except to the extent a removal is otherwise permitted by law. The student may also be removed to a more restrictive placement by following change in placement procedures. The IEP team must conduct or review a FBA and/or BIP as provided in Section C.

H. Interim Alternative Educational Settings for Weapons and Drugs and Infliction of Serious Bodily Injury

Students with disabilities 1) who carry or possess a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or local educational agency; 2) who knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or 3) who inflict serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency may be disciplined pursuant to Policies JFCD, JFCF or JGDB of the Smyth County School Board Policy Manual and may be placed in an interim alternative educational setting for up to forty-five school days. This option may be available even where a manifestation exists. If no manifestation is found, the student may be disciplined to the extent a student without disabilities would be disciplined.

Any interim alternative educational setting shall be selected, by the IEP team, so as to enable the student to continue to progress in the general curriculum, although in another setting, and to

progress toward meeting the goals set out in the student's IEP. The student must also receive, as appropriate, a FBA, behavioral intervention services and modifications designed to address the behavior so it does not recur.

I. Change of Placement by Hearing Officer

In addition to the other options for removal, a hearing officer may order a change in the placement for a student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of such student is substantially likely to result in injury to the student or others. Additional forty-five (45) school day removals may be authorized by the hearing officer as necessary.

J. Placement During Appeals

Students with disabilities are entitled to the due process rights available to a non-disabled student. In addition, students with disabilities are entitled to the due process procedures available under the Individuals with Disabilities Education Act, as amended and any state procedures. During the course of any appeals, the student's placement shall be in accordance with the provisions of federal law unless the parent and the school division agree otherwise.

K. Students Not Identified as Disabled

Students for whom the parents assert there is a disability but who have not yet been identified as disabled may be subjected to the same measures applied to students without disabilities if the school division did not have knowledge of the disability before the behavior that precipitated the disciplinary action occurred. A school division will be found to have knowledge of the student's disability if before the behavior that precipitated the disciplinary action occurred:

1. The parent expressed concern in writing to supervisory or administrative personnel of the school division, or to a teacher of the student, that the student is in need of special education and related services; or
2. The parent requested an evaluation of the student for special education eligibility through formal evaluation procedures; or
3. The student's teacher or other school personnel had expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school division.

A school division would not be found to have knowledge of a student's disability if:

1. The parents refused to allow an evaluation of the student or refused special education services; or
2. The student was evaluated and found not eligible for special education services.

If a request for an evaluation is made during the period such student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the student is found eligible as a child with a disability, taking into consideration information from the evaluation

conducted by the school division and information provided by the parents, then the student must be provided special education and related services, although in another setting, in compliance with the procedures for suspended and expelled students with disabilities. Pending the results of the evaluation, the student shall remain in the educational placement determined by the school authorities.

SURROGATE PARENTS
8 VAC 20-81-220

- A. The special education administrator/designee for Smyth County Public Schools will be responsible for identifying those who are willing and qualified to serve as surrogate parents.
- B. To be qualified as a surrogate parent, an individual 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 Virginia Department of Education, this school division, or any other agency that is involved in the education or care of the child. If otherwise qualified, a person will not be considered to be an “employee” solely because they are paid to serve as a surrogate parent.
- 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 a surrogate parent, and may serve only until a surrogate parent meeting all of the qualifications for a surrogate parent can be assigned.
- D. While every effort will be made to secure individuals willing to serve as surrogates from within Smyth County Public Schools, individuals from outside Smyth County Public Schools 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 Regulations, 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 parent, and the person charged with the responsibility for the child will be notified in writing that the appointment has been made. The surrogate parent 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 a surrogate parent 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 a surrogate parent 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; when the child is no longer eligible for special education services and the surrogate parent has consented to the termination of services; when legal guardianship has transferred to a person who can serve as the parent in special education matters; when the parent whose whereabouts previously were unknown is now known and the parent is available; or when the appointed surrogate is 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 division superintendent who will convene a panel which shall include a principal, a school board member, and a central office administrator who will hear evidence presented and make a decision.
- H. A surrogate parent is not required for a child who is placed in the care of a foster parent in Smyth County. However, Smyth County Public Schools 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

AUDIO/VIDEO RECORDING 8 VAC 20-81-170J

- A. Smyth County Public Schools limits the use of audio recordings to IEP meetings, eligibility meetings, and manifestation determination reviews according to the following:
 - 1. The parent(s) must inform the principal at the student's school in writing 24 hours prior to the meeting that they will be audio recording the meeting unless they are unable to write in English.
 - 2. If the parent(s) does not inform the local educational agency, the parent(s) shall provide the local educational agency with a copy of the audio recording, and it will become part of the child's educational record.
- B. Smyth County Public Schools does not allow the use of video recording for any situations other than by its staff for instructional purposes.

