

**REPORT OF THE VIRGINIA
COMMISSION ON YOUTH**

**Review of Virginia's Special
Education Dispute Resolution
System (Chapter 502, 2024)**

TO THE GENERAL ASSEMBLY OF VIRGINIA



SENATE DOCUMENT NO. 7

**COMMONWEALTH OF VIRGINIA
RICHMOND
2025**



COMMONWEALTH of VIRGINIA

Commission on Youth

Senator Barbara A. Favola, *Chair*
Delegate Carrie E. Coyner, *Vice Chair*

Executive Director
Amy M. Atkinson

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November 1, 2025

TO: The Honorable Glenn A. Youngkin, Governor of Virginia

and

Members of the Virginia General Assembly

During the 2024 General Assembly Session, Delegate Carrie Coyner and I introduced House Bill 1089 and Senate Bill 220 respectively. These bills through an enactment clause directed the Commission on Youth:

To study and make recommendations on Virginia's special education dispute resolution system. In conducting such study, the Commission shall (i) consider the entire special education dispute resolution system in the Commonwealth, including the parent ombudsman for special education, mediation, complaints, and due process; (ii) review the effectiveness of such system in responding to the concerns of parents, analyze such system in comparison to best practices from other states, and make actionable recommendations for improvement, including regulatory, statutory, staffing, and budgetary modifications; and (iii) specifically review and make recommendations to improve the Department of Education's system for collecting, tracking, analyzing, and publicly reporting data on parent interactions with such system and the outcomes of such interactions. The Commission shall report its findings and recommendations to the General Assembly no later than November 1, 2025.

This report represents the work of many government and private agencies and individuals, including parents and educators, who provided input to the study. The Commission on Youth gratefully acknowledges their contributions to this effort.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Favola".

Barbara A. Favola

cc: The Honorable Ghazala F. Hashmi, Chair, Senate Education and Health Committee
The Honorable Sam Rasoul, Chair, House Education Committee
Emily Anne Gullickson, Superintendent of Public Instruction, Virginia Department of Education

MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

Senate of Virginia

Barbara A. Favola, Chair
Dave W. Marsden
David R. Suetterlein

Virginia House of Delegates

Carrie E. Coyner, Vice-Chair
Joshua G. Cole
Karrie K. Delaney
Holly M. Seibold
Irene Shin
Anne Ferrell H. Tata

Gubernatorial Appointments from the Commonwealth at Large

The Honorable Mackenzie Babichenko
Rita Jones
(*one vacancy*)

Commission on Youth Staff

Amy M. Atkinson, Executive Director
Will Egen, Senior Policy Analyst

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I. Authority for Study

Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to “study and provide recommendations addressing the needs of and services to the Commonwealth’s youth and their families.” This section also directs the Commission to “encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services.” Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to “undertake studies and to gather information and data ... and to formulate and report its recommendations to the General Assembly and the Governor.”

The General Assembly and the Governor approved Senate Bill 220 (Favola) and House Bill 1089 (Coyner) introduced during the 2024 Session. The legislation made several changes relating to special education and related services for children with disabilities in public elementary and secondary schools in the Commonwealth. The legislation’s tenth enactment clause directed:

That the Virginia Commission on Youth (the Commission) shall study and make recommendations on Virginia's special education dispute resolution system. In conducting such study, the Commission shall (i) consider the entire special education dispute resolution system in the Commonwealth, including the parent ombudsman for special education, mediation, complaints, and due process; (ii) review the effectiveness of such system in responding to the concerns of parents, analyze such system in comparison to best practices from other states, and make actionable recommendations for improvement, including regulatory, statutory, staffing, and budgetary modifications; and (iii) specifically review and make recommendations to improve the Department of Education's system for collecting, tracking, analyzing, and publicly reporting data on parent interactions with such system and the outcomes of such interactions. The Commission shall report its findings and recommendations to the General Assembly no later than November 1, 2025.

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. The Commission has twelve member positions: six Delegates, three Senators, and three citizens appointed by the Governor.

2025 membership of the Virginia Commission on Youth is listed below.

Senator Barbara A. Favola, Arlington, Chair
Senator David W. “Dave” Marsden, Fairfax

Senator David R. Suetterlein, Roanoke County
Delegate Carrie E. Coyner, Chesterfield, Vice-Chair
Delegate Joshua G. Cole, Fredericksburg
Delegate Karrie K. Delaney, Fairfax
Delegate Holly M. Seibold, Fairfax
Delegate Irene Shin, Fairfax
Delegate Anne Ferrell H. Tata, Virginia Beach
Mackenzie Babichenko, Mechanicsville
Rita Jones, North Chesterfield

III. Executive Summary

The General Assembly and the Governor approved Senate Bill 220 (Favola) and House Bill 1089 (Coyner) introduced during the 2024 Session. The legislation made several changes relating to special education and related services for children with disabilities in public elementary and secondary schools in the Commonwealth. The legislation's tenth enactment clause directed:

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During June of 2024, the Commission on Youth, in partnership with the Parent Education Advocacy Training Center (PEATC), hosted four in-person listening sessions in Wytheville, Henrico, Arlington, and Norfolk and one virtual session. A wide variety of stakeholders attended the sessions including teachers, parents, students, school officials, public officials, legislators, members of the administration and parent advocates. On September 18, 2024, the Commission convened an Advisory Group of special education stakeholders. An update of the implementation of the 2024 special education legislation was given along with a summary of the summer listening sessions. The consultant for the study gave an update of his progress with the study. A roundtable discussion of the study took place and the meeting concluded with public comment.

In 2025, the Advisory Group convened on May 5 and July 7. At the May 5 meeting, the Advisory Group received an update from the Commission's consultant. Following the consultant's presentation, members of the Advisory Group went into small group breakout sessions where they discussed the following questions:

- What is the one thing in dispute resolution that would make the system better for all families?
- Where do I see the most alignment among stakeholders for reform and the most disagreement?

At the July 7 meeting, the consultant presented his draft recommendations. Then members of the Advisory Group went into small group breakout sessions where they discussed the consultant's draft recommendations and were directed to formulate Advisory Group recommendations. In addition, the small breakout groups considered draft recommendations from Delegate Carrie Coyner's listening session of stakeholders. The meeting concluded with public comment.

Draft study recommendations that came out of this process were presented at the Commission's September 3, 2025 meeting. The Commission received written public comments through October 15, 2025. After receiving in-person public comments at the October 21, 2025 meeting, the Commission on Youth adopted the following recommendations:

Universal Awareness & Training on the Dispute Resolution Process

Recommendation 1:

The Virginia Department of Education (VDOE) should provide awareness and training for the formal dispute resolution options. Develop consistent training on laws, processes, systemic & structural biases, neutrality, and the family perspective. Provide step-by step expectations for what happens when parties agree or disagree. Develop and provide easy-to-read resources, self-help materials and tools for all parties to help families and school staff understand the dispute resolution process in a tangible way. Ensure that training and awareness materials are developed with input by independent subject-matter experts whose professional experience and backgrounds reflect a range of racial, cultural, and historically marginalized perspectives.

VDOE should provide early conflict resolution training to school staff, and when appropriate, lay advocates and parents to improve communication and collaborative problem-solving. As part of this:

- Encourage school divisions, advocates, and parents to participate in structured early conflict resolution and communication training, ideally aligned with existing efforts by VDOE and PEATC through the CADRE project.

- Focus on de-escalation strategies, trauma-informed practices, and effective family engagement.
- Provide voluntary training to lay advocates on the dispute resolution system, early conflict resolution, and effective communication strategies.

Recommendation 2:

VDOE should expand multilingual parent education and dispute resolution navigation tools. Create a mobile-friendly webpage offering plain-language descriptions of dispute options, video explainers and real-world scenarios, interactive guidance based on the nature of the concern. VDOE should leverage PEATC and other neutral third-party partners to provide coaching and support to families throughout the dispute process, both before and during the process. Require local education agencies to provide this information on their websites.

State Complaints

Recommendation 3:

VDOE should strengthen oversight of school division implementation of Corrective Action Plans (CAP) through increased documentation requirements and quarterly monitoring for one year after a CAP or other remedy is mandated. VDOE should conduct random oversight of school divisions specific to dispute resolution to ensure consistent implementation of timelines, roles, forms, and procedures.

Recommendation 4:

VDOE should consult a neutral independent expert to conduct mandatory initial and ongoing training for state complaint personnel involved in investigation of complaints and writing of Letters of Finding regarding the IDEA state complaint system and standard decision writing practices, including issue specification and applicable standards of law. The training must include the determination and statement of issues for a state complaint; the conduct of the investigation; and the writing of the Letters of Finding, including enforceable final corrective actions. Training should be followed by the availability of a minimum of two months of technical assistance from the trainer to the state complaint personnel from case assignment to case closure.

Recommendation 5:

VDOE should collect, track/monitor, and publicly report the data on the enforcement of all Letters of Finding with ordered remedies, once enforceable final corrective actions are

provided in the Letters of Finding.

Ensure public reporting of dispute resolution outcomes and corrective actions (excluding student identifiers) through the publication of an annual dashboard to include:

- Number and outcomes.
- Common issues (e.g., FAPE, placement, evaluations).
- Timelines of resolution, including applicable enforcement actions.
- Patterns of repeat filings by division.

Facilitated IEPs

Recommendation 6:

VDOE should substantially restructure and enhance the state-supported system of trained, neutral qualified facilitators, independent from school divisions. Incorporate the use of facilitated IEP meetings into VDOE technical assistance materials, IEP procedural guides, and family dispute resolution resources. Explore adding facilitated IEPs as a recommended step in VDOE's procedural safeguards and guidance documents, aligned with IDEA's preferences for early resolution. VDOE should maintain a list of facilitators; provide guidance on when to offer a facilitator; how to request a facilitator; and the role of the facilitator.

In the restructuring of the IEP facilitation system, VDOE should utilize the intensive technical assistance from CADRE and receive input from independent subject-matter experts whose professional experience and backgrounds reflect a range of racial, cultural, and historically marginalized perspectives.

Recommendation 7:

VDOE should collect, track, analyze, and publicly report data on the number of IEP facilitations conducted and the outcomes of each IEP facilitation meeting.

- Require divisions to document and report when facilitated IEP meetings are offered and used (similar to how mediation usage is reported under IDEA).
- Publish annual summary data that reports statewide and by division showing trends in requests, usage, outcomes, and geographic distribution of facilitated IEP meetings.
- Use data to identify divisions with underutilization and provide support to build capacity and awareness.

Recommendation 8:

VDOE should consult with CADRE, PEATC, parents/families, and other neutral organizations with professional experience and backgrounds that reflect a range of racial,

cultural, and historically marginalized perspectives on strategies to recruit qualified IEP facilitators.

Special Education Mediation

Recommendation 9:

VDOE should update the training process to ensure all mediators are trained using VDOE-approved materials aligned with IDEA and Virginia regulations.

Require mediators to complete specialized training in:

- Federal and State special education law and regulations.
- Student-centered decision-making to ensure that the mediation process is understandable, fair, and accessible to families.
- Mediation strategies that facilitate respectful, balanced participation for both parents and schools.
- Communication strategies that demonstrate clarity and support family engagement.
- IEP development.

As part of the training process, require ongoing professional development and recertification every 2-3 years for mediators.

Recommendation 10:

VDOE should consider the addition of an independent neutral expert in laws and regulations relating to the provision of special education and effective mediation techniques to provide ongoing technical assistance to mediators, upon request.

Recommendation 11:

VDOE should ensure that there is a mandatory annual evaluation for mediators to be conducted by an independent neutral expert. To assist, VDOE should develop a consumer-friendly and universally accessible process to promote the submission by parents of post-mediation consumer evaluations of the mediation system and the mediator used.

Recommendation 12:

VDOE should provide multimedia approaches to share information about mediation and other alternative dispute resolution processes, including the use of social media, to ensure the information is visible in schools and communities.

Special Education Due Process Hearings

Recommendation 13:

VDOE should update its training process to ensure all due process hearing officers are trained using VDOE-approved materials aligned with IDEA and Virginia regulations. Require hearing officers to complete specialized training in:

- Federal and State special education law and regulations.
- Student-centered decision-making to ensure that the hearing process is understandable, fair, and accessible to families.
- Hearing strategies that facilitate respectful, balanced participation for both parents and schools.
- Communication strategies that demonstrate clarity and support family engagement.
- IEP development.

As part of the training process, require ongoing professional development and recertification every 2-3 years for hearing officers.

Recommendation 14:

VDOE should promulgate and revise current regulations to require the hearing officer to conduct a prehearing conference in every case, as early as possible at the commencement of the 45-day hearing timeline in non-expedited cases and, as soon as possible in expedited cases. Revise regulations to include the minimum areas that must be addressed and determined at the prehearing conference, including the clarification of the issues to be heard and relief requested and determination of jurisdiction over the parties and the issues. The mandated pre-hearing conference shall not delay the due process timeline.

Recommendation 15:

VDOE should reform the current due process hearing system to provide oversight by a knowledgeable and impartial individual/agency to:

- Supervise the hearing officers' implementation of standard and best legal practices at all stages of the hearing process, including prehearing, hearing, and decision/order writing;
- Create an evaluation system for measuring hearing officers' performance. VDOE should work with PEATC, parents/families, other neutral organizations with professional experience and backgrounds that reflect a range of racial, cultural, and historically marginalized perspectives, and school divisions to promote the submission by parents and school division personnel of post-hearing surveys of the hearing process; and

- Provide the hearing officers access to technical assistance on an ongoing basis.

Recommendation 16:

VDOE or an impartial individual/agency should analyze annually and report data for fully adjudicated cases on the percentage of time parents or public agencies prevail in due process hearing and, separately, mixed/split decisions. Conduct anonymous parent/staff surveys about fairness, neutrality, and satisfaction. Data should track how disputes are addressed, resolved, or elevated to formal processes to identify trends and opportunities for systemic improvement. This information shall be made available to the public on VDOE's website.

Recommendation 17:

VDOE should meet with relevant stakeholders including parents/families and neutral organizations with professional experience and backgrounds that reflect a range of racial, cultural, and historically marginalized perspectives to adopt an optional authorization/certification process for advocates including attorneys and non-attorneys that includes qualifications of knowledge, experience, and standards of professional responsibility/conduct. Any authorization process should be in regulations by January 1, 2027 to ensure uniform standards.

Recommendation 18:

VDOE should consider whether the current qualifications to serve and be recertified as a special education hearing officer need to be augmented. If the current hearing system is maintained, all current and former applicant hearing officers should be required to reapply and, if selected, successfully complete the pre-service training and be recertified on a regular basis.

Recommendation 19:

VDOE should review the rates hearing officers receive for conducting proceedings for other Virginia agencies/entities that require specialized knowledge and training and consider increasing the rate for trained special education hearing officers.

Recommendation 20:

Amend the Code of Virginia and introduce a budget amendment to increase staffing and relocate the Parent Ombudsman for Special Education's office outside of VDOE to the Office of the Children's Ombudsman to enhance its neutrality and public trust. Responsibilities would include one-on-one technical assistance for families and schools; monitoring systemic concerns; public reporting on trends and recommendations. This

recommendation includes a delayed enactment clause of January 1, 2027.

Recommendation 21:

VDOE should conduct and implement the following awareness and resource initiatives and maintain such approaches:

- Develop and implement an initial promotional campaign at the school level in collaboration with families, PEATC, parent organizations, and other organizations with professional experience and backgrounds that reflect a range of racial, cultural, and historically marginalized perspectives on effective strategies to get information to the users of the resources and maintain visibility.
- Develop or adopt parent-friendly resources on the VDOE Ombudsman website, such as brochures and videos, to supplement the one-page summaries.
- Supplement its multimedia offerings with additional parent and educator friendly resources on the development and utilization of early conflict resolution skills for both school personnel and parents.
- All materials and multimedia offerings should be ADA compliant, multilingual, and culturally responsive.

Dismissal of Certain Vexatious and Repetitive Complaints

Recommendation 22:

Request the Virginia Department of Education to report to the Senate Education and Health and House Education Committees prior to the 2027 General Assembly Session, the data (number of dismissals based on vexatious and repetitive complaints) on hearing officers' use of the law enacted by HB 2606 (Ware) to dismiss due process hearing complaints.

IV. Study Goals and Objectives

A. BACKGROUND

The General Assembly and the Governor approved Senate Bill 220 (Favola) and House Bill 1089 (Coyner) introduced during the 2024 Session. The legislation made several changes relating to special education and related services for children with disabilities in public elementary and secondary schools in the Commonwealth. The legislation's tenth enactment clause directed that the Virginia Commission on Youth shall study and make recommendations on Virginia's special education dispute resolution system.

The Commission adopted a study plan at its May 21, 2024 meeting on the Review of Virginia's Special Education Dispute Resolution System directing the Commission on Youth to conduct a two-year study.

In addition, during the middle of conducting this study the General Assembly and the Governor approved House Bill 2606 introduced during the 2025 Session. The legislation introduced by Delegate Lee Ware includes an uncodified act that permits the dismissal of certain vexatious and repetitive special education due process hearing complaints. As enacted this legislation has a sunset date of July 1, 2027. The legislation's third enactment clause states that as part of its study on Virginia's special education dispute resolution system, the Commission shall study and make recommendations on the provisions of HB 2606. The Commission included this directive in its updated study plan when they met on May 6, 2025.

B. STUDY ACTIVITIES

The Commission on Youth was tasked with carrying out the following study activities, according to the legislative study mandate. Given the authority for study outlined in Senate Bill 220 and House Bill 1089, the Commission on Youth initiated the study process, which involved hiring a consultant, holding several public listening sessions, and convening an Advisory Group. The Commission on Youth completed the following study activities:

Year One:

- Conducted four in-person and one virtual listening session of special education stakeholders including parents, education professionals, and advocates.
- Hired a special education consultant
- Convened an Advisory Group of stakeholders.
- Presented at State Special Education Advisory Committee.
- Presented study updates to the Commission on Youth.

Year Two:

- Convened two meetings of the Special Education Dispute Resolution Advisory Group.
- Developed recommendations.
- Presented recommendations to the Commission on Youth.
- Received public comment.
- Prepared final report.

Additional study activities were conducted by the special education consultant as outlined in his report, found in Appendix B of this report.

V. Methodology

The recommendations of this study are based on the following activities:

A. LISTENING SESSIONS AND ADVISORY GROUP

In order to accomplish the work of this study, the Commission on Youth held four regional listening sessions and one virtual session. Members of the public were invited, and participants included teachers, parents, students, school officials, public officials, legislators, members of the administration and parent advocates.

Listening Sessions:

- Virtual – June 20, 2024
- Wytheville – June 24, 2024
- Henrico – June 25, 2024
- Arlington – June 26, 2024
- Norfolk – June 27, 2024

Following the listening sessions, the Commission convened an Advisory Group with special education stakeholders. The Advisory Group was chaired by Senator Barbara A. Favola. The Advisory Group met three times:

- September 18, 2024 – Members heard an update on 2024 legislation from the Virginia Department of Education and PEATC and held a roundtable discussion
- May 5, 2025 – Members participated in small group breakout sessions where they discussed the following questions: What is the one thing in dispute resolution that would make the system better for all families? Where do I see the most alignment among stakeholders for reform and the most disagreement?
- July 7, 2025 – Members heard a presentation of consultant’s draft recommendations and participated in small group breakout sessions to develop Advisory Group recommendations.

The membership list of the Advisory Group can be found in Appendix A of this report.

B. RESEARCH AND ANALYSIS

Commission on Youth contracted with a consultant, Deusdedi Merced, Esq., Managing Member, Special Education Solutions, LLC to do the research and analysis for this study as directed by Senate Bill 220 and House Bill 1089. His independent report, *External Review of the Commonwealth of Virginia’s Dispute Resolution System*, is included as Appendix B of this report.

VI. Recommendations

After presenting the recommendations at the Commission on Youth's October 21, 2025, meeting and receipt of public comment, the Commission approved and adopted the following recommendations:

Universal Awareness & Training on the Dispute Resolution Process

Recommendation 1:

The Virginia Department of Education (VDOE) should provide awareness and training for the formal dispute resolution options. Develop consistent training on laws, processes, systemic & structural biases, neutrality, and the family perspective. Provide step-by step expectations for what happens when parties agree or disagree. Develop and provide easy-to-read resources, self-help materials and tools for all parties to help families and school staff understand the dispute resolution process in a tangible way. Ensure that training and awareness materials are developed with input by independent subject-matter experts whose professional experience and backgrounds reflect a range of racial, cultural, and historically marginalized perspectives.

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- Encourage school divisions, advocates, and parents to participate in structured early conflict resolution and communication training, ideally aligned with existing efforts by VDOE and PEATC through the CADRE project.
- Focus on de-escalation strategies, trauma-informed practices, and effective family engagement.
- Provide voluntary training to lay advocates on the dispute resolution system, early conflict resolution, and effective communication strategies.

Recommendation 2:

VDOE should expand multilingual parent education and dispute resolution navigation tools. Create a mobile-friendly webpage offering plain-language descriptions of dispute options, video explainers and real-world scenarios, interactive guidance based on the nature of the concern. VDOE should leverage PEATC and other neutral third-party partners to provide coaching and support to families throughout the dispute process, both before and during the process. Require local education agencies to provide this information on their websites.

State Complaints

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Recommendation 5:

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Ensure public reporting of dispute resolution outcomes and corrective actions (excluding student identifiers) through the publication of an annual dashboard to include:

- Number and outcomes.
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and family dispute resolution resources. Explore adding facilitated IEPs as a recommended step in VDOE's procedural safeguards and guidance documents, aligned with IDEA's preferences for early resolution. VDOE should maintain a list of facilitators; provide guidance on when to offer a facilitator; how to request a facilitator; and the role of the facilitator.

In the restructuring of the IEP facilitation system, VDOE should utilize the intensive technical assistance from CADRE and receive input from independent subject-matter experts whose professional experience and backgrounds reflect a range of racial, cultural, and historically marginalized perspectives.

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VDOE should collect, track, analyze, and publicly report data on the number of IEP facilitations conducted and the outcomes of each IEP facilitation meeting.

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Recommendation 8:

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- Student-centered decision-making to ensure that the mediation process is understandable, fair, and accessible to families.
- Mediation strategies that facilitate respectful, balanced participation for both parents and schools.

- Communication strategies that demonstrate clarity and support family engagement.
- IEP development.

As part of the training process, require ongoing professional development and recertification every 2-3 years for mediators.

Recommendation 10:

VDOE should consider the addition of an independent neutral expert in laws and regulations relating to the provision of special education and effective mediation techniques to provide ongoing technical assistance to mediators, upon request.

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VDOE should ensure that there is a mandatory annual evaluation for mediators to be conducted by an independent neutral expert. To assist, VDOE should develop a consumer-friendly and universally accessible process to promote the submission by parents of post-mediation consumer evaluations of the mediation system and the mediator used.

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Recommendation 14:

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Recommendation 15:

VDOE should reform the current due process hearing system to provide oversight by a knowledgeable and impartial individual/agency to:

- Supervise the hearing officers' implementation of standard and best legal practices at all stages of the hearing process, including prehearing, hearing, and decision/order writing;
- Create an evaluation system for measuring hearing officers' performance. VDOE should work with PEATC, parents/families, other neutral organizations with professional experience and backgrounds that reflect a range of racial, cultural, and historically marginalized perspectives, and school divisions to promote the submission by parents and school division personnel of post-hearing surveys of the hearing process; and
- Provide the hearing officers access to technical assistance on an ongoing basis.

Recommendation 16:

VDOE or an impartial individual/agency should analyze annually and report data for fully adjudicated cases on the percentage of time parents or public agencies prevail in due process hearing and, separately, mixed/split decisions. Conduct anonymous parent/staff surveys about fairness, neutrality, and satisfaction. Data should track how disputes are addressed, resolved, or elevated to formal processes to identify trends and opportunities for systemic improvement. This information shall be made available to the public on VDOE's website.

Recommendation 17:

VDOE should meet with relevant stakeholders including parents/families and neutral organizations with professional experience and backgrounds that reflect a range of racial, cultural, and historically marginalized perspectives to adopt an optional authorization/certification process for advocates including attorneys and non-attorneys that includes qualifications of knowledge, experience, and standards of professional

responsibility/conduct. Any authorization process should be in regulations by January 1, 2027 to ensure uniform standards.

Recommendation 18:

VDOE should consider whether the current qualifications to serve and be recertified as a special education hearing officer need to be augmented. If the current hearing system is maintained, all current and former applicant hearing officers should be required to reapply and, if selected, successfully complete the pre-service training and be recertified on a regular basis.

Recommendation 19:

VDOE should review the rates hearing officers receive for conducting proceedings for other Virginia agencies/entities that require specialized knowledge and training and consider increasing the rate for trained special education hearing officers.

