

What is the date that the schools technically closed and again were they were opened? Schools were closed by Executive Order of Governor Northam on March 13, 2020 and are reopening at a time that the school division determines appropriate.

Is Virtual Virginia considered a virtual school? Can it be considered just “continuity of instruction” if gen ed students were receiving new instruction? Virtual Virginia is **not** a school. As a program of the Virginia Department of Education, Virtual Virginia (VVA) offers online Advanced Placement (AP), world language, core academic, and elective courses to students throughout the Commonwealth and nation. VVA is committed to providing high-quality, rigorous course content with the flexibility to meet schools’ and students’ varied schedules. Our program strives to provide instruction that meets the individual needs of students. Virtual learning is the new frontier in today’s educational institutions. The technology of the 21st century provides a unique opportunity for educators to reach students who want the experience of online courses. Virtual Virginia should not be confused with [Virginia Virtual Academy](#) which is an accredited, full-time online public school program that serves students in grades K through 10.

If a school team presents an amendment to the IEP due to virtual, and parents don’t agree then the last IEP is still legal? The last agreed upon IEP remains in effect. However, if a school is only offering virtual instruction the parent as a member of the IEP team should request an IEP Team meeting to discuss how the IEP can be implemented in the virtual environment. The IEP Team should discuss any alternatives to virtual instruction, such as fully “in-person” or in a hybrid situation. The school division must provide the parent with prior written notice of any proposed or refused actions and the parent can then determine if they will sign an IEP addendum or seek resolution of any disagreement over the provision of a free appropriate public education (FAPE) through either mediation, filing a state complaint, or requesting a due process hearing.

What do you do when the school district refuses to add observations for present levels/data from the school closure period stating data isn’t being considered after March 13th? Parent may well be a primary or secondary source of observation on how their child performed and reacted to virtual instruction. This “parental input” should be reviewed by the IEP Team along with any other data that may be available to it.

What happens when my child’s school moves to hybrid? Any change in the instructional modality that may impact on the child’s receipt of the special education and related services outlined in their IEP are best addressed through the IEP development, review, and revision process. This could include a full IEP Team meeting or, with parental agreement, an addendum without a meeting if the changes are not complex and easy to understand.

Do we need to file complaints every time we are pushed past the timeline? I’ve had several in my LEA. Parents have the right to file a state complaint “each and every time” they believe that their child’s school division has violated federal or state special education laws or regulations. You may file a complaint up to one year from the date the alleged violation occurred. However, the longer you put between the alleged violation and filing a state complaint, the greater the risk of missing the one-year timeline. If several parents are experiencing the same alleged violation associated with a specific regulatory requirement, such as timelines, they could together file a “systemic” complaint allegation.

If I want to keep my child home until there’s a safe treatment and vaccine for COVID, even after in person learning resumes, can I do so without her losing her spot in LCPS and losing her IEP? Would it be

possible to request homebound in order to keep her place in her classroom? Not sure what is meant by “losing her spot,” but pulling a child from public school does not automatically negate the fact that an IEP was in place at the time of removal. In fact a parent could ask that the IEP be reviewed in anticipation of returning the child to school. Additionally, if the child’s eligibility reaches the triennial review point, the parent can seek reevaluation, again in anticipation of returning the child to school. As to “homebound” instruction, this would have to be supported by evidence of need from a physician or child psychologist. If you are seeking “home-based” instruction, such a determination that such a placement would be the least restrictive environment (LRE) in which the child could receive a free appropriate public education (FAPE) falls to the purview of the child’s IEP Team. The IEP Team should discuss any alternatives to virtual instruction and then provide the parent with prior written notice of any proposed or refused actions and the parent can then determine if they wish to seek resolution of any disagreement over the provision of FAPE through either mediation, filing a state complaint, or requesting a due process hearing.

There are private professionals who are providing full in-person evaluations. Why won’t the schools go to that option? The school’s choice to not do evaluations in person is its choice. Students shouldn’t be impacted by the school’s decision, if there are others available to do the evaluation. Initially, I must point out that the federal or state special education laws and regulations which attach to evaluations, including timelines, have not been waived, modified, or rescinded. However, many evaluations cannot be done in a virtual environment given the protocol of the test maker and or the nature of the evaluation in general. Secondly, there is nothing in federal or state special education laws and regulations which prohibit, or for that matter require, a school division to use outside providers to conduct their evaluations. A parent may request that the school division approve an IEE if they are refusing to do their own evaluations. If a school division refuses to conduct an evaluation, they must provide the parent with prior written notice (PWN) of that refusal. The PWN should include, among other things: (a.) A description of the action proposed or refused by the school division; (b.) An explanation of why the school division proposes or refuses to take the action; (c.) A description of any other options the IEP team considered and the reasons for the rejection of those options; (d.) A description of each evaluation procedure, assessment, record, or report the school division used as a basis for the proposed or refused action; and (e.) A description of any other factors that are relevant to the school division’s proposal or refusal. The parent can use the PWN as the basis for determining if they want to pursue their disagreement through the use of mediation, filing a state complaint, or requesting a due process hearing.

How should parents respond when LEAs and IEP team want to reduce hours and services because “that is all they can provide”? Absent parental consent for a reduction in service hours, the IEP should be implemented as it is written. As such, the parent may request an IEP Team meeting to discuss alternatives. The IEP Team should discuss any alternatives to the provision of the service hours and then provide the parent with prior written notice of any proposed or refused actions and the parent can then determine if they wish to seek resolution of any disagreement over the provision of FAPE through either mediation, filing a state complaint, or requesting a due process hearing.