SCIENTIFICALLY-BASED INTERVENTIONS
8 VAC 20-81-50 D.4; 8 VAC 20-81-80 D.6

Smyth County Public Schools may use 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. Smyth County Public Schools, however, will not delay the evaluation of a student who is suspected of having a disability while these interventions are being implemented.

EXCUSAL OF IEP TEAM MEMBERS
8 VAC 20-81-110 D

Smyth County Public Schools permits required members of the IEP team (ie. members whose area of the curriculum or related service is being discussed or modified) to be excused in advance from attending the IEP team meeting, in whole or in part, if

1. the parent and Smyth County Public Schools consent in writing to the excusal, and
2. prior to the meeting, the member provides the parent and the IEP team written input into the development of the child's IEP.

IEP AMENDMENTS WITHOUT IEP MEETING
8 VAC 20-81-110 B.9

After a child's annual IEP team meeting for the school year, the parent(s) and Smyth County Public Schools may agree to develop a written amendment to a child's IEP without convening an IEP meeting. If changes are made to a child's IEP without a meeting, Smyth County Public Schools must ensure that the child's IEP team is informed of the changes, and that the parent, upon request, is provided a revised copy of the child's IEP with the amendment incorporated. This process is not a substitute for the required annual IEP meeting.

DISPROPORTIONALITY
8 VAC 20-81-20

In the event that Smyth County Public Schools 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.

In the event that Smyth County Public Schools 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, Smyth County Public Schools will review its policies, procedures, and practices related to the development and implementation of IEPs,

and procedural safeguards to ensure that students with disabilities are not inappropriately long-term suspended or expelled.

HEARING – STUDENT RECORDS
8 VAC 20-81-170 G.7 & 9

Smyth County Public Schools will adhere to the protections of the Family Education Rights and Privacy Act. This is outlined in Chapter 7, Section 16, Management of Scholastic Records of the policy manual for the Smyth County School Board.

SECTION 504 GRIEVANCE PROCEDURES
8 VAC 20-81-330

I. Section 504 Grievance Procedure

- A. Persons who believe that the school division has discriminated against them because of their disability and thus violated Section 504 of the Rehabilitation Act (Section 504) or the Americans with Disabilities Act (ADA) can file a written grievance with the school division’s Section 504/ADA Coordinator. See 34 C.F.R. § 104.7. Once a written grievance is received, the school division will investigate the allegations contained in the written grievance in an effort to reach a prompt and equitable resolution.
- B. A grievance may be filed by a student, the student’s parent or parents, or a school division employee. A grievance must meet the following requirements:
 - 1. The grievance must be in writing. At a minimum, it must contain (1) the nature of the grievance; (2) the facts upon which the grievance is based, including a list of all witnesses; (3) the remedy requested; and (4) the complainant’s signature and the date the grievance is filed.
 - 2. The written grievance must be filed with the school division’s Section 504/ADA Coordinator (“coordinator”) at the following address:

Section 504/ADA Coordinator
Smyth County Public Schools
121 Bagley Circle, Suite 300
Marion, VA 24354
 - 3. The grievance should be reported as soon as possible and should generally be made within fifteen (15) school days of the occurrence.
- C. The complainant must have the opportunity to present verbal and written evidence.
- D. The coordinator or designee will independently investigate the allegations to determine whether the school division is in compliance with Section 504 and the ADA. The coordinator or designee will provide a written report of the investigation

within thirty (30) school days of receipt of the complaint. The report should include the following information:

1. A statement of the complainant's allegations and the remedy sought;
 2. A statement of facts as contended by each party;
 3. A narrative describing attempts to resolve the grievance;
 4. A list of the witnesses interviewed and the documents reviewed during the investigation;
 5. A statement of facts as determined by the coordinator or designee with reference to the evidence to support each fact;
 6. The coordinator or designee's conclusion as to whether the allegations are valid; and
 7. If the coordinator or designee does determine that the allegations are valid, the report should include any corrective action determined by the coordinator or designee.
 8. An extension of the thirty (30) school day time limit may occur if necessary as determined by the coordinator or designee.

- E. The complainant shall have an opportunity to make a written appeal to the school division's superintendent within ten (10) school days of receiving the coordinator's report. Following an appeal, the superintendent or the superintendent's designee will review the complainant's appeal along with the coordinator's report and then respond in writing to the complainant within thirty (30) school days of receiving the appeal. The superintendent or the superintendent's designee shall either confirm or disapprove the coordinator or designee's decision. An extension of the thirty (30) school day time limit may occur if necessary as determined by the superintendent or the superintendent's designee.