Recommendation 20:

Amend the Code of Virginia and introduce a budget amendment to increase staffing and relocate the Parent Ombudsman for Special Education's office outside of VDOE to the Office of the Children's Ombudsman to enhance its neutrality and public trust. Responsibilities would include one-on-one technical assistance for families and schools; monitoring systemic concerns; public reporting on trends and recommendations. This recommendation includes a delayed enactment clause of January 1, 2027.

Recommendation 21:

VDOE should conduct and implement the following awareness and resource initiatives and maintain such approaches:

- Develop and implement an initial promotional campaign at the school level in collaboration with families, PEATC, parent organizations, and other organizations with professional experience and backgrounds that reflect a range of racial, cultural, and historically marginalized perspectives on effective strategies to get information to the users of the resources and maintain visibility.
- Develop or adopt parent-friendly resources on the VDOE Ombudsman website, such as brochures and videos, to supplement the one-page summaries.
- Supplement its multimedia offerings with additional parent and educator friendly resources on the development and utilization of early conflict resolution skills for both school personnel and parents.
- All materials and multimedia offerings should be ADA compliant, multilingual, and culturally responsive.

Dismissal of Certain Vexatious and Repetitive Complaints

Recommendation 22:

Request the Virginia Department of Education to report to the Senate Education and Health and House Education Committees prior to the 2027 General Assembly Session, the data (number of dismissals based on vexatious and repetitive complaints) on hearing officers' use of the law enacted by HB 2606 (Ware) to dismiss due process hearing complaints.

VII. Acknowledgments

The Virginia Commission on Youth extends appreciation to the numerous stakeholders who participated in this study. A list of stakeholders who participated in the Advisory Group is included in Appendix A of this report. The Commission would also like to give a special thank you to members of the public who provided written comments or testimony during this study.

Review of Virginia's Special Education Dispute Resolution System

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FINAL REPORT

EXTERNAL REVIEW OF THE
COMMONWEALTH OF VIRGINIA'S DISPUTE RESOLUTION SYSTEM

Submitted by:

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External Reviewer

Special Education Solutions, LLC

Filed

September 9, 2025

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I. EXECUTIVE SUMMARY¹

Virginia's special education dispute resolution system has been well-studied and monitored over the past five years and the General Assembly and the Virginia Department of Education (VDOE) responsively corrected inconsistencies with the Individuals with Disabilities Education Act (IDEA),² and enacted changes designed to improve the system options. The purposes of this study, in many ways, mirrored previous efforts in Virginia to identify impediments to compliant, effective, and efficient special education dispute resolution system options and provide recommendations for change. Rather than replicating these prior studies, this study design acknowledges and builds on these efforts with a focus primarily on the degree to which the system options meet standard and best practices, with actionable recommendations for improvement when the system options fall short.

As a result of a comprehensive review of Virginia's dispute resolution system to evaluate the compliance, effectiveness, and efficiency of its options, including public perception, Special Education Solutions, LLC (SES) concludes that the statutory and regulatory, and, generally, structural elements of compliant and effective system options are in place. It is the execution of the options that prevents the dispute resolution system from attaining optimal effectiveness and efficiency – not only being fair and impartial but being perceived to be so.

As such, the recommendations in this study are fundamentally focused on: the integration of standard and best practices into the current system options; the implementation of each system option in accord with those practices, including enhanced minimum qualifications and not only pre-service and in-service training, but an ongoing neutral oversight of the system options to ensure effectiveness, efficiency, and actual and perceived impartiality and fairness; grass-roots efforts in communities at the school level to enhance informal conflict resolution to avoid unnecessary impasse, including stakeholder training; promotion of the available, alternative system options; and partnerships to address head-on the persistent perception of bias in the systems.

¹ The author acknowledges with appreciation the assistance of Gail ImObersteg, Esq., Special Education Law Associates, LLC, in the conduct of this external review.

² 20 U.S.C. § 1400 et seq.; 34 C.F.R. Part 300. In 2004, Congress reauthorized the Individuals with Disabilities Education Act as the Individuals with Disabilities Education Improvement Act. *See* Pub. L. No. 108-446, 118 Stat. 2647 (Dec. 3, 2004), effective July 1, 2005. The amendments provide that the short title of the reauthorized and amended provisions remains the Individuals with Disabilities Education Act. *See* Pub. L. 108-446, § 101, 118 Stat. at 2647; 20 U.S.C. § 1400 (2006) (“This chapter may be cited as the ‘Individuals with Disabilities Education Act.’”). Implementing regulations followed in August 2006. *See* 34 C.F.R. Part 300 (August 14, 2006). In December 2008, the regulations were clarified and strengthened in the areas of parental consent for continued special education and related services and non-attorney representation in due process hearings. *See* 34 C.F.R. Part 300 (December 1, 2008). In June 2017, the regulations were further amended to conform to changes made to the IDEA by the Every Student Succeeds Act (ESSA).

II. INTRODUCTION

The IDEA exists to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”³ It must further “ensure that the *rights of children with disabilities and their parents* are protected.”⁴ It is with these purposes in mind that the activities in this external study were undertaken and the recommendations made.

III. INITIATION OF EXTERNAL REVIEW AND SCOPE

The IDEA provides for only three distinct dispute resolution options, each with its own set of procedures, to help resolve disputes between parents and a public agency.⁵ Each State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of 34 C.F.R. §§ 300.500 through 300.536 and children with disabilities and their parents are afforded these procedural safeguards.⁶ The procedural safeguards include the systems of mediation⁷ and due process hearing,⁸ including a resolution process,⁹ to resolve disputes between parents and public agencies. State written complaint procedures provide additional procedural safeguards to parents of students with disabilities, as well as other individuals or organizations, to resolve allegations of noncompliance with the IDEA.¹⁰

Several States go beyond the dispute resolution options available under the IDEA and provide other collaborative conflict resolution options. These additional options include, facilitation, ombudsman, parent liaisons, and informal complaint resolution

³ 34 C.F.R. § 300.1(a).

⁴ 34 C.F.R. § 300.1(b) (emphasis added). The IDEA has an expansive definition of the term “parent.” A parent means a biological or adoptive parent of the student; a foster parent, unless State law/regulations, or contractual obligations with a State or local entity, prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student; an individual acting in the place of a biological or adoptive parent with whom the student lives, or an individual who is legally responsible for the student's welfare; or surrogate parent who has been appointed in accordance with the IDEA. *See* 34 C.F.R. § 300.30(a). As used in this study, the term “parent” is used consistent with the IDEA's definition.

⁵ A public agency includes a local educational agency (LEA), which is defined to include a public board of education (i.e., school district). *See* 34 C.F.R. §§ 300.33 and 300.28(a).

⁶ 34 C.F.R. § 300.121.

⁷ 34 C.F.R. § 300.506.

⁸ 34 C.F.R. § 300.507(a).

⁹ 34 C.F.R. § 300.510.

¹⁰ *See* 34 C.F.R. §§ 300.151 through 300.153.

processes at the local level.¹¹ Virginia has the required systems of mediation, due process hearing, and State complaints, but also provides the early resolution options of facilitation¹² and ombudsman.¹³

This external review was commissioned by the Virginia Commission on Youth (Commission) expressly to build on an April 23, 2024, memorandum authored by the University of Virginia School of Law that identified challenges with the existing system, including findings of noncompliance from 2020, through March 13, 2024, by the United States Department of Education, Office of Special Education Programs (OSEP), and some best practices from other states.¹⁴ The UVA Memorandum followed and acknowledged multiple other recent studies that included a review of Virginia's special education dispute resolution system and included recommendations for systemic change.¹⁵

The stated purpose of this external review is generally to study and make recommendations on Virginia's special education dispute resolution system. This includes –

- reviewing the dispute resolution options in Virginia for compliance, as well as their efficiency and effectiveness.
- reviewing the responsiveness of these options to the concerns of parents and LEAs, including the actual and perceived fairness of each option.

¹¹ See The Center for Appropriate Dispute Resolution in Special Education (CADRE) Continuum, <https://cadreworks.org/cadre-continuum>. (Last visited on June 30, 2025.) CADRE is a widely recognized and respected resource for in-depth information on the continuum of dispute resolution options, including capacity building and prevention, exemplary practices, and resources for parents and State and local educational agencies.

¹² See <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/facilitated-ieps>. (Last visited on June 30, 2025.)

¹³ See <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/parent-ombudsman-for-special-education>. (Last visited on June 30, 2025.)

¹⁴ See Memorandum from Young, Ryan to Coyner, University of Virginia School of Law State and Local Government Policy Clinic, dated April 23, 2024 (hereinafter, UVA Memorandum). (On file with the Commission.)

¹⁵ See, e.g., Report to Governor and the General Assembly of Virginia, *K-12 Special Education in Virginia*, Joint Legislative Audit and Review Commission, <https://jlarc.virginia.gov/pdfs/reports/Rpt545-1.pdf>, (2020) (hereinafter JLARC Report) (last visited June 30, 2025); Robert Pasternack & Sam Howarth, *A Survey of K-12 Special Education in the Commonwealth of Virginia and Recommendations to Improve Special Education in the State*, Ensenar Educational Services, Inc., <https://specialeducationaction.com/wp-content/uploads/2023/10/Robert-Pasternack-and-Sam-Howarth-report-for-VDOE.pdf>, (September 29, 2023, revised October 4, 2023) (hereafter Pasternack Report) (last visited June 30, 2025).

- analyzing each option in comparison to standard and best practices of other States, as appropriate.
- making actionable recommendations for improvement, including regulatory, statutory, staffing, and budgetary modifications.
- making recommendations to improve the VDOE's system for collecting, tracking, analyzing, and publicly reporting data on parent interactions and the outcomes of such interactions.¹⁶

At the outset, it is important to recognize that U.S. Department of Education's, Office of Special Education Program's (OSEP), findings of noncompliance in Virginia's State complaint, mediation, and due process hearing options cited in the UVA Memorandum have been addressed by corrective action taken by the VDOE, including the revision of State regulations and policies found to be inconsistent with IDEA.¹⁷ As a result of these corrective actions, on December 5, 2024, OSEP notified the VDOE that all necessary steps had been taken to address and resolve the findings of noncompliance and that was no further action needed.¹⁸

A. Foundation for the Findings in this Report

Various information sources were relied upon in reaching the findings, conclusions and recommendations contained in this report. These sources include interviews with various individuals, the review of documents and information provided by the VDOE and stakeholders, and informal observations of the reviewer.¹⁹ Specifically, the primary activities that were undertaken include:

- Discussions with VDOE personnel.
- Discussions with parents of students with disabilities residing in Virginia who volunteered to be interviewed and who have accessed the dispute resolution options.

¹⁶ See Virginia Commission on Youth, Review of Virginia's Dispute Resolution System, Study Plan, adopted May 21, 2024. (On file with the Commission.)

¹⁷ See, e.g., Virginia Regulatory Town Hall, <https://www.doe.virginia.gov/home/showpublisheddocument/53421/638466954835200000>, August 2022. (Last visited on June 30, 2025.)

¹⁸ See Letter from U.S. Department of Education, OSEP, to VDOE, dated December 5, 2024. (On file with the VDOE.)

¹⁹ Since 2021, the VDOE has contracted the services of SES to provide specialized training to its special education hearing officers. See n.86, *infra*. The informal observations of the reviewer are based on interactions occurring during these training programs.

- Discussions with lay advocates who represent parents of students with disabilities in Virginia.
- Discussions with licensed attorneys (private and legal services type) who represent parents of students with disabilities in Virginia.
- Discussions with school district personnel, including teachers and administrators (both school building and school district administrators).
- Discussions with personnel from various agencies who work to disseminate and/or provide assistance to families, schools, and/or communities to improve the outcome for students with disabilities (e.g., The Parent Educational Advocacy Training Center (PEATC); Virginia Autism Project; William and Mary Law School Special Education Advocacy Clinic; Virginia Board of People with Disabilities).
- Review of numerous documents and information provided by the VDOE,²⁰ parents of students with disabilities,²¹ the Commission, and others.
- Responses to a comprehensive survey on the dispute resolution options in Virginia.
- Review of various reports authored by various organizations that have studied the dispute resolution options in Virginia (e.g., UVA Memorandum, JLARC Report).
- Letters of findings from the U.S. Department of Education, OSEP, and written responses from the VDOE to OSEP.
- Newspaper articles regarding dispute resolution matters in Virginia.
- Email correspondence from stakeholders to various individuals relating to dispute resolution matters.
- Judicial court orders relating to dispute resolution matters.
- Informal observations of the reviewer during training sessions.

Discussions with parents, school district personnel, attorneys, and agency staff were held in confidence to increase the level of participation and information sharing.

²⁰ See Appendix for a listing of the specific documentation/data SES requested of the VDOE and, if available, reviewed.

²¹ These documents include due process hearing decisions and State complaint findings, including supporting documentation.

Similarly, responses to the written survey were in confidence. As such, this report does not identify to any specific person individual comments.

The discussions with, and surveys from, parents, teachers, administrators, and others, as well as the informal observations of the reviewer, were used to both inform and corroborate the content of this report, and to help generate the findings, conclusions, and recommendations included in this report.

B. Structure of the Report

This report provides a general overview of how Virginia compares to other States, as well as some observations gleaned from various sources. The overview is then followed by a more thorough discussion of each dispute resolution option available in Virginia, findings related to each option, based on available data/information, and recommendations for improvement.

IV. OVERVIEW

A. In General

Honorable people can disagree. “Because parents and educators may not share identical perceptions of the child or goals for the student and because their roles in the child’s life as parent and professional are dissimilar, disputes are inevitable and normal.”²²

The resources of State educational agencies (SEA) in the State complaint, due process hearing and mediation options are primarily focused on resolving disputes after an impasse is reached between a parent and a school. Federal and State law, and the inevitability of the need for third party intervention in some cases, will perpetuate the need for these formal dispute resolution systems. However, there is general agreement among special education dispute resolution specialists, that the closer resolution is to the parent, student, and school at the earliest stages of conflict, the more likely it is that the continuing relationship between parents and schools will be preserved.

... [M]ost cases that reach the stage of due process have already been through multiple efforts at dispute resolution: discussions at IEP meetings, mediation, a resolution session, and settlement talks. By the time the case is at due process, the parties have dug in their heels and may well view the opposing side as being unreasonably recalcitrant.²³

²² Anita Engiles, Marshall Peters, Susan Baxter Quash-Mah and Bonnie Todis, Team Based Conflict Resolution in Special Education, <https://cadreworks.org/sites/default/files/Team%20Based%20Conflict%20Resolution%20o.pdf>, June 1996. (Visited on June 30, 2025.)

²³ Professor Jane R. Wettach and Bailey K. Sanders, *Insights into Due Process Reform: A Nationwide Survey of Special Education Attorneys*,

To avoid parents and schools reaching an impasse, any special education alternative dispute resolution system must not only include the federally mandated options, but support the prevention of disputes through joint problem-solving and other conflict resolution approaches between parents and schools and provide early intervention strategies at the school level when problems arise. Some of these approaches that promote local-level resolution of disputes are facilitation, training for parents and educators on collaborative problem solving, other resources for educators and parents to prevent or reduce the likelihood of miscommunication or conflict escalating into disputes, helplines, and parent liaisons.²⁴

B. Trend Data – Dispute Resolution Options

Trend data can be instructive as to the utilization of a State's dispute resolution system. However, the utilization of the mandatory options of due process hearing, State complaint, and mediation relative to other States,²⁵ including States identified as having an exemplary system,²⁶ is particularly enlightening.

Nationally, the relative use of dispute resolution options from school year (SY) 2017-2018 to SY 2022-2023 for the 50 States remained stable at 15.4 percent to 15.7 percent for State complaints filed; decreased significantly from 32.6 percent to 15.7 percent for mediations requested; and increased substantially from 52 percent to 68.7 percent for requests for due process complaints filed.²⁷ The relative use of dispute resolution options in Virginia for that same period increased substantially from 37 percent to 49.1 percent for State complaints filed; decreased somewhat from 32.7 percent to 30.2 percent for mediations requested; and went from the already relatively low 30.3 percent to 20.7 percent for due process complaints filed.²⁸

<https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2021/07/Wettach-Final.pdf>, p. 278, n.83 (2021). (Last visited June 30, 2025.)

²⁴ See CADRE Continuum, <https://cadreworks.org/cadre-continuum>. (Last visited on June 30, 2025.)

²⁵ For a longitudinal summary of IDEA dispute resolution data amongst States, see CADRE, *IDEA Dispute Resolution Data Summary for U.S. And Outlying Areas: 2012-13 to 2022-23*, <https://cadreworks.org/files/2024-national-idea-dispute-resolution-data-summary-accessible-rev-1-21-20250pdf>, Jan. 1, 2025. (Last visited on June 30, 2025.)

²⁶ See, e.g., CADRE, *Four Exemplary Dispute Resolution Systems in Special Education*, https://cadreworks.org/sites/default/files/Combined%20State%20Profiles_1.pdf, June 2010. (Last visited on June 30, 2025.)

²⁷ See CADRE National and State Dispute Resolution Data Dashboard, <https://cadreworks.org/national-state-dr-data-dashboard>, 2025. (Last visited on June 30, 2025.)

²⁸ *Id.*

Not surprisingly given this trend, the anomalies per 10,000 students among the utilization of the dispute resolution options are reflected for Virginia in SY 2022-2023, as compared to national utilization. The filing per 10,000 students of due process complaints was grossly disparate in SY 2022-2023 with 5 percent utilization in Virginia, as compared to 37 percent nationally;²⁹ 30 11.9 percent for State complaints in Virginia, as compared to 8.4 percent nationally; and 7.3 percent for mediation requests in Virginia, as compared to 8.4 percent nationally.

A lower number of due process complaints filed can be perceived as a strength in a State's system of dispute resolution. However, since good faith disagreements between parents and schools as to a student's education will exist, unless these numbers are accompanied by data on the early resolution of disagreements or, better yet, prevention due to problem solving prior to impasse at the local and State level, the numbers may portend parents' actual or perceived lack of access to the due process hearing system.³¹ In Virginia, there is a troubling, pervasive perception among parents and advocates that the current due process hearing officer model is biased and unfair to the parents who file requests for due process hearings.³²

V. SPECIAL EDUCATION DUE PROCESS HEARINGS

A. Overview

Under the IDEA, and its implementing regulations, a free and appropriate public education (FAPE) must be available to all students residing in the State between the ages of 3 and 21.³³ Whenever a dispute arises between a student's parent(s) and the school district on any of the matters relating to the identification, evaluation or educational placement of a student with a disability or the provision of a FAPE to the student, the parent(s) or the school district must have an opportunity for an impartial due process hearing.³⁴

²⁹ As another point of comparison between 2017-2018 and 2022-2023, Pennsylvania, identified as an exemplary State by CADRE, went from the relative use of 12.3 percent to 11.2 percent for State complaints filed; 26.6 percent to 29.1 percent for mediations requested; and 61.1 percent to 59.7 percent Due Process Complaints filed. *Id.*

³⁰ A review of data of due process complaint filings by LEA in Virginia provided by the VDOE reveals that, from 2017-2018 to 2023-2024, Fairfax County consistently had the highest number of filed due process complaints. (Information and data provided by the VDOE in response to the data request made by SES as part of this external review is cited, hereinafter, as VDOE Data, and, where applicable, followed by the specific document reviewed by SES.)

³¹ From 2022-2023 to 2023-2024, the filings of due process complaints in Virginia rose from 88 to 136, but no information is available to ascertain if the filings in 2023-2024 were an anomaly or are representative of a trend. VDOE Data.

³² Pasternack Report, *supra*, p. 15.

³³ 34 C.F.R. § 300.101(a).

³⁴ 34 C.F.R. §§ 300.507(a), 300.511(a).

It is the responsibility of individual States to provide for a due process hearing system,³⁵ and to appoint a hearing officer to hear and decide the dispute between the parent(s) and the school district.³⁶ Virginia provides for an impartial special education due process hearing system and appoints hearing officers from the impartial hearing system that is administered by the Supreme Court of Virginia.³⁷

B. Authority and Background

Since the enactment of the Education for All Handicapped Children Act in 1975,³⁸ the predecessor to the IDEA that established the right to a due process hearing, IDEA hearings have grown in complexity and, arguably, the parties have become more litigious.³⁹

While conceived in the [IDEA] as a prompt and informal tool, evidence suggests that special education due process hearings have become overly complex, prohibitively expensive, and excessively lengthy, thus limiting their accessibility and usefulness as an enforcement mechanism.⁴⁰

A competent and impartial IDEA hearing system, nonetheless, promotes either the early resolution of disputes – through mediation, the resolution meeting, or traditional settlement discussions or other early resolution options offered by a State – or, should a hearing be necessary, the fair and timely conduct of the hearing.

While each State’s due process hearing system must include the requirements of the IDEA, such as the impartiality and required knowledge and experience of hearing officers and rights of the parties, including the right of appeal, State systems nationally differ in significant ways:

³⁵ 34 C.F.R. §§ 300.121(a), 300.511(b).

³⁶ See 34 C.F.R. § 300.511(c).

³⁷ 8VAC20-81-210(A), (B).

³⁸ Education for All Handicapped Children Act of 1975, Pub. L. No. 94 142, §§ 615(b)(2), 615(d), 89 Stat. 773, 788–89 (1975).

³⁹ For a discussion on the complexity of IDEA hearings despite the IDEA’s intended informality, see Diane M. Holben and Perry A. Zirkel, *Due Process Hearings under the Individuals with Disabilities Education Act: Justice Delayed ...*, https://administrativelawreview.org/wp-content/uploads/sites/2/2022/02/Holben-Zirkel_Final.pdf, (2022). (Last visited on June 30, 2025.)

⁴⁰ Jane R. Wettach and Bailey K. Sanders, JD, PhD, *Insights into Due Process Reform: A Nationwide Survey of Special Education Attorneys*, <https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2021/07/Wettach-Final.pdf>, (2021). (Last visited on June 30, 2025.)

- One-tier systems with appeal to court or, for a small and increasingly diminishing number of States,⁴¹ a two-tier system with an administrative review process prior to civil action.
- Qualifications for hearing officers,⁴² including whether they are licensed attorneys and serving in a full time or part time capacity. As of 2025, administrative law judges preside over special education due process hearings in approximately twenty-two States.⁴³ Among the remaining States that do not use administrative law judges, many states have simply adopted the IDEA's general requirements for hearing officers, but other States, like Virginia, have added additional requirements.⁴⁴
- The method by which a State maintains the cadre of IDEA hearing officers, ranging from contracts with individuals or through other entities such as the State's Office of Administrative Hearings.⁴⁵
- The degree of the formalization of procedures, including alignment with a State's administrative procedures act, use of formal discovery, rules of civil procedure, and rules of evidence.
- The time period for filing a due process complaint and/or time limitation for bringing civil actions thereafter.⁴⁶ While most States maintained the

⁴¹ The number of States with two-tier systems dropped from twenty-four in 1991 to ten in 2011. See Perry A. Zirkel & Gina Scala, *Due Process Hearing Systems Under the IDEA: A State-by-State Survey*, 21(1) Journal of Disability Policy Studies, 3-8 (2010). Currently, there are fewer than 10 two-tiered states remaining.

⁴² The IDEA uses the term "hearing officer" to refer to those individuals appointed to decide disputes between parents of children with disabilities and the public agency. 34 C.F.R. § 300.511(c). Some SEAs, however, have designated this responsibility to their State's Office of Administrative Hearings (OAH) or similar. In these States, the hearings are typically presided by individuals titled administrative law judges or similar. The authority of a hearing officer and an administrative law judge is the same under the IDEA. Hearings before an administrative law judge, however, may also be subject to the procedural rules adopted by the OAH, in addition to what the IDEA and State law requires.

⁴³ See Perry A. Zirkel, Ph.D., J.D., LL.M., and Diane M. Holben, Ed.D., *Impartial Hearings Under the IDEA: Does the Model Make a Difference in the Decisional Outcomes?*, 435 Educ. L. Rep. 14 (July 17, 2025). In 2021, the number had been seventeen. See *Insights into Due Process Reform*, *supra*, p. 246.

⁴⁴ See *Insights into Due Process Reform*, *supra*, pp. 246 – 247. Compare 34 C.F.R. § 300.512(c) with 8VAC20-81-210(H)(4), (I).

⁴⁵ See n.41 and accompanying text.

