



**VIRGINIA
IS FOR
LEARNERS**

January 10, 2022

The Honorable L. Louise Lucas
Chair, Senate Education and Health Committee
Virginia General Assembly
P.O. Box 700
Portsmouth, Virginia 23705-0700

The Honorable Roslyn C. Tyler
Chair, House Education Committee
Virginia General Assembly
25359 Blue Star Highway
Jarratt, Virginia 23867

Dear Chairwoman Lucas and Chairwoman Tyler:

In December 2020, the General Assembly's Joint Legislative Audit Review Commission (JLARC) released its report, *K-12 Special Education in Virginia*. In 2018, JLARC directed its staff to review Virginia's K-12 special education system including school divisions' identification and eligibility determination processes; the processes used to determine where students with disabilities will receive their education; student outcomes; the adequacy of training and expertise in special education across school divisions; the effectiveness of the Virginia Department of Education's (VDOE) monitoring, guidance, and support; and spending trends in special education.

As part of their review, JLARC staff analyzed student- and state-level data on the enrollment, placements, discipline, and outcomes of students receiving special education, data on state and local spending on special education services, and data related to VDOE's monitoring efforts. Staff interviewed school division special education directors, special education teachers, VDOE staff, parents, advocates, staff from education agencies in other states, and other stakeholders, including special education experts at Virginia's special education Training and Technical Assistance Centers. JLARC staff also surveyed school division special education directors and parents of students receiving special education services and reviewed research literature on topics related to special education.

The JLARC report included twenty-seven recommendations for VDOE and the General Assembly (GA). This report is in response to Recommendation #27 which suggested that the GA

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“may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to develop and implement a clear and comprehensive plan to improve its approach to monitoring Virginia’s special education system on an ongoing basis. At a minimum, the plan should clearly describe VDOE’s procedures for effectively determining whether school divisions are complying with state and federal requirements pertaining to (i) identification and eligibility determination processes; (ii) individualized education program development and implementation, (iii) post-secondary transition planning; (iv) inclusion in academic and non-academic experiences and the use of discipline; and (v) special education staffing. The plan should also propose actions to increase monitoring capacity and onsite visits with existing resources and by leveraging available federal funding.”

During its 2021 Special Session I, the General Assembly passed House Bill 2299 and Senate Bill 1288 which included the above requirement as part of the bills’ enactment clauses.

We are pleased to submit the attached report which in fulfillment of both the JLARC recommendation and legislative mandate and outlines VDOE’s plan to improve its approach to monitoring Virginia’s special education system which is ground in the agency’s commitment to providing support to Virginia’s local school divisions.

The Virginia Department of Education (VDOE) has put in place a robust system for monitoring local school division’s compliance with The *Individuals with Disabilities Education Act* (IDEA) and identifying, addressing, and verifying the correction of noncompliance. In 2016, the U.S. Department of Education’s Office of Special Education Programs (OSEP) began providing differentiated monitoring and support (DMS) to states as part of its Results Driven Accountability system. OSEP has implemented a monitoring approach that focuses on compliance and improving results for children with disabilities. OSEP also supports differentiation in its approach for each state based on the state’s unique strengths, progress, challenges, and needs. VDOE has taken this guidance and reformed its model of federal special education program monitoring to strike a balance with its general supervision system between focusing exclusively on compliance or outcomes and has implemented activities that attend to both goals as well as being flexible to individual division characteristics and needs. This system design reflects the intent of IDEA, Section 616 of the 2004 IDEA amendments, which states that:

The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on – (A) improving educational results and functional outcomes for all children with

disabilities; and (B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

In the initial phase of implementation, VDOE is conducting a program of more frequent and comprehensive monitoring of local special education programs with several school divisions, beginning in the 2021-2022 school year following a small-scale pilot deployed in the Spring of 2021. In addition, this new model includes a comprehensive verification and review process for a sample of school divisions every year, with all 132 of the commonwealth's divisions undergoing a detailed review at least once every five years.

Local school divisions will review the requirements of the monitoring protocol and work with an assigned special education monitor in order to assess the area of focus. This review will include a review of all local policies, procedures, practices, and associated documents relevant to the regulation(s) identified; a determination that the policies, documents, and processes meet all requirements of the noted regulation(s); and, as needed, a consultation of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* for additional information as required.

The VDOE has leveraged existing resources to increase monitoring capacity with a focus on the following areas.

- (i) *identification and eligibility determination processes;*
- **Child Find** - 8VAC20-81-50 A.1.a-e. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who are migrant and homeless, wards of the state, attend private schools, suspected of being children with disabilities and in need of special education even though they are advancing from grade to grade; and are under age 18, who are suspected of having a disability, and who are incarcerated.

