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FROM: Virginia Council of Administrators of Special Education

On behalf of the Virginia Council of Administrators of Special Education (VCASE), a professional organization of 324 members, the following comments are submitted to the Virginia Department of Education regarding the revision of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.

Foremost, VCASE upholds the provisions under the 2004 *Individuals with Disabilities Education Improvement Act* (IDEA 2004) ensuring that children with disabilities have a Free Appropriate Public Education available to meet their unique needs and prepare them for further education, employment and independent living. However, the current *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* exceed federal regulations. VCASE strongly supports *IDEA 2004*, Section 608, where the federal government directs the State to “minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title” (citation below).

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***“Individuals with Disabilities Education Improvement Act,***  
**SEC. 608. STATE ADMINISTRATION.**

- (a) RULEMAKING- Each State that receives funds under this title shall--
- (1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;
  - (2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and
  - (3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.
- (b) SUPPORT AND FACILITATION- State rules, regulations, and policies under this title shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.”
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In addition, VCASE supports the objectives of *the State of Virginia Board of Education Comprehensive Plan 2005-2010*, principally Standard 8: “The Board of Education will provide leadership for implementing the provisions of state and federal laws and regulations smoothly and with minimal disruption to local divisions.” VCASE strongly believes these standards must be followed and recommends that the Virginia Department of Education (VDOE) gives full consideration to them when revising the current regulations.

The priorities listed reflect VCASE's position on select areas in the revision of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. The priorities are the culmination of input from the VCASE Legislative Committee as well as other members, school districts and superintendent regions. Chief among the current issues are: exceeding federal regulations, discipline, parent consent, individualized education programs, learning disability identification, least restrictive education placement, timeline guidelines, mediation, due process, evaluation, developmental delay and Special Education Advisory Committee guidelines.

**1. Virginia Regulations Exceeds Federal Regulations.**

- (a) VCASE supports revisions that clarify and reinforce IDEA 2004 and that do not exceed the federal regulations.
- (b) VCASE supports regulations that enhance the ability of administrators and teachers to conduct school business without excessive regulations that produce too much paperwork and time spent in meetings, interfering with instructional time for children.
- (c) VCASE believes that every stakeholder is responsible for effectively implementing IDEA 2004 federal regulations which help to foster success and positive student outcomes without excessive rules and policies.

**2. Discipline.**

VCASE supports IDEA 2004 deletion of the requirement for the development of a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) for discipline removals subsequent to the first ten days in a school year that is not a long term removal/change in placement. Individualized Education Program (IEP) teams routinely consider the use of interventions and positive behavior support systems to address behavior and do not require mandatory FBA and BIP.

**3. Parent Consent.**

- (a) Virginia exceeds federal regulations in requiring parent consent in three areas: identification and eligibility; the termination of services and the implementation of educational changes in the IEP.
- (b) VCASE supports parental involvement in all aspects of their children's education and opposes parent consent requirements in excess of federal regulations. This additional consent is particularly burdensome in the termination of services for children whose assessments and progress no longer warrant special education and related services, causing a significant personnel and financial impact on schools. Local divisions should not be required to provide costly special education and related services to students who do not meet eligibility criteria and whose parents refuse to consent to the termination of services.

**4. Individualized Education Program.**

- (a) VCASE supports IDEA 2004 in the use of benchmarks for students eligible for the alternate assessment.
- (b) VCASE supports the IDEA 2004 regulation that transition services begin not later than the first IEP to be in effect when the child turns 16 or younger, if determined appropriate by the IEP team.

**5. Learning Disability Identification.**

- (a) VCASE supports IDEA 2004 statement, "that the state education agency must not require the use of a severe discrepancy model; must permit the use of a process based on the child's response to scientific, research-based intervention; and, may permit the use of other alternative research-based procedures."
- (b) VCASE supports the provision that no parent consent is required on a routine classroom observation conducted after a child is suspected of having a disability and is referred for an evaluation. A school team must provide an observation and documentation of the child's academic performance

and behavior in the areas of difficulty to determine whether a child has a specific learning disability. Requiring parent consent on a routine observation places undo burden on the child and school when a parent fails to give consent or does not respond to the request.

**6. Least Restrictive Environment.**

VCASE supports the IDEA 2004 that distinguishes placement and location; the IEP team determines placement (i.e., the provision of special education and related services on the continuum of services) whereas the local education agency determines the specific place/site/location for the delivery of these services.

**7. Timelines.**

VCASE supports the current VDOE timeline of 65 business days for completion of an evaluation/reevaluation and an eligibility determination. To change the timeline to 60 calendar days would have a significant personnel and financial impact on schools.

**8. Mediation.**

VCASE supports the need for VDOE to require parties to sign a confidentiality pledge to ensure that decisions during mediation remain confidential, irrespective of the mediation results.

**9. Due Process.**

VCASE opposes non-attorney representation of parties. VCASE supports access to attorney representation of parties, at their expense, in a due process hearing due to the complexity of cases that require a hearing.

**10. Evaluation.**

VCASE supports the IDEA 2004 provision that a school is not required to conduct evaluations for children to meet the entrance or eligibility requirements of a vocational rehabilitation program, college, or other postsecondary setting.

**11. Developmental Delay.**

(a) VCASE supports continuation of the current VDOE definition of developmental delay ages 2 to 5 for preschool children and opposes the developmental delay continuation of 5 through 9 years of age.

**12. Special Education Advisory Committee (SEAC) Guidelines.**

- (a) VCASE favors a balanced representation of parents of children with varied disabilities on SEAC.
- (b) VCASE favors membership and voting rights for school personnel. This is a particular issue for those who are parents of children with disabilities.

The overriding principle is Virginia's current regulations exceed federal requirements. VCASE strongly believes that reducing the number of rules, regulations, and policies to which the local educational agencies and schools are subject under IDEA 2004 benefit the instruction of children with disabilities.

We appreciate the opportunity to submit comments at this initial stage of revision to the regulations. If you wish to contact VCASE, please contact Tom Nash, President, at the email or phone listed.