⁴⁶ See, e.g., Alaska, AK Stat. § 14.30.193(a) ("A parent shall make a request for a due process hearing under this section not later than 12 months after the date that the school district provides the parent with written notice of the decision with which the parent disagrees."); Alaska, 4 AAC § 52.550(a) ("[A] district must file a complaint for a

two-year time limitation to file a due process complaint set forth in IDEA,⁴⁷ some States have restricted the time limitation to one year, while only Kentucky, has extended it to three years.⁴⁸

- The allocation of the burden of proof to the filing party or, in all or some cases, to the public agency. In 2005, the Supreme Court ruled that the party requesting a due process hearing bears the burden of proof under the IDEA.⁴⁹ The majority of States place the burden of proof upon the party seeking relief. Only six states — Delaware, Nevada, New Jersey, Connecticut, New Hampshire, New York, Washington, and the District of Columbia — place the burden of proof on the involved educational agency in whole or in part.⁵⁰
- Limitations on party representations by an attorney who is member of the State bar or, if representation by non-attorneys is permitted, whether limitations such as the certification of advocates is required. (As of 2021, eleven States allow non-attorney advocates to represent parents in a due process hearing.⁵¹)

due process hearing within 60 days after a parent takes the action or inaction that is the subject of the complaint.”); North Carolina, NC §§ 1501-1.8(a)(2), 1504-1.12(e) (requiring the due process petition to be filed within one calendar year of the alleged violation unless the LEA stated it had resolved the issue or it withheld required information from the parent); Hawaii, HI Rev. Stat. § 302A-443(a) (2024) (“An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the department, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested: (1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and (2) Notwithstanding paragraph (1), within one hundred and eighty calendar days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.”).

⁴⁷ 34 C.F.R. § 300.507(a)(2).

⁴⁸ See *Insights into Due Process Reform*, *supra*, pp. 244 – 251. Alaska has a one-year statute of limitations for parents and a sixty-day statute of limitations for school districts. See AK Stat. § 14.30.193(a) (2024); 4 AAC § 52.550(a) (2025). North Carolina and Wisconsin have a one-year statute of limitations for both parents and school districts. See NC Gen. Stat. § 115C-109.6(b) (2021); WI Stat. § 115.80(1)(a)(1) (2024). Kentucky has a three-year statute of limitations. See KY Rev. Stat. § 157.224(6) (2004).

⁴⁹ See *Schaffer v. Weast*, 546 U.S. 49 (2005).

⁵⁰ See, e.g., 14 Del. Admin. Code § 926(11.10); Nev. Rev. Stat. § 388-467; N.J. Rev. Stat. § 18A:46-1.1; Conn. Agencies Regs. § 10-76h-14(a); N.H. Rev. Stat. § 196-C:16-b(III-a); N.Y. Educ. Law § 4404(1)(c); Wash. Rev. Code § 28A.155.260; D.C. Code § 38-2571.03(6A).

⁵¹ *Insights into Due Process Reform*, *supra*, p. 246.

- How training and technical assistance is provided to hearing officers and how they are evaluated.

C. Virginia's Due Process Hearing System

1. *Overview*

a. *Introduction*

The Virginia Board of Education is tasked with prescribing procedures to afford due process to students with disabilities and their parents or guardians, and to school divisions, in resolving disputes regarding placements, individualized education programs (IEP), tuition eligibility, and other matters, as defined in State or federal statutes or regulations.⁵² With few exceptions, such as the right of representation and the time period to bring a civil action in circuit court after the issuance of a final hearing decision, the due process hearing procedures are largely addressed in regulation. Consistent with most other States, Virginia has elected to be a one-tier hearing system, with an appeal to court.⁵³

Virginia's special education hearing system is fraught with perceptions of inaccessibility for *pro se* parents, the bias and partiality of the hearing officers, and a lack of confidence in the hearing officers' knowledge of special education law. Public sentiment is insightful.⁵⁴

I have been the attorney in dozens of due process hearings. The range of the level of competency between the hearing officers is very noticeable. Some are excellent and some are not good at all. The decisions reflect of the range of competency.

- Attorney for public agency

Hearings appear to be unbiased but decisions are almost always in favor of the school division no matter what the evidence is.

- Advocate for parent/guardian

⁵² See Va. Code Ann. § 22.1-214(B).

⁵³ While Virginia law provides only that the Board of Education "may provide for final decisions to be made by a hearing officer," the regulations provide a one-tier system with appeal to State circuit court or federal district court. Va. Code Ann. § 22.1-214(D); 8VAC20-81-210(T).

⁵⁴ These comments were offered in response to the survey or in discussions with the examiner. To maintain their authenticity, the comments are presented here as written or said, without regard to spelling or grammar. Some comments were edited for length when doing so did not change the intended meaning.

Regarding some observations and experiences we've had over the past year concerning the due process hearings. It seems that there is a noticeable lack of consistent structure and procedure across different hearing officers. This inconsistency is quite concerning.... The level of legal analysis and application of the Virginia Regulations also varies greatly among hearing officers. This variation, coupled with their limited experience in special education, lack of knowledge related to disabilities and services, and lack of understanding of the public school system, poses a significant barrier to a fair due process hearing....

- School division personnel

VDOE Hearing Officers are some of most bias, unprofessional, individuals in the D/R process.... They have limited knowledge about special education laws and overt seeking clarification and directions from school board attorney's during the hearing and PHC.... [W]e need new ones.

- Advocate for parent/guardian

Due process is so expensive to parents with not enough knowledge attorneys even for those able to pay a \$10,000+ retainer as to make it impossible for families. Plus, parents are discouraged in filing by school employees who proudly boast that parents rarely win. Calling me Mom 37 times after I asked the hearing officer to address me similar to how they addressed the attorneys shows clear bias.... The whole process was one sided. The school system attorneys and hearing officers are entirely too friendly, and paid by the schools. The hearing officers do not have the requisite knowledge and rely too heavily on the school's attorneys....

- Parent/guardian of student with a disability

Even with the best infrastructure in place, the effectiveness of a State's IDEA hearing system is dependent not only on the fairness, impartiality, knowledge and ability of the appointed hearing officer, but on the parties' perception of the fairness of the hearing system. Research has shown that litigants who perceive the decision-making process as fair, are more likely to accept the outcome, even when it is adverse to their interest.⁵⁵

For the IDEA hearing process to be perceived as fair:

- Both parties must be given an opportunity to be heard (i.e., have a voice in the process). The hearing officer must strike a balance between allowing the parties to present their respective cases as they see fit and making sure the record includes the foundational facts, and the evidence needed to

⁵⁵ See C. Thibaut and L. Walker, *Procedural Justice: A Psychological Analysis*. (Hillsdale, NJ: Lawrence Erlbaum, 1975).

make an informed decision.

- The hearing officer must maintain neutrality, including treating both parties similarly and avoiding even the appearance of favoritism.
- The hearing officer must communicate neutrally with the parties and other participants, both verbally and nonverbally.
- The hearing process must be accessible or “consumer friendly” to its participants – it needs to be easy to understand and sufficiently structured to accomplish its purpose.
- The decision should provide the parties with a clear, reasoned path on how the hearing officer arrived at the decision based on determined critical facts and the application of the law to those facts, including distinguishing or applying case law offered by the parties and resolving disputed facts.

Various aspects of Virginia’s hearing system were examined to ascertain the effectiveness and efficiency of the hearing system. Based on the significant public input that focused on the conduct, impartiality and knowledge, and abilities of the hearing officers, it is that aspect of the system that will be addressed first.

b. Virginia’s IDEA Hearing Officers – Qualifications

While Virginia law does not establish the method by which the State maintains the cadre of IDEA hearing officers, pursuant to regulation, the VDOE uses the list of hearing officers maintained by the Office of the Executive Secretary (OES) of the Supreme Court of Virginia.⁵⁶

The minimum qualifications for OES hearing officers are attorneys with active membership in good standing in the Virginia State Bar; active practice of law for at least five years, with at least two of those years of practice in Virginia; established prior experience with administrative hearings or knowledge of administrative law; demonstrated legal writing ability; willingness to travel to any area of the state to conduct hearings; and the completion of a course of training approved by the Executive Secretary.⁵⁷ The OES hearing officers preside over a variety of administrative proceedings for state agencies in the Commonwealth.⁵⁸

⁵⁶ See 8VAC20-81-210(C).

⁵⁷ See Va. Code Ann. § 2.2-4024. See also Supreme Court of Virginia, *Hearing Officer System Rules of Administration*, https://www.courts.state.va.us/static/programs/ho/rules_of_admin.pdf, Rule 2(B) (Jan. 1, 2022). (Last visited June 30, 2025.) For brevity, specific references to these rules will be cited hereinafter as, “OES Rule” followed by the specific rule number.

⁵⁸ See, generally, Va. Code Ann., Article 2.

While the VDOE is not involved in the selection of the OES hearing officers, VDOE certifies and recertifies the eligibility of the OES hearing officers to serve as a special education hearing officer based on specific factors included in the Virginia Administrative Code.⁵⁹ The VDOE requires OES hearing officers to apply for the position of a special education hearing officer;⁶⁰ selects qualified hearing officers; and, upon qualification, the hearing officers must complete a specialized training program to be certified as a special education hearing officer.⁶¹ Only a subset of the OES hearing officers choose to seek certification to serve as a special education hearing officers.⁶²

As of August 2024, there were 17 active special education hearing officers. In 2021-2022, there were 16 special education hearing officers certified to hear special education cases, with one taking no cases, with an average case load of 8.3 cases per hearing officer;⁶³ 15 in 2022-2023, with two taking no cases, with an average case load of 5.86 cases per hearing officer; and, 18 in 2023-2024, with five taking no cases, with an average case load of 7.55 cases per hearing officer.⁶⁴ The average case load per year for the active hearing officer is low compared to other States and is determined not to be a factor in the capacity of Virginia's hearing system to meet standard and best legal practices.⁶⁵

c. Appointment of Virginia's Hearing Officers

Pursuant to Virginia Administrative Code –

Within five business days of receipt of the request for a non-expedited hearing and three business days of receipt of the request for an expedited hearing: ... The local educational agency shall contact the Supreme Court of Virginia for the appointment of the special education hearing officer.... The local educational agency contacts the special education hearing officer to confirm availability, and upon acceptance, notifies the special education hearing officer in writing, with a copy to the parent(s) and the Virginia Department of Education of the appointment.⁶⁶

⁵⁹ See 8VAC20-81-210(D)(3)(c).

⁶⁰ VDOE Data (Special Education Hearing Officer Application).

⁶¹ 8VAC20-81-210(D)(1). *See also* OES Rule 3(B).

⁶² VDOE Data (VDOE Memorandum to OSEP – Overview of Virginia Due Process System).

⁶³ In the 2021-22, one parent filed approximately 30 cases. Twenty-eight of the 30 cases were assigned to one hearing officer pursuant to Chapter 40, Administrative Procedures Act, Va. Code Ann. § 2.2-4024(B).

⁶⁴ VDOE Data (Hearing Officers and Cases).

⁶⁵ For trend analysis of due process hearing filings and adjudications under the IDEA, see Perry A. Zirkel, Gina L. Gullo, *Trends in Impartial Hearings Under the IDEA: A Comparative Update*, 376 Ed. Law Rep. 870 (2020), <https://perryzirkel.com/wp-content/uploads/2022/01/zirkel-and-gullo-dph-trends-article-i.pdf>. (Last visited on June 30, 2025.)

⁶⁶ 8VAC20-81-210(H)(1).

The list of qualified hearing officers available to hear IDEA hearings is maintained by OES.⁶⁷ When a due process complaint is filed by a parent or school district, it must be filed with the VDOE, with a copy provided to the other party.⁶⁸ It is the responsibility of the LEA, even when the parent files the due process complaint, to contact OES for the appointment of a hearing officer.⁶⁹ The LEA must inform the OES whether the case is expedited or non-expedited.⁷⁰

OES hearing officers certified to hear special education cases are grouped by Virginia judicial circuits and, upon a request for selection, a hearing officer is selected from the appropriate region on a rotational basis,⁷¹ with the hearing officers ranked from the oldest previous selection date.⁷² For hearing requests involving the same person who was the subject of a hearing request within 120 calendar days preceding the hearing request at issue, or if the facts and circumstances are substantially similar to those associated with a prior hearing request, OES, for the stated purpose of judicial economy and consistency, may assign the same hearing officer assigned to the prior hearing request.⁷³

Either party has five business days after notice of an appointment is received, or the basis for an objection becomes known to the party, to object to the hearing officer's appointment and file a request for consideration of the objection directly with the

⁶⁷ 8VAC20-81-210(C).

⁶⁸ 8VAC20-81-210(F)(1).

⁶⁹ 8VAC20-81-210(H)(1)(a). *See also* VDOE Data (VDOE Memorandum to OSEP – Overview of Virginia Due Process System).

⁷⁰ VDOE Data (VDOE Memorandum to OSEP – Overview of Virginia Due Process System). An *expedited* case involves a challenge to the placement decision resulting from a disciplinary removal, the manifestation determination, or placement in an interim alternative education setting (IAES). The parent or LEA must be given an opportunity for an expedited due process hearing, which must occur within 20 school days of the date the complaint is filed. 34 C.F.R. § 300.532(c)(1) and (2). A decision must be made and provided to the parties within 10 school days after the hearing. 34 C.F.R. § 300.532(c)(2). A *non-expedited* case involves a challenge to any of the matters relating to the identification, evaluation or educational placement of a child with a disability or the provision of a FAPE to the child. 34 C.F.R. § 300.507(a). In a non-expedited case, within 45 calendar days after the expiration of the 30-day resolution period, or the adjusted time periods described in 34 C.F.R. § 300.510(c), a final decision must be reached in the hearing and mailed to each of the parties. 34 C.F.R. § 300.515(a).

⁷¹ Va. Code Ann. § 2.2-4024(B).

⁷² Hearing officers are also able to further limit their appointments by deciding whether to accept cases in the region where they reside, accept only non-expedited cases, and/or remove themselves from rotation for a define period during which they do not accept assignments. VDOE Data (information provided by the VDOE on hearing officer appointments).

⁷³ OES Rule 5(C).

hearing officer.⁷⁴ If the special education hearing officer's ruling on the objection does not resolve the objection, the party may then file a request within five business days of receipt of the ruling with the Executive Secretary of the Supreme Court of Virginia.⁷⁵ If a special education hearing officer recuses, or is disqualified, the Supreme Court of Virginia must ensure that another special education hearing officer is promptly appointed.⁷⁶

Pursuant to the OES Rules, a party may also request that the OES permanently remove a hearing officer from the list of qualified hearing officers by submitting a letter to OES specifying the grounds for removal.⁷⁷ The filing of a request for removal or disqualification does not stay the proceeding or filing requirements, except that the hearing may not be conducted until OES issues a decision on the request in accordance with its procedures.⁷⁸

2. Appropriate, Standard Legal Practice

The IDEA and, by extension, Virginia law, sets forth minimum qualifications for hearing officers who preside over IDEA hearings.⁷⁹ Specifically, an IDEA hearing officer must:

- possess knowledge of, and the ability to understand, the provisions of the IDEA, federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and State courts;
- possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

⁷⁴ See 8VAC20-81-210(H)(3).

⁷⁵ 8VAC20-81-210(H)(3)(a).

⁷⁶ 8VAC20-81-210(H)(3)(c).

⁷⁷ See OES Rule 4(A). The utilization of this reconsideration and removal process in Virginia is low. In 2022, one request for removal of a named hearing officer was filed with OES and two requests for reconsideration of disqualification were filed with the Supreme Court of Virginia. All three requests were denied. VDOE Data (information obtained by VDOE from OES).

⁷⁸ 8VAC20-81-210(H)(3)(b). The Virginia Administrative Code does not specify by when the Supreme Court of Virginia must issue a decision on the request. *See id.* The IDEA's abridged hearing timelines – 45 calendar days to complete and render a decision in non-expedited hearings, (34 C.F.R. § 300.515(a)), and 20 school days to complete the hearing in expedited hearings (34 C.F.R. § 300.532(c)(2)) – challenges compliance with this regulation. And, while an extension of the hearing timeline *only* at the request of either party is an option in non-expedited hearings, (34 C.F.R. § 300.515(c); 8VAC20-81-210(P)(9)(a)), it is not an option in expedited hearings (*see* 34 C.F.R. § 300.532(c)). Enjoining the hearing from moving forward – absent a party requesting an extension of the timeline (in a non-expedited hearing) or a court order – violates the IDEA. *See id.*

⁷⁹ *See, generally*, 20 U.S.C. § 1415(f)(3)(A).

- possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.⁸⁰

However, because standard legal practice will vary depending on the State in which the hearing is held, the requirements that the hearing officer possess the knowledge and ability to conduct hearings and render and write decisions in accordance with appropriate, standard legal practice, are general in nature.⁸¹

Equally, the IDEA does not provide for training requirements.⁸² However, each State must ensure that individuals selected to conduct impartial due process hearings are sufficiently trained.⁸³ Each State is tasked with determining the required training and the frequency of the required training, consistent with State rules and policies.⁸⁴

a. Training and Technical Assistance of Virginia's Hearing Officers

Pursuant to the Virginia Administrative Code, the VDOE is required to establish procedures to provide special education hearing officers specialized training on the federal and State special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.⁸⁵

The VDOE provides for the annual training of the certified special education hearing officers and an initial training for all OES hearing officers who elect to serve as special education hearing officers. The training is conducted by an independent neutral trainer with expertise in IDEA special education hearings.⁸⁶ While the VDOE does

⁸⁰ 20 U.S.C. § 1415(f)(3)(A)(ii) – (iv).

⁸¹ *See, generally, id.*

⁸² *See, generally*, 20 U.S.C. § 1415(f)(3)(A); *see also C.S. by Struble v. California Dep't of Educ.*, 50 IDELR 63 (S.D. Cal. 2008) (unpublished) (denying the parent's request for a temporary restraining order to enjoin the California's Department of Education from contracting with the Office of Administrative Hearings on the grounds that the parent did not have standing to challenge the Department's training requirements, as the requirement is not in the IDEA but an obligation between two contracting parties); *Carnwath v. Grasmick*, 115 F. Supp. 2d 577, 33 IDELR 271 (D. Md. 2000) (dismissing the parent's claims against the State education agency because there is no federal right to a competent or knowledgeable ALJ); *Cavanagh v. Grasmick*, 75 F. Supp. 2d 446, 31 IDELR 158 (D. Md. 1998) ("Standards for ALJ competency and training are not found within the statutory provisions of the IDEA....Thus, ALJ competency and training appear to be governed solely by state law standards.")

⁸³ *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46705 (August 14, 2006).

⁸⁴ *Id.*

⁸⁵ 8VAC20-81-210(D)(1).

⁸⁶ VDOE Data (Memorandum to OSEP; review of training materials). Since 2021, the VDOE has contracted the services of SES six (6) times to provide specialized training to its special education hearing officers. SES has provided 41.25 instructional hours to

provide targeted technical assistance on its website,⁸⁷ and occasional updates or reminders, to the hearing officers,⁸⁸ there is no system of technical assistance available on an ongoing basis to the hearing officers from an independent neutral.

The annual and pre-service training programs provided by the independent trainer to Virginia's hearing officers from 2021 – 2024 included the following topics:

- IDEA and VA qualifications for IHOs, including impartiality and case law, dealing with perceptions of bias, conveying impartiality.
- Guide to working with an unrepresented parent.
- Conveying impartiality including how an IHO can promote fairness and communicate fairly and objectively with the parties.
- The utility, necessity, and authority for the conduct of prehearing conferences, including effective practices on defining the issue(s) and requested relief, and the importance of the prehearing conference to assist an unrepresented parent to understand and navigate the hearing process.
- Managing the hearing process, including ensuring a complete record and guarding against unnecessarily lengthy hearings that prolong final determinations on the issue(s).
- Decision writing, including a template and sample decisions, and exercises in the application of standard legal practice.⁸⁹

The hearing officer has the authority at the prehearing stage to determine when an IDEA due process notice also indicates a Section 504 dispute pursuant to the

the cadre of special education hearing officers and an additional 27 instructional hours (in May 2021 and March 2024) to each of two cadre of OES hearing officers seeking to be certified as special education hearing officers by the VDOE.

⁸⁷ See, e.g., *Navigating the Maze of the Due Process Requirements*, <https://www.doe.virginia.gov/home/showpublisheddocument/38498/638737624818870000>; *Managing the Timelines in Due Process Hearings – Guidance Document for Special Education Hearing Officers*, <https://www.doe.virginia.gov/home/showpublisheddocument/38496/638741657877530000>; and *Timeline Summary in Due Process Hearings*, <https://www.doe.virginia.gov/home/showpublisheddocument/59465/638741660210300000>.

⁸⁸ At each training session referenced in n.84, the VDOE has reserved time to provide the special education hearing officers with necessary updates. VDOE Data (review of training program agendas). Additional updates are provided, as needed, outside training programs. VDOE Data (discussions with VDOE personnel).

⁸⁹ VDOE Data (review of training program agendas and materials).

Rehabilitation Act of 1973,⁹⁰ whether to hear both disputes to promote efficiency in the hearing process and to avoid confusion about the status of the Section 504 dispute.⁹¹ While it is permissible for the Virginia hearing officers to accept jurisdiction over Section 504 disputes in this manner, and some other States have similar practices, the specialized training provided to hearing officers from the VDOE does not include training on Section 504 prior to being certified as a hearing officer or during the annual training programs. Given the standards under IDEA and Section 504 are different, the absence of training on Section 504 is a concern.

(1) *Recommendation(s)*

Regarding training and technical assistance to Virginia's hearing officers, it is recommended that:

- Given the authority in 8VAC20-81-210(O)(5) for a hearing officer to hear Section 504 disputes, the hearing officers receive pre-service and in-service training on Section 504.
- For the pre-service training, each candidate hearing officer must be determined by the independent, neutral trainer to have satisfactorily completed the training to be certified as a special education hearing officer.
- A system of technical assistance from an independent, neutral individual with expertise in IDEA special education hearings be available to the hearing officers on an ongoing basis.

b. *Conduct of Prehearing Conferences*

The IDEA and its regulations do not require a prehearing conference but hearing officers have the discretion, consistent with appropriate standard legal practice, to hold one even if State law is silent on the matter. The conduct of a prehearing conference in IDEA due process hearings is widely accepted by neutral experts as a critical way to ensure the effective, orderly, and efficient management of the hearing process.⁹² To effect that purpose, the prehearing conference must be conducted early in the 45-day hearing timeline, for non-expedited cases, and as soon as possible in expedited cases.

⁹⁰ See 29 U.S.C. §§ 705, 794, 794a, 794b; 34 C.F.R. Part 104.

⁹¹ 8VAC20-81-210(O)(5).

⁹² See Andrew M.I. Lee and Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act III: The Pre-Hearing Stage*, 40 J. Nat'l Ass'n Admin. L. Judiciary 1, <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1672&context=naalj>, (2021). (Last visited June 30, 2025.)

The prehearing conference should be meaningful, and should accomplish various objectives,⁹³ including –

- ascertaining whether either party has an objection to the hearing officer;
- the clarification of the issues and the relief the party is seeking;
- the determination of jurisdiction over parties and issues;
- explaining the hearing process to an unrepresented party;
- determining if interpreter services or other special accommodations are necessary for any parties, representatives, and/or anticipated witnesses and decide who will make these arrangements;
- determining and setting the number of days and the time and date for the hearing and the date for the five-business day exchange and other logistical details;
- ruling on all objections and motions raised at the prehearing stage in a timely manner;
- and determining whether the parent opts for the hearing to be open or closed and whether the parent elects an electronic or written verbatim record of the hearing, and/or electronic or written findings of fact and decision.

A prehearing conference is mandated in Virginia, including when the parties request the conference, except that the hearing officer is also granted discretion to deem the conference “unnecessary.”⁹⁴ Even if a prehearing conference is conducted, the hearing officer is merely authorized, not required to, clarify or narrow issues and determine the scope of the hearing.⁹⁵

⁹³ See also 8VAC20-81-210(O) and (P).

⁹⁴ 8VAC20-81-210(O)(3) and (4). If the conference is not held, the hearing officer must provide a written prehearing report to the VDOE (and parties, if the conference is requested by parties) explaining why the conference was not held. See *id.*

⁹⁵ 8VAC20-81-210(O)(3).

(1) *Recommendation(s)*

It is recommended that the Virginia Administrative Code, 8VAC20-81-210(O), be revised⁹⁶ to require the hearing officer to conduct a prehearing conference in every case and as early as possible at the commencement of the 45-day hearing timeline in non-expedited cases and, as soon as possible, in expedited cases. It is also recommended that the regulations be revised to include the minimum subject matters that must be addressed and determined at the prehearing conference, including the clarification of the issue(s) to be heard and relief requested and determination of jurisdiction over the parties and the issues.

c. *Hearings and Decisions*

It is determined that the pre-service and annual trainings provided to Virginia's hearing officers as described above are consistent with the training provided to hearing officers in other States.⁹⁷ As such, any identified absence of the hearing officers' adherence to standard and best legal practices discussed in this study is not attributed to these trainings. With regard to issue specification/clarification, the annual and pre-service training of hearing officers consistently focused on the standards and skills on issue specification/clarification and rendering and writing decisions in accordance with appropriate, standard legal practice. A review of prehearing conference reports and hearing decisions rendered by Virginia's special education hearing officers in recent

⁹⁶ Any revisions of the Virginia Administrative Code or the Code of Virginia will require the revision of associated policies and procedures, as necessary and appropriate.