- **Child Find - Coordination of Activities with Part C** - 8VAC20-81-50 A.2. and 8VAC20-81-230 F.2 Each Local Education Agency (LEA) shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council. The local school division shall participate in transition planning conferences when notified by the designated local Part C early intervention agency (not less than 90 days and not more than nine months before the child is eligible for preschool services).
- **Local Educational Agency Administration and Governance - Transition from Part C to Part B** - 8VAC20-81- 230 F.1. and 8 VAC-81-50 A.2. Children who are participating in early intervention programs under Part C of the Act and who will participate in preschool programs under Part B shall be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures. Each local school division shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council. (34 CFR 3001. 24)
- **Children Enrolled by Their Parents in Private Schools** - 8VAC20-81-50 A.3.a.(1)(2), e.(1) and f. Each local school division shall locate, identify and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools. a. The child find process shall be designed to ensure: (1) The equitable participation of parentally placed private school children, and (2) An accurate count of those children. e. Each local school division in which private, including religious, elementary and secondary schools, are located, shall include parentally placed private school children, including those who reside in a state other than Virginia, or country other than the United States. (1) If the location of the administration of the private school in which the child attends is different from the school division in which the private school is located, the school division in which the private school is located and which the child attends is responsible for the child find activities. f. The local school division shall 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.

- **Referrals** - 8VAC20-81-50 D.1. and 2.a-c. Each school shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability. Each school shall have a team to review records and other performance evidence of the child being referred in order to make recommendations to meet the child's educational and behavioral needs.

The team shall include:

1. the referring sources, as appropriate, except if the inclusion of a referring source would breach the confidentiality of the child;
2. the principal or designee
3. at least one teacher, and
4. at least one specialist.

Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.

One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs."

- **Evaluation and Reevaluation** - 8VAC20-81-70. C.1.a.-d. The LEA shall establish policies and procedures to ensure: Assessments and other evaluation materials used to assess a child 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.

(ii) *individualized education program development and implementation,*

- **IEP Accountability** – 8VAC20-81-110. B.3.a.b. Each LEA shall ensure that: a. The child’s IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and b. Teachers and providers are informed of (1) their specific responsibilities related to implementing the child’s IEP; and (2) the specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.
- (iii) *post-secondary transition planning;*
- **Indicator 13 of the State Performance Plan/Annual Performance Report** – School divisions must annually self-report on the percentage of youth, aged 16 and above, with IEPs that include appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student’s transition service’s needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority. The school division will review student IEPs and respond to eight questions. If any response is “no,” the division is out of compliance. If less than 100 percent compliance is reported, the division will receive a written notice of noncompliance. The division is required to make corrections. It is also important to note that the official notification of all findings of non-compliance are documented and submitted to each school division with a percentage of the state subject to data validation annually as a part of the cyclical review process.
- (iv) *inclusion in academic and non-academic experiences and the use of discipline; and*
- **Consultation and Equitable Services Determined**– 8VAC20-81-150. C.5.a-c and 6b. The LEA shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for children. Following consultation, the LEA shall obtain a written affirmation signed by the representatives of

participating private schools. Decisions about the services that will be provided to the parentally-placed private school children with disabilities are made in accordance with the consultation process and a service plan.

- **Discipline – Services During Short-term Removals-** 8VAC20-81-160.B.2.b. For additional short-term removals, which do not constitute a pattern, the local educational agency shall provide services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals of the student’s IEP. School personnel, in consultation with the student’s special education teacher, make the service determinations.
 - **Additional Short-term Removals-** 8VAC20-81-160.B.2.c. For additional short-term removals that do not constitute a pattern, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and division-wide assessment programs.
 - **Use of Positive Behavioral Interventions, Strategies, and Supports-** 8VAC20-81-160. A.2.a. and b. In the event that the child’s behavior impedes the child’s learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either: Developing goals and services specific to the child’s behavioral needs; or conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child’s behavioral needs.
- (v) *special education staffing.*
- **Personnel Assignment-** 8VAC20-81-40. A.2.a. Each student shall receive special education services from special education personnel assigned in accordance with Virginia Licensure Regulations for School Personnel.
 - **Caseload Standards Maximum per Teacher-** 8VAC20-81-40. A.3.a. and 8VAC20-81-340 The maximum instructional caseloads for special education teachers and speech-language pathologists, for which public schools receive state funds shall be in accordance with the Virginia Appropriation Act as listed in 8VAC20-81-340.

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- **Caseload Standards Single Class Standard-** 8VAC20-81-40. A.3.b.(3) and 8VAC20-81-340 No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than ten (10) students shall be assigned to a single class period when there are varying achievement levels. For children receiving early childhood special education, no more than eight (8) children shall be assigned to a teacher in a center based program with a paraprofessional 100 percent of the time and no more than ten (10) shall be assigned if there are also children receiving home-based and/or itinerant services. No more than 12 children shall be assigned to a teacher providing only home-based and/or itinerant services.

With the implementation of a revised model for monitoring school divisions for compliance with federal and state special education laws and regulations, VDOE has enhanced its supervision of local school divisions as they strive for excellence in meeting the needs of children identified with special needs. This new approach is the result of internal discussions about improving the Department's system for monitoring local special education programs and recommendations from recent state and federal reports, including JLARC's December 2020 report: [K-12 Special Education in Virginia](#). The consistently high ratings Virginia receives for improving outcomes for students with disabilities reflect the effectiveness of VDOE's efforts to support local programs and monitor divisions for compliance with the federal Individuals with Disabilities Education Act (IDEA).

If you require additional information, please contact Holly Coy, Assistant Superintendent, Department of Policy and Communications at (804) 225-2092 or Holly.Coy@doe.virginia.gov.

Sincerely,



Rosa S. Atkins, Ed.D.

Acting Superintendent of Public Instruction

RSA/jgh