

Report to the Governor and the General Assembly of Virginia

# K–12 Special Education in Virginia

2020



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# Contents

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<b>Summary</b>	i
<b>Recommendations</b>	vii
<b>Chapters</b>	
1. Overview of K–12 Special Education in Virginia	1
2. Outcomes of Virginia Students with Disabilities	13
3. Determining Student Eligibility for Special Education Services	25
4. IEP Development and Implementation	35
5. Post-Secondary Transition Planning and Applied Studies Diploma	47
6. Inclusion of Students with Disabilities in Academic and Extracurricular School Programs and Activities	57
7. Recruiting and Retaining Qualified Special Education Teachers	75
8. State Supervision of Virginia’s Special Education System	89
<b>Appendixes</b>	
A: Study resolution	109
B: Research activities and methods	111
C: COVID-19 impacts on special education	122
D: Virginia’s special education staffing model	128
E: Agency response	132



# Summary: K–12 Special Education in Virginia

## WHAT WE FOUND

### Graduation rate has improved among students with disabilities but remains lower for students who are Black

Students with disabilities in Virginia are less likely to graduate high school than students without disabilities, but the graduation rate gap between students with and without disabilities has decreased. In 2008, the graduation rate for students without disabilities was 43 percentage points higher than the graduation rate for students with disabilities. By 2018, that difference decreased to 30 percentage points. In general, students with severe, less common disabilities, including intellectual disabilities and multiple disabilities, graduate at a lower rate than students with more common disabilities.

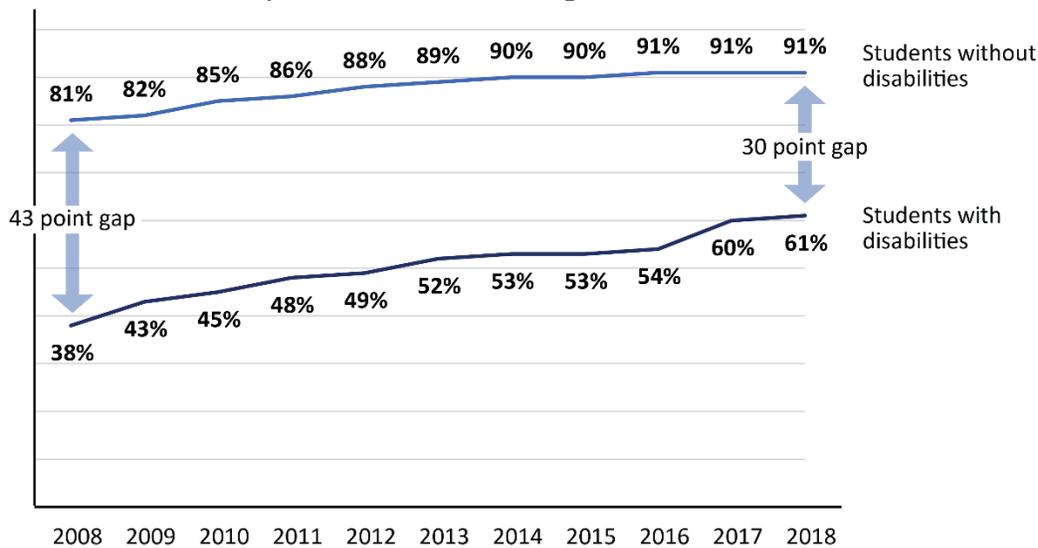
### WHY WE DID THIS STUDY

In 2018, the study topic subcommittee of the Joint Legislative Audit and Review Commission (JLARC) asked staff to conduct a review of K–12 special education services. The study resolution required staff to examine the processes used by school divisions to enroll students in special education, to determine the services needed by students with disabilities, and to provide needed services, as well as to review the effectiveness of VDOE in its supervisory role.

### ABOUT K–12 SPECIAL EDUCATION

Federal law requires public schools to provide students with disabilities specially designed instruction and services to ensure that their education is appropriately ambitious in light of the student’s particular circumstances. In the 2018–19 school year, about 164,000 K–12 students were enrolled in special education, about 13 percent of Virginia’s total student population.

### Graduation rate has increased for students with disabilities over the past decade but still lags students without disabilities



SOURCE: JLARC analysis of VDOE data

NOTE: Includes standard, advanced, and IB diplomas; four-year graduation rates. "Disability" indicates that student had an IDEA-qualifying disability *at time of graduation*. Excludes students who transferred or died before graduation. The Modified Standard Diploma was no longer an option for students with disabilities who entered the ninth grade for the first time beginning in 2013, affecting four-year graduation rates in 2017 and 2018.

Black students with disabilities were less likely to graduate than students with disabilities of other races in each of the past 10 years. In 2018, 52 percent of Black students with disabilities graduated with at least standard diplomas, compared with 65 percent of students with disabilities of other races. In 2018, Black students with disabilities were also the only racial group with a lower graduation rate than the statewide average. The gap in graduation rates between Black students with disabilities and students with disabilities of other races has narrowed over the past decade.

### **Enrollment in special education varies across Virginia school divisions, both overall and by disability**

The proportion of K–12 students receiving special education in some school divisions is more than twice as high as others, and students in some divisions are more likely to be enrolled in special education because of a certain disability than students in other divisions. Differences in enrollment do not appear to be explained by differences in school division characteristics, such as the size of the division or local poverty rate. Instead, insufficient guidance and vague terms in the state’s eligibility criteria likely contribute to variation in eligibility determinations among school divisions.

### **IEPs are not consistently designed to be effective and reliable guides for special education services**

The quality of individualized education programs (IEPs) for students with disabilities varies across Virginia school divisions, and some IEPs do not contain required or key information. About one-third of a sample of IEPs reviewed by JLARC staff lacked a description of the student’s academic or functional needs, and one-quarter did not describe the effect of the disability on the student’s educational performance. JLARC’s review of IEPs found that about half (48 percent) lacked academic or functional goals.

The variation in IEP quality appears to be due in part to inconsistent knowledge among key school staff, including special education teachers, general education teachers, and building-level administrators, about IEPs and staff’s roles in developing them. Special education teachers noted in interviews that IEP development is not covered as thoroughly in some teacher preparation programs as others. Virginia state laws and regulations do not require general education teachers and administrators to be knowledgeable of IEPs or their role as participants in IEP meetings.

### **Shortcomings in post-high school transition planning require VDOE intervention**

Planning for transition to adulthood is essential to prepare students with disabilities for success after high school. Plans and services to help students transition from high school to adulthood must be included in IEPs, but many transition plans reviewed by JLARC staff were of poor quality, and about one-quarter of those reviewed did not include any specific transition services for the student. The quality of post-secondary goals varied considerably, and in a majority of the transition plans reviewed, goals were

not measurable, specific, or useful for planning purposes. Stakeholders from a variety of perspectives, including division-level special education directors, special education teachers, and parents, expressed concerns regarding the quality of post-secondary transition supports for Virginia students with disabilities before they leave high school.

### **“Applied studies diploma” for students with disabilities does not help students access future opportunities and is not well understood**

About 20 percent of Virginia students with disabilities graduate with a diploma that provides limited value for accessing future educational and career opportunities. Unlike the other diplomas, students receiving the applied studies diploma do not need to demonstrate that they have met any particular academic standards or curriculum requirements. Instead, they need to complete only the requirements of their IEP. Neither Virginia’s community colleges nor four-year higher education institutions recognize the applied studies diploma as a high school diploma or equivalent certificate, and students with an applied studies diploma who are interested in pursuing further education must obtain their GED first. Families of students with disabilities are not sufficiently made aware of (1) the limitations of the applied studies diploma; (2) decisions made early in a student’s K–12 experience that could reduce the student’s odds of obtaining a standard diploma; or (3) their student’s inability to pursue a standard diploma once an applied studies diploma track is chosen.

### **Despite emphasis on inclusion, Virginia does not prepare general education teachers or administrators with necessary special education-related skills**

In Virginia and nationally, approximately 95 percent of students with disabilities are served in public schools, and a majority of students with disabilities spend most, and increasingly more, of their time in the general education classroom. Seventy-one percent of students with disabilities receive instruction for most of their day in the general education classroom. Students with disabilities that have the most profound effects on learning typically spend less time in the general education classroom. However, time spent in the general education classroom *has* increased for these students including students with autism, emotional disabilities, and traumatic brain injuries.

General education teachers play a critical role in educating students with disabilities, but many general education teachers do not know how to effectively teach and support students with disabilities, including how to collaborate with special education teachers. About 50 percent of the special-education directors responding to JLARC’s survey indicated that they felt *half or fewer* of the general education teachers in their division have the skills necessary to support students with disabilities. Many general education teachers are likely not equipped to adapt instruction for students with disabilities or work with special education teachers because they are not required to have much special education-specific training. For example, while state regulations require *special education* teacher preparation programs to prepare special education teacher candidates for

co-teaching and co-planning with general education teachers, *general education* teacher preparation programs are not required to teach these skills.

About a third of special education directors reported that *half or fewer* of the building-level administrators in their division have the knowledge or skills to support students with disabilities or their teachers. State licensure regulations and administrator preparation regulations require that administrators receive some minimal training in special education, and there are opportunities to improve these requirements.

### **School divisions rely on under-prepared teachers to fill gaps in special education teaching positions**

The Virginia Department of Education (VDOE) has identified special education as among the top three critical teaching shortage areas since it began reporting shortages in 2003. However, VDOE does not collect the basic information needed to accurately understand the magnitude of the special education teacher shortage in Virginia and across school divisions, such as the number of special education teachers in the state.

When school divisions cannot fill positions with fully licensed special education teachers, they rely primarily on provisionally licensed special education teachers. Provisionally licensed special education teachers are required to complete only one class on the foundations of special education prior to being hired. Divisions throughout the state are, on average, three times more likely to hire provisionally licensed special education teachers than provisionally licensed teachers in other subjects. During the 2019–20 school year, an estimated 15 percent (2,038) of special education teachers were provisionally licensed statewide, compared with 5 percent of teachers in other subjects. An estimated 30,000 students with disabilities were being taught by a provisionally licensed special education teacher during the 2019–20 school year.

U.S. Department of Education data on the number of students who complete teacher preparation programs indicates that there are not enough credentialed special education teachers graduating from Virginia higher education institutions to meet statewide demand. For example, assuming a *conservative* 10 percent turnover rate, JLARC estimates that there were approximately 1,500 special education teacher positions to fill at the beginning of the 2019–20 school year across Virginia. However, only 303 students graduated from Virginia colleges and universities with a special education teaching credential in 2019, leaving divisions to fill an estimated 1,200 positions from other sources, including provisionally licensed teachers or long-term substitutes.

### **VDOE’s handling of complaints against school divisions does not ensure all problems are resolved**

In state complaints submitted to VDOE and reviewed by JLARC staff, VDOE rarely ensures any found non-compliance is corrected or that any negative effects of non-compliance on the student are remedied through make-up (“compensatory”) services. For example, VDOE rarely requires school divisions to provide compensatory services

to students when it determines the school divisions did not provide legally required services. Instead, VDOE 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 IEP team discussed compensatory services. If the additional IEP meeting does not resolve the parent's complaint, VDOE advises parents that they may pursue further dispute resolution through mediation or due process hearings. While VDOE's handling of complaints validates that, in many cases, parent complaints are legitimate, it does not ensure that non-compliance is rectified.