⁹⁷ Given that the VDOE has retained the services of SES to provide the pre-service and annual trainings to its special education hearing officers, this statement can be read to be self-serving. SES is a leading provider of professional development programs to special education hearing officers in the country. SES has been retained by a number of States and U.S. territories to provide pre-service and annual trainings, including Alabama, Arkansas, Connecticut, District of Columbia, Hawaii, Illinois, Indiana, Maine, Maryland, Missouri, New York, Nevada, North Carolina, Pennsylvania, Puerto Rico, Texas, and Virginia. In addition, Mr. Merced is a sought-after SEA consultant/trainer and speaker at nationally recognized conferences on special education, including for the Center for Appropriate Dispute Resolution in Special Education (CADRE), LRP National Institute on Legal Issues of Educating Individuals with Disabilities, LRP School Attorneys Conference, the National Academy for IDEA Administrative Law Judges and Hearing Officers, the Lehigh Special Education Law Symposium: ALJ/IHO Institute, the Council of Parent Attorneys and Advocates Annual Conference, the Illinois Annual Special Education Directors' Conference, and the ABA National Conference on Disability Issues in Employment and Education Law. SES is also the owner of the National Academy for IDEA Administrative Law Judges and Hearing Officers, which gathers administrative law judges and hearing officers from around the country for annual training. In 2025, there were 23 representative States at the Academy.

years, shows an extreme variability among the hearing officers to the degree to which issues are clarified, and decisions meet standard legal practice.⁹⁸

(1) Issue Clarification

A hearing officer's early clarification of the issues presented in a due process complaint is critical to the effective and efficient management of the hearing process. When the issues in the due process complaint are clear, the responding party can prepare for the hearing; the hearing is focused; there is meaningful opportunity for resolving the due process complaint during the resolution meeting or thereafter; and the hearing officer can better determine whether there is jurisdiction over the specific issue(s). If the matter is fully adjudicated, the clarification of the issues also ensures the decision is focused on the critical findings of fact and relevant law to decide the issue(s) and enhances the clarity and comprehensiveness of the decision.

In Virginia, as described above, while some hearing officers do ensure a clarification of issues, most did not.⁹⁹ The failure to do so impacts the effectiveness and efficiency of the hearing process, including the hearing that is conducted and the decision.

(2) Decision Writing

Pursuant to IDEA, as noted above, a hearing officer must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.¹⁰⁰ It is generally accepted among experts in this field that appropriate, standard legal practice requires a hearing officer to render and write decisions and orders that are clear, comprehensive, concise, understandable, founded upon demonstrable facts based in the record, and include the application of appropriate legal authority. The expectation is that the rendered decisions and orders:

- demonstrate correct grammar and usage, with organized thought and understandability;
- demonstrate conciseness, including avoiding extraneous findings of fact and conclusions of law that depart from the issues in dispute that were timely framed with clarity and specificity during the prehearing process;
- dispose of all issues in the case within the hearing officer's jurisdiction;

⁹⁸ VDOE Data (review of hearing officer decisions and prehearing conference documents).

⁹⁹ *Id.* Some issues are so expansively stated – such as whether the student's IEP is appropriate, or whether the student was provided a free appropriate public education – that the statement of the issue neither provides adequate notice to the respondent nor focuses the evidentiary hearing or decision on the actual issue(s) in dispute.

¹⁰⁰ 34 C.F.R. § 300.511(c)(1)(iii).

- make coherent, relevant, and necessary findings of fact, including resolution of conflicting evidence (e.g., credibility);
- provide conclusions of law that articulate and reasonably apply the relevant legal standards to the facts;
- employ the applicable legal standards for the burden of proof and the standard of proof when noted in the decision; and
- provide orders with sufficient detail and clarity to inform the parties of all steps necessary to ensure timely and accurate implementation of the hearing officer's directives, including, if corrective action is ordered, clearly stated timelines to ensure enforceability.

d. Judicial Review

Pursuant to the IDEA, the party bringing the action has 90 days from the date of the decision of the hearing officer to file a civil action or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by the State law.¹⁰¹ Virginia provides an explicit time limitation in State law and regulation.

Virginia State law provides that any party aggrieved by the findings and decision may, within 180 days of such findings and decision, bring a civil action in the circuit court for the jurisdiction in which the school division is located.¹⁰² The Administrative Code, however, provides two different timelines depending in which court the appeal is filed: 180 days for a decision being appealed to State circuit court and 90 days for a decision being appealed to federal district court.¹⁰³ No information was provided in the course of this external review to ascertain if this discrepancy had an impact on a party's election of jurisdiction in federal or State court or the impact on the student of the longer appeal period for appeals filed in State circuit court.¹⁰⁴

This study included a review of reported judicial decisions resulting from the appeal of the Virginia hearing officer's hearing decisions for the sole purpose of noting judicial comments regarding deference to hearing officer's thorough findings of fact and application of the law or other matters reflecting on the hearing officer's conduct of the administrative hearing. As a general matter, the conduct and decisions of the Virginia hearing officers are supported by the Virginia federal district courts, with repeated reliance on the Fourth Circuit Court of Appeals' tolerant standard for hearing decisions

¹⁰¹ 34 C.F.R. § 300.516(b).

¹⁰² Va. Code Ann. § 22.1-214(D).

¹⁰³ 8VAC20-81-210(T)(1)

¹⁰⁴ The Administrative Code provides that the implementation of a hearing officer's decision is held in abeyance when appealed to the courts, except in those cases where the special education hearing officer has agreed with the student's parent that a change in placement is appropriate. *See* 8VAC20-81-210(T)(3).

articulated in *J.P. v. Cnty. Sch. Bd. of Hanover*:¹⁰⁵

It must be remembered that in Virginia, the IDEA hearing officers are lawyers appointed through the Supreme Court of Virginia to serve as judges in IDEA due process hearings.... The hearing officers operate under tight time constraints – in non-expedited cases, a written opinion must be issued within 45 days after a request for a due process hearing is received.... As pointed out by an amicus in this case, this short time-frame means that the written opinions may be issued before a transcript has been prepared. Under these circumstances, hearing officers (who have no state-provided law clerks or clerical support) cannot be expected to craft opinions with the level of detail and analysis we expect from a district judge. By rejecting the hearing officer’s opinion in this case for lack of detail, the district court improperly held the hearing officer to a standard not dictated by statute or case law and one which ignored the constraints under which an IDEA hearing officer operates.¹⁰⁶

While Virginia’s hearing decisions withstand the scrutiny of the Virginia federal district courts and the Fourth Circuit Court of Appeals given this tolerant standard, the lack of clarity and coherence in some of the decisions rendered, and the absence of a “sufficiently detailed analysis of the hearing officer’s resolution of the legal and factual issues in the case,” likely contribute to the perception of the parties that the hearing system is not a fair and impartial system.

3. *Oversight of Due Process Hearing System*

The implementation of the IDEA hearing system in accord with not only the law, but standard and best legal practices, requires ongoing oversight and refinement of the processes; monitoring compliance of the system, including the evaluation of hearing officers; and the provision of technical assistance to hearing officers in a manner immune from influence. The quandary for an SEA is how to accomplish this oversight in a manner that supports the impartiality of the system and, in particular, the hearing officers, and ensures a cadre of qualified hearing officers in this highly specialized hearing process. The primary way other SEAs have successfully provided this essential

¹⁰⁵ 516 F.3d 254 (4th Cir. 2008).

¹⁰⁶ *J.P.*, 516 F.3d at 259 (internal citations omitted). Similarly, the Court held, “When determining whether a hearing officer’s findings were regularly made, our cases have typically focused on the process through which the findings were made.... In this case, there is nothing in the record suggesting that the hearing officer’s process in resolving the case was anything other than ordinary. That is, the hearing officer conducted a proper hearing, allowing the parents and the School Board to present evidence and make arguments, and the hearing officer by all indications resolved the factual questions in the normal way, without flipping a coin, throwing a dart, or otherwise abdicating his responsibility to decide the case....” *J.P.*, 516 F.3d at 260. See also *Smith v. Arlington County School Board*, 78 IDELR 224 (E.D. Va. 2021) (finding that the hearing officer’s decision is entitled to a “presumption of correctness, citing to *J.P.* for support).

and impartial oversight is through a dedicated special education division within their State's Office of Administrative Hearings.¹⁰⁷

a. Evaluation of Virginia's Hearing Officers

In accordance with the VDOE's hearing officer performance review standards, the "[f]ailure of a hearing officer to comply with due process procedures and regulations will result in, as appropriate in the specific case, reminders of prior training and procedures; additional training of the hearing officer by the VDOE; denial of certification or recertification to serve as a special education due process hearing officer; or in egregious cases, the VDOE will move for the hearing officer to be removed from the list of hearing officers maintained by the Supreme Court of Virginia...."¹⁰⁸

The manner by which evaluations of the Virginia special education hearing officers are conducted is neither in statute or regulation. Based on procedure, the VDOE has a peer evaluation system for hearing officers using former Virginia hearing officers who have maintained their specialized training requirements. There are no additional qualifications for the evaluators to ensure they have the requisite knowledge and ability to evaluate hearing officer performance consistent with standard legal practice. The evaluation includes an observation component that generally includes the first two prehearing conferences and two days of hearing. The evaluators utilize a form provided to review the hearing officer's performance and the form is provided to the VDOE.¹⁰⁹

The VDOE also provides an evaluation form to the party public agency and the parent after the closure of a fully adjudicated hearing. The form provides questions regarding the performance of the hearing officer and the decision and, for the parent, questions on the school division's administration of the hearing system are also included. Between 2021 – 2022 to 2023 – 2024, 21 questionnaires were submitted to

¹⁰⁷ Examples include: the Special Education Division in the California Office of Administrative Hearings, <https://www.dgs.ca.gov/oah/case-types/special-education>; the Massachusetts Bureau of Special Education Appeals in the Division of Administrative Law Appeals, <https://www.mass.gov/orgs/bureau-of-special-education-appeals>; Texas State of Administrative Hearings, <https://www.soah.texas.gov/individuals-disabilities-education-act-special-education>; and the Office of State Superintendent of Public Instruction special education hearings in the Washington State Office of Administrative Hearings, <https://oah.wa.gov/case-preparation/hearings/superintendent-public-instruction/what-expect-your-osp- hearing>. Some SEAs with independent contracted hearing officers have opted to engage an independent and neutral expert in special education law and the conduct of IDEA due process hearings to provide all (State of Nevada) or components (State of Illinois, New York, Hawaii) of the oversight functions. (SES has contracts with Illinois, New York, and Hawaii to assist with oversight functions.)

¹⁰⁸ See *Managing the Timelines in Due Process Hearings*, *supra*, n.87, Appendix A.

¹⁰⁹ VDOE Data (Memorandum to OSEP during the monitoring describing the hearing system, undated).

the VDOE. Of those, the vast majority were submitted by the LEA participants with only six (6) from parents and two (2) from parent advocates. The questionnaires from the LEAs were generally positive, with only one largely negative. In comparison, only two (2) questionnaires from parents were largely positive, with one (1) distinguishing the decision as negative. The rest of the parent or parent advocate questionnaires were largely negative with comments about the hearing officer's bias, partiality, and deference to the school.¹¹⁰

b. *Recommendation(s)*

Notwithstanding the pre-service and in-service training Virginia hearing officers receive and a system of peer-evaluation, the hearing officer's implementation of the special education hearing system falls short of standard legal practices, as exemplified by the extreme variability in hearing officers' adherence to clarification of the issues and decision writing practices. The answer is *not more training, or another study*, given the persistence of the very same concerns expressed in prior studies.¹¹¹ There must be a change to the infrastructure.

- It is, therefore, recommended that the VDOE reform the current hearing system to provide oversight by a knowledgeable and impartial individual/agency to:
 - Supervise the hearing officers' implementation of standard and best legal practices at all stages of the hearing process, including prehearing, hearing, and decision/order writing.
 - Conduct a comprehensive criterion referenced system of evaluation for measuring hearing officers' performance on an annual basis. The evaluation system will include a review of all stages of the hearing process (prehearing, hearing, and decision writing), case management, judicial temperament and professional behavior, and preparation and return of an administrative record. Incorporated into this review is an assessment of an individual hearing officer's knowledge and understanding of the IDEA, Virginia law and regulations, and legal interpretations of the IDEA by State and federal district courts. The results of this evaluation of the hearing officers will determine, on an annual basis, whether a hearing officer is retained/recertified. It is also recommended that in partnership with PEATC and school divisions, VDOE promote the submission by parents/school division personnel of post-hearing surveys of the hearing process to ensure the VDOE's oversight of

¹¹⁰ VDOE Data (review of special education due process hearing system questionnaires).

¹¹¹ It is particularly concerning that, for at least several years, the special education hearing process has been perceived as biased against parents. *See Pasternack Report, supra*, p. 11.

the hearing system. These surveys should be taken into consideration in completing the annual performance evaluation.

- Provide the hearing officers access to technical assistance on an ongoing basis. (This technical assistance would augment the existing required pre-service and in-service training.)
- It is further recommended that the VDOE consider, after obtaining input from stakeholders over a curtailed time period, whether the current system of utilizing hearing officers through the Supreme Court in accordance with 8VAC20-81-210(H) is a viable system and should be maintained and augmented to include the above recommended changes in the infrastructure¹¹² or whether an alternative hearing system should be developed. This recommendation is consistent with the *Pasternack 2023* report to the VDOE:

[T]he selection and maintenance of special education hearing officers from their current appointment and supervision by the Virginia Supreme Court to an independent entity (e.g., the University of Virginia School of Law or the William and Mary Special Education Law Clinic). This change would address the parent and advocate perception that the current due process hearing officer model in the Commonwealth is biased and not fair to the parents who file requests for due process hearings. Statutory or regulatory change may be needed to accomplish this change in how hearing officers are selected, trained, and evaluated for their performance.¹¹³

- Consider whether the current hearing officer qualifications to serve as a special education hearing officer and to be recertified need to be augmented.
- If the current hearing system through the Supreme Court is maintained, all current hearing officers be required to reapply for the position and, if selected, successfully complete a pre-service training, with each candidate hearing officer being required to demonstrate competency post the pre-service training, as determined by a neutral training entity/agency. Continued certification would be based on the annual performance evaluation.

¹¹² One such recommendation is the Legal Aid Justice Center's September 18, 2024, recommendation to the Virginia Commission on Youth to establish "... an independent commission to select hearing officers in conjunction with the Supreme Court of Virginia. Reduce VDOE's responsibility in the selection and certification/recertification process for special education due process hearing officers."

¹¹³ Pasternack Report, *supra*, p. 11.

- In addition to the above recommendations that may require revision of the Virginia Administrative Code, it is recommended that 8VAC20-81-210 and the VDOE's hearing procedures be reviewed for consistency with IDEA including:

- 8VAC20-81-210(H)(3), regarding the provision that the hearing may not be conducted until the Supreme Court of Virginia issues a decision on the request of an objection to the special education hearing officer. This provision may impact the timeliness of a non-expedited hearing and does not reconcile the stay of the conduct of the hearing with the requirement to conduct an expedited hearing within 20 school days of the date the complaint requesting the hearing is filed. *See* 34 C.F.R. § 300.532(c)(2); 8VAC20-81-210(P)(13)(a).
- 8VAC20-81-210(F)(6). The special education hearing officer has the discretionary authority to permit either party to raise issues at the hearing that were not raised in the notice by the party requesting the due process hearing in light of particular facts and circumstances of the case.

This provision is inconsistent with IDEA, 34 C.F.R. § 300.511(d), that prohibits the party requesting the due process hearing to raise issues at the due process hearing without the agreement of the other party. Without party consent, a hearing officer's exercise of the authority in 8VAC20-81-210(F)(6) is particularly problematic given the impact on the parties' right to present evidence and runs afoul of the 5-business day rule and, when applicable, the resolution process. 34 C.F.R. §§ 300.510, 300.512. In the case of the non-filing party, this authority essentially allows for a cross appeal that circumvents the filing and hearing processes. (It would also not be a permissible exercise of the hearing officer's authority to allow a filing party to amend the due process complaint at hearing since a hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins. 34 C.F.R. § 300.508(d)(3)).

- 8VAC20-81-210(Q)(9). The automatic application of the 30-day resolution process for an LEA-initiated due process complaint, is inconsistent with the IDEA, 34 C.F.R. §§ 300.510(a) and 300.506(b)(1)(ii), by denying the right to a timely hearing.¹¹⁴

¹¹⁴ This regulatory provision also requires further clarification. While it notes that the LEA is "not required" to schedule a resolution meeting when it initiates the due process hearing, it can be read to allow the LEA the discretion to schedule one, and it further requires the 30-day resolution period when the parties elect to use mediation. Further, the second sentence is an incomplete sentence. *See* 8VAC20-81-210(Q)(9).

- 8VAC20-81-210(Q)(14). Due to the complexity of the issues in an expedited hearing and the required findings of fact and decision, reconsider the appropriateness of authorizing a hearing officer to render an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held.
- Additional considerations regarding the review of the effectiveness and efficiency of the existing infrastructure:
 - 8VAC20-81-210(P)(7) provides the special education hearing officer the authority to refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive, with the protection that it must not deprive the parties of their rights and must be exercised only when the special education hearing officer determines that the best interests of the child will be served. No data was provided in the course of the study whether hearing officers have exercised this authority and, if so, the outcomes. Given this authority is in addition to the required resolution process for parent-initiated due process complaints, it is recommended that consideration be given to the efficacy of this additional resolution mechanism.
 - Va. Code Ann. § 22.1-214(D) and 8 VAC §20-81-210(T)(1). The desirability of different appeal timelines for bringing a civil action in the State's circuit court for the jurisdiction in which the school division is located or in federal district court be reconsidered.
 - OES Rule 5(E). If the assignment procedures currently implemented by OES are maintained, in light of the evidentiary requirements for special education hearings, including that the decision must be based on the hearing record, and to combat concerns of hearing officer bias, reconsider the reappointment of the same hearing officer to hearing requests involving the same person who was the subject of a hearing request within 120 calendar days preceding the hearing request at issue or to matters in which the facts and circumstances are substantially similar to those associated with a prior hearing request made within 120 calendar days.

4. *Other Aspects of the Hearing System*

a. *Hearing Outcomes*

In a recent study of the national outcomes of fully adjudicated due process hearing cases, without New York as an acknowledged statistical outlier, from 2013 to 2018, parents completely prevailed 26 percent of the time, school districts completely

prevailed 48 percent of the time, and 26 percent of the decisions had mixed outcomes (i.e., where both the parents and school districts prevailed). For the follow-up period of 2019 to 2022, parents prevailed 36 percent of the time, school districts prevailed 58 percent of the time, and only 5 percent of the decisions had mixed outcomes. While the authors noted the statistically significant difference between these two time periods, the conclusion was that the difference was “attributable to a major reduction in the mixed category that shifted equally in the direction of each polar outcomes category.”¹¹⁵

In Virginia, “[b]etween school years 2010-11 and 2019-20, parents have fully prevailed or partially prevailed in only 17 percent of fully adjudicated due process hearings. Between school years 2015-16 and 2019-20, parents fully prevailed in only four of 47 fully adjudicated due process hearings, and split decisions were issued in another four cases.”¹¹⁶ In 2022-23, of 10 fully adjudicated cases, parents fully prevailed in 10 percent of the cases, school districts prevailed in 50 percent of the cases, and mixed/split decisions were issued for 40 percent of the cases. In 2023-24, of 20 fully adjudicated hearing cases, parents fully prevailed in 30 percent of the cases, school districts prevailed 65 percent of the time, and mixed/split decisions were issued for 5 percent of the cases.¹¹⁷

As such, the change in the percentage of times parents prevailed in fully adjudicated hearings in Virginia rose somewhat from 8.5 percent of the time from 2015 – 2020 to 10 percent in 2022-23 and then rose markedly to 30 percent in 2023-24, which is more aligned with national percentages. In the absence of data as to attribution for this change in 2023-24, no conclusion is drawn in this study as to whether this portends a change in trend or an incongruity. However, but for 2023-24, the statistically significant difference between the number of times parents prevailed in fully adjudicated cases in Virginia, as compared to national results, confirms the vocal perception of parents in this regard.

¹¹⁵ Perry A. Zirkel Ph.D., J.D., LL.M., & Diane M. Holben, Ed. D., *Due Process Hearing Decisions Under the IDEA: A Follow-up Outcomes Analysis With and Without New York*, 431 Educ. L. Rep. 394, <https://perryzirkel.com/wp-content/uploads/2025/02/dph-outcomes-article-feb-2025.pdf>, (February 27, 2025). (Last visited on June 30, 2025.) See also Perry A. Zirkel and Diane M. Holben, *The Outcomes of Fully Adjudicated Impartial Hearings under the IDEA: A Nationally Representative Analysis with and without New York*, 44 J. Nat’l Ass’n Admin. L. Judiciary 126, <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1712&context=naalj>, (2023). (Last visited on June 30, 2025.)

¹¹⁶ JLARC Report, *supra*, p. 97. Stated differently, between school years 2015-16 and 2019-20, parents in Virginia prevailed 8.5% of the time, school districts prevailed 82.9% of the time, and 8.5% were mixed/split.

¹¹⁷ VDOE Data (review of information on due process hearing outcomes).

(1) *Recommendation(s)*

It is recommended that, prospectively, in addition to the current tracking and reporting of data, the VDOE should post annually the outcomes of each adjudicated hearing, tracking and reporting the percentage of time parents or school divisions prevail in due process hearings, including mixed/split decisions.¹¹⁸ This information should be tracked by school division and should be in language understandable to the public.

b. *Burden of Proof*

In 2005, the United States Supreme Court in *Schaffer v. Weast*,¹¹⁹ held that since IDEA is silent on the allocation of the burden of persuasion, consistent with the default rule that plaintiffs bear the burden of persuasion regarding the essential aspects of their claims, “[T]he burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” The United States Supreme Court expressly declined to address whether states may, if they wish, override the default rule and put the burden always on the school district. In response to petitioner’s argument that placing the burden of persuasion on school districts would “further IDEA’s purposes because it will help ensure that children receive a free appropriate public education,” the Court opined that, “[I]n truth, however, very few cases will be in evidentiary equipoise.”

In Virginia, consistent with *Schaffer*, the burden of proof is allocated to the petitioner, generally the parent, and it is a hotly debated topic. Most of the proposals for change to Virginia’s due process hearing system included placing the burden of proof on the party public agency.¹²⁰

In a 2015 study on the impact of the allocation of the burden of proof to petitioners nationally after *Schaffer*, the researchers found that the “outcome of the decisions based on prevailing party status did not change significantly from before *Schaffer* or after *Schaffer*. School districts were the prevailing party in a moderate

¹¹⁸ Given the requirement that hearing officers enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided, the data and the mechanism is already available for this purpose. See 8VAC20-81-210(P)(12).

¹¹⁹ 546 U.S. 49 (2005).

¹²⁰ One proposal submitted on a possible compromise model like that used in Medicaid Appeals, was provided during this study, advocating for assigning the burden of proof to the party that is attempting to change the status quo. For a discussion on the burden of proof in Medicaid administrative hearings, see Sara Somers, Celine Lefebvre, National Health Law Program, Q & A *The Burden of Proof in Administrative Hearings*, https://healthlaw.org/wp-content/uploads/2018/09/Q_A_The_Burden_of_Proof_at_Medicaid_Hearings_July_2011.pdf, (2011). (Last visited on June 30, 2025.)

majority of the 255 conclusive cases for both time periods.”¹²¹ A follow-up limited empirical analysis was conducted in 2024 to determine whether there was a statistically significant (i.e., generalizable) difference in the outcomes of due process hearings depending on whether the burden of proof was on the school district or the parent. The conclusion was that the results added “to the previous evidence that [burden of proof] under the IDEA does not make a forceful difference on the outcomes of [due process hearing] decisions.”¹²² While recognizing a number of earlier articles by other writers to change the burden of proof post-*Schaffer*, the study concluded: “[H]owever, any policy argument of parent or district advocates that changing the *Schaffer* approach at the federal or state level to put the [burden of proof] on school districts for FAPE or all cases will make it easier for parents to win at the [due process hearing] level is clearly questionable.”¹²³

A review of hearing decisions in Virginia reveal that the hearing officers rely heavily on whether the petitioner met the burden of proof in every case, which may be why proposals to change the burden of proof in various ways were a common recommendation during the conduct of this study.¹²⁴ As previously noted, this practice is inconsistent with conclusion of the United States Supreme Court that, “[I]n truth, however, very few cases will be in evidentiary equipoise.”