II. Section 504 Hearing Procedure

- A. Impartial hearings are available under Section 504 to resolve disagreements between parents and the school division over matters related to the identification, evaluation, or educational placement of a student with a disability. See 34 C.F.R. § 104.36.
 1. Exception for student use of drugs or alcohol. School divisions can take disciplinary action against any student with a disability "who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities." 29 U.S.C. § 705(20)(C)(iv). Furthermore, disciplinary matters relating to a student's current use of illegal drugs or alcohol are not reviewable in a hearing. See id.
 2. These hearing procedures shall not be used if the remedy requested by the complainant is available through the due process procedures set forth in the Individuals with Disabilities Education Improvement Act ("IDEIA") of 2004, 20 U.S.C. § 1415.

B. Requesting a Hearing

Requests for hearings shall be made in writing and directed to the school division's Section 504 Coordinator ("coordinator"). A hearing must be requested within ninety (90) calendar days of the dispute giving rise to the hearing. The hearing request must include the following information:

1. The name of the student, the address of the residence of the student (or available contact information in the case of a homeless student), and the name of the school the student is attending;
2. In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the student and the name of the school the student is attending;
3. A description of the decision(s) made by the school division with which the complainant disagrees, including facts relating to such decision; and
4. A proposed resolution of the problem to the extent known and available to the party at the time.

C. Appointment of a Hearing Officer

The coordinator will appoint an impartial hearing officer from the list of special education hearing officers maintained by the Supreme Court of Virginia. The hearing officer should be appointed within five (5) school days of receipt of a request for a hearing.

D. Pre-Hearing Procedures

1. The hearing officer is responsible for the following matters prior to the hearing:
 - a. Within five (5) school days of appointment, securing a date, time, and location for the hearing that are convenient to both parties, and notifying both parties, in writing, of the date, time, and location of the hearing.
 - b. Ascertaining whether the parties will be represented at the hearing.
 - c. Ascertaining whether the hearing will be open to the public.
 - d. Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
2. A list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) must be exchanged by the parties and received by the hearing officer at least five (5) school days before the hearing. The hearing officer has the authority to exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five (5) school days before the hearing.
3. Pre-hearing conferences should be held, if appropriate.

E. Hearing Procedures

1. The parties have the following rights in a hearing:

- a. to participate in the hearing and be represented by counsel at their own expense;
 - b. to present evidence and cross-examine witnesses; and
 - c. to obtain a copy of the transcript or a tape recording of the hearing (the cost of the transcript to be borne by the requesting party).
2. For hearings requested on behalf of students, the student may attend the hearing.
3. In connection with the hearing, the hearing officer shall:
 - a. Maintain an atmosphere conducive to impartiality and fairness.
 - b. Ensure the appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the IDEA.
 - c. Maintain an accurate record of the proceedings.
 - d. Issue a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
 - e. Render a written decision within forty-five (45) calendar days after the request for a hearing is received by the school division, unless continued upon a request of either party to the hearing. A continuance can be granted by the hearing officer upon a showing of good cause.
 - f. Assign the burden of proof to the party seeking relief.
4. The hearing officer shall hold all records for thirty (30) calendar days after issuance of a decision. In the event an appeal is noted, the coordinator will provide the hearing officer with the name and address of the review officer and request that the records be forwarded to the review officer. The hearing officer shall transmit the records to the review officer within three (3) school days of the coordinator's request. In the event that no appeal is made, the hearing officer shall return the records to the coordinator.

III. Section 504 Review Procedure

- A. Any party aggrieved by the hearing officer's decision may appeal the decision to a review officer. See 34 C.F.R. § 104.36.
- B. An appeal may be noted by an aggrieved party by filing a written notice with the coordinator within thirty (30) calendar days of the date of the decision issued by the hearing officer.
- C. An impartial review officer must be appointed by the coordinator from the same list from which the initial hearing officer was appointed and within five (5) school days of the request for review.
- D. The review officer shall:
 1. examine the record of the hearing;
 2. seek additional evidence, if necessary;
 3. afford the opportunity for written or oral argument;

4. advise the parties of the right to be represented by counsel at their own expense during the review proceedings; and
 5. issue a written decision.
- E. The review officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by evidence.
 - F. The review officer's decision must be issued within thirty (30) school days of receipt of the request for an appeal, unless continued at the request of a party. A continuance can be granted by the review officer upon a showing of good cause. A copy of the decision must be sent to all parties.
 - G. The record of the administrative hearings shall be sent by the review officer to the coordinator upon the issuance of the decision.
 - H. The coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.
 - I. Any party aggrieved by the review officer's decision may file a civil action in a court of appropriate jurisdiction. See 29 U.S.C. § 794a.