### **VDOE's ongoing monitoring is too limited**

VDOE conducts useful on-site monitoring reviews of school divisions, but too few divisions are subject to them, and there is heavy reliance on self-reported data by school divisions to assess overall state compliance and performance. Since FY16, only 22 of 132 school divisions have been subject to an on-site review, an average of four per year. These divisions represent only about 11 percent of total statewide special education enrollment. The vast majority of divisions could conceivably go over a decade without receiving an in-depth review of their special education programs from VDOE. Feedback from division-level special education directors about VDOE guidance and technical assistance in the area of special education was generally positive, suggesting that improved monitoring by VDOE would be both beneficial and well received.

## **WHAT WE RECOMMEND**

### **Legislative action**

- Direct VDOE to conduct a targeted review, in the near term, of the transition sections of student IEPs to identify improvements needed to student transition planning, and direct VDOE to develop a robust statewide plan for improving transition planning for students with disabilities.
- Require school divisions to provide a draft IEP to parents at least two business days in advance of the IEP team meeting, but only if a draft IEP is developed in advance of the meeting.
- Direct VDOE and the Board of Education to develop and implement statewide criteria for the applied studies diploma and require local school divisions to more fully explain the limitations of this diploma to families.
- Direct the Board of Education to review and update regulations governing K-12 teacher preparation programs to require that graduates are proficient in teaching students with disabilities and require teachers seeking license renewal to complete training in instructing students with disabilities.
- Direct the Board of Education to review and update regulations governing administrator preparation programs to require that graduates demonstrate comprehension of key aspects of special education.

- Direct VDOE to develop and maintain a data-driven statewide strategic plan for recruiting and retaining special education teachers.
- Direct VDOE to revise its handling of special education complaints to require that school divisions carry out corrective actions that fully and appropriately remedy any found instances of school non-compliance.
- Direct VDOE to develop and implement a robust plan to improve the effectiveness of its supervision and monitoring of special education.

# Recommendations: K–12 Special Education in Virginia

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## RECOMMENDATION 1

The Virginia Board of Education should more clearly define terms used in 8-VAC-20-81-80 including, but not limited to, terms such as “adverse effect” and “environmental, cultural, or economic factors.” (Chapter 3)

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## RECOMMENDATION 2

The Virginia Department of Education should improve its eligibility worksheets and other guidance documents to better ensure more accurate and consistent eligibility determinations and equal access to special education services across school divisions. (Chapter 3)

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## RECOMMENDATION 3

The Virginia Department of Education should revise and improve the training and guidance documents it provides to school divisions on the development of individualized education programs for students with disabilities, incorporating more specific examples of high quality present level of performance descriptions, annual goals, and post-secondary transition sections. (Chapter 4)

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## RECOMMENDATION 4

The General Assembly may wish to consider amending the Code of Virginia to direct the Virginia Department of Education to develop a required training module for individuals participating in individualized education program (IEP) meetings that comprehensively addresses and explains in detail (i) each team member’s respective role in the IEP meeting; (ii) the IEP development process; and (iii) components of effective IEPs. (Chapter 4)

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## RECOMMENDATION 5

The General Assembly may wish to consider amending the Code of Virginia to require that all individualized education program (IEP) team members participating in IEP development, with the exception of parents, complete a Virginia Department of Education-approved training regarding their roles in the IEP meeting, the IEP development process, and components of effective IEPs prior to participating in the IEP process and at regular intervals thereafter. (Chapter 4)

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## RECOMMENDATION 6

The General Assembly may wish to consider amending § 22.1-214 of the Code of Virginia to require that school divisions provide a draft individualized education program (IEP) to parents at least two business days before the scheduled IEP meeting, if a draft IEP is developed in advance of the meeting. (Chapter 4)

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### **RECOMMENDATION 7**

The General Assembly may wish to consider amending the § 22.1-214 of the Code of Virginia to require that the Virginia Department of Education (VDOE) conduct structured reviews of a sample of individualized education programs (IEPs) from a sufficiently large sample of school divisions annually to verify that the IEPs are in compliance with state and federal laws and regulations and are of high quality. VDOE should provide a summary report of the reviews' findings and required corrective actions to the reviewed divisions' superintendents, special education directors, school board chairs and vice-chairs, and local special education advisory committee. (Chapter 4)

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### **RECOMMENDATION 8**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to (i) conduct a one-time targeted review of the transition sections of a random sample of students' individualized education programs (IEPs) in each school division; (ii) communicate its findings to each local school division, school board, and local special education advisory committee; and (iii) ensure local school divisions correct any IEPs that are found out of compliance. The superintendent of public instruction should be directed to submit a letter to the Senate Education and Health and the House Education committees certifying that school divisions have corrected all instances of non-compliance identified through these reviews, which should occur no later than the end of the 2021–22 school year. (Chapter 5)

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### **RECOMMENDATION 9**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to develop and maintain a robust statewide plan for improving (i) its ongoing oversight of local practices related to transition planning and services and (ii) technical assistance and guidance provided for post-secondary transition planning and services. At a minimum, the plan should articulate how VDOE will reliably and comprehensively assess the compliance and quality of transition plans for students with disabilities in Virginia on an ongoing basis and communicate findings to local school division staff and local school boards. VDOE should submit its plan to the Senate Education and Health and the House Education committees no later than December 1, 2022, and update those committees annually on its progress implementing the plan. (Chapter 5)

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### **RECOMMENDATION 10**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to develop clear and simplified guidance, in multiple languages, for families conveying (i) the limitations of the applied studies diploma; (ii) key curriculum and testing decisions that reduce the likelihood their student will be able to obtain a standard diploma; and (iii) pursuit of an applied studies diploma may preclude a student's ability to pursue a standard diploma. (Chapter 5)

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### **RECOMMENDATION 11**

The General Assembly may wish to consider amending section §22.1-253.13:4 of the Code of Virginia to require local school divisions to provide guidance from the Virginia Department of Education regarding the applied studies diploma and its limitations to parents of students with disabilities, at a minimum, (i) at the first IEP meeting and (ii) when curriculum or testing decisions are being made that will negatively impact a student’s chances of obtaining a standard diploma. (Chapter 5)

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### **RECOMMENDATION 12**

The General Assembly may wish to consider amending § 22.1-253.13:4 of the Code of Virginia to require the Virginia Board of Education and the Department of Education to develop and implement statewide standards, such as curriculum standards, for earning the applied studies diploma and require school divisions to implement these standards by the beginning of the 2022–23 school year. (Chapter 5)

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### **RECOMMENDATION 13**

The Virginia Department of Education (VDOE) should, as part of its reviews of school divisions’ individualized education programs (IEPs), determine whether the special education and related services, supplementary aids and services, and program modifications that will be provided to enable students with disabilities to participate in nonacademic and extracurricular activities are sufficient, and include its findings and required corrective actions in the summary reports it provides to the reviewed divisions’ superintendents, special education directors, and school board chairs and vice-chairs. (Chapter 6)

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### **RECOMMENDATION 14**

The Virginia Department of Education should issue a superintendent’s memo clarifying school divisions’ responsibility to (i) provide the special education and related services, supplementary aids and services, and program modifications necessary to provide children with disabilities an equal opportunity to participate in nonacademic and extracurricular activities; and (ii) include a description of these aids, services, and program modifications in students’ individualized education programs (IEPs), as appropriate. (Chapter 6)

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### **RECOMMENDATION 15**

The General Assembly may wish to consider including language in the Appropriation Act directing the Board of Education to review and update its regulations of general education K–12 teacher preparation programs to ensure graduates are required to demonstrate proficiency in (1) differentiating instruction for students depending on their needs, (2) understanding the role of general education teachers on the IEP team, (3) implementing effective models of collaborative instruction, including co-teaching, and (4) understanding the goals and benefits of inclusive education for all students. (Chapter 6)

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### **RECOMMENDATION 16**

The General Assembly may wish to consider amending § 22.1-298.1 of the Code of Virginia to require all teachers seeking to renew their teaching license to complete training in the instruction of students with disabilities. This training should be developed by the Virginia Department of Education and should include, at a minimum, (1) strategies for differentiating instruction for students with disabilities, (2) the role of the general education teacher in special education, (3) the use of effective models of collaborative instruction, including co-teaching, and (4) the goals and benefits of inclusive education for all students. (Chapter 6)

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### **RECOMMENDATION 17**

The General Assembly may wish to consider including language in the Appropriation Act directing the Board of Education to review and update its regulations governing administrator preparation programs to ensure graduates are required to demonstrate comprehension of (1) key special education laws and regulations, (2) individualized education program (IEP) development, (3) the roles and responsibilities of special education teachers, and (4) appropriate behavior management practices. (Chapter 6)

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### **RECOMMENDATION 18**

The General Assembly may wish to consider amending § 22.1-215 of the Code of Virginia to require each K–12 public school to (i) complete the Inclusive Schools Self-Assessment instrument and action planning tool at least once every three years and (ii) report the results of the assessment and plans for improvement to the division’s superintendent, special education director, chairs of the local school board and local special education advisory committee, and to the Virginia Department of Education. (Chapter 6)

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### **RECOMMENDATION 19**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to develop and maintain a statewide strategic plan for recruiting and retaining special education teachers. At a minimum, VDOE’s strategic plan should (i) use data analyses to determine divisions’ specific staffing needs on an ongoing basis; (ii) evaluate the potential effectiveness of strategies for addressing recruitment and retention challenges, including tuition assistance, differentiated pay for special education teachers, and the expansion of special education teacher mentorships; and (iii) estimate the costs of implementing each strategy, including the extent to which federal funds could be used to support implementation. VDOE should present its plan to the Senate Education and Health Committee and the House Education Committee no later than November 1, 2021, and update those committees annually on its progress implementing the plan. (Chapter 7)

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### **RECOMMENDATION 20**

The Virginia Department of Education (VDOE) should (i) develop criteria for what constitutes “exceptional circumstances” that warrant extension of the 60-calendar day regulatory timeline for complaint investigations; (ii) include these criteria in its publicly available complaint resolution procedures; (iii) consistently track the duration between VDOE’s receipt of each sufficient complaint and its issuance of the respective letter of findings; and (iv) require staff to report at least quarterly to the superintendent of public instruction on the specific reasons for granting an extension because of “exceptional circumstances” and the amount of time it took to complete each investigation beyond the 60-calendar day time limit. (Chapter 8)

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### **RECOMMENDATION 21**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to revise its state complaint procedures and practices to ensure it requires and enforces corrective actions that (i) achieve full and appropriate remedies for school divisions’ non-compliance, including, at a minimum, requiring school divisions to provide compensatory services to students when it determines divisions did not provide legally obligated services and (ii) ensure relevant personnel understand how to avoid similar non-compliance in the future. (Chapter 8)

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### **RECOMMENDATION 22**

The Virginia Department of Education should develop 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. These policies and procedures should include expectations and mechanisms for collaboration between the Office of Dispute Resolution and Administrative Services and the Office of Special Education Program Improvement to investigate and resolve alleged violations that do not qualify for state complaint investigations. (Chapter 8)

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### **RECOMMENDATION 23**

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. (Chapter 8)

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#### **RECOMMENDATION 24**

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. (Chapter 8)

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#### **RECOMMENDATION 25**

The Virginia Department of Education should develop and implement a process for systematically auditing and verifying school divisions' self-determinations of compliance with all Individuals with Disabilities in Education Act performance indicators. The verification process should include a random sample of divisions each year and ensure that all divisions' self-determinations are reviewed and verified no less frequently than once every five years. (Chapter 8)

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#### **RECOMMENDATION 26**

The Virginia Department of Education (VDOE) should review and revise, as appropriate, its federal indicator-based public reports on school divisions' special education services to ensure they accurately and clearly articulate (i) the extent to which the school division's self-reported performance or compliance has been independently validated by VDOE and (ii) what each performance or compliance indicator is actually measuring. (Chapter 8)

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#### **RECOMMENDATION 27**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to develop and implement a clear and comprehensive plan to improve its approach to monitoring Virginia's special education system on an ongoing basis. At a minimum, the plan should clearly describe VDOE's procedures for effectively determining whether school divisions are complying with state and federal requirements pertaining to (i) identification and eligibility determination processes; (ii) individualized education program development and implementation, (iii) post-secondary transition planning; (iv) inclusion in academic and non-academic experiences and the use of discipline; and (v) special education staffing. The plan should also propose actions to increase monitoring capacity and on-site visits with existing resources and by leveraging available federal funding. VDOE should present its plan to the Senate Education and Health Committee, the House Education Committee and the Joint Legislative Audit and Review Commission no later than November 1, 2021. (Chapter 8)

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# 1 Overview of K–12 Special Education in Virginia

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In 2018, the Joint Legislative Audit and Review Commission (JLARC) directed its staff to review Virginia’s K–12 special education system. Staff were directed to review school divisions’ identification and eligibility determination processes; the processes used to determine where students with disabilities will receive their education; student outcomes; the adequacy of training and expertise in special education across school divisions; the effectiveness of the Virginia Department of Education’s (VDOE) monitoring, guidance, and support; and spending trends in special education. (See Appendix A for the study resolution.)