(1) Recommendation(s)

While enacting a statutory change in the burden of proof is viewed by many as a panacea, given the prevalence of Virginia hearing officers’ reliance on the burden of proof as the rule, rather than the exception, when evidence is in “equipoise,” and the research on the impact of the burden of proof nationally, it is the conclusion of SES that merely changing the burden of proof will not significantly impact the effectiveness of the hearing system or address the perceived inaccessibility and partiality of the hearing process. While more difficult, it is recommended that more fundamental systemic changes discussed in this study need to be implemented to transform Virginia’s hearing system.

¹²¹ Cathy A. Skidmore, Perry A. Zirkel, *Has the Supreme Court’s Schaffer Decision Placed a Burden on Hearing Officer Decision-Making Under the IDEA?*, 35-2 J. Nat’l Ass’n Admin. L. Judiciary 284, <https://perryzirkel.com/wp-content/uploads/2016/04/skidmore-zirkel-article-on-hearing-officers-bop.pdf>, p. 299 (2015). (Last visited on June 30, 2025.)

¹²² Perry A. Zirkel, Ph.D., J.D., LL.M., Diane M. Holben, Ed.D, *Burden of Proof Under the IDEA: Does it Make a Difference in Due Process Decisions?* 425 Ed. Law Rep. 29, <https://perryzirkel.com/wp-content/uploads/2024/09/zirkel-and-holben-bop-article-aug.-2024.pdf>, p. 4 (August 29, 2024). (Last visited on June 30, 2025.)

¹²³ *Id.* at 4.

¹²⁴ Strong and prolific reliance on the opinions of the educators who testified in the hearings to find that the parents did not meet the burden of proof, even if accompanied by judicial authority, likely contributed to the perception of a bias in the hearing process.

c. *Party Representation*

(1) *Non-attorney Advocates*

Pursuant to the IDEA, any party to a hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law.¹²⁵ During the reauthorization process of IDEA in 2003 – 2004, Congress considered the question of non-attorney representation at due process hearings and, at one point, the legislation included the “right to be represented by counsel and by non-attorney advocates.” However, the statute did not adopt this language.

Given that the Act is silent regarding the representational role of non-attorneys in IDEA due process hearings, the issue of whether non-attorneys may “represent” parties to a due process hearing is a matter that is left, by the statute, to each State to decide.¹²⁶

In Virginia, by law, the parents and the school division have the right to be represented by legal counsel or “other representative” before a hearing officer without being in violation of practicing law without being authorized or licensed.¹²⁷ The data shows that parents in Virginia are increasingly being represented by advocates in the special education hearing proceedings.¹²⁸

While attorneys are held to Virginia standards of professional responsibility/conduct, as well as meeting requirements to engage in the practice of law, neither Virginia law nor regulation establish a minimum competency level for non-attorney advocates to represent parties before a hearing officer or standards of professional responsibility/conduct.¹²⁹ This is a matter of concern in Virginia:

¹²⁵ See 34 C.F.R. § 300.512(a)(1).

¹²⁶ *Analysis and Comments to the Regulations*, Federal Register, Vol. 73, No. 231, Page 73017 (December 1, 2008).

¹²⁷ Va. Code Ann. § 22.1-214(C).

¹²⁸ In 2021-22 and 2022-23, parents did not have a licensed attorney in approximately 70% of the cases and, when represented, they were represented by an advocate, 18.8 percent of the time and 23.86 percent of the time, respectively. In 2023-24, parents did not have a licensed attorney 77% of the time, and, when represented, they were represented by an advocate 40.44 % of the time. VDOE Data (on representation during due process hearings).

¹²⁹ On March 21, 2025, Virginia enacted a law authorizing a special education hearing officer to dismiss a due process complaint that contains substantively the same issues as a previously adjudicated due process hearing complaint and evidences a clear pattern of initiating vexatious and repetitive litigation. See *An Act to Permit the Dismissal of Certain Vexatious and Repetitive Special Education Due Process Hearing Complaints*, Acts of Assembly, Chapter 294 (HB 2602), <https://lis.virginia.gov/bill-details/20251/HB2606/text/CHAP0294>, (2025).

VDOE personnel and hearing officers indicate that the quality and helpfulness of these advocates vary, and that some advocates have engaged in behavior that could be considered disruptive or unethical – a situation that appears to be, to some degree, a national issue.¹³⁰

Only several states have instituted an authorization process¹³¹ for a non-attorney to represent a party in a special education due process hearing. Texas,¹³² Florida,¹³³ and

¹³⁰ JLARC Report, *supra*, p. 114. It is recognized that hearing officers in Virginia have the authority to stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the special education hearing officer's rules and with relevant laws and regulations. *See* 8VAC20-81-210(P)(5). *See also* 8VAC20-81-210(P)(10) (providing authority to the hearing officer to take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the special education hearing officer's orders). However, this authority does not address minimum qualifications to serve as a non-attorney representative or establish any recourse for the client or consequences for failing to meet standards of professional responsibility/conduct.

¹³¹ As used herein, an authorization process grants individual hearing officers the discretion to allow non-attorneys to represent parents in due process hearings. In contrast, a certification process would require a non-attorney to seek approval from a designated, neutral entity, who determines whether the non-attorney has met minimum requirements to appear before due process hearing officers and represent clients. There may be continuing education requirements, similar to what is required of licensed attorneys.

¹³² The standards in Texas are in regulation and it is the hearing officer, upon application by a party who wishes to be represented by an individual who is not an attorney licensed in the State of Texas, who determines whether the non-attorney representative is qualified and meets the requirements to represent the party in the hearing. The hearing officer's determination is final and not subject to review or appeal. *See* 89.A.A. § 89.1175, *Representation in Special Education Due Process Hearings*, <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/coe-tac-currently-in-effect/cho89aa.pdf>, (November 2024). (Last visited on June 30, 2025.)

¹³³ *See* Florida Administrative Code, Rule 6A-6.03311, *Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities*, <https://www.fldoe.org/core/fileparse.php/20653/urlt/29-2.pdf>, (incorporating the qualifications and standards set forth in the State's regulations for the conduct of administrative hearings or proceedings, Fla. Admin. Code Ann. R. 28-106.106-107 – “A party seeking representation by a qualified representative must obtain authorization from the presiding officer for the representative to appear on behalf of the party.... The presiding officer will authorize the appearance if the officer is satisfied that the representative has the necessary qualifications to responsibly represent the party's interests in a manner which will not impair the fairness of the proceeding or the correctness of the action to be taken.”)

New Jersey¹³⁴ have elected to do so in regulation, providing the authority to the hearing officer to approve or deny the representation of a party by a non-attorney. Florida also provides a guide for parents on educational advocates, including questions to ask and warning signs.¹³⁵

(2) Attorneys' Fees

A challenge most IDEA hearing officers face in fulfilling their role and responsibilities is addressing the needs of unrepresented parents during the hearing process. While a few parents possess the skills and emotional control to cogently and professionally present their case to an ALJ/HO, most understandably do not.

The number of unrepresented parents in IDEA cases is a frequent occurrence, likely for several reasons.¹³⁶ First, though IDEA provides that parents must be notified of any free or low-cost legal services,¹³⁷ in reality, such services are either non-existent or the agencies providing them are overwhelmed by the demand.¹³⁸ Second, since 1986,

¹³⁴ In New Jersey, a non-lawyer may apply for permission to represent a party at a contested case special education hearing by filing a written Notice of Appearance/Application. N.J.A.C. 1:1-5.4(a)(7), <https://www.law.cornell.edu/regulations/new-jersey/N-J-A-C-1-1-5-4>. New Jersey regulations also provide the presiding judge, unless precluded by federal law, the discretion to determine at any time during the proceeding that a specific case is not appropriate for representation by a non-lawyer representative. The judge's determination may be based either on the lack of appropriate experience or expertise of the particular non-lawyer representative, or the complexity of the legal issues or other factors which make the particular case inappropriate for a non-lawyer representative. See N.J.A.C. 1:1-5.5(e), <https://www.law.cornell.edu/regulations/new-jersey/N-J-A-C-1-1-5-5>.

¹³⁵ This guide, which was produced by CADRE, is designed to assist parents in asking interview questions that will help get an understanding of an advocate's approach to providing support, to connect with parent centers and additional sources of information on advocacy. *Educational Advocates: A Guide for Parents*, <https://www.fldoe.org/core/fileparse.php/7675/urlt/APG17.pdf>. (Last visited on June 30, 2025.)

¹³⁶ The IDEA permits a court, in its discretion, to award reasonable attorneys' fees as part of the costs to the prevailing parent of a student with a disability. See 34 C.F.R. § 300.517(a)(1)(i). The fact that the parents did not prevail on all issues before the hearing officer or court, does not bar an award of fees. Courts will look at the degree of success to decide whether the parents are the prevailing party. See, e.g., *Mr. and Mrs. B. v. East Granby Bd. of Educ.*, 201 F. App'x 834, 46 IDELR 212 (2d Cir. 2006) (unpublished); *Linda T. v. Rice Lake Area Sch. Dist.*, 417 F.3d 704, 44 IDELR 1 (7th Cir. 2005).

¹³⁷ 34 C.F.R. § 300.507(b).

¹³⁸ Non-profit law organizations can also recover attorneys' fees at the same hourly rate as for-profit attorneys and law firms. See, e.g., *Eggers v. Bullitt Cty. Sch. Dist.*, 854 F.2d 892, 441 IDELR 147 (6th Cir. 1988); *Township of Bloomfield Bd. of Educ. v. S.C.*, 45 IDELR 97 (D.N.J. 2006) (unpublished).

the IDEA has provided that parents may be reimbursed for attorneys' fees if found to be a prevailing party.¹³⁹ But, many attorneys require a substantial retainer to mitigate their risk and most parents just cannot afford it. Finally, a few parents dislike/distrust attorneys or consider representing themselves and their child kind of a do-it-yourself project.¹⁴⁰

Parents cannot recover fees for their non-attorney advocates.¹⁴¹

Many parents and their representatives in Virginia voiced their concerns about the exorbitant costs of retaining an attorney. This, coupled with their perception that the hearing system is stacked against them, has resulted in some parents not exercising their due process rights, or retaining the services of non-attorney advocates, some of whom feel out-matched by their attorney counterpart.¹⁴² Others indicated that legal aid attorneys either do not have the requisite expertise to represent parents in special education due process hearings or the income requirements to qualify for services are too low for families with modest incomes.

One attorney recommended three different models to assist parents with the cost of retaining an attorney:

State funding needs to be provided to DisAbility Law Center ... to provide Special Education advocacy services throughout our state ... ---tax payer money is being spent to hire \$300-400/hr attorneys to deny our most vulnerable citizens (children with disabilities) their civil rights under IDEA, 504, and the

¹³⁹ 34 C.F.R. § 300.517(a)(1)(i). Courts can also award attorneys' fees to a school district if it is the prevailing party against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. 34 C.F.R. § 300.517(a)(1)(ii). Fees to the school district are also available if the attorney for the parent, or the parent him/herself, if the due process hearing, or a subsequent cause of action, was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. 34 C.F.R. § 300.517(a)(1)(iii).

¹⁴⁰ See Memorandum to Erlichman, et. al from Wamsley, *Judges, Administrative Law Judges, and Hearing Officers Ability, Extent, and Duty to Question Witnesses to Develop the Record with Pro Se Litigants* (July 23, 2012) (on file with The Massachusetts Bureau of Special Education Appeals) at 1.

¹⁴¹ See, e.g., *Arons v. New Jersey State Bd. of Educ.*, 842 F.2d 58 (3d Cir. 1988), cert. denied, 488 U.S. 942 (1988); *S.W. v. Bridgeton Bd. of Educ.*, 45 IDELR 122 (D.N.J. 2006) (unpublished); *Connors v. Mills*, 34 F. Supp. 2d 795 (N.D.N.Y. 1998). See also *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46708 (August 14, 2006) ("Lay advocates are, by definition, not attorneys and are not entitled to compensation as if they were attorneys.").

¹⁴² A few non-attorney advocates and attorneys shared with SES that due process hearings in Virginia are increasingly adopting a civil litigation model instead of the informal administrative proceeding intended by the IDEA.

ADA. Tax payer money should also be made available to ensure ALL families of children with disabilities in VA have access to quality legal representation. This advocacy program would be available regardless of income status, so that our P&A can take the most meritorious cases to hearing or potentially to trial.... Right now families are financially outgunned and school board attorneys know they can drag out the process to eventually break the financial backs of the parents who will go away and stop advocating for their children.

For families who are not able to access the P&A or Legal Aid services (because even with hefty funding, these organizations will not be able to realistically serve all disabled students in VA), provide a state tax credit for expenditures for advocate and attorney fees expended in pursuing their child's rights under IDEA, Section 504 or ADA.

One solution would be to set up a statewide legal defense fund that parents could access to pay advocate/legal fees. Access to these funds would not be means-tested. If the case has merit, then it should be funded. Hard-working families whose taxes pay the school board attorneys to fight them should not also have to pay to protect their children's rights. A position within the Attorney General's office could be established to review cases for merit and refer for funding if a claim is meritorious.

(3) Recommendations

- For the protection of the parties and for the effectiveness and efficiency of the hearing system, it is recommended that Virginia consider an authorization/certification process for non-attorneys that includes qualifications of knowledge and experience and standards of professional responsibility/conduct.¹⁴³ Any authorization process should be in regulation to ensure uniform performance/knowledge standards and is best implemented by the hearing officer appointed to the case.¹⁴⁴ If a certification process is preferable, it should be done by a neutral entity, such as the Supreme Court of Virginia.¹⁴⁵ It is also recommended that the development of a guide for parents similar to that available in the State of Florida¹⁴⁶ be considered and, ideally, developed in cooperation with, for

¹⁴³ Any associated costs should be reasonable or allow for a waiver or reduction of fees based on income specifications.

¹⁴⁴ The hearing officer's exercise of this discretion can be reviewed during the annual performance evaluation to ensure compliance with applicable regulations.

¹⁴⁵ Alternatively, the certification process can be voluntary. Even with a voluntary process, certification may help parents make a more informed decision in the selection of a non-attorney representative, as the certification process can provide assurances that the non-attorney has met minimum requirements.

¹⁴⁶ See n.135, *supra*.

example, the PEATC, CADRE, and/or Council of Parent Attorneys and Advocates, Inc. (COPAA).¹⁴⁷

- In addition to the aforementioned guides and current Learning Library Resources on the VDOE website, including the videos prepared in partnership with Old Dominion University,¹⁴⁸ and the toolkits available through the Parent Teacher Association (PTA)¹⁴⁹ and the PEATC,¹⁵⁰ it is recommended that the VDOE provide access to additional resources *in a more centralized location* to help a parent understand the hearing process in a tangible way, such as the videos available to parents and school personnel in Pennsylvania on preparing for the prehearing conference and hearing.¹⁵¹
- To increase the availability of attorney representation during due process hearings for parents and their students with disabilities with income limitations, consideration should be given to the following:
 - Establishing a fund to be awarded on a grant basis to legal services agencies who demonstrate the ability to represent families in special education due process hearings. Any attorneys' fees recovered by the legal services agency as a result of the representation should be payable (in whole or part) to the fund from which grants are awarded to help replenish the fund.
 - Establishing a fund to be awarded to accredited Virginia law schools to establish advocacy clinics, similar to the William and Mary Law School Special Education Advocacy Clinic. This will not only increase available representation, but it will also help to increase the number of law school students who may choose to work in special education law in the future. Any attorneys' fees recovered by the clinic¹⁵² as a result of the representation should be payable (in

¹⁴⁷ COPAA is a non-profit organization governed by a volunteer Board of Directors. COPAA's mission is to protect and enforce the legal and civil rights of students with disabilities and their families. See <https://www.copaa.org/>. (Last visited on June 30, 2025.)

¹⁴⁸ See Office of Dispute Resolution Learning Library, <https://cieesodu.org/office-of-dispute-resolution-learning-library/>. (Last visited on June 30, 2025.)

¹⁴⁹ See Special Education Toolkit, <https://cieesodu.org/office-of-dispute-resolution-learning-library/>.

¹⁵⁰ See Special Education Due Process Hearing Toolkit, <https://peatc.org/wp-content/uploads/2023/06/Due-Process-Toolkit.pdf>. (Last visited on June 30, 2025.)

¹⁵¹ See Pennsylvania's Office of Dispute Resolution, Hearing Procedures, <https://odr-pa.org/due-process/procedures/>. (Last visited on June 30, 2025.)

¹⁵² Law clinics may also recover attorneys' fees for work performed by law students. See, e.g., *M.C. v. Dept. of Educ.*, 61 IDELR 102 (S.D.N.Y. 2013).

whole or part) to the fund from which grants are awarded to help replenish the fund.

- Providing a State tax credit for expenditures for advocate and attorney fees expended in pursuing a student with a disability's rights under IDEA.

d. *Funding of Virginia's Hearing System*

In many one-tier States, the costs of the hearing system,¹⁵³ such as the costs of the hearing officers and transcripts, are paid by the State.¹⁵⁴ In Virginia, the costs of independent educational evaluations ordered by the special education hearing officers, the special education hearing officers, court reporters, and transcripts are shared equally by the LEA and the VDOE.¹⁵⁵ Upon request, the LEA is reimbursed by the VDOE for these applicable shared costs.¹⁵⁶ The cost-sharing system in Virginia may serve as an incentive for early dispute resolution and was not raised as a concern in the course of this study. As such, no change in the funding system is recommended.

e. *Compensation and Billing Procedures for Special Education Hearing Officers*

The agency or entity requesting assignment of an OES hearing officer is responsible for compensating the appointed hearing officer.¹⁵⁷ The special education

¹⁵³ It is recognized that the fiscal and emotional costs to the party parent and local education agency of participating in the hearing process are often significant. While not as prevalent, it is acknowledged that there are some studies on the impact of the hearing system on, for example, special education teachers. See Elizabeth Zagata, Ph.D, Melanie J. Reese, Ph.D., Tracy E. Sinclair, Ph.D, BCBA-D, *"I Didn't Sign up for This!": Considering the Impact of Due Process on Teachers*, <https://cadreworks.org/resources/literature-article/i-didnt-sign-for-considering-impact-due-process-teachers>, (2024); Sasha Pudelski, *Rethinking Special Education Due Process*, <https://www.aasa.org/docs/default-source/resources/reports/aasarethinkingspecialduedueprocess.pdf>, (2013). These costs were not an area to be addressed by this study. However, it is recommended this information inform any systemic reform of Virginia's due process hearing system, including enhancing the efficiency of the process.

¹⁵⁴ *Due Process Hearings under the Individuals with Disabilities Education Act: Justice Delayed ...*, *supra*, pp. 856-857.

¹⁵⁵ 8VAC20-81-210(S)(1). For the 2021-22 to 2023-24, these system costs, shared equally by the party LEA and VDOE, have been as follows (rounded): \$180,826 in 2021-22; \$100,840 in 2022-23; and \$189,824.00 in 2023-24. VDOE Data (responsive information on costs).

¹⁵⁶ *Id.*

¹⁵⁷ OSE Rule 6. Another agency that requires specialized training to hear proceedings, the Virginia Department of Human Resources – Employment Dispute Resolution (EDR), uses a flat fee compensation structure. The established fee amount of

hearing officers receive \$125.00 an hour for hearing time for a variety of functions, including; conducting prehearing conferences; research; writing decisions and case closure summary report, prehearing conference order(s) and other related correspondence, as well as time related to phone calls and email communications, including contact with the assigned Hearing Officer Evaluator.¹⁵⁸ This hourly rate has not increased in many years.¹⁵⁹

(1) *Recommendations*

It is recommended that along with other recommendations to reform the hearing system, the VDOE review the rates hearing officers receive for conducting proceedings for other Virginia agencies/entities that require specialized knowledge and training and consider increasing the rate of compensation for hearing officers comparably.

f. Duration of Virginia Due Process Hearing Cases

One aspect of an effective due process hearing system is whether the time period for fully adjudicated decisions from the filing of a due process complaint has been within timelines or with a minor or major delay. For non-expedited cases for which a continuance may be allowed, nationally, from 2013 – 2018, the data shows that decisions rendered within timelines remained around 15% until 2016 which showed a marked decrease in decisions rendered within timelines.¹⁶⁰ For that same time period, Virginia was one of ten states with the lowest average duration for non-expedited cases, with 33% within timelines, 31% with minor delays, and 36% with major delays.¹⁶¹ The average life cycle of a fully adjudicated non-expedited case nationally was 200.1 days, while in Virginia it was 102 days.¹⁶² More recently, in Virginia, the average case life cycle for fully adjudicated cases was 80.57 days in 2021 – 2022, rose to 109.2 in 2022 – 2023, and decreased to 91 days in 2023 – 2024.¹⁶³

\$4000.00 covers all services and disbursements incurred for the hearing officer to conduct an employee grievance hearing, including travel, trip, or office expenses. The flat fee structure has a different rate for consolidated hearings and grievances that are settled or concluded prior to the hearing, and are billed on a prorated basis as a percentage of the unconsolidated hearing flat fee. See <https://www.dhrm.virginia.gov/employment-dispute-resolution/hearings/hearing-fees>. (Last visited on June 30, 2025.)

¹⁵⁸ VDOE Data (Compensation and Billing Procedures for Special Education Hearing Officers).

¹⁵⁹ VDOE Data (*Memorandum to OSEP, Overview of Virginia Due Process System rate*).

¹⁶⁰ *Due Process Hearings under the Individuals with Disabilities Education Act: Justice Delayed ...*, *supra*, pp. 856-857.

¹⁶¹ *Id.*

¹⁶² *Id.* at pp. 853, 856.

¹⁶³ VDOE Data (information on life cycle of due process hearings).

Upon consideration of other States' standards for granting an extension/continuance of time, including good cause, in all likelihood Virginia's comparatively low life cycle of cases overall is due to the stringent standard hearing officers must weigh. Specific extensions of time for a non-expedited hearing are only authorized at the request of either party if it is *in the best interest of the student*.¹⁶⁴ The party requesting an extension is required to provide the hearing officer sufficient information that the best interest of the student is served by granting an extension. The hearing officer may only grant such requests for cause, but not for personal attorney convenience.¹⁶⁵

VI. STATE WRITTEN COMPLAINT SYSTEM

A. Overview

The IDEA regulations require that each State establish procedures for the filing of written complaints with the SEA regarding alleged violations of the IDEA.¹⁶⁶ A written complaint must be filed within one year of the alleged event and must be decided by the SEA within 60 days of the complaint having been filed.¹⁶⁷ Monetary reimbursement, compensatory services, and other corrective action can be provided if it is determined that FAPE was denied to the student(s).¹⁶⁸

A parent may utilize either or both of the written complaint or hearing processes.¹⁶⁹ If an issue has already been decided in a due process hearing, then that decision should prevail over a complaint investigation of the same issue.¹⁷⁰ If the parents have commenced both processes, any part of the written complaint that is being addressed in the due process hearing must be held in abeyance pending conclusion of the hearing.¹⁷¹ However, any issue in the written complaint that is not part of the due process hearing, must be resolved within the 60 calendar days.¹⁷²

An SEA in its procedures regarding written complaints must provide that an LEA has the opportunity to respond to the written complaint, including a proposal to resolve

¹⁶⁴ See 8VAC20-81-210(P)(9).

¹⁶⁵ *Id.* The VDOE has provided hearing officers guidance to assist special education hearing officers in managing the timeline more effectively during a due process case. This guidance document also includes some samples and formats such as a sample prehearing conference report and the continuance order format for hearings. See n.87, *supra*.

¹⁶⁶ 34 C.F.R. §§ 300.151 through 300.153.

¹⁶⁷ 34 C.F.R. §§ 300.152(a) and 300.153(c).

¹⁶⁸ 34 C.F.R. § 300.151(b).

¹⁶⁹ *Memorandum to Chief State School Officers*, 34 IDELR 264 (OSEP 2000).

¹⁷⁰ 34 C.F.R. § 300.152(c)(2)(i).

¹⁷¹ 34 C.F.R. § 300.152(c)(1).