How long can IEP be in “stay put”? “Stay put” is a due process term. The last agreed upon IEP remains in effect until the parent consents to a new IEP. An IEP can be amended as often as necessary to address the child’s unique needs while the parent and the school division continue to work out the issues that remain in disagreement. NOTE: Once an IEP becomes convoluted due to the number of addenda that

are now attached to it, the best practice would be to have a new IEP written that reflects all of the proposed services, supports, etc. that the parent has agreed to in the addenda and have a “clear and clean” IEP for those who have to implement it to work from. The issues of disagreement can be continued through the IEP development, review, and revision process or the use of mediation or a due process hearing.

What about schools that say they don’t have to provide services for partial days of school – and then go onto say that all the virtual classes were partial days, thus they don’t have to provide anything. School divisions are not required to provide special education service on days (partial or full) when schools are closed and no instruction is being provided to other students (i.e. holidays, teacher workdays, pandemic, etc.). If the school is providing instruction to any students then students with disability should have the same access to services. The fact that a school is offering virtual instruction does not change this requirement.

Does Triannual work the same way?...for instance it runs out due to school closure. A child’s eligibility for special education and related services can only be terminated with parental consent or the school division prevailing on a consent override in a due process hearing. Thus, if the reevaluations have not occurred due to school closures or other circumstances, the child will remain eligible as a student with a disability under the last agreed upon eligibility determination and the same disability category.

What are some accommodations that should be put in IEP to reflect this (what seems like) impossible situation? An IEP must address all of the child’s unique needs, regardless of the child’s disability category. As such, the IEP Team must discuss any and all accommodations, modifications, or supports that the child may need whether receiving in-person or virtual instruction; or a hybrid of both. There is nothing in federal or state special education law or regulations which limit the number or type of the accommodations a child can receive. This is an IEP team responsibility. Any proposed or refused action made by a school division associated with the evaluation, identification, placement, or provision of a free appropriate public education (FAPE) requires the school division to provide the parent with a prior written notice (PWN). The PWN should include, among other things: (a.) A description of the action proposed or refused by the school division; (b.) An explanation of why the school division proposes or refuses to take the action; (c.) A description of any other options the IEP team considered and the reasons for the rejection of those options; (d.) A description of each evaluation procedure, assessment, record, or report the school division used as a basis for the proposed or refused action; and (e.) A description of any other factors that are relevant to the school division’s proposal or refusal. The parent can use the PWN as the basis for determining if they want to pursue their disagreement through the use of mediation, filing a state complaint, or requesting a due process hearing.

What if they say NO to all our requests for accommodations? As noted above, any proposed or refused action made by a school division associated with the evaluation, identification, placement, or provision of a free appropriate public education (FAPE) requires the school division to provide the parent with a prior written notice (PWN). The PWN should include, among other things: (a.) A description of the action proposed or refused by the school division; (b.) An explanation of why the school division proposes or refuses to take the action; (c.) A description of any other options the IEP team considered and the reasons for the rejection of those options; (d.) A description of each evaluation procedure, assessment, record, or report the school division used as a basis for the proposed or refused action; and (e.) A description of any other factors that are relevant to the school division’s proposal or refusal. The parent

can use the PWN as the basis for determining if they want to pursue their disagreement through the use of mediation, filing a state complaint, or requesting a due process hearing.

If a division refuses evaluations due to COVID can an IEE be implemented? **There is nothing in federal or state special education laws and regulations which prohibit, or for that matter require, a school division to out rightly accept a parentally obtained evaluation. However, federal and state special education laws and regulations do require that a school division consider any information provided by the parent when determining a child's eligibility or continuing eligibility for special education and related services or during the development, review, and revision of an a student's IEP. A parent may request that the school division approve an IEE if they are refusing to do their own evaluations. Any proposed or refused action made by a school division associated with the evaluation, identification, placement, or provision of a free appropriate public education (FAPE) requires the school division to provide the parent with a prior written notice (PWN). The PWN should include, among other things: (a.) A description of the action proposed or refused by the school division; (b.) An explanation of why the school division proposes or refuses to take the action; (c.) A description of any other options the IEP team considered and the reasons for the rejection of those options; (d.) A description of each evaluation procedure, assessment, record, or report the school division used as a basis for the proposed or refused action; and (e.) A description of any other factors that are relevant to the school division's proposal or refusal. The parent can use the PWN as the basis for determining if they want to pursue their disagreement through the use of mediation, filing a state complaint, or requesting a due process hearing.**

If a division doesn't do an evaluation, can they accepts a private evaluation? (they don't do it b/c they say they can't do in person evaluations – but a private provider agrees to do it.) **See my response to the question preceding this one.**

Please share the following NEW resources, which were released after my presentation, with these families and any others that you deem appropriate.

Guidance from the Department of Special Education & Student Services

- [VDOE Special Education and Student Services Frequently Asked Questions](#) – The goal of this document is to provide school divisions and stakeholders with information and solutions around the provision of services for special education and student services. **NOTE – This document is currently under revision and will be updated within the next few days.**
- [Superintendent's Memo 112-20, May 1, 2020: Additional Guidance from the U.S. Department of Education Regarding Waivers for the Individuals with Disabilities Education Act](#) (Word)
- [VDOE Considerations for COVID Recovery Services for Students with Disabilities](#) (Word) – This document highlights information related to compliance, documentation and progress monitoring, and IEP Team considerations that are necessary in order to make decisions about and address requests for COVID recovery services for students with disabilities.
- [Special Education Students After COVID-19 Key Considerations](#) (Word) – A document to help support decision making surrounding potential issues regarding school reopening and supports for students, families and staff.

- [Sustaining Inclusive Practices for Virtual Learning for Students with Disabilities](#) (Word) – This document offers guidance, suggestions, and resources for sustaining inclusionary practices for students with disabilities through continuous learning opportunities using a virtual platform.