To address the mandate, JLARC staff analyzed student- and state-level data on the enrollment, placements, discipline, and outcomes of students receiving special education, data on state and local spending on special education services, and data related to VDOE’s monitoring efforts. Staff interviewed school division special education directors, special education teachers, VDOE staff, parents, advocates, staff from education agencies in other states, and other stakeholders, including special education experts at Virginia’s special education Training and Technical Assistance Centers. JLARC staff also surveyed school division special education directors and parents of students receiving special education services and reviewed research literature on topics related to special education. (See Appendix B for a detailed description of research methods.)

## Special education services are intended to ensure students with disabilities receive a quality education

Under the federal Individuals with Disabilities Education Act (IDEA), all students have a right to a “free appropriate public education.” Therefore, schools are required to provide special education services to meet the needs of students with disabilities, such as autism, visual or hearing impairments, or emotional disabilities, who would otherwise not be able to receive an appropriate education because of their disability. Special education includes the provision of specially designed instruction and related services and is provided at no cost to the student’s parents (sidebar).

Schools are required to provide students who have disabilities any services and supports that will enable them to learn the material in the general K–12 curriculum. A 2017 U.S. Supreme Court decision further requires that school divisions set appropriately challenging goals for students with IEPs and that special education services enable students with disabilities to make progress toward academic and functional goals (sidebar, next page). This decision set a legal standard for the provision of special education services and effectively raised the standard for schools that were not already setting challenging objectives for students.

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**JLARC’s last comprehensive review of K–12 special education** was conducted in 1984. JLARC also conducted a review of services for Virginians with autism spectrum disorders in 2009, which included an assessment of special education services provided to K–12 students with autism.

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During this study, JLARC staff surveyed school division-level special education directors and parents of students with disabilities. Both surveys asked about **their respective experiences during the COVID-19-related school closures**. Appendix C summarizes their responses.

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**Special education** is the specially designed instruction provided to meet the unique needs of a student, and associated supports, such as accommodations and modifications.

**Related services** are developmental, corrective, or support services required for a student to benefit from special education. Examples include speech-language pathology services and physical and occupational therapy.

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In the 2017 U.S. Supreme Court case **Andrew F. v. Douglas County School District**, the court held that “every child should have the chance to meet challenging objectives,” and that individualized education programs (IEPs) must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

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**Virginia students with disabilities may also receive their special education services** through private special education day schools, one of Virginia’s 11 regional programs, the Virginia School for the Deaf and the Blind, or a state-operated program, such as juvenile detention facilities, hospitals, and mental health facilities.

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Students with disabilities can be identified and determined eligible for special education from ages two to 21, and not all students with disabilities will need or receive special education services. Special education services are provided to eligible students according to an individualized education program (IEP) that is developed by a team composed of a general education teacher, a special education teacher, a building-level administrator, the student’s parent, the student (when appropriate), and other individuals, as needed. Special education services are provided until the student graduates from high school, turns 22, or the services are no longer deemed necessary.

## **Special education services are locally administered and must conform to federal and state laws**

IDEA governs states’ administration of special education services. State laws and regulations specify how IDEA is to be implemented, which school divisions must follow. VDOE is responsible for supervising school divisions’ administration of special education services, and the U.S. Department of Education (USDOE) conducts periodic monitoring of the state’s programs to ensure compliance with federal laws and regulations.

### **Local school divisions provide (or contract for) special education services**

Virginia’s 132 local school divisions (through local school boards) are responsible for providing special education and related services to students residing in their division (sidebar). School divisions’ responsibilities for providing special education include:

- identifying students who may need special education services;
- making eligibility determinations;
- developing and implementing each eligible student’s IEP;
- placing and supporting students in the least restrictive environment appropriate for their needs;
- providing and coordinating needed services for students; and
- monitoring student progress.

School divisions have substantial discretion in how they implement special education programs but must remain in compliance with federal and state laws and regulations. For example, school divisions may use different evaluative techniques and standards when determining whether a student meets eligibility criteria for special education, as long as those techniques and standards satisfy statutory and regulatory requirements.

Generally, a special education director in each division’s central office oversees a school division’s provision of special education. Special education teachers, general education teachers, and related service providers, such as occupational therapists, physical thera-

pists, speech-language pathologists, and school psychologists, provide special education and related services to students. School divisions may have related service providers on staff or may contract out these positions because of limited staffing.

School divisions are also required to have a local special education advisory committee that is appointed by the school board and advises the school board on the education of students with disabilities.

### **VDOE is responsible for supervising Virginia’s special education system and ensuring laws and regulations are followed**

In Virginia, state supervision of special education and related services is provided through the Virginia Board of Education and VDOE. The state board promulgates special education regulations that local school boards and school divisions must follow. VDOE has three primary special education functions: administration, monitoring, and provision of guidance and support services.

VDOE’s administrative responsibilities include developing procedures for implementing federal laws and regulations, administering systems for dispute resolution, and facilitating the state’s special education advisory committee (sidebar). As part of its administrative responsibilities, VDOE also distributes federal and state funding to local school divisions for their special education expenses.

Federal and state laws require VDOE to monitor school divisions’ special education services to ensure they comply with laws and regulations. VDOE, through the Virginia Board of Education, has the broad statutory direction to provide “general supervision of the public school system” and conduct “proper and uniform enforcement of the provisions of the school laws in cooperation with the local school authorities.” Virginia’s K–12 system is locally administered, and VDOE has limited ability to make overriding budgetary, personnel, and instructional decisions for local school divisions. However, state law gives the Board of Education specific authority to withhold all special education funds if it determines a school division’s special education services do not comply with state special education regulations. When funds are withheld, the board is authorized to provide services, directly or by contract, to students. State regulations detail the process through which such authority may be exercised by the board and the superintendent of public instruction. VDOE staff could not recall an instance where this authority has been used.

VDOE determines the level of monitoring and technical assistance school divisions receive primarily through annual compliance reviews of certain federal laws and school divisions’ performance relative to statewide targets. For example, school divisions that do not meet multiple targets may receive intensive on-site monitoring and be required to attend trainings.

VDOE also provides special education training, technical assistance, and guidance related to professional development, parental involvement, and the interpretation of

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The state special education advisory committee advises the Virginia Board of Education and VDOE on the provision of special education in Virginia. Among other things, the state special education advisory committee determines unmet needs of students with disabilities in Virginia, comments publicly on any rules or regulations proposed by the Board of Education related to special education, and aids VDOE in developing evaluations, reporting data to the USDOE, and developing corrective action plans.

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federal and state initiatives, policies, regulations, and guidelines. As a part of this function, VDOE provides federal funds to regional Training and Technical Assistance Centers, which are located at seven public universities across the state.

VDOE’s Department of Special Education and Student Services in the Division of School Quality, Instruction, and Performance is primarily responsible for these administrative, monitoring, and support functions. The Division of Special Education and Student Services is led by an assistant superintendent and has 67 staff. Fifty-five of these staff are assigned to special education, accounting for 16 percent of all VDOE staff. These 55 staff are responsible for finance and budgeting, monitoring and technical assistance, data analysis and reporting, dispute resolution services, and eligibility and instructional support. A majority of VDOE staff with special education responsibilities are involved in monitoring, finance and budgeting, or dispute resolution services.

### **U.S. Department of Education provides guidance, funding, and monitoring of states’ special education services**

At the federal level, support and monitoring of state special education programs is conducted by the Office of Special Education Programs (OSEP), a unit within the USDOE. OSEP provides guidance on federal laws and regulations, distributes funding for special education and related services, and monitors state implementation of IDEA.

OSEP also monitors states’ special education programs in several ways. States set performance targets and report annually to OSEP on specific indicators (sidebar). This is the primary way in which OSEP monitors states’ compliance with IDEA. OSEP also conducts on-site monitoring in states that perform poorly on these indicators or when problems have been brought to the office’s attention.

Each year, OSEP uses information from states’ reported performance on the IDEA indicators, monitoring visits, and other public information to determine whether each state complies with IDEA. Virginia has consistently been found to “meet requirements for purposes of the IDEA” (USDOE’s highest rating) since 2011. In 2020, 21 states were determined to “meet requirements,” while the remaining 29 were found to “need assistance” or “need intervention.”

VDOE was subject to an on-site review by OSEP in May 2019 because of stakeholder concerns regarding the effectiveness of the state’s supervision of special education services. The OSEP review was prompted by “an unusually high number of customer service communications from parents, advocates, and other stakeholders in Virginia with concerns that appeared to raise potential compliance concerns related to the State’s general supervisory process and the implementation of the IDEA dispute resolution requirements.” In June 2020, OSEP issued its findings, which expressed concerns with VDOE’s general supervision capabilities over the state’s special education

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Per IDEA regulations, OSEP collects data annually from states on **17 indicators**, including both compliance and outcome-focused results indicators. Examples of compliance indicators include the timeliness of eligibility determinations and presence of post-secondary transition services in IEPs. Examples of student outcome indicators include graduation rates and statewide assessment scores.

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system and state complaint resolution system. OSEP’s findings specifically cited concerns about VDOE’s process for tracking due process hearing timelines, its policy of allowing VDOE staff to sit in on mediations, and a provision of Virginia’s special education regulations regarding a parent’s right to an independent education evaluation at the public’s expense. In September 2020, VDOE issued a letter questioning the validity of the findings but expressed its commitment to addressing identified areas of non-compliance. As of November 2020, OSEP was still reviewing VDOE’s proposed corrective actions.