¹⁷² *Id.*

it, including, with the parent’s consent, through mediation or some other means, with the 60-day time limitation being extended upon agreement of the parties.¹⁷³

In resolving the written complaint in which the SEA has found a violation of the IDEA, the SEA must address the failure to provide appropriate services to the student (if the complaint involved a particular student), take whatever additional corrective action is required and, as appropriate, provide for future provision of services for all students with disabilities who may have been similarly impacted, even if those students were not the subject of the written complaint.¹⁷⁴

B. Virginia’s State Written Complaint System

OSEP’s findings of noncompliance in Virginia’s State written complaint system cited in the April 23, 2024, University of Virginia Law School study have been addressed by corrective action taken by the VDOE, including the revision in August 2024 of the Complaint Resolution Procedures.¹⁷⁵ Similarly, two of the three recommendations in the JLARC Report,¹⁷⁶ and codified in the Code of Virginia,¹⁷⁷ have been addressed by VDOE:|

- Recommendation Number 20, regarding the criteria for what constitutes “exceptional circumstances” that warrant extension of the 60-calendar day regulatory timeline for complaint investigations and a tracking and quarterly reporting system to the Superintendent of Public Instruction, or their designee.¹⁷⁸
- Recommendation Number 22, regarding the development of policies and procedures for tracking, investigating, and resolving allegations of violations of special education law and regulations that do not meet the current regulatory standard for state complaints.¹⁷⁹ (This was also an area identified by OSEP and resolved.)

¹⁷³ 34 C.F.R. §§ 300.152(a)(3), 300.152(b)(1)(ii).

¹⁷⁴ 34 C.F.R. §§ 300.151 through 300.153.

¹⁷⁵ See Letter from U.S. Department of Education, OSEP, to VDOE, dated December 5, 2024. (On file with the VDOE.). The VDOE Complaint Resolution Procedures, revised in August 2024, are disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. The procedures are also posted on the VDOE’s website, Special Education Complaints page, <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/resolving-disputes>. (Last visited on June 30, 2025.)

¹⁷⁶ See JLARC Report, pp. 92, 96

¹⁷⁷ See Va. Code Ann. §§ 22.1-214.4(7) and (8).

¹⁷⁸ See VDOE Complaint Resolution Procedures, p. 12 (August 2024). VDOE Data (ODRAS Quarterly Complaint Extension Reports).

¹⁷⁹ See VDOE Complaint Resolution Procedures, p. 11 (August 2024). VDOE Data (Documentation of implementation in reviewed State complaint Letters of Finding

Notwithstanding these achievements, based on the review of Letters of Finding for State written complaints and the survey conducted in the course of this instant study, JLARC's finding with regard to corrective actions has not been remedied, and that is a fundamental concern that impacts the effectiveness and integrity of Virginia's State written complaint system and the resolution of identified noncompliance with finality. In its report, JLARC determined –

VDOE does not require school divisions to address identified non-compliance even when it involves not providing needed services

In complaints reviewed by JLARC staff, VDOE rarely requires corrective actions that would ensure the identified non-compliance is corrected and that the negative effects of the non-compliance on students are remedied. Most notably, VDOE rarely requires a school division to provide compensatory services to students when it finds that the school division did not provide legally obligated services, including when VDOE staff have identified the precise duration of services that were not provided. Instead, with only rare exceptions, VDOE requests, asks, or directs the school division to hold an IEP team meeting to discuss the need for compensatory services and to submit evidence to VDOE that the possibility of providing compensatory services was discussed at the meeting. VDOE then directs parents to pursue additional dispute resolution, either through mediation or due process, if this meeting does not result in an agreement regarding compensatory services.

VDOE's current approach of only requiring the IEP team to reconvene to discuss whether compensatory services will be provided does not appear to be in the best interest of students. Directing school divisions to convene another IEP team meeting is easier for school divisions to implement than if VDOE required them to provide compensatory services, but it does nothing to ensure students with disabilities receive needed services. Under VDOE's current approach, school divisions are not held accountable for (i) not providing services they were legally required to provide and (ii) addressing the subsequent effects of this failure on students' academic or functional achievement. In addition, requiring another meeting without mandating school divisions provide at least some compensatory services further delays the provision of needed services to students.

Other corrective actions required by VDOE do not consistently ensure that identified non-compliance is corrected... Ineffective required corrective actions likely contribute to dissatisfaction among parents who have filed complaints through VDOE.¹⁸⁰

2024; July 12, 2024, e-mail communication to Virginia special education directors on the VDOE's general supervision responsibilities and "credible issue"; the VDOE internal procedures).

¹⁸⁰ JLARC Report, pp. 93-94, *supra*.

In accordance with the IDEA, in resolving a State written complaint in which the SEA has found a failure to provide appropriate services, the agency, pursuant to its general supervisory authority under IDEA Part B must address: (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all students with disabilities.¹⁸¹

It is of significant concern that, five years later, the findings reported in 2020 in the JLARC Report regarding corrective actions in the VDOE's Letters of Finding persist.

Filing a complaint with VDOE is not worth the time and effort, as there is no enforcement of the finding when the school district does not comply.

- Parent/guardian of student with a disability

VDOE complaint process is a total sham.

- Parent/guardian of student with a disability

It would be helpful if VDOE would direct the School District to provide a specific number of comp hours, rather than returning the issue to the district that already doesn't want to comply.

- Advocate for parent/guardian

The consistency in the state complaint process has been challenging. The findings can, at times, not be directly tied into regulations. Additionally, whether or not the division would be found in compliance would be contingent on the individual reviewing the complaint. Additionally, the actions on the division to satisfy the Corrective Action Plan can be unreasonable at times

- School division personnel

As ratified by OSEP, Virginia has in place the requisite policies and procedures for State written complaints that align with the IDEA. However, what became abundantly clear in the conduct of this study, is that the implementation of these policies and procedures is a fundamental flaw in this significant dispute resolution option. If not corrected forthwith, Virginia's State written complaint system will be an empty promise. That perception is reflected in the universally scathing comments provided in response to the survey conducted during this study (as the examples above note), and in the many interviews this examiner conducted.

Therefore, while other aspects of Virginia's State written complaint system are addressed below, it is the implementation of these policies and procedures that must be addressed at the outset. In particular, the identification of relevant issues, the rendering

¹⁸¹ 34 C.F.R. § 300.151(b).

and issuance of comprehensive Letters of Findings consistent with standard legal practice, including when appropriate, enforceable orders that correct the identified noncompliance with finality, and, after issuance, the enforcement of the orders.

For a State written complaint system to be effective, the VDOE must not only investigate each *sufficient* State written complaint,¹⁸² but it must also decide the case based on verifiable facts, apply the law to the determined facts with fidelity and clarity, and unequivocally decide and order a remedy. It does not end there. The VDOE's actual enforcement of the order and the perception of the parties that an ordered remedy will be enforced is essential for a State written complaint system to be efficient and perceived as having integrity.

A review of randomly determined Letters of Finding from the 2023 – 2024 school year in the course of this study confirmed the VDOE's delegation of the remedy to the involved school district or the student's IEP team. This practice not only causes the system to be perceived as ineffectual, but it also likely exacerbates the impasse that led to the filing of a State written complaint on the part of a complainant parent. The review also revealed fundamental decision writing practices contrary to standard practices and the VDOE's own State written complaint resolution procedures, including:

- The absence of a clear statement of the issue(s) being investigated, rather than a restatement of the allegation(s) of the complainant.¹⁸³
- The absence of a statement of all critical demonstrable, verifiable findings of facts, rather than relying on assertions of the involved public agency.¹⁸⁴
- While applicable law is included, the application of the appropriate legal authority to the determined findings of fact for each issue within the scope of the investigation is not always included.

¹⁸² See 34 C.F.R. § 300.153(b), for the requisite information needed in the complaint for it to be sufficient.

¹⁸³ See VDOE Complaint Resolution Procedures, p. 3 (August 2024). In the Notice of Complaint, the Office of Dispute Resolution identifies the relevant issues, in reference to the applicable laws and regulations, and requests that the LEA (or public agency) respond in writing. Based on the August 2021 VDOE Training Handbook for Office of Dispute Resolution and Administrative Services, the office maintains an issue bank and an issue that best described the issue in the written complaint is selected or, if not listed, the regulations are relied upon for guidance. *Id.*

¹⁸⁴ See VDOE Complaint Resolution Procedures, p. 6 (August 2024). Determination of compliance or noncompliance on each issue is based upon the facts and applicable laws, regulations, or standards. The August 2021 VDOE Training Handbook for Office of Dispute Resolution and Administrative Services (ODRAS) indicates that for each issue, the applicable law or regulation is to be cited and, in addition to the response, the public agency is informed of the documentation to be submitted that is necessary to make a finding on each issue.

- In addition to the aforementioned concerns, with the lack of finality and effective corrective actions, in at least one case, the corrective action was inconsistent with the findings of fact and conclusions of law. (The ordered consideration of compensatory education for a violation related to an initial evaluation without addressing whether the student was eligible as a student with a disability.)

1. *Recommendation(s)*

- As soon as possible after the issuance of this final external report, it is recommended that the VDOE engage a neutral independent professional with expertise regarding the IDEA state written complaint system and standard decision writing practices, including issue specification and applicable standards of law, to conduct a mandatory training in these areas for all state written complaint personnel involved in the investigation of a state written complaint and the writing of Letters of Findings, including VDOE contractors. The training must include information on determining the precise statement of issues to be investigated, the conduct of the investigation itself, and the writing of the Letters of Findings, including enforceable final corrective actions. It is further recommended that the training be followed by the availability of a minimum of two months of technical assistance from the designated trainer to the VDOE State written complaint personnel (from case assignment to closure). This post-training technical assistance will assist the assigned investigator to apply the standard practices addressed in the training.
- In the absence of data otherwise regarding the VDOE's enforcement of State written complaint orders, it was determined that the practice, to date, of returning decision making on corrective actions to the involved public agency is likely the cause of stakeholders' perception that VDOE fails to enforce Letters of Findings. It is recommended that, when enforceable final corrective actions are provided in Letters of Findings, the VDOE collect, track/monitor, analyze, and publicly report the data on the enforcement of all Letters of Findings with ordered remedies.
- Consideration should also be given to posting the Letters of Findings on the VDOE website, without personally identifiable information, just as the VDOE posts hearing officer due process hearing decisions.

C. Staffing of the State Complaint System

Notwithstanding the findings above, as previously discussed, Virginia has a disproportionately high utilization rate for State written complaints as the preferred dispute resolution option. Notably, the data over the past three years reveal a trend of increasing filings of State written complaints from 177 in 2021 – 2022, to 211 in 2022 – 2023, to 297 in 2023 – 2024. In 2021 – 2022, of these filed State written complaints, 58.75 percent were withdrawn or dismissed and 71 – approximately 40 percent – resulted in Letters of Findings; in 2022 – 2023, 82.45 percent were withdrawn or dismissed and 114, approximately 54 percent resulted in Letters of Findings; and in 2023 – 2024, based on partial data, 160, 53.87 percent resulted in Letters of Findings in 2023 – 2024.¹⁸⁵

In 2021, the VDOE’s ODRAS had three compliance specialists assigned to State written complaints along with a coordinator of complaints and special projects, with the investigation of State written complaints as one responsibility.¹⁸⁶ At the time of this study, the ODRAS had two compliance specialists, one possesses a Master of Education (M.Ed.) degree and one possesses a Juris Doctor (J.D.) degree; the coordinator of complaints and special projects who possesses a J.D., with investigation as one responsibility; and one compliance specialist with a Doctor of Education (Ed.D.) degree that is a “compliance and CAP specialist.” The ODRAS also contracts with two additional individuals as needed for State written complaints, one of whom has a J.D. and one of whom has a M.Ed.

Given the trend of increasing numbers of State written complaints and, if the recommendations are adopted, potentially a higher number of State written complaints and an increase in time spent per case to implement improvements to the system, the current case load per investigator may be an impediment to effecting necessary change. While contractors needed to align practices to any adopted improvements are helpful during periods of extreme fluctuation, at least one additional full time compliance specialist may be required to effect meaningful system change.¹⁸⁷

1. *Recommendation(s)*

The VDOE examine the case load for each ODRAS professional staff member responsible for the investigation of State written complaints, including the development of Letters of Findings, relative to the most recent trend data, and determine whether one or more additional staff are necessary to correct the findings in the prior JLARC Report and implement the recommendations in this study, if adopted. If VDOE makes a

¹⁸⁵ VDOE Data (information on State written complaint filings).

¹⁸⁶ VDOE Data (VDOE Training Handbook for Office of Dispute Resolution and Administrative Services (August 2021)).

¹⁸⁷ While the use of contractors is economical and help to absorb increased work during periods of fluctuation, full time employment is preferable, as it affords the VDOE greater control over availability and work product.

determination that an additional staff member(s) is required, budgetary resources will need to be allocated to effectuate this change.

D. Timeliness of the State Written Complaint System

Based on the data provided in the course of this study, Virginia has a timely State written complaint system.¹⁸⁸ In addition to the aforementioned changes in the VDOE's Complaint Resolution Procedures regarding the criteria for extensions of the Letter of Findings, timeline, and tracking procedures, the VDOE has instituted redundant procedures within the ODRAS to ensure timeliness.¹⁸⁹ These redundant procedures ensure multiple personnel are tracking cases with alerts and reminders. No recommendations to ensure Virginia's State written complaint system meet the timelines in IDEA and State law/regulation are warranted.

E. Appeals of Letters for Findings

While the IDEA does not provide for an appeal process of adverse Letters of Findings, Virginia procedures does allow an appeal process.¹⁹⁰ In Virginia, parties to the State written complaint procedures have the right to appeal the final decision to the VDOE within 30 calendar days of the issuance of the decision in accordance with procedures established by the VDOE. (The right of appeal is not in statute.) The VDOE procedures for appeal are set forth in the August 2024 Complaint Resolution Procedures and in the 2009 VDOE Special Education Complaint Appeal Procedures. Parties to a State written complaint are notified of the right to appeal by the VDOE's attachment of a copy of the Complaint Appeal Procedures in each Letter of Finding.

In accordance with the VDOE appeal procedures, the request for appeal must be made on the basis of (i) newly discovered information, or (ii) an error in fact or law on which the findings were based. Generalized disagreement with the Letter of Findings or non-specific requests for a generalized review of the Letter of Findings are not appropriate or proper for consideration or resolution by the complaint appeal reviewer. The appeal reviewer may affirm or amend the findings, or remand to the VDOE for further review and reissuance of findings, as well as any corrective action plan.¹⁹¹

The designated State written complaint reviewer(s) is a current special education hearing officer who serves for a term of one year. The reviewer is retained on the special education hearing officer list maintained by the Supreme Court of Virginia, but is ineligible to be assigned special education cases for the period of service as an appeal reviewer. The reviewer is required to receive training in special education law that the VDOE provides for the special education hearing officers.¹⁹²

¹⁸⁸ VDOE Data (ODRAS Quarterly Complaint Extension Reports).

¹⁸⁹ VDOE Data (Tracking Process).

¹⁹⁰ See 8VAC20-81-200(E).

¹⁹¹ VDOE Data (2009 VDOE Special Education Complaint Appeal Procedures).

¹⁹² *Id.*

Notwithstanding, the aforementioned dissatisfaction with the State written complaint process, only an average of 20% of Letters of Findings have been appealed in the past three years. For those appealed Letters of Findings, over 92% were affirmed on appeal.¹⁹³

1. *Recommendation(s)*

- While an administrative appeal process for State written complaint decisions is not uniformly available among SEAs, the VDOE's appeal process affords the parties additional rights and an opportunity to review the soundness of Letters of Findings. As such, it is recommended that an appeal process be maintained, even if the recommendations to improve the effectiveness of the current State written complaint process are adopted.

However, given the previously discussed findings regarding the hearing officers' adherence to standard practices, along with the pervasive perception of partiality, it is recommended the VDOE consider whether the current system of review by a designated hearing officer is effective or whether it should be changed in some manner.

- It is also recommended that VDOE consider the expansion of the basis of appeal set forth in the 2009 VDOE Special Education Complaint Appeal Procedures to include not just newly discovered information or an error in fact or law on which the findings were based, but to include an assertion of an error in the application of the law to the facts. (While the elimination of the appeal procedures would necessitate regulatory change, a change in the procedures and designated reviewers would not since these matters are only in policy.)

¹⁹³ VDOE Data (information on State written complaint appeals). Only two comments were received during this external review from parents, other complainants, or public agency personnel relating to the utility and perceived fairness of the appeal process. One parent felt the appeal process is a "sham," and felt that the "appeal is not looked at." Another commented on the school district not being "required to give any concrete evident [sic] when they are appealing the complaint." This parent, too, felt that the "whole process is very bias against the parents."

VII. MEDIATION

A. Overview

Each State must have procedures in place for parents and LEAs to voluntarily resolve their disputes through a mediation process at no cost.¹⁹⁴ Mediation cannot deny or delay the parents' right to a hearing.¹⁹⁵ Mediation must be available to the parties even if a request for a due process hearing has not been filed.¹⁹⁶

Special education mediators must be trained in effective mediation techniques to resolve special education disputes consistent with IDEA and state law.¹⁹⁷ More importantly, special education mediators are required to be trained and be knowledgeable in the laws and regulations regarding special education services.¹⁹⁸ An individual who serves as a special education mediator may not have a personal or professional interest which would conflict with his or her objectivity in the mediation process and may not be an employee of the state education agency (SEA) or LEA.¹⁹⁹

LEAs and/or parents choosing not to utilize the mediation process can be required by a State or school district policy to meet with a disinterested third party who would encourage and explain the benefits of mediation.²⁰⁰ Meeting participation can be through video conferences, conference calls, or other alternatives, by agreement of the parties. Mediation must be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.²⁰¹

¹⁹⁴ See 34 C.F.R. § 300.506. "While states are required to offer a process that meets the statutory and regulatory requirements, there is considerable flexibility as to how states provide mediation services. This flexibility includes the selection, training and evaluation of practitioners who serve in the role of mediator and the manner in which the program is administered. State education agencies typically provide this process through one of four different approaches. Most states contract individually with private practitioners, a few states contract with their state-wide network of community mediation programs, and others contract with an organizational provider, such as a different state agency or institution of higher learning, often accessing institutional expertise in mediation and dispute resolution. Two states contract with a for-profit mediation firm through an RFP process." CADRE, Procedural Safeguards, Mediation, <https://cadreworks.org/cadre-continuum/procedural-safeguards>. (Last visited on June 30, 2025.)

¹⁹⁵ 34 C.F.R. § 300.506(b)(1)(ii).

¹⁹⁶ 34 C.F.R. § 300.506(a).

¹⁹⁷ 34 C.F.R. § 300.506(b)(1)(iii).

¹⁹⁸ 34 C.F.R. § 300.506(b)(3)(i).

¹⁹⁹ 34 C.F.R. § 300.506(c).

²⁰⁰ 34 C.F.R. § 300.506(b)(2).

²⁰¹ 34 C.F.R. § 300.506(b)(5).

Mediation discussions are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.²⁰² An LEA may not compel parents to sign a confidentiality agreement as a prerequisite to the school district participating in the mediation process.²⁰³ The mediation agreement itself is not subject to the same confidentiality requirement, though an LEA would need to abide by the confidentiality requirements in IDEA²⁰⁴ and the Family Educational Rights and Privacy Act (FERPA) and its regulations.²⁰⁵ The parties, however, may voluntarily agree to include in their mediation agreement a provision that limits disclosure of the mediation agreement, in whole or in part, to third parties or to disclose it to the public.²⁰⁶

Should the parties reach resolution through the mediation process, the parties must execute a legally binding agreement.²⁰⁷ The mediation agreement must be in writing, signed by the parents and a district representative with the authority to bind the school district, and provide that all discussions that occur during the mediation process will remain “confidential” (i.e., cannot be used later as evidence in any subsequent IDEA due process hearing or civil proceeding).²⁰⁸ The agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.²⁰⁹

Generally, under IDEA, mediation can be used to address disputes relating to any of the matters relating to the identification, evaluation or educational placement of a child with a disability or the provision of a FAPE to the child. Mediation can also be used to address any other matters arising under federal and State special education law and regulations that are not subject to a due process hearing complaint.

Mediation should be the preferred dispute resolution mechanism over due process and litigation.

The committee is aware that, in States where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind. It is the committee's strong preference that mediation become the norm for resolving disputes under IDEA. The committee believes that the availability of mediation will ensure that far fewer conflicts will proceed to the next procedural steps,

²⁰² 34 C.F.R. § 300.506(b)(7).

²⁰³ *Letter to Anonymous*, 120 LRP 23294 (OSEP 2020).

²⁰⁴ 34 C.F.R. §§ 300.611 – 300.626.

²⁰⁵ 34 C.F.R. Part 99.

²⁰⁶ *See Questions and Answers on Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232, Question A-24 (OSEP 2013).

²⁰⁷ 34 C.F.R. § 300.506(b)(6)(i).

²⁰⁸ 34 C.F.R. § 300.506(b)(6)(i).

²⁰⁹ 34 C.F.R. § 300.506(b)(7).

formal due process and litigation, outcomes that the committee believes should be avoided when possible.²¹⁰

A lack of information and consistency amongst the special education mediators define Virginia's special education mediation system.

I understand the results of mediation are not enforceable and [school district] does not comply with finding.

- Parent/guardian of student with a disability

On one of my mediations, we came to a great agreement and the mediator was excellent at facilitating a conversation. On my most recent mediation, the mediator did basically nothing to facilitate a conversation and we were not able to come to an agreement.

- Parent/guardian of student with a disability

I no longer use mediation because it is a waste of the parents time.

- Advocate for parent/guardian

Was not aware of using and not informed by lawyer or school that this option was available.

- Parent/guardian of student with a disability

Families are unaware they have this option.

- Parent/guardian of student with a disability

B. Mediation Data

In addition to the previously discussed lower incidence of mediation in Virginia, as compared to the nation, it is useful to consider the comparative mediation agreement rates. The national trend of agreements reached for mediations held have slightly improved since SY 2020 – 2023, reaching a relatively high of 51 percent in SY 2022 – 2023, which is lower than prior agreement rates which started at 70 percent in SY 2012 – 2013.²¹¹

²¹⁰ Individuals with Disabilities Education Act Amendments of 1997, 105-17, Senate Committee Report to Accompany S.717.

²¹¹ See CADRE, *IDEA Dispute Resolution Data Summary for U.S. And Outlying Areas: 2012-13 to 2022-23*, *supra*. This data is consistent with the GAO November 2019 Study: Special Education IDEA Dispute Resolution Activity in Selected States Varied Based on School Districts' Characteristics, including race and ethnicity showing that in 2017-2018 the very high minority districts had the highest level of mediation

Virginia’s mediation agreement rates for mediations held are slightly higher than the national rate, with 60.9 percent in 2021 – 2022 and rising to 63.64 percent in 2022 – 2023. While commendable, to reach a conclusion that this rate is satisfactory based on national comparability would be complacent, particularly since the rates for Virginia have decreased since 2020²¹² and at least one state, Massachusetts, as referenced in the University of Virginia Study, *supra*, had an 85 percent agreement in 2023 for mediations held. This rate for Massachusetts was preceded by an average of 81.3 percent rate for agreements for the three prior years.²¹³ All state systems of mediation should aspire to reach this level of agreement.

C. Virginia’s Mediation System

1. *The Mediators*

The VDOE recruits, trains, and maintains a panel of mediators who act as independent contractors. The VDOE provides selected mediators with initial training and annual training programs to promote the delivery of quality mediation services to participants in mediation. Prospective mediators are required to attend the initial training program to be included on the approved roster of mediators and must attend the annual training program to remain on the list.²¹⁴ Each mediator must sign a “Mediator Expectation Agreement” with provisions that include evaluation requirements, participation in mandatory training, and conditions for removal.²¹⁵

States differ on the way they pay mediators who serve under contract – either using a per hour reimbursement schedule or a per case schedule similar to Virginia.²¹⁶

agreements reached at 81%, <https://www.gao.gov/assets/gao-20-22.pdf>, (2019). (Last visited on June 30, 2025.)

²¹² VDOE Data (mediation agreements information); *see also* JLARC Report, p. 97. Mediations, although infrequently used, are more likely to result in an agreement, with an average annual success rate between 70 and 78 percent. *Id.*

²¹³ *See* Bureau of Special Education Appeals, *Data on Special Education Disputes & Rejected Individualized Education Programs (IEPs)*, Fiscal Year 2023 Report, <https://www.mass.gov/data-on-special-education-disputes-rejected-individualized-education-programs-ieps>. (Last visited on June 30, 2025.)

²¹⁴ The OES establishes guidelines for the training and certification of *court-referred mediators*, but not for mediators generally, *see* Guidelines for the Training and Certification of Court-Referred Mediators, <https://www.vacourts.gov/static/courtadmin/aoc/djs/programs/drs/mediation/training/tom.pdf>, (2025). (Last visited on June 30, 2025.)

²¹⁵ VDOE Data (VDOE Administration of the Virginia Special Education Mediation System, Revised May 2024).