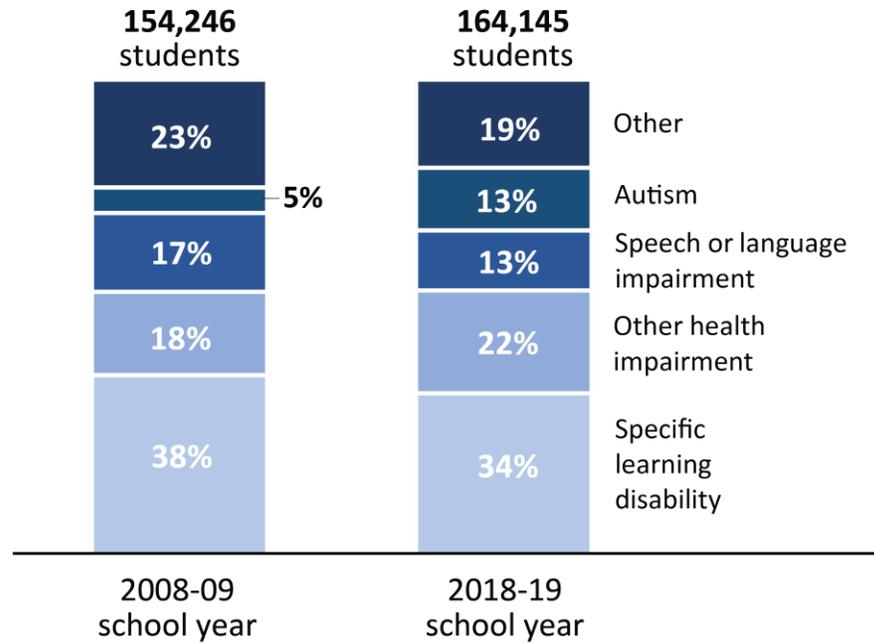
## **Special education enrollment has remained relatively stable over the past decade, but the prevalence of certain disabilities has changed**

In the 2018–19 school year, approximately 164,000 K–12 students, 13 percent of Virginia’s total student population, received special education and related services. The proportion of Virginia K–12 students receiving special education has remained relatively stable over the past 10 years. Between the 2008–09 and 2018–19 school years, the number of K–12 students with disabilities in Virginia increased by 5 percent, similar to the growth rate of the state’s total student population during that time (4 percent). The proportion of students receiving special education in Virginia is similar to the nationwide proportion.

Although overall special education enrollment has remained relatively stable over the past decade, the prevalence of certain disabilities has changed. For the past 10 years, more than 75 percent of Virginia students receiving special education services have had one of four disabilities: a specific learning disability, other health impairment, autism, or a speech or language impairment. The prevalence of these disabilities has shifted over the past decade (Figure 1-1). Most notably, the proportion of students with autism in Virginia has more than doubled. This change mirrors nationwide trends.

Enrollment in special education varies across grades, and the distribution of grade-level enrollment in special education varies by disability. Overall, enrollment in special education increases through elementary school, plateaus in middle school, and then fluctuates in high school (Figure 1-2). The variation in high school is due to some students with less severe disabilities graduating with their age-level peers, while others with more severe disabilities stay in high school until age 22. The grade-level distribution of students receiving special education varies by type of disability category because of several factors, such as the severity of the disability. (Figure 1-3 provides examples of differences in grade-level enrollment by disability.)

**FIGURE 1-1**  
**Composition of Virginia’s special education population has changed over the past decade**



SOURCE: JLARC analysis of VDOE Student Record Collection data, 2008–09 and 2018–19 school years.  
 NOTE: The disabilities noted in this figure are students’ primary disabilities. “Other” includes deaf-blindness, deafness, developmental delay, emotional disability, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, traumatic brain injury, and visual impairment. Percentages do not sum to 100 because of rounding.

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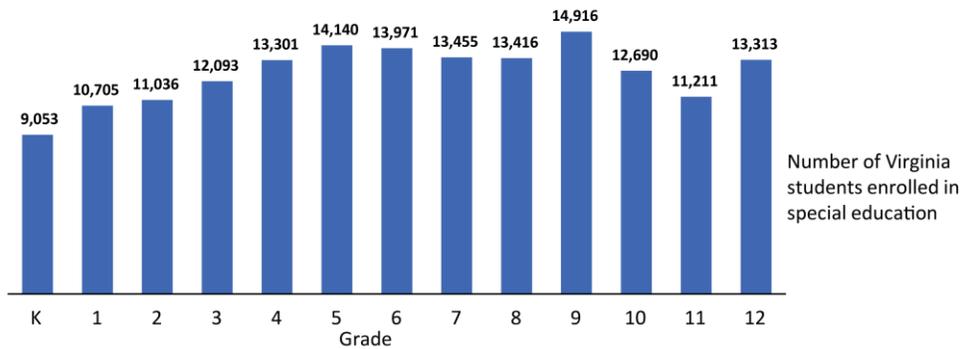
**Adapting JLARC style guide to capitalize races and ethnicities:** Many news organizations and writing style guides recently have been debating how to capitalize races and ethnicities in their publications. JLARC staff have been monitoring this debate to determine how to adapt the JLARC style guide. As of November 2020, JLARC staff have decided to capitalize Black when referring to race to reflect a generally shared culture and identity. JLARC will not capitalize white when referring to race because hate groups have traditionally capitalized white. This approach is used by the Associated Press and most major news organizations. JLARC staff will continue to monitor this debate and adapt the JLARC style guide accordingly.

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Other characteristics of Virginia’s special education population, such as the racial makeup of students receiving special education, are generally similar to the characteristics of the overall K–12 population in Virginia. The majority of students with and without disabilities in Virginia are from minority racial groups. Just under 50 percent of students enrolled in special education are white, and white students make up a similar percentage of the total K–12 student population. Additionally, in Virginia, 16 percent of students enrolled in special education are Hispanic, which mirrors the proportion in the total K–12 student population.

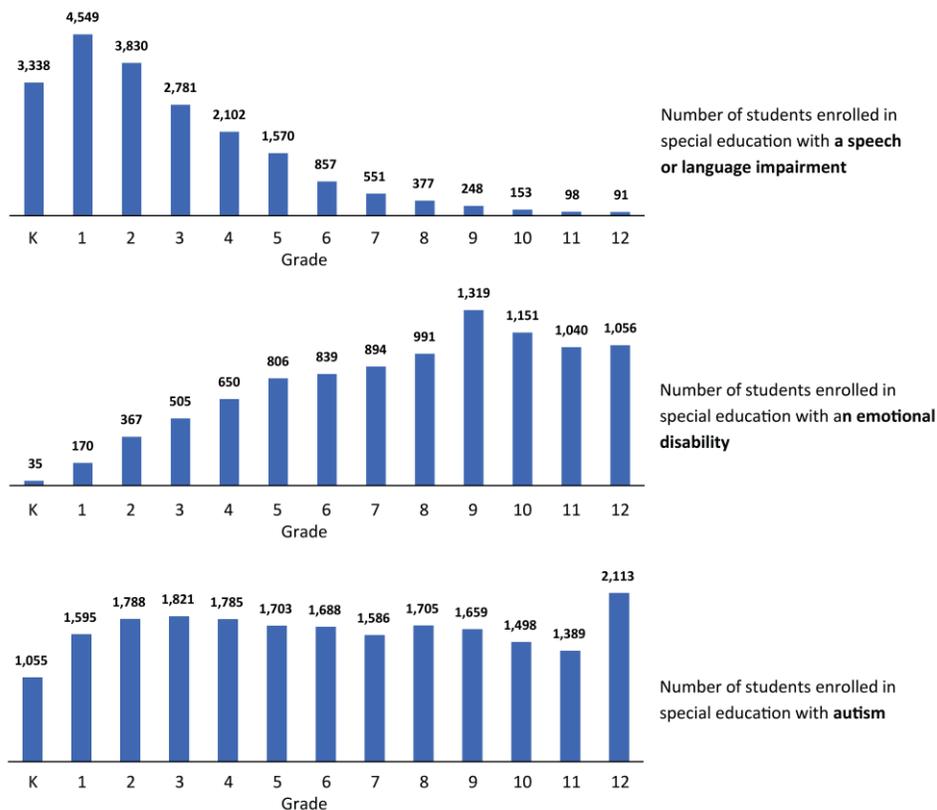
For two racial groups there are differences between the overall proportion of students and the proportion in the special education population. The proportion of K–12 students enrolled in special education in Virginia who are Black (27 percent) is higher than the proportion of all K–12 students who are Black (22 percent). In addition, the proportion of K–12 students enrolled in special education who are Asian (4 percent) is lower than the proportion of all K–12 students who are Asian (7 percent) (sidebar).

**FIGURE 1-2**  
**Enrollment in special education increases through elementary school, plateaus in middle school, and fluctuates in high school**



SOURCE: JLARC analysis of VDOE December 1 Child Count data, 2018-19 school year.  
 NOTE: "K" includes students in kindergarten, AM kindergarten, and PM kindergarten, but does not include students in pre-kindergarten or junior kindergarten. Grades K–5 are elementary school, 6–8 are middle school, and 9–12 are high school.

**FIGURE 1-3**  
**Grade-level enrollment in special education varies significantly by disability**



SOURCE: JLARC analysis of VDOE December 1 Child Count data, 2018-19 school year.  
 NOTE: "K" includes students in kindergarten, AM kindergarten, and PM kindergarten, but does not include students in pre-kindergarten or junior kindergarten. The disabilities noted in this figure are students' primary disability.

## Most students receiving special education are instructed in the general education classroom

Special education services are provided in a variety of settings (referred to as “placements”), depending on a student’s unique needs. These placement settings include the general education classroom at the public school closest to the student’s home, a “self-contained” classroom within the public school with other students with disabilities, a separate private special education day school, the student’s home, a children’s residential facility, or a correctional facility (sidebar). Students receiving special education services may also spend part of their day in one setting and part of their day in another.

Federal law requires that schools place students in the “least restrictive environment” that meets their needs and maximizes their inclusion with students without disabilities. The general education classroom is the least restrictive placement option, and a residential facility is the most restrictive option. While the general education classroom is considered to be the least restrictive placement relative to other placement settings, that does not mean that it is the least restrictive *appropriate* placement for all students with disabilities. IEP teams determine the most appropriate placement for students based on their needs.

Approximately 95 percent of students with disabilities in Virginia receive special education in the public school setting. The remaining 5 percent receive services in more restrictive settings, including private special education day schools, residential facilities, and correctional facilities. The proportion of students with disabilities served in public schools has remained relatively steady over the past decade.

In the 2018–19 school year, students receiving special education in Virginia spent, on average, 77 percent of their school day in the general education classroom setting. Students with less severe disabilities, such as specific learning disabilities and speech or language impairments, spend more time in the general education setting than students with more severe disabilities, such as an intellectual disability.

## Special education teachers ensure students receive needed services and supports

Special education teachers are responsible for ensuring students with disabilities receive the services they need. Special education teachers provide instruction and support to students in both the general education and special education settings. They also manage many aspects of each student’s education program, such as drafting their IEP, ensuring students receive needed services, and tracking students’ progress. Special education teachers have responsibilities even for students with IEPs who receive all of their education in the general education classroom. Teachers serving as these students’ case managers are responsible for ensuring students receive the services and supports in their IEPs and make appropriate progress.

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Concurrent to this review, JLARC also reviewed Virginia’s Children’s Services Act (CSA). The CSA program provides funding for private special education day school placements and special education services for students with disabilities whose behaviors are found to be too challenging to be managed in the public schools. That report (2020) provides more information about special education for students in private day schools.

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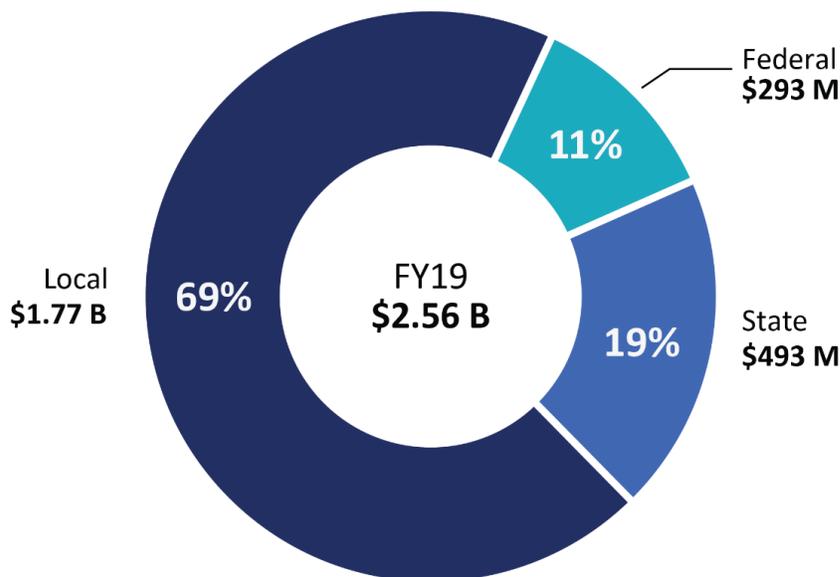
Additionally, if students' IEPs specify they need other services, such as physical or occupational therapy, special education teachers are typically responsible for coordinating with service providers to ensure students receive these services.

Fully licensed special education teachers are the most qualified individuals to teach special education. They must complete at least 27 semester hours of coursework in special education, and if they complete an approved teacher preparation program, an average of 360 hours of student teaching.

## About 20 percent of special education funding (~\$500M) comes from the state

Federal, state, and local governments spent a combined \$2.6 billion on special education in Virginia in FY19. Local funds make up the majority of special education funds, followed by state general funds and federal IDEA funds (Figure 1-4). Special education funds are primarily used for special education instruction costs (\$2.3 billion) but also for related services (\$300 million).

**FIGURE 1-4**  
Localities pay the highest proportion of special education costs



SOURCE: JLARC analysis of VDOE Schedule A data.

NOTE: Percentages do not sum to 100 because of rounding. Figure does not include spending through the Children's Services Act on special education in private day schools.

## Federal and state spending on special education has decreased

Over the past decade, federal and state spending on special education has decreased, while total local spending has increased. Total spending on special education and related services increased by 8 percent, adjusted for inflation, between FY10 and FY19—from \$2.4 billion to \$2.6 billion (Figure 1-5). This was driven by a 29 percent increase in local spending. Over the same period, both federal and state spending on special education decreased by 30 percent and 13 percent, respectively.

While state general funds contribute to all special education placements, they are mostly used for special education services delivered in public schools. The special education funding needs of each school division are estimated through the Standards of Quality (SOQ) formula (sidebar). The state pays a proportion of these estimated costs to each local school board based on the school division’s “local ability to pay,” which currently ranges from 20 percent to 80 percent of the estimated costs and is based on a local government’s revenue potential. State funds also reimburse school divisions for a proportion of the costs incurred for students who receive services through regional special education programs (sidebar). State funds also pay for special education services provided in home-based or homebound settings and for state-operated programs, such as mental health facilities and correctional facilities.

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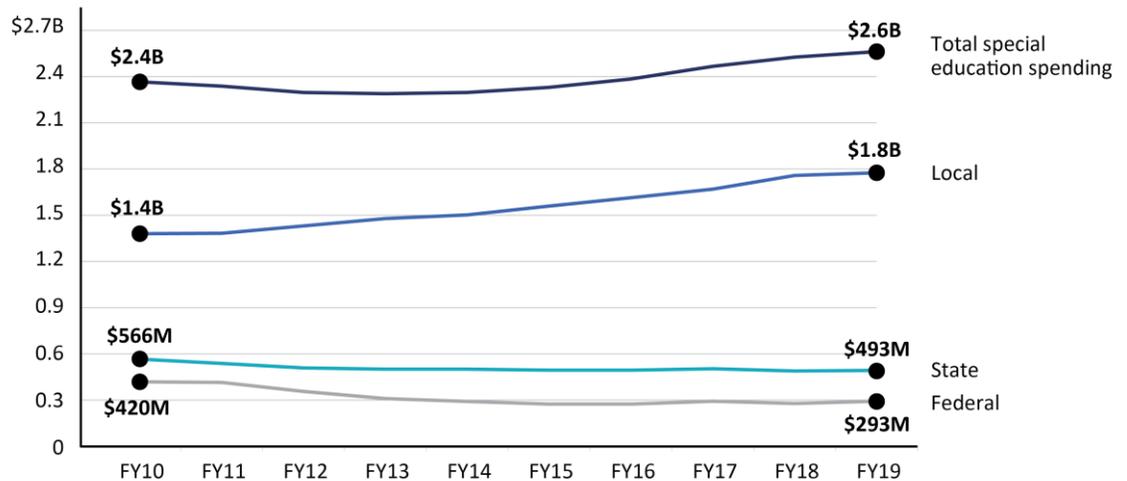
The **SOQ formula** estimates the minimum funding required for each school division to achieve the standards of quality established by the General Assembly.

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**Local school divisions may opt to provide special education services to students through regional special education programs** for students with more severe disabilities. VDOE sets the tuition rates for regional special education programs. The proportion of the tuition fees the state reimburses depends on the division’s local ability to pay, and is paid in lieu of per pupil basic aid that would have been provided if the student was served in a traditional public school.

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**FIGURE 1-5**  
Federal and state spending on special education has decreased over the past decade, while local spending has increased



SOURCE: JLARC analysis of VDOE Schedule A data.

NOTE: Figures adjusted for inflation and do not include spending through the Children’s Services Act on special education in private special education day schools.

Federal IDEA grants make up 11 percent of Virginia’s funding for K–12 special education. These federal funds are distributed across school divisions based on the historical federal funding, total school enrollment, and poverty levels of the school divisions. While federal funding allocations vary across the state, on average, they cover 15 percent of a school division’s special education spending. To remain eligible for these funds, the state or its school divisions must maintain or increase their total special education funding each year.

Localities pay their school division’s local match requirements to receive state general funds and fund any additional special education services not covered by state and federal funds. As described above, local match requirements are based on local ability to pay. On average, local funds cover 58 percent of the special education spending in a school division.

### Special education funding accounts for 15 percent of total K–12 spending in Virginia

Funding for special education represents about 15 percent of Virginia’s total K–12 public education funding, and this proportion has remained constant over the past 10 years. Special education funds account for a considerable portion of all federal and local funding support for K–12 education (Table 1-1). However, *state* special education funding only accounts for 7 percent of the *state’s* total contribution to K–12 education.

**TABLE 1-1**  
**In FY19, 15 percent of K–12 public education funding was for special education**

	Funding for special education	Funding for all K–12 education	Special education as proportion of all K–12 funding
Local	\$ 1,775M	\$ 8,563M	21%
State	\$ 493	\$ 6,926	7
Federal	\$ 293	\$ 1,158	25
Total	\$ 2,561	\$ 16,620	15

SOURCE: JLARC analysis of data from VDOE’s Schedule A and Superintendents Annual Report.

NOTE: Numbers may not sum because of rounding.

In FY19, state and local governments spent an additional \$186 million on special education through the Children’s Services Act (CSA) program for private special education day schools. The state’s spending on private day schools has doubled from \$59 million in FY10 to \$118 million in FY19, adjusted for inflation, and this growth is primarily driven by increasing enrollment, increasing tuition, and greater use of services offered by private day schools. When the increase in private day school expenditures is accounted for, the total state spending on special education has decreased by only 2 percent since FY10. (For more information on CSA program spending, see JLARC’s 2020 *Review of the Children’s Services Act and Private Special Education Day School Costs*.)

VDOE’s central office special education operations are almost entirely federally funded. VDOE spent \$11.1 million on special education central office operations in FY19. Federal funds account for 99 percent (\$11 million) of VDOE’s total central office spending for special education, while state funds account for \$115,000. The majority of VDOE’s special education expenditures go toward instructional services (\$7.2 million). These funds are also used for compliance and monitoring (\$2.9 million), and administration and assistance services (\$1 million). VDOE’s special education spending has remained relatively consistent over the past decade.

## 2 Outcomes of Virginia Students with Disabilities

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A key approach to understanding the effectiveness of Virginia’s K–12 special education services is to examine the extent to which those services help students with disabilities succeed in school and after graduation. Indicators of the performance and outcomes of Virginia students with disabilities include (1) Standards of Learning assessment (SOL) pass rates; (2) high school graduation rates; (3) high school dropout rates; and (4) post-secondary outcomes, such as whether students with disabilities obtain employment or pursue additional education or training after high school. Accordingly, the U.S. Department of Education (USDOE) includes these measures in its monitoring of states’ implementation of the federal Individuals with Disabilities Education Act (IDEA).

### **SOL pass rates among students with disabilities have improved slightly but still lag pass rates among students without disabilities**

Virginia’s Standards of Learning (SOLs) establish statewide minimum expectations for students’ knowledge and skills at the end of each grade or course. SOL assessments measure students’ success meeting those expectations and are considered a measure of academic performance. Between grades three and 12, students take between two and four SOL assessments each year. To graduate high school and earn a standard diploma, students must pass a certain number of SOL assessments (sidebar).

About 99 percent of students with disabilities take SOL assessments. The remaining 1 percent participate in the Virginia Alternate Assessment Plan (VAAP), which provides an alternative approach to evaluating the performance of students with significant cognitive disabilities.

### **Students with disabilities pass math and reading SOLs at higher rates than a decade ago but still have much lower pass rates than students without disabilities**

The percentage of students with disabilities passing their math SOL assessments has increased in recent years, although pass rates remain lower than those of students without disabilities. During the 2018–19 school year, 51 percent of students with disabilities passed their SOL assessments in math—13 percentage points higher than pass rates during the 2012–13 school year (sidebar). About half of the performance increase appears to be attributable to the introduction of a new math test in the 2018–19 school year, which contributed to increased pass rates among students with and

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Depending on the courses they take, **students may not need to pass all the SOL assessments they take to graduate with a standard diploma.**

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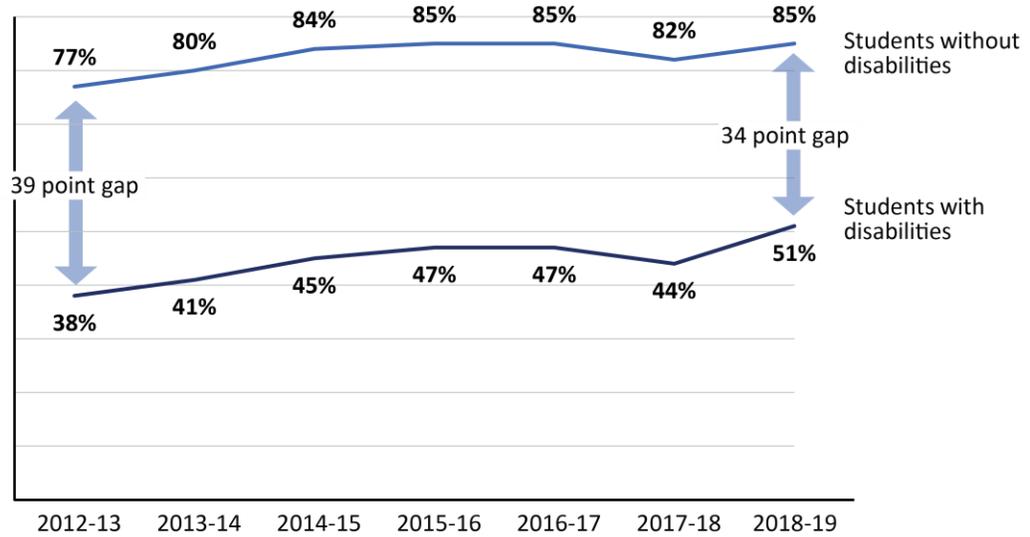
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The math and reading SOL assessments were changed substantially in 2011 and 2012, respectively. Therefore, JLARC’s analyses of SOL pass rates focuses on SOL assessments that were taken between the 2012–13 and 2018–19 school years.