²¹⁶ Virginia’s special education mediators are paid at the following rate per case: \$200.00 total if a mediator is assigned and involved in preparation for the case but the mediation request is withdrawn prior to the mediation taking place; \$900.00 if a mediation request goes to mediation; \$700 for a reconvened second mediation session

The VDOE's per case rate applies to the preparation and conduct of the case, depending on the activity in the case and, while the majority of mediation sessions are currently conducted virtually, travel expenses associated with conducting assigned mediations are reimbursed according to State reimbursement guidelines.²¹⁷

a. Selection of a Mediator

Pursuant to IDEA, the SEA must select mediators on a random, rotational, or other impartial basis.²¹⁸ The VDOE randomly assigns a mediator on a rotational basis.²¹⁹ While this is consistent with IDEA and standard practice nationally, there are some States that have elected to allow parties to jointly request a specific mediator from the cadre at the time of the mediation request.²²⁰

b. Evaluation

The annual evaluation of mediators is discretionary, not mandatory: "Mediators may be evaluated annually through observation of a mediation session by a fellow mediator or by VDOE staff."²²¹ If the performance of a mediator is rated ineffective, the VDOE reviews the matter for further remedial action or removal of the mediator.²²² Consumer evaluations are provided to participants at the mediation conference, with the assurance that the identity of the consumer will remain confidential.²²³ The consumer evaluations submitted from 2021 – 2022 through 2024 – 2025 were overwhelmingly positive, with an exponentially disproportionate number of LEA personnel responding over parents. Of the minimal parent evaluations submitted, eight were largely positive and three were largely negative.²²⁴

for the same mediation request. Should a mediator travel 25+ miles from their home base and a mediation session is cancelled within 24 hours of the session start date/time, the mediator may bill the VDOE \$315. VDOE Data (VDOE Administration of the Virginia Special Education Mediation System, Revised May 2024).

²¹⁷ *Id.*

²¹⁸ 34 C.F.R. § 300.506(b)(3)(ii).

²¹⁹ VDOE Data (VDOE Administration of the Virginia Special Education Mediation System, Revised May 2024).

²²⁰ For example, Nevada allows for "joint request" of a "named mediator" on its Request for Mediation Form, https://webapp-strapipaas-prod-nde-001.azurewebsites.net/uploads/Requestfor_Med_Form_e02c5262e3.pdf, (April 2025). (Last visited on June 30, 2025.)

²²¹ VDOE Data (VDOE Administration of the Virginia Special Education Mediation System, Revised May 2024).

²²² *Id.*

²²³ *Id.*

²²⁴ VDOE Data (Consumer Questionnaires 2021 – 2024 through 2024 – 2025).

c. *Recommendation(s)*

- With respect to training of special education mediators, it is recommended that the VDOE –
 - adopts the prior recommendation in *A Survey of K-12 Special Education in the Commonwealth of Virginia and Recommendations to Improve Special Education in the State* to enhance the training of mediators: “Special education mediators should receive professional learning from PEATC and/or the William and Mary Special Education Law Clinic. These opportunities would better ensure that the rights of parents and educator roles are better understood and supported by mediators.”
 - reviews the guidelines and certification processes and other available resources through Virginia’s Judicial System for the training and certification of court mediators for the purpose of augmenting the training and certification processes for special education mediators in a similar manner.
 - considers the engagement of an independent, neutral expert knowledgeable in laws and regulations relating to the provision of special education and related services and effective mediation techniques to provide ongoing technical assistance to mediators, upon request.
- With respect to the appointment of special education mediators, it is recommended that 8VAC20-81-190(D)(2) be revised to augment the current rotational mediator selection process to allow parties to jointly request a specific mediator from the cadre and, if available, to appoint the mediator. The availability of this option may increase the willingness of the parties to request mediation and serves to encourage the parties to work together.
- With respect to the evaluation of special education mediators, it is recommended that –
 - The annual evaluation for mediators be mandatory and conducted by an independent neutral expert knowledgeable in laws and regulations relating to the provision of special education and related services

and effective mediation techniques.

- In partnership with PEATC and other parent information centers, the VDOE promote the submission by parents of post-mediation consumer evaluations to increase participation and to assist in the VDOE's oversight of the system.

2. Enforcement

A written, signed mediation agreement is enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.²²⁵ Similarly, a resolution agreement is also enforceable in the same manner.²²⁶

In addition to judicial enforcement of a mediation and resolution agreement, the IDEA authorizes a State to establish an additional enforcement mechanism:

Notwithstanding §§ 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.²²⁷

a. Recommendation(s)

It is recommended that the Virginia Administrative Code, 8VAC20-81-190(E)(3) and 8VAC20-81-210(Q)(4), be revised to provide the additional mechanism of the filing of a State written complaint to enforce mediation (or resolution) agreements. The judicial enforcement of mediation (or resolution) agreements as the sole option, particularly for an unrepresented parent, may serve as a deterrent to using mediation as it can be cost prohibitive.

²²⁵ 34 C.F.R. § 300.506(b)(7); 8VAC20-81-190(E)(3).

²²⁶ 8VAC20-81-210(Q)(4).

²²⁷ 34 C.F.R. § 300.537.

3. *Promotion and Information*²²⁸

The IDEA permits a public agency to offer to parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party who would explain the benefits of, and encourage the use of, the mediation process to the parents.²²⁹ Virginia authorizes this process at both the local and State level:

The local educational agency or the Virginia Department of Education may establish procedures to offer parents and schools who choose not to use the mediation process an opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training and information center or community parent resource center in Virginia established under § 1471 or 1472 of the Act; or an appropriate alternative dispute resolution entity. The purpose of the meeting would be to explain the benefits of and encourage the parents to use the mediation process.²³⁰

Based on the absence of procedures at the VDOE level regarding this opportunity it does not appear that the VDOE has established this process. Further, no information was provided in the course of the study as to whether any LEA has established these procedures and, if implemented, the rate of utilization and effectiveness. Given this is not a required procedure in either federal or state law, there is no harm in maintaining the authority in regulation, in the event it is later determined the practice should be initiated. (Of course, if it is in effect, promotion of the procedure would be necessary.)

The VDOE provides information on the website that includes a mediation brochure, a comparison of mediation and hearings, frequently asked questions about mediation and confidentiality, the VDOE policy/procedures on the administration of the special education mediation system, key points on preparation for mediation, and a link to the outside resources of CADRE.²³¹ In addition, the Virginia Family's Guide to Special

²²⁸ A recommendation was provided in the UVA Report, *supra*, that the Commission should request access to the results of the Department's Parent Involvement Survey. SES did request and was provided the survey form and results. However, the form is responsive to the collection of information to be provided to OSEP for Indicator 8, Parent Involvement, and is not directed to the subject of this study. Indicator 8 is focused on the provision of a FAPE in the least restrictive environment with the indicator results of the percentage of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities. 20 U.S.C. § 1416(a)(3)(A).

²²⁹ 34 C.F.R. § 300.506(b)(2).

²³⁰ See 8VAC20-81-190(C).

²³¹ VDOE website, <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/special-education-mediation>. (Last visited on June 30, 2025.)

Education, May 2023,²³² on the VDOE's Special Education for Families webpage describes the alternative procedures for resolving disagreements and addressing concerns: the Ombudsman, mediation, State written complaints, and due process hearings.

The VDOE website also provides a link to access PEATC Regional Family Support on the Special Education for Families webpage that provides mediation, State complaint and due process hearing toolkits for Virginia parents.²³³ This same webpage provides family engagement resources; upcoming training opportunities on topics such as building strong parent advocates and critical decision points; and a link to the ongoing training modules developed in partnership with Old Dominion on back to basics special education law.

a. Recommendation(s)

The VDOE has a significant amount of information on its website on mediation and the other alternative dispute resolution processes, apart from IEP facilitation, with links to outside resources. The VDOE provides training annually on dispute resolution options to new special education directors, as well as other periodic administrator training programs.²³⁴ However, based on comments collected from parents and parent advocates during this study, the information has not reached the school/community level. It is time to try another way.

This finding is consistent with prior studies of Virginia's dispute resolution processes and the recommendations to publicize the availability of, in particular, the early conflict resolution resources of the Ombudsman, IEP facilitation, and mediation.²³⁵ With the involvement of local/regional parent support organizations, the

²³² See VDOE, *The Virginia Family's Guide to Special Education*, <https://www.doe.virginia.gov/home/showpublisheddocument/890/638454983326630000> (2023). (Last visited on June 30, 2025.)

²³³ See <https://peatc.org/>. (Last visited on June 30, 2025.) (Note: PEATC also provides a link to a 2008 VDOE Parents' Guide to Special Education Dispute Resolution Grassroots in the mediation toolkit. See <https://peatc.org/special-education-dispute-resolution-overview/>. (Last visited on June 30, 2025.) However, given it predated the required changes to comply with IDEA in all regards, the resource may be outdated, if still available through VDOE.)

²³⁴ VDOE Data (review of information on mediation outreach).

²³⁵ See Pasternack Report, p. 19, ("VDOE should work with the federally funded PTI (PEATC) to co-develop training modules on parent-educator collaboration and co-deliver these trainings to educators, school administrators, IEP facilitators, mediators, hearing officers and parents. Training both parents and educators together will facilitate collaboration, cooperation, and consistency of information provided to both parents and educators."), *supra*.

dissemination of information should include multimedia approaches, including the use of social media, to ensure the information is visible in schools and communities.²³⁶

As previously recommended in the area of due process hearings, it is also recommended that the VDOE consider videos that actually portray what happens in a mediation, as well as in an IEP team facilitation meeting, to provide parents, in particular, insight into the process and what they can expect and to help reduce apprehension to utilizing these conflict resolution resources.²³⁷ As described further in the section on the Ombudsman, *infra*, it is recommended that the Ombudsman spearhead the grassroots efforts at the school/community level to explain and promote Virginia's dispute resolution resources and support early conflict resolution.

VIII. IEP FACILITATION

A. Overview

The IDEA, Part B, neither authorizes nor requires States to maintain an IEP facilitation system. However, many States offer IEP facilitation.²³⁸ SES agrees with, and endorses, CADRE's assessment that –

[W]ell-designed and skillfully implemented collaborative approaches, such as IEP facilitation and mediation, can mitigate the use of more adversarial dispute resolution processes and may foster better educator-family relationships and result in more satisfying agreements. Early dispute resolution options are generally more cost effective and more expedient than other processes.²³⁹

²³⁶ The Virginia Family Special Education Connection for example not only provides links to some of the aforementioned resources but provides free apps for mobile devices developed by ATware Solutions, LLC. Given the app development team is in the process of launching several new apps for people with disabilities, service providers and professionals working in the field of special education, it is recommended that the VDOE continue to collaborate with this organization, as well in the availability of information and promotion on dispute resolution. *See* <https://vafamilysped.org/Resource/JWHaEa5BS75P3OHLJIDBHA/Resource-apps-developed-by-atware-solutions-llc>. (Last visited on June 30, 2025.)

²³⁷ CADRE has companion mediation and IEP Facilitation videos to their parent guides. *See* <https://cadreworks.org/resources/cadre-materials/idea-dispute-resolution-parent-guides/mediation>; <https://cadreworks.org/resources/cadre-materials/idea-dispute-resolution-parent-guides/iep-facilitation>. (Last visited on June 30, 2025.)

²³⁸ *See* CADRE, *Trends in Dispute Resolution 2019*, <https://cadreworks.org/resources/cadre-materials/trends-dispute-resolution-2019>. (Last visited on June 30, 2025.)

²³⁹ CADRE, *Trends in Dispute Resolution under the IDEA – Updated 2021*, <https://cadreworks.org/resources/trends-dispute-resolution-under-idea-updated-november-2021>. (Last visited on June 30, 2025.)

Facilitation is a voluntary process. It is designed to make communication and problem solving easier.²⁴⁰ A facilitated IEP team meeting involves a facilitator who assists IEP team members in reaching consensus on the student's IEP.²⁴¹ The facilitator helps keep members focused on the development of the IEP, while also addressing conflicts and disagreements that may arise during the meeting.²⁴² Communication skills are used to ensure that all are heard and can work together to complete the development of the student's IEP.²⁴³

It is important to recognize that the use of collaborative approaches such as IEP facilitation to resolve conflicts and avoid impasse also results in a saving on the emotional costs of more formal dispute resolution processes on, not only parents, but school personnel as well. Unless a family moves out of a school district or the student exits special education, these school level relationships often continue for a long period of time, particularly for families of young children.

B. Virginia IEP Facilitation Option

IEP facilitation is managed under a subgrant provided to the Jimmy and Roselyn Carter School for Peace and Conflict Resolution at George Mason University in Fairfax, Virginia. Training in advanced facilitation in the IEP environment was provided by an independent trainer on three different occasions over the last five to six years.²⁴⁴

1. *IEP Facilitators*

At the time of this study, the VDOE had only two active IEP facilitators, one of whom is employed by a school division and one of whom is a retired special education director. Other previously trained IEP facilitators have not remained with the program. The VDOE acknowledged during this study that the lack of capacity at the Department has hampered the growth of the program and that dedicated resources within the Department are necessary to make the IEP facilitation system more successful.²⁴⁵

Other input provided in the course of the study consistently reported that IEP facilitation has not been utilized to its potential due to a lack of facilitators.²⁴⁶ Not

²⁴⁰ CADRE, *Facilitated IEP Meeting Quick Reference Guide*, <https://cadreworks.org/sites/default/files/TX-1%20FIEP%20Quick%20Reference%20Guide.pdf>, (2012). See also *IEP Facilitation*, <https://files.eric.ed.gov/fulltext/ED555858.pdf>. (Last visited on June 30, 2025.)

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ VDOE Data (2017 training materials: *Advanced Facilitation in the IEP Environment*; information on IEP facilitation, in general).

²⁴⁵ *Id.*

²⁴⁶ At the time of this study, IEP facilitators are paid at the rate of \$400.00 per case. VDOE Data (information on IEP facilitation, in general). There was insufficient

surprisingly, given this information, there is a notable absence of data on IEP facilitation such as utilization rates and outcomes in Virginia.

2. *Promotion and Information*

“Even a well-planned system to house and deliver facilitation to parents and schools will be ignored if not marketed. Getting the message out that your program is open and ready for business requires planning, and leveraging of existing resources and relationships is necessary.”²⁴⁷

“Parents want to see improvements made to the facilitated IEP process. They expressed frustration that the ‘facilitation’ did not actually facilitate the development of IEPs that were designed to meet the unique needs of their student.”²⁴⁸

These sentiments continue today:

Parents locally refer to this as ‘bullied IEP.’ At best, the facilitators are trying to be helpful but can’t make the school system do anything they had not already decided to do. More typically, I have heard many stories of the facilitators being completely one-sided, pressuring the parents to accept whatever the school system offered, while being far too chummy with the school staff.

- Parent/guardian of student with a disability

Facilitator clearly favored the school division and Facilitated Meetings were NOT productive, and then the school division acts like it did a 'service' agreeing to a 'facilitated IEP meeting' but with NO positive impact for the child...it's worthless....

- Advocate for parent/guardian

...The facilitator was unprofessional and provided inaccurate information to the family. The facilitator also did not maintain confidentiality for the family.

- Advocate for parent/guardian

Was not aware nor informed of utilizing a facilitator for the IEP.

- Parent/guardian of student with a disability

information provided to reach a conclusion regarding whether this fee is equitable, as compared to other similar work in Virginia.

²⁴⁷ CADRE, *Public Awareness and Outreach*, <https://cadreworks.org/facilitation-programs/public-awareness-and-outreach>. (Last visited on June 30, 2025.)

²⁴⁸ Pasternack Report, p. 4.

It is the conclusion of SES that Virginia's IEP facilitation system, while well-intentioned, falls short of being a viable effective option at this time due to insufficient number of IEP facilitators and a paucity of information directed to parents and school personnel on the availability and value of this early conflict resolution option.²⁴⁹ There is no promotion of IEP facilitation either by the VDOE on its website nor by the parent organizations cited previously in this study on their respective websites.

That said, in a very positive development during this study, PEATC and the VDOE have been selected by CADRE to participate in a Collaborative State Technical Assistance Workgroup on Local-Level Capacity-Building, a two-year collaborative effort. The purpose of the workgroup is to strengthen the capacity of school systems to implement a range of effective and equitable early dispute resolution options. The collaborative work in Virginia, which will be supported by CADRE, is centered on facilitated IEPs.

3. *Recommendation(s)*

- The VDOE undertake a substantial restructuring of Virginia's IEP facilitation program.²⁵⁰
- The VDOE must ensure that a sufficient number of trained and qualified IEP facilitators are available. Given that the current IEP facilitators (of which there are two) have a background in school administration and the process is perceived not to be impartial, it is also recommended that the VDOE consult with PEATC, the Parent Teacher Association (PTA), and other parent organizations on methods to recruit qualified IEP facilitators who have not been or are associated with the school divisions.
- CADRE offers extensive resources to SEAs either making improvements to an existing program or building a new IEP facilitation program, including a Facilitated IEP Program Initial Self-Assessment tool that focuses on the critical function areas of effective system design: system structure and organization, program access and delivery, practitioner standards and

²⁴⁹ There are few resources on IEP facilitation on the VDOE website. See <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/facilitated-ieps>. (Last visited on June 30, 2025.)

²⁵⁰ It is recognized that the VDOE does have a contract with the Jimmy and Roselyn Carter School for Peace and Conflict Resolution at George Mason University in Fairfax, Virginia. The duration and terms of the contract are unknown. Notwithstanding this recommendation to restructure the program, SES takes no position on the best infrastructure to provide IEP facilitation in Virginia – that is for Virginians to decide. That is, it could be a restructuring of the existing program through the School for Peace and Conflict Resolution, with support from the VDOE on matters such as public awareness and outreach access, or an entirely new IEP facilitation program.

development, public awareness and outreach, evaluation and continuous quality improvement.²⁵¹

If not already being done by the time this study is completed, it is recommended the VDOE utilize the intensive technical assistance available from CADRE in the areas of IEP facilitation program design, including system structure and organization; program access and delivery; practitioner standards and professional development; public awareness and outreach; evaluation and continuous program improvement.²⁵²

- The restructuring of Virginia's IEP facilitation program will be a substantial undertaking. However, if executed well with a sufficient number of qualified IEP facilitators and promoted on an ongoing basis, it will be a worthwhile investment that will likely reduce the escalation of disputes to the formal and more costly dispute resolution options of State written complaints and due process hearings.

To ensure the VDOE has the capacity and dedicated resources to undertake the restructuring of the IEP facilitation program, it is recommended that the VDOE's ODRAS budget be augmented with sufficient resources, including additional staff.

- As was recommended in the discussion on mediation, it is recommended that the VDOE allow parties to jointly request a specific IEP facilitator from the cadre of available facilitators and to appoint the selected facilitator to the facilitated IEP team meeting. The availability of this option may increase the willingness of the parties to access IEP facilitation and encourages the parties to work together at the onset of the process.
- The VDOE must collect, track, analyze, and publicly report data on the number of IEP facilitations conducted and the outcomes of each IEP facilitation meeting.

²⁵¹ See <https://cadreworks.org/facilitation-programs/getting-started>. (Last visited on June 30, 2025.)

²⁵² *Id.*

IX. STATE PARENT OMSBUDMAN FOR SPECIAL EDUCATION

A. Overview

Virginia has established an early resolution process for special education of an Ombudsman. The Ombudsman is a “person who serves as a designated neutral party who advocates for a fair process and provides confidential, informal assistance and support. Notwithstanding the title (State Parent Ombudsman for Special Education), the Ombudsman not only provides this assistance and support to parents, guardians, advocates, and students with disabilities, but to educators as well.”²⁵³

B. Duties and Staff

The duties of the Ombudsman are to –

- Serve as a source of information and referral regarding State and federal laws and regulations governing special education.
- Provide information and support to parents of students with disabilities to help them understand and navigate the special education process.
- Provide communication strategies to parents and school divisions for resolving disagreements and special education issues.
- Assist parents in developing strategies and informal options to address issues and concerns.
- Promote collaboration and positive communication between parents and school division personnel in addressing special education issues.
- Provide information and resources on available options for dispute resolution, such as mediation, state complaints, and due process hearings when collaboration efforts fail.
- Serve as a resource for disability related information and referrals to available programs and services for individuals with disabilities.²⁵⁴

²⁵³ VDOE website, <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/parent-ombudsman-for-special-education>. (Last visited on June 30, 2025.) The Ombudsman estimates that approximately 90% of contacts come from parents or guardians or so. VDOE Data (Discussion with Ombudsman).

²⁵⁴ VDOE website, <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/parent-ombudsman-for-special-education>. (Last visited on June 30, 2025.)

One individual in VDOE serves as the Ombudsman, with assistance provided by two staff members in the Family Engagement Team when the Ombudsman is unavailable. These staff members have other primary functions/responsibilities and do not report to the Ombudsman, but rather to the VDOE Director of Family Support Team.

The role of the Ombudsman supplements but does not replace the formal dispute resolution processes of mediation, State written complaints, or due process hearings. The description of the Ombudsman is broadly described with the limitation that the Ombudsman is a resource in “non-legal special education matters.”²⁵⁵ (While it is clearly established that the Ombudsman is not an attorney or advocate and does not provide legal advice, this limitation can be misleading given the role of the Ombudsman includes matters involving interpretation of State and federal laws and regulations governing special education.)

The current Ombudsman has experience as a special education professional for over 21 years and does have access to technical support within the VDOE. However, other than generally available resources and opportunities, there is no formal targeted pre-service or in-service training for the Ombudsman on matters on which the Ombudsman serves as a source of information, such as the State and federal laws and regulations governing special education and the available dispute resolution options of mediation, State complaints, and due process hearings.

C. Utilization

Thirty-seven percent of the contacts with the Ombudsman are by email and 63 percent by telephone.²⁵⁶ The Ombudsman receives approximately 35 contacts per week, but there are fluctuations throughout the year,²⁵⁷ likely reflective of the cycles in other special education dispute resolution processes. Typically, the top five categories of contacts with the Ombudsman in the past year were in the area of dispute resolution systems; suspension/discipline; evaluation/eligibility; IEP implementation; and Section 504 of the Rehabilitation Act.²⁵⁸

²⁵⁵ *Id.*

²⁵⁶ VDOE Data (A Report on Constituent Issues from the Parent Ombudsman for Special Education, July 2024).

²⁵⁷ VDOE Data (interview with the Ombudsman).

²⁵⁸ The Ombudsman Quarterly Report provides the number of contacts by region, issues discussed, and whether the contact originated by email or phone. At the time of this study, the newly required Parent Training and Information Center Report enacted in the 24th session of the Virginia General Assembly, Va. Code Ann. §22.1-214.5., had not yet been submitted on the questions and concerns raised by parents at the eight regional special education family support centers.

D. Promotion and Information

The VDOE provides information concerning the availability of this resource on its website, including one-page summaries on the specific duties of the Ombudsman, frequently asked questions, and the strategies of the Ombudsman. As previously discussed, in partnership with the Center for Implementation and Evaluation of Education Systems at Old Dominion University, the VDOE also provides an online library. This online library provides training videos and resources to aid in understanding special education laws and regulations, as well as strategies to encourage effective collaboration between parents and educators.²⁵⁹

E. Studies and Statutes

The effectiveness of this early dispute resolution resource has been well-studied in recent years with resultant recommendations for change, most notably the previously referenced JLARC Report. The JLARC found that parents in Virginia appear to be unaware of this State-level support available to help with questions about special education services, parental rights, or the dispute resolution options available if they cannot resolve a dispute with their school division.²⁶⁰ The JLARC recommended:

The Virginia Department of Education (VDOE) should develop a one-page, easy-to-understand, and comprehensive summary of the roles and responsibilities of the parent ombudsman, the specific supports the parent ombudsman can provide to parents, and how to contact the parent ombudsman. VDOE should make this one-page summary available in multiple languages and ensure it is easily accessible on its website.²⁶¹

The Virginia Department of Education (VDOE) should (i) elevate the position of special education parent ombudsman to report to an individual in the VDOE leadership outside of the Department of Special Education and Student Services and (ii) require the ombudsman to systematically track the questions or concerns raised, and report common questions or concerns to the superintendent of public instruction and the assistant superintendent of special education and student services on at least a quarterly basis.²⁶²

Responsively, the Virginia legislature addressed these recommendations in 2021 and 2024 and elevated the position of the Ombudsman; sought to address the absence of information regarding this state-level resource for parents of students with

²⁵⁹ See VDOE Website, <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes>. (Last visited on June 30, 2025.)

²⁶⁰ The need for VDOE to increase efforts to publicize the availability of the Special Education Ombudsman and other dispute resolution options was echoed in 2023 in the Pasternack Report, p. 16, *supra*.

²⁶¹ JLARC Report, p. 100, *supra*.

²⁶² *Id.*

disabilities; and mandated interagency coordination with the Parent Training and Information Center:

The State Parent Ombudsman for Special Education shall (i) report to the Superintendent; (ii) systematically track and report to the Department questions and concerns raised by parents to the State Parent Ombudsman for Special Education and special education family support centers established pursuant to § 22.1-214.5; (iii) coordinate with the Parent Training and Information Center on the activities of the special education family support centers established pursuant to § 22.1-214.5; and (iv) develop a one-page comprehensive summary of the roles and responsibilities of the State Parent Ombudsman for Special Education and such special education family support centers, the specific supports the State Parent Ombudsman for Special Education and such special education family support centers can provide to parents, and how to contact the State Parent Ombudsman for Special Education and such special education family support centers. The Department shall make the summary available in multiple languages on its website and as part of the Virginia IEP pursuant to subdivision 11.²⁶³

F. Conclusion

Notwithstanding these statutory changes and implementation by the VDOE, including the required one-page informational resources on the VDOE website,²⁶⁴ the utilization of this resource over the past three years, while increasing,²⁶⁵ is not proportionate to these restructuring and enhancement efforts.²⁶⁶ The comments provided by interested parties in the course of the survey conducted during this study are reflective of a general perception among parents and parent advocates that there remains a persistent lack of awareness of this resource and an underwhelming satisfaction level.²⁶⁷

²⁶³ See Va. Code Ann. §§ 22.1-214.4(9), (11). (The Virginia IEP is not in effect until July 1, 2027.)

²⁶⁴ VDOE website, <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/parent-ombudsman-for-special-education>. (Last visited on June 30, 2025. As previously discussed, VDOE also provides an Office of Dispute Resolution Learning Library. This online library provides training videos and resources to aid in understanding special education laws and regulations, as well as strategies to encourage effective collaboration between parents and educators that includes a link to Conducting Individualized Education Program (IEP) Team Meetings When Members Disagree.

²⁶⁵ VDOE Data (Constituent Contacts Trends: 2021-2022: 1120; 2022- 2023: 1326; and 2023-2024: 1604).

²⁶⁶ VDOE Data (A Report on Constituent Issues from the Parent Ombudsman for Special Education (2024)).

²⁶⁷ Of 17 survey comments: four comments were regarding the lack of awareness of the availability of this resource; and regarding satisfaction in the utilization of this

I do not feel this option is offered to parents often enough by schools, nor is there much information available about this person.

- Parent/guardian of student with a disability

Did not know it was available to assist in our issues.

- Parent/guardian of student with a disability

Every parent I have directed to the Ombudsman has been given non answers and feel like they are given non answers.

- Advocate for parent/guardian

Though, all is not lost. As one parent noted, “[The Ombudsman] has been a fantastic resource and always listens without judgement. He gives sound advice and options for resolution.”

G. Best Practices – Pennsylvania

As noted in the UVA Study, *supra*, a comparable resource for early resolution for parents and advocates is available in the State of Pennsylvania: ConsultLine. The ConsultLine is staffed by three specialists with backgrounds in special education who are “highly trained in relevant special education regulations, policies and procedures.” The specialists regularly participate in ongoing staff development and training to ensure they remain fully informed of changes in regulations and best practices and trends.²⁶⁸ The specialists do not act as advocates or provide legal advice. However, the ConsultLine specialists will answer “procedural questions to help parents understand the mechanics of mediation as well as various procedures involved in preparing for a due process hearing, such as how to prepare exhibits (e.g., ordering and numbering) and other information”²⁶⁹

In addition to the toll-free telephone line, ConsultLine offers a Live Chat function, where the specialists respond to questions and provide information to individuals who reach out to the Office of Dispute Resolution through the chat function on the website. The specialists also engage in family outreach, providing assistance to parents who have an active facilitation, mediation, or due process hearing in which they are representing themselves; outreach to parties involved in a mediation session that did not result in a written agreement to gather feedback; and making follow-up calls to

resource, eight individuals expressed mixed satisfaction; five expressed a negative experience and three expressed a positive experience.

²⁶⁸ See, generally, Annual Report, Fiscal Year 2023, https://odr-pa.org/wp-content/uploads/ODR_Annual_Report_2023-24.pdf, pp. 7 – 13. (Last visited on June 30, 2025.)

²⁶⁹ See Special Education ConsultLine, <https://odr-pa.org/parent-resources/consultline-information/>. (Last visited on June 30, 2025.)

respondents from the Dispute Resolution Survey to further discuss any comments, suggestions, and/or concerns about their recent Office of Dispute Resolution service. Pennsylvania publicizes the availability of the resource of the ConsultLine in a variety of ways, including a constituent friendly video on the resource.²⁷⁰

Given the populations in the States of Virginia and Pennsylvania are not comparable, the utilization rate for the ConsultLine is not markedly different than that of the Ombudsman.²⁷¹ However, based on anonymous surveys with satisfaction-based questions that are sent to all users who provide contact information, the ConsultLine maintains a high level of satisfaction from constituents.²⁷²

H. Recommendation(s)

It is recommended that:

- The ODRAS budget be augmented to provide a full-time VDOE staff member to assist the Ombudsman in the duties of the office and the implementation of the recommendations in the final external study report to enhance utilization of the resource and user satisfaction.
- The VDOE to provide formal targeted pre-service and in-service training by a neutral trainer for the Ombudsman and staff on, at least, the state and federal laws and regulations governing special education (including Section 504 of the Rehabilitation Act if that is retained as a resource area) and the dispute resolution options of mediation, State written complaints, and due process hearings.
- The VDOE to develop and implement an initial promotional campaign at the school level, enlisting PEATC, PTA, and other parent organizations on effective strategies to get the information to the users of the resource and to maintain visibility.
- The Ombudsman regularly visit in person different regions of the state to engage with parents and educators to promote the resources of the office and to hear comments and recommendations to enhance the visibility and

²⁷⁰ See <https://odr-pa.org/resources/odr-training-videos/>. See also Pennsylvania's parent friendly brochure on the ConsultLine and other parent resources: <https://odr-pa.org/trainings/conflict-resolution-skills/> and Family Resource Library with link to ConsultLine for more information about the topics, <https://odr-pa.org/parent-resources/parent-resource-library/>. (Last visited on June 30, 2025.)

²⁷¹ See Annual Report, Fiscal Year 2023, https://odr-pa.org/wp-content/uploads/ODR_Annual_Report_2023-24.pdf, pp. 7 – 13. (Last visited on June 30, 2025.)

²⁷² *Id.*

effectiveness of the office.²⁷³ An increase in budget may be necessary to pay for costs associated with travel and promotional materials.

- VDOE develop or adopt parent-friendly resources on the VDOE Ombudsman website, such as brochures and a video, to supplement the one-page summaries.
- The VDOE supplement the Office of Dispute Resolution and Administrative Services' library with additional parent and educator friendly resources on the development and utilization of early conflict resolution skills for both school personnel and parents.²⁷⁴
- The VDOE consider the efficacy of conducting annual trainings to school personnel, parents, and advocates on early conflict resolution skills.²⁷⁵ Allocation of additional funding to carry out these annual trainings throughout the State may be necessary (e.g., travel costs, room rentals, promotional materials).
- The VDOE develop and implement an evaluation survey to be provided after an individual has contacted the Ombudsman. The survey must be brief, anonymous, satisfaction-based, and allow for comments.²⁷⁶

²⁷³ If these regular in-person visits will significantly impact the Ombudsman's availability to carry out the other functions, consideration should be given to increasing the number of available ombudsmen. The ODRAS budget may need to be increased to allow for the additional personnel, including support staff.

²⁷⁴ See, e.g., Pennsylvania, *Conflict Resolution Skills for Schools and Families*, <https://odr-pa.org/trainings/conflict-resolution-skills/>; CADRE's Working Together Online Learning Series, <https://cadreworks.org/resources/cadre-materials/working-together-online-learning-series>. (Last visited on June 30, 2025.)

²⁷⁵ As previously discussed, PEATC and the VDOE have been selected by CADRE to participate in a Collaborative State Technical Assistance Workgroup on Local-Level Capacity-Building. This effort can also support capacity building to implement a range of effective and equitable early dispute resolution options in local schools.

²⁷⁶ For example, the ConsultLine evaluation survey in Pennsylvania has five satisfaction-based questions in the areas of the usefulness of information; identifying options for resolving concerns; timeliness of service; and general satisfaction. See https://odr-pa.org/wp-content/uploads/ODR_Annual_Report_2023-24.pdf. (Last visited on June 30, 2025.)

X. VEXATIOUS AND REPTETIVE LITIGATION

A. Introduction

In January 2025, House Bill (HB) No. 2606, was presented and referred to the House of Delegates Committee on Education on January 13, 2025, and the Senate Education and Health Committee on February 5, 2025.²⁷⁷ The bill was signed into law by the governor, and chaptered, on March 21, 2025.²⁷⁸ HB 2606 is due to expire on July 1, 2027.²⁷⁹ Prior to its expiration, the Commission must study and make recommendations on the implementation of HB 2606.²⁸⁰

Though not required under this study, the Commission requested preliminary impressions of HB 2606, which follows. Specific recommendations are reserved.

HB 2606 provides –

If a special education due process hearing officer determines that a due process hearing complaint filed in accordance with subsection B of § 22.1-214 of the Code of Virginia contains *substantively the same issues as a previously adjudicated due process hearing complaint and evidences a clear pattern of initiating vexatious and repetitive litigation*, the hearing officer *may* dismiss the complaint. Any party aggrieved by such a dismissal may bring a civil action as set forth in subsection D of § 22.1-214 of the Code of Virginia. Nothing in this act shall be construed to require the dismissal of any complaint or portion thereof that alleges a new claim of noncompliance within the subject matter jurisdiction of the due process hearing officer under applicable law and regulations.²⁸¹

The intent of the legislation is to “permit the dismissal of certain vexatious and repetitive special education due process hearing complaints.”²⁸²

²⁷⁷ See Legislative Information System, 2025 Regular Session, <https://lis.virginia.gov/bill-details/20251/HB2606>. (Visited April 16, 2025.)

²⁷⁸ *Id.*

²⁷⁹ See Chapter 294, <https://lis.blob.core.windows.net/files/1072416.PDF>. (Visited April 16, 2025.) Prior to its expiration, the Virginia Commission on Youth must study and make recommendations on the implementation of HB 2606. *See id.*

²⁸⁰ *See id.*

²⁸¹ HB 2606(1) (emphasis added).

²⁸² See Legislative Information System, 2025 Regular Session, <https://lis.virginia.gov/bill-details/20251/HB2606/text/HB2606H3>. (Visited April 16, 2025.)

B. Preclusion, Generally

The doctrines of collateral estoppel (issue preclusion) and *res judicata* (claim preclusion) seek to preserve efficiency, finality, and fairness in litigation. Issue preclusion prevents any party (and their privies) from relitigating facts and issues that were previously litigated and decided even if the parties in the subsequent suit are unrelated. In contrast, claim preclusion prohibits the relitigating all issues of a claim arising out of the same transaction or series of transactions in a subsequent lawsuit involving the same parties (or their privies).

The scope of claim preclusion is broader than issue preclusion. Claim preclusion would prevent the litigation of an entire claim or cause of action regardless of the legal argument or the damages sought. Issue preclusion is limited to specific issues, even when the claims are different.

Whether the intent of HB 2606 is to codify the doctrines of collateral estoppel and *res judicata* and expressly grant Virginia hearing officers the authority to dismiss due process complaint notices on either ground is unclear. Hearing officers already enjoy inherent authority to do so.²⁸³ Moreover, issue preclusion generally is limited to identical issues decided in a prior case. HB 2606 speaks to *substantively* similar issues.

The purpose of HB 2606 appears to be more expansive than simply granting Virginia hearing officer discretionary authority²⁸⁴ to dismiss a due process complaint notice on the grounds of issue or claim preclusion. HB 2606 requires the hearing officer to first determine whether the issues in the pending due process complaint notice are *substantively the same as a previously adjudicated due process hearing complaint*, and whether there is *a clear pattern of initiating vexatious and repetitive litigation*. The absence of an affirmative answer to one of these questions would preclude the hearing officer from exercising discretion to dismiss pursuant to HB 2606.

A further complicating factor is how the hearing officer is to determine whether the pending due process complaint notice (1) *contains substantively the same issues as a previously adjudicated due process complaint* and (2) *evidences a clear pattern of initiating vexatious and repetitive litigation*.²⁸⁵ A record would have to be made, and the hearing officer may need to make factual findings. This alone may very well prolong the hearing process unnecessarily and challenge the principles underpinning the preclusion doctrines.

²⁸³ See, e.g., *T.G. v. Baldwin Park Unified Sch. Dist.*, 55 IDELR 2 (C.D. Cal. 2010); *Elizabeth City Bd. of Educ.*, 122 LRP 5897 (SEA NJ 2022); *Independent Sch. Dist. of Boise City #1*, 115 LRP 28482 (SEA ID 2015).

²⁸⁴ The hearing officer is not mandated to dismiss the due process complaint notice – “the hearing officer *may* dismiss the complaint.” HB 2606(1) (emphasis added).

²⁸⁵ Presumably, the intended subject in “evidences a clear pattern of initiating vexatious and repetitive litigation,” is the complainant of the pending due process complaint notice and not the complaint itself.

XI. CONCLUSION

When initiating this study, SES suspected that the data it would review would not reveal a smoking gun. This assessment continues to be accurate. In fact, this is the quintessential “tale of two cities” – where the data provides a narrative that sits in stark contrast of the experiences of those who have accessed the dispute resolution options in Virginia.

This said, SES has no reason to doubt the legitimacy of the data, but the data fails to capture the strong emotions on both sides of the aisle. In the end, most data are numbers – compilations of what one individual or agency felt important to capture. Reviewing data alone, would have yielded very different findings. And, because of this, a great deal of time was spent reaching out and speaking directly to those who had the need to access Virginia’s dispute resolution options, as well as reading the results of hearing decisions and State written complaints letters of findings.

While many who participated in the survey, in interviews with SES, or meetings of the Special Education Dispute Resolution Advisory Group fervently advocated their respective positions, there was consensus on the need to enact reform to improve the dispute resolution options in Virginia to protect the rights afforded to school divisions and parents of students with disabilities. And, although many fingers placed blame directly on the VDOE, the VDOE has taken, and continues to take, corrective action to address many of the concerns raised by parents, school divisions, and their representatives, as well as those of OSEP. In fact, its cooperation throughout this study, is not only commendable, but also a testament to its willingness to reform its special education dispute resolution system to ensure, as IDEA requires, that the rights of students with disabilities and their parents are protected.

It is SES’s overall conclusion that the statutory and regulatory, and, generally, structural elements of compliant and effective dispute resolution system options in Virginia are in place, with the one exception being facilitation. It is the execution of the options that prevents the dispute resolution system from attaining optimal effectiveness and efficiency – not only being fair and impartial but being perceived to be so. This is where the heavy lifting lies.

In short, this review confirms that the Virginia dispute resolution system is teetering between general legal compliance and practical inaccessibility. Perceptions of bias complicate the picture. Much is needed. But continued studies are not the answer.

President John F. Kennedy once said-

There are costs and risks to a program of action. But they are far less than the long-range risks and costs of comfortable inaction.

To this reviewer, there is no doubt: the time for decisive action is now. Only then will the full breadth of the protections afforded to students with disabilities will be realized.

APPENDIX A

A. General Documentation/Data

1. All current VDOE policies, procedures, practices in each dispute resolution area and any handbooks of standard practice for Hearing Officers, Mediators, IEP Facilitators and the Parent Ombudsman, identifying those available to the public.
2. Information regarding VDOE's efforts to publicize the dispute resolution options available to parents and LEAs, at the LEA and school level, and to parent advocacy organizations, such as public informational workshops or brochures available at school sites.
3. Documentation/description of any partnership VDOE has with LEA and/or parent organizations to publicize dispute resolution options.
4. Statewide demographic data for numbers of students with disabilities eligible under IDEA for the past 10 years, if available, and/or trend data analysis, if in existence.
5. Special education enrollment by LEA, if available, and/or trend data analysis, if in existence.
6. Trend data, if available, for the past 10 years on the participation numbers in each dispute resolution area, by LEA.
7. If available, demographics of people making requests for each of the dispute resolution processes, including whether represented by attorneys or with the involvement of advocates assisting parents.
8. If available, data on the cost of each of the dispute resolution processes per case at the LEA level for due process hearings, and State level, for mediations, State Complaints and IEP Facilitations. If available, data breakdowns by category such as payment of the mediator and case management by VDOE.
9. Any participant questionnaires/surveys provided VDOE in each of the dispute resolution processes.
10. The annual Parent Involvement Surveys submitted to VDOE.
11. Documentation of VDOE's use of the results of the annual Parent Involvement Survey "to improve parental involvements in the special education process and improve outcomes for all students."

12. What data, other than the IDEA Indicator data, are collected by VDOE on the efficiency and effectiveness of each of the dispute resolution processes? What data sources are employed (e.g., surveys, interviews, intake forms)? What methods are used to track and analyze the data? How does VDOE use this data to improve performance.
13. Description of State tracking system for timely appointment and resolution of hearings, mediations and IEP Facilitations, including continuances.
14. Authority for the enforcement of mediation and resolution agreements, if VDOE has an alternative system, and how parents and LEAs are informed of the availability of the system.
15. Identification of known LEAs that have initiated local collaborative, joint problem-solving processes for parents of students with disabilities and schools prior to impasse.
16. VDOE's revised special education regulations through March 2024 in response to OSEP's DMS Report, and/or revised policies and procedures, assurances or other documents submitted to OSEP in response to ordered Next Steps/Required Action in the March 13, 2024, DMS Report.
17. Any other revised regulations, policies, or procedures in place or in progress to address the findings in the UVA Law study or other external actions, such as litigation.
18. Numbers of staff and roles assigned to the VDOE alternative dispute resolution office.
19. VDOE's Office of Special Education budget for 2023-24 and 2024-25, including division allocations.

B. Data for Each System

Due Process

1. Number of Due Process Complaints filed, and number of hearings fully adjudicated.
2. If already in existence, any trend data on the average number of hearing days.
3. State qualifications for Hearing Officers and any additional standards required to be eligible as a Supreme Court of Virginia Hearing Officer for special education due process hearings.

4. Compensation for Hearing Officers, including system/schedule of compensation.
5. Description of current impartial system of ongoing technical assistance to, and evaluation of, Hearing Officers by an outside expert.
6. Description of mandatory pre-service training and frequency of ongoing training of Hearing Officers by an outside expert.
7. The length of time each Hearing Officer in the current cadre has served as a special education due process Hearing Officer.
8. Average case load of the Hearing Officers in the cadre each year, and case load per Hearing Officer per year. (SES has access to the list of Hearing Officers.)
9. Average number of days after the filing of a Due Process Complaint to the appointment of a Hearing Officer and notification to the parties.
10. Redacted copies of, or access to, Hearing Decisions issued from July 2023, through June 1, 2024. (SES has access to redacted Hearing Decisions up until June 2023 online.)
11. Number of times parties filed a request for removal or disqualification with the Supreme Court of Virginia in the 2022-23 and 2023-24 school years, with the name of the Hearing Officer, basis for the request, number of days until the Supreme Court of Virginia issued a decision on the request, and outcome.
12. Written Prehearing Conference Reports/Orders for the 2023-24 school year for fully adjudicated Due Process Complaints, including those in which that the Hearing Officer deemed a Prehearing Hearing Conference was unnecessary.
13. Number of expedited hearings for the 2022-23 and 2023-24 school years through June 1, 2024.
14. Description of how VDOE tracks both the timely conduct of expedited hearings and the timely issuance of expedited hearing decisions.
15. Description of how VDOE tracks timely issuance of non-expedited hearing decisions and other timely case closures.
16. Number of hearing decisions and other closing orders issued within timelines (including expedited).

17. Number of hearing decisions and other closing orders for non-expedited cases within extended timelines.
18. Copies of Hearing Officer's Orders of Continuance issued in the 2023-24 school year through June 1, 2024, for fully adjudicated Due Process Complaints and, if not noted in the Order, the party's motion for continuance and response of the non-requesting party.
19. Average life cycle of fully adjudicated Due Process Complaints to decision, from filing to issuance of the hearing decision.
20. Documentation that VDOE notified Hearing Officers of the OSEP finding in the March 13, 2024, OSEP DMS Report that extensions are not allowable where neither party requests an extension of time.

State Written Complaint

21. A copy of the VDOE's Model Form for the filing of a State Complaint prior to the May 2024 revised form.
22. Number of State Written Complaints filed and number of investigations to Letters of Findings.
23. Number of State Written Complaints involving an allegation of the failure to implement a due process hearing decision.
24. From February 1, 2024, to May 30, 2024, the number of intended State Complaints filed that did not proceed to investigation given a lack of jurisdiction and the number of letters of inquiry issued by VDOE informing the complainant that the submitted complaint did not meet the minimum requirements for a State Written Complaint under 34 C.F.R. § 300.153.
25. VDOE tracking data on the number of State Complaint Letters of Findings issued within 60 days and number issued with an extension for exceptional circumstances.
26. If the State Written Complaint Letters of Findings do not include the basis for extensions for exceptional circumstances, information on the basis for granted extensions.
27. Average life cycle of State Written Complaints from filing to issuance of the Letters of Findings.

28. Access to or copies of redacted²⁸⁶ State Written Complaint Letters of Findings for 2022-23 and 2023-24 school years.²⁸⁷
29. Access to or copies of redacted State Complaint Appeal decisions for 2022-23 and 2023-24 school years.
30. Quarterly reports to the Superintendent on the specific reasons for granting an extension due to “exceptional circumstances” and the amount of time it took to complete each investigation beyond the 60-calendar day regulatory timeline. Va. Code § 22.1-214.4(7) (2024).
31. Number of appeals for State Complaints per year and data on whether the appeal affirms, reverses/amends the findings, or remands back for further investigation.
32. Any policies and procedures for tracking, investigating, and resolving allegations of violations of special education law and regulations that do not meet the current regulatory standard for State written Complaints.

Mediation

33. Number of mediation requests received, and number of mediations held by year.
34. Of the mediations held, number that resulted in partial or total agreement, by year.
35. State qualifications and compensation for mediators and copies of solicitations.
36. Description of mandatory pre-service training and frequency of ongoing training of mediators.

²⁸⁶ Letters of Findings/State written complaint decisions are not required to be made public. Accordingly, they are not maintained by the VDOE in a redacted form. Upon that determination, only a directed sampling of redacted Letters of Findings was reviewed during this study. Similarly other reports/orders that were not retained by the VDOE in redacted form were reviewed in the same manner, given the enormity of the overall data request to VDOE.

²⁸⁷ This request was limited to the preceding two school years. SES was aware of the JLARC Report, *supra*, (“JLARC staff conducted a review of 95 letters of findings resulting from state complaints from the 2017–18 school year to the 2019–20 school year. JLARC staff reviewed all letters of findings for the 2019–20 school year available as of July 2020, and at least 10 from each of the two prior school years.”).

37. Description of current system of ongoing technical assistance to, and evaluation of, mediators as well as general management of mediation.
38. Number of mediation agreements related to Due Process Complaints.
39. Number of mediation agreements related to State Complaints.
40. Documentation of the notification to mediators of the elimination of the practice of a confidentiality pledge provided the parties prior to the commencement of mediation.
41. Number of times a party has requested VDOE enforce a mediation agreement, if VDOE has an alternative system.

IEP Facilitation

42. Number of IEP Facilitations requested and held by year, both statewide and by LEA.
43. Number of IEP Facilitations requested by a parent and the LEA declined and vice versa, by year.
44. The average time period from the request for IEP Facilitation to the conduct and completion of the Facilitation.
45. Number of IEP Facilitations that resulted in a partial or fully agreed-upon IEP.
46. VDOE efforts to promote IEP Facilitation, if different than the general data request above to publicize dispute resolution options.

Parent Ombudsman for Special Education²⁸⁸

47. Reports of questions and concerns raised by parents, including the newly required, as of July 2024, questions and concerns raised by parents at the eight regional special education family support centers.

²⁸⁸ SES was aware that the Parent Ombudsman is independent of the formal dispute resolution options of mediation, State written complaints, and due process hearings, <https://www.doe.virginia.gov/programs-services/special-education/resolving-disputes/parent-ombudsman-for-special-education> (last visited on July 15, 2024), and reports directly to the Superintendent. Va. Code § 22.1-214.4(9) (2024). Dr. Lisa Coons, former Superintendent of Public Instruction, designated ODRAS as the primary point of contact on this study and the information was provided through ODRAS.

48. If different, the Parent Ombudsman's report(s) to the Superintendent of Public Instruction.
49. Documentation of the usage and resolution rates of the Parent Ombudsman.
50. Number of times a parent accesses the other dispute resolution processes within 60 days after contact with the Parent Ombudsman.