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without disabilities statewide. The gap in pass rates between students with disabilities and students without disabilities decreased slightly over that period but remains large (Figure 2-1).

**FIGURE 2-1**  
**Students with disabilities pass math SOLs at a lower rate than students without disabilities, and the gap in pass rates has improved slightly**



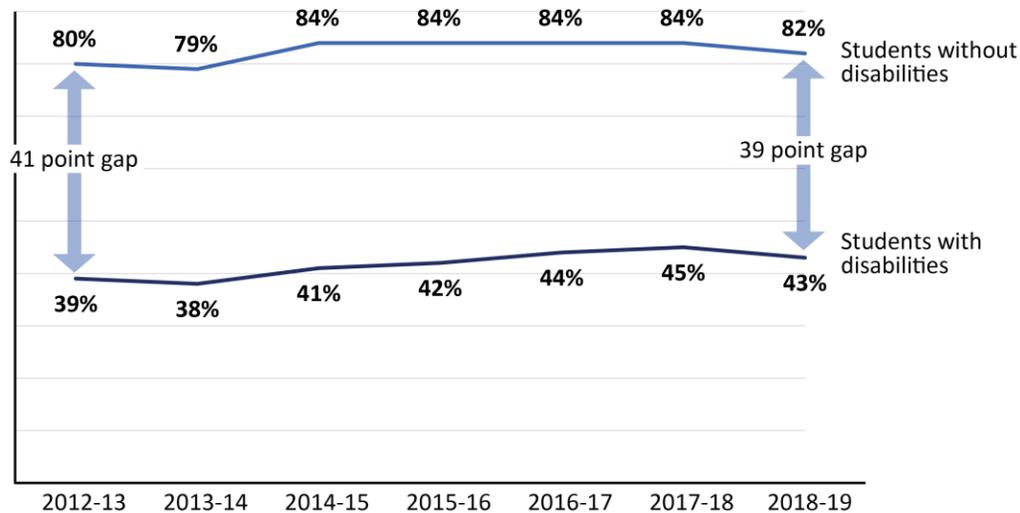
SOURCE: JLARC analysis of VDOE data.

NOTE: Rates based on whether students passed *their most recent attempt* at a given SOL. A new math SOL was introduced in the 2018–19 school year, and improvements were seen statewide. Excludes the ~1% of students who did not take SOL (students who took alternate assessments, refused assessment, or took a substitute test).

Students with disabilities’ performance on reading SOLs has not improved materially since the 2012–13 school year. The gap in performance between students with and without disabilities decreased slightly during that time period and remains large (Figure 2-2). During the 2018–19 school year, 43 percent of students with disabilities passed their SOL reading assessments—4 percentage points higher than pass rates during the 2012–13 school year. The gap in reading SOL pass rates between students with and without disabilities decreased by 2 percentage points over that period, from a 41 percentage point gap to a 39 percentage point gap.

FIGURE 2-2

**Students with disabilities pass reading SOLs at a lower rate than students without disabilities, and statewide performance has not improved materially in recent years**



SOURCE: JLARC analysis of VDOE data.

NOTE: Rates based on whether students passed *their most recent attempt* at a given SOL. Excludes the ~1% of students who did not take SOL (students who took alternate assessments, refused assessment, or took a substitute test).

Students with disabilities' performance on reading and math SOLs between the 2012–13 and 2018–19 school years varied by region, type of disability, and the student's race or ethnicity. Students with disabilities who live in VDOE region eight (Southern Virginia), have more severe disabilities, or are Black passed math and reading SOLs at lower rates than their peers. For example, during the 2018–19 school year, students with intellectual disabilities and multiple disabilities were the least likely groups to pass both the math and reading SOLs. That year, 12 percent of students with intellectual disabilities and 25 percent of students with multiple disabilities passed their math SOLs, compared to 51 percent of all students with disabilities. In the same year, 6 percent of students with intellectual disabilities and 24 percent of students with multiple disabilities passed their reading SOLs, compared with 43 percent of all students with disabilities.

Black students with disabilities were the least likely racial group to pass math and reading SOLs each year since the 2012–13 school year. During the 2018–19 school year, 35 percent of Black students with disabilities passed their math SOLs, compared to 51 percent of all students with disabilities. In the same year, 27 percent of Black students with disabilities passed their reading SOLs, compared with 43 percent of all students with disabilities. The difference in SOL pass rates between Black students and students of other races does not appear to be explained by differences in disability prevalence or poverty status across races.

## **Graduation rate has improved among students with disabilities but is lower for students who are Black or have more severe disabilities**

Students are determined to have graduated high school if they earn a high school diploma. In Virginia, students with disabilities are eligible for four types of high school diplomas: the standard diploma, the advanced studies diploma, the International Baccalaureate (IB) diploma, and the applied studies diploma. Students of all abilities are eligible for the standard, advanced studies, and IB diplomas. Only students with disabilities are eligible for the applied studies diploma. To receive standard, advanced studies, and IB diplomas, students must fulfill certain curriculum requirements. There are no curriculum requirements for the applied studies diploma.

Unless otherwise specified, in this chapter “graduation rate” refers to the proportion of students who graduate in four years with standard, advanced studies, or IB diplomas—not the applied studies diploma. This is consistent with how USDOE measures graduation rates, as USDOE treats the applied studies diploma as a certificate rather than a diploma. (See Chapter 5 for a discussion about the applied studies diploma and its limitations.)

### **Graduation rate has increased for students with disabilities over the past decade but still lags students without disabilities**

The proportion of Virginia students with disabilities who graduate high school with a standard, advanced, or IB diploma has increased substantially since 2008 (Figure 2-3). In 2018, 61 percent of students with disabilities graduated, compared with 38 percent in 2008. This increase was driven by the proportion of students with disabilities graduating with standard diplomas, which increased by 68 percent over that period.

In 2013, Virginia created new accommodations for students with disabilities pursuing the standard diploma, and these likely accounted for some portion of the increased graduation rate among students receiving special education services, beginning with students who graduated in 2017 (sidebar). The Board of Education first approved standard diploma credit accommodations in 2013, after the General Assembly passed legislation eliminating the modified standard diploma, effective for students with disabilities entering ninth grade during the 2013–14 school year. The first cohort of students who were ineligible for the modified standard diploma, and therefore likely to use credit accommodations, graduated in 2017.

Improvements in the graduation rate for students with disabilities generally occurred statewide. Between 2008 and 2018, the graduation rate for students with disabilities increased in 122 of 132 Virginia school divisions. The remaining 10 school divisions served 2 percent of Virginia’s students with disabilities in the 2018–19 school year.

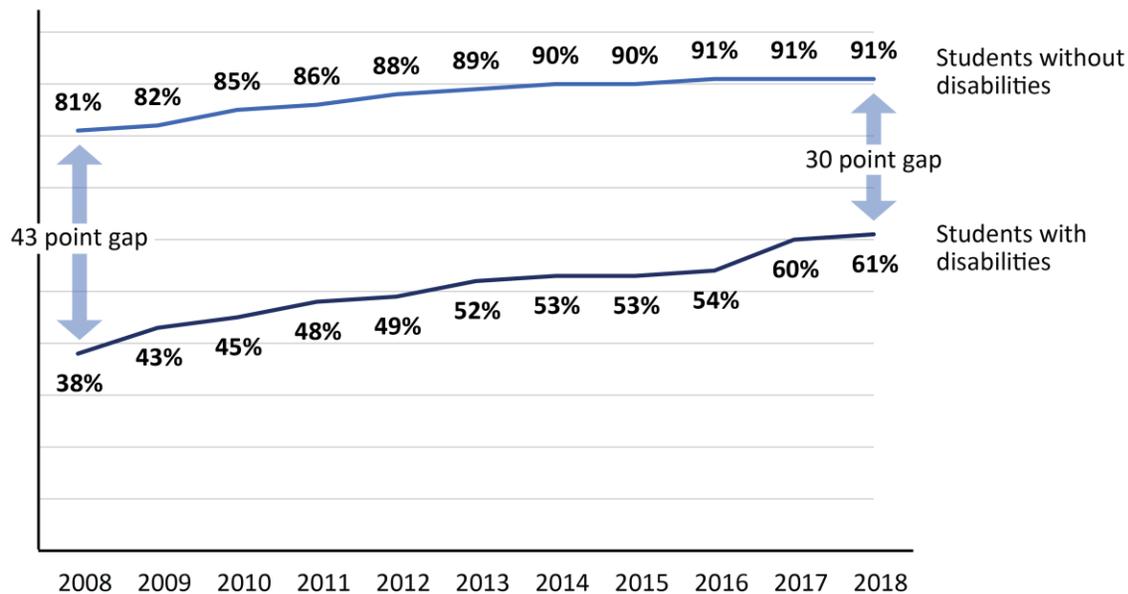
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**Standard diploma credit accommodations** include allowing students to take alternative courses to receive standard credits for graduation and allowing students to receive verified credits without passing SOLs, if the student can demonstrate mastery of course material through other means. Credit accommodations are available only to students with disabilities.

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Students with disabilities in Virginia are less likely to graduate high school than students without disabilities, but the graduation rate gap between students with and without disabilities has decreased since 2008 (Figure 2-3). In 2008, the graduation rate for students without disabilities was 43 percentage points higher than the graduation rate for students with disabilities. By 2018, that difference decreased to 30 percentage points.

**FIGURE 2-3**  
**Graduation rate for students with disabilities has improved over last decade**



SOURCE: JLARC analysis of VDOE data.

NOTE: Includes standard, advanced, and IB diplomas. Four-year graduation rate. "Disability" indicates that student had an IDEA-qualifying disability *at time of graduation*. Excludes students who transferred or died before graduation. The Modified Standard Diploma was no longer an option for students with disabilities who entered the ninth grade for the first time beginning in 2013, affecting four-year graduation rates in 2017 and 2018.

### **Graduation rates vary considerably across school regions, disability types, and racial and ethnic groups**

Although the graduation rate for students with disabilities improved consistently across the state over the past decade, the likelihood that students with disabilities graduate varies by where students live, their disability, and their race and/or ethnicity. In general, students with disabilities who live in high-poverty divisions, have less common, severe disabilities, or who are Black graduate with standard, advanced, or IB diplomas at lower rates than their peers. These students are the most likely groups to receive applied studies diplomas. (See Chapter 5 of this report for more information on the applied studies diploma.)

**Graduation rates among students with disabilities range from 47 percent to 70 percent across Virginia regions**

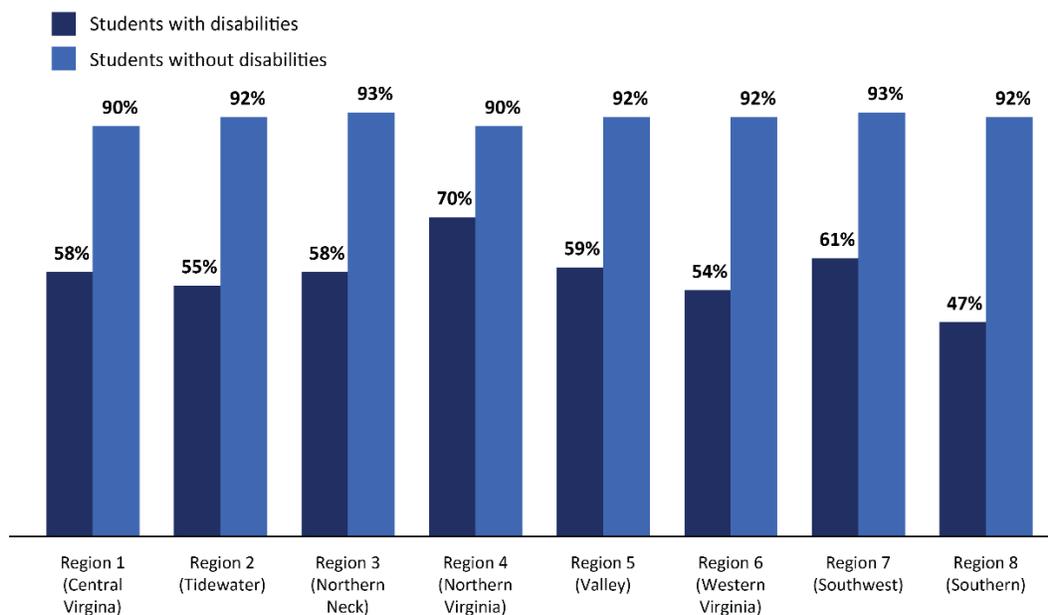
In most regions of the state, roughly 55 percent of students with disabilities graduate high school (sidebar). However, the graduation rate for students with disabilities in region four (Northern Virginia) is substantially higher than rates in other regions, while the graduation rate in region eight (Southern Virginia) is substantially lower. In 2018, students living in the highest-performing region, Northern Virginia, were 49 percentage points (23 percentage points) more likely to graduate high school than students living in the lowest performing region, Southern Virginia (Figure 2-4). Southern Virginia also had the largest gap in graduation rates between students with and without disabilities. In 2018, the graduation rate for students without disabilities in that region was 45 percentage points higher than the graduation rate for students with disabilities.

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“Regions” refers to VDOE’s superintendent’s regions.

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**FIGURE 2-4**  
**Students with disabilities’ graduation rates vary across the state**



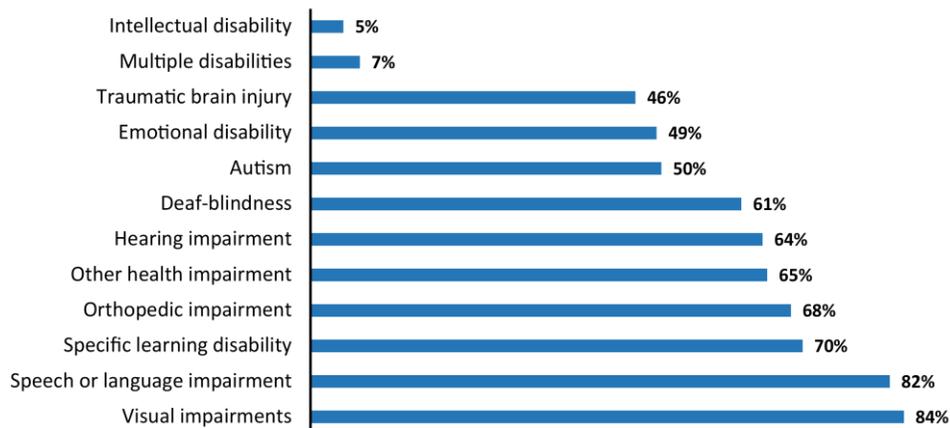
SOURCE: JLARC analysis of VDOE data.

NOTE: 2018. Includes standard, advanced, and IB diplomas. Four-year graduation rates. Includes students who had an IDEA-qualifying disability *at time of graduation*. Excludes students who transferred or died before graduation.

**Students with less common, but more severe disabilities, are less likely to graduate than students with other disabilities**

The likelihood that students with disabilities graduate high school varies depending on students’ primary disabilities. In general, students with severe, less common disabilities, including intellectual disabilities and multiple disabilities, graduate at lower rates than students with more common disabilities, including speech and language impairments and specific learning disabilities (Figure 2-5).

**FIGURE 2-5**  
**Graduation rates vary by disability (three-year average)**



SOURCE: JLARC analysis of VDOE data.

NOTE: Calculated using a three-year average (2016, 2017, 2018) because of small size of some disability groups. Includes standard, advanced, and IB diplomas. Four-year graduation rates. Includes students who had an IDEA-qualifying disability *at time of graduation*. Excludes developmental delay category because students cannot be identified as having a developmental delay at graduation age. Excludes students who transferred or died before graduation.

***Black students with disabilities are less likely to graduate than students of other racial or ethnic groups***

The likelihood that students with disabilities graduate high school varies across racial and ethnic groups. Black students with disabilities were less likely to graduate than students with disabilities of other races for each of the past 10 years (sidebar). In 2018, 52 percent of Black students with disabilities graduated with at least standard diplomas, compared with 65 percent of students with disabilities of other races (Figure 2-6). The difference in graduation rates between Black students and students of other races does not appear to be explained by differences in disability prevalence or poverty status across races.

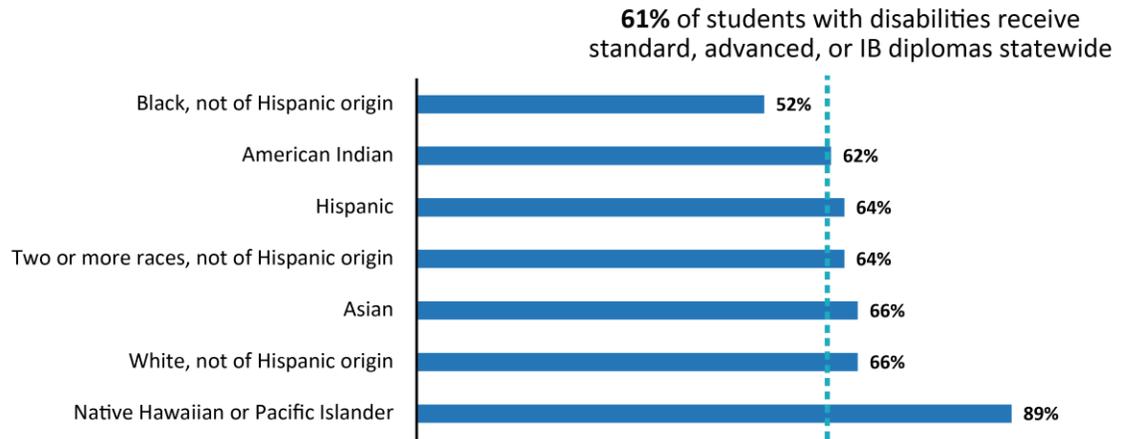
Though racial disparities in graduation rates persist, the gap in graduation rates between Black students with disabilities and students with disabilities of other races has narrowed over the past decade (Figure 2-7). In 2008, the gap between the graduation rate for Black students with disabilities and the graduation rate for students with disabilities of other races was 21 percentage points. By 2018, the gap narrowed to 13 percentage points.

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**Black students without disabilities also experience worse graduation outcomes than their peers of other races.** Though total graduation rates are lowest among Hispanic students, Black students without disabilities are the only racial group more likely to receive a standard diploma than an advanced diploma, indicating that they receive fewer credits than their peers. In 2018, 90 percent of Black students without disabilities graduated high school.

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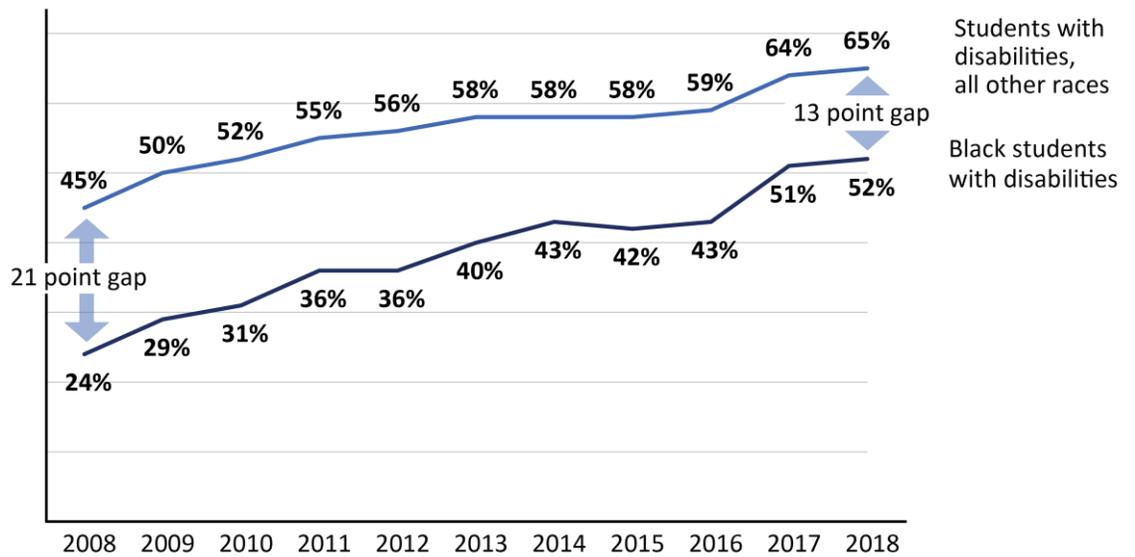
**FIGURE 2-6**  
**Black students with disabilities graduate at a lower rate than students with disabilities of other races**



SOURCE: JLARC analysis of VDOE data.

NOTE: 2018. Includes standard, advanced, and IB diplomas. Four-year graduation rates. Includes students who had an IDEA-qualifying disability *at time of graduation*. Excludes students who transferred or died before graduation.

**FIGURE 2-7**  
**The graduation rate gap between Black students with disabilities and students with disabilities of other races has decreased over the past decade**



SOURCE: JLARC analysis of VDOE data.

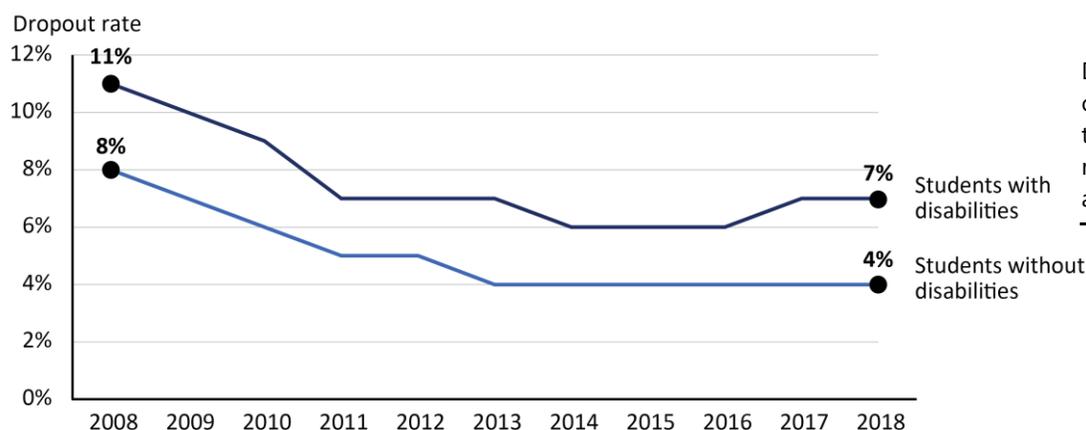
NOTE: Includes standard, advanced, and IB diplomas. Four-year graduation rates. Includes students who had an IDEA-qualifying disability *at time of graduation*. Excludes students who transferred or died before graduation.

## Dropout rate for students receiving special education services has declined but remains higher than for other students

As the proportion of students with disabilities who graduate high school on time has increased, the proportion of students with disabilities who drop out of high school has decreased (sidebar). Between 2008 and 2018, the dropout rate for students with disabilities fell from 11 percent to 7 percent. Decreases in dropout rates were largest among students with emotional disabilities, multiple disabilities, other health impairments, and specific learning disabilities.

Despite this decrease, students with disabilities are still more likely to drop out of high school than students without disabilities (Figure 2-8). Further, the gap in dropout rates between students with and without disabilities has not changed in the past 10 years.

**FIGURE 2-8**  
Dropout rates have decreased for students with and without disabilities over the past decade



SOURCE: JLARC analysis of VDOE data.

NOTE: Four-year rates. Includes students who had an IDEA-qualifying disability *at time of graduation*. Excludes students who transferred or died before graduation.

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VDOE defines **dropouts** as students who

- Were enrolled during the previous school year but were not enrolled on October first of the current school year and have not graduated high school, OR
- Students who were not enrolled on October first of the previous school year and were expected to be enrolled and have not graduated high school.

Dropout calculations exclude students that have transferred, have a school recognized temporary absence, or have died.

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## Majority of Virginia students with disabilities report working or seeking further education or training a year after high school

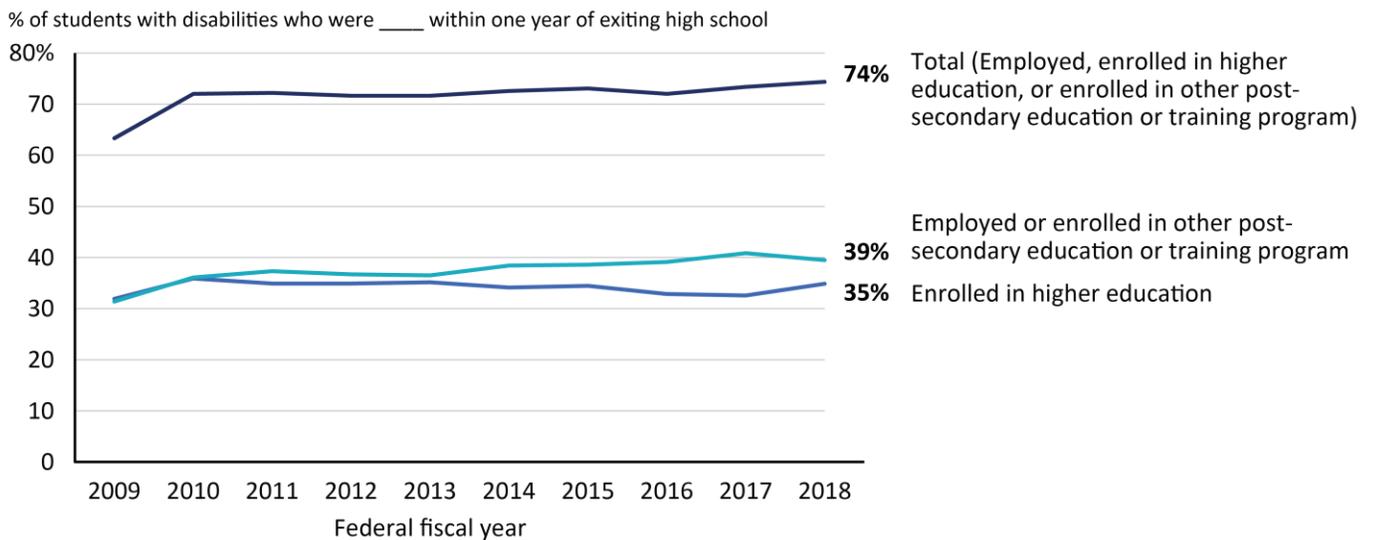
The majority of students who receive special education services in Virginia are employed or enrolled in higher education or training programs one year after leaving high school. In federal FY18, 74 percent of individuals with disabilities who responded to VDOE’s post-secondary outcomes survey were employed or enrolled in a training or

VDOE’s post-secondary outcomes data is collected through a locally administered survey to students with disabilities who had an IEP and exited high school in the previous year, including those who graduated, dropped out, or aged out. In federal FY18, 66 percent of surveyed students responded to the survey.

higher education program a year after exiting high school (sidebar). The proportion of individuals with disabilities who report such outcomes a year after exiting high school has slightly increased since federal FY09 (Figure 2-9). However, in federal FY18, 26 percent of individuals with disabilities did *not* transition into employment, higher education, or vocational training within one year after leaving secondary school.

Post-secondary outcomes of students who received special education services in Virginia are similar to nationwide trends. The median nationwide proportion of students receiving special education who reported being employed or pursuing further education a year after exiting high school is 77 percent—3 percentage points above Virginia’s rate.

**FIGURE 2-9**  
**Proportion of students with disabilities who reported being employed or pursuing further education a year after exiting high school has slightly increased over the past decade**

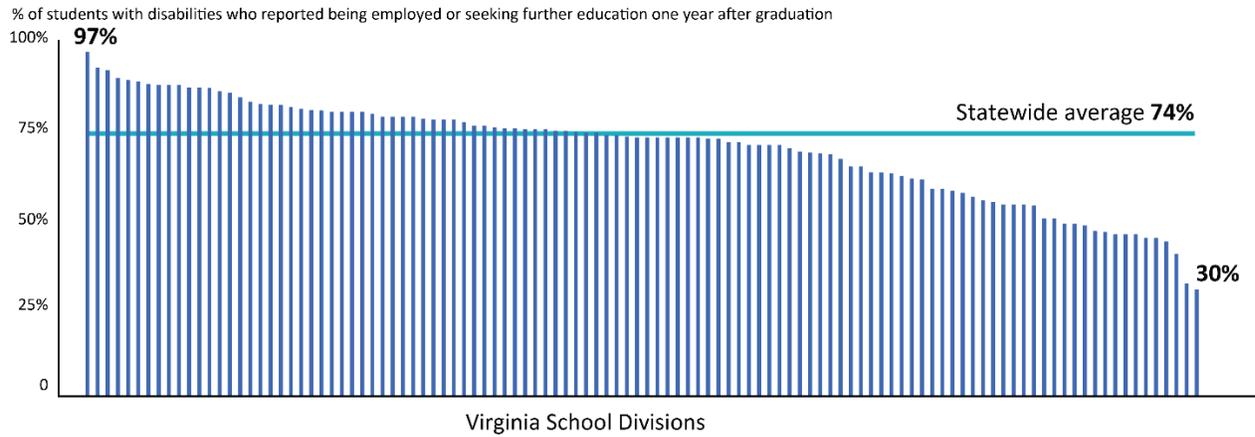


SOURCE: Federal Indicator 14 data from USDOE’s Office of Special Education Programs and VDOE.  
 NOTE: The data presented was collected through a VDOE survey to individuals with disabilities who exited high school in the previous year and had received special education services while in high school.

Post-secondary outcomes vary considerably across school divisions. This variability may be partly attributable to differences in local school divisions’ special education policies and practices, including those related to transition planning and supports. In federal FY18, the proportion of students who responded to VDOE’s survey and reported being employed or seeking further education one year after exiting high school ranged from 30 percent to 97 percent across school divisions (Figure 2-10). This variation was not found to be strongly correlated with external factors such as the unemployment rate, free and reduced lunch rate, or the population density of a school division.

**FIGURE 2-10**

**Proportion of students with disabilities who reported being employed or seeking further education one year after exiting high school varies across divisions**



SOURCE: Federal Indicator 14 data from the Virginia Department of Education.

NOTE: Twenty-two school divisions are excluded because VDOE does not report results for divisions where fewer than 10 students with disabilities exit high school in a given year. Only students with disabilities who exited high school with an IEP are included in this measure.



# 3 Determining Student Eligibility for Special Education Services

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Federal and state laws and regulations require school divisions to maintain processes to effectively and efficiently determine whether students may need special education services. School divisions are responsible for identifying students suspected of having a disability, as well as accepting referrals to evaluate students from other sources. Following identification or referral, school divisions must determine whether students are eligible to receive special education and related services.

To determine a student’s eligibility for special education, an eligibility team, made up of the student’s parents, a special education teacher, general education teacher, school division administrators, and others, must decide whether a student meets three main criteria. First, a student must have one of 14 disabilities, as defined in federal and state regulations. These include:

- autism
- deaf-blindness
- deafness
- developmental delay
- emotional disability
- hearing impairment
- intellectual disability
- multiple disabilities
- orthopedic impairment
- other health impairment
- specific learning disability
- speech or language impairment
- traumatic brain injury
- visual impairment

Second, students’ disabilities must “adversely affect” their educational performance (sidebar). Students with disabilities that do not adversely affect their academic or functional performance are not eligible for special education under federal and state regulations.

Finally, because of the adverse impact of the disability, students must need specially designed instruction. Specially designed instruction involves adapting the content, methodology, or delivery of instruction to address students’ needs that result from their disability (sidebar). Special education is intended to help students with disabilities learn the same curriculum as their peers without disabilities and meet the state’s educational standards.

The eligibility team must ensure that the reason the student meets the eligibility criteria is not due to lack of appropriate instruction in reading or math or to limited English proficiency. In addition, for the specific learning disability and developmental delay disability categories, the eligibility team must determine that the student’s learning problems are not caused by cultural, environmental, or economic factors.

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**Educational performance** includes all aspects of a student’s functioning at school, including academic achievement, intellectual development, social-emotional development, communication, behavior, and functioning.

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Students receiving special education receive **specially designed instruction**, or adaptation to the content, methodology, or delivery of instruction, as part of a free appropriate education.

-Content refers to what the student will learn, or the knowledge and skills to be taught to the student.

-Methodology refers to how the student will learn, or the design of the content.

-Delivery refers to where and when the student will learn, or the context of conditions in which the student will learn.

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## Special education enrollment varies across school divisions and by race

School divisions need effective processes to accurately identify students who may need special education services. Ineffective or inappropriate identification or eligibility determination processes can result in

- students not receiving the special education services they need (at all or in a timely manner);
- students receiving special education services they do not need; and
- a misallocation of financial, material, and personnel resources in an already resource-constrained special education system.

Some variation in the characteristics and size of divisions' special education student populations is to be expected, especially among smaller divisions. However, wide variation in special education enrollment, including across student characteristics like race, can indicate inconsistent or ineffective identification and eligibility determination processes in certain school divisions.

### Enrollment in special education varies across Virginia school divisions, both overall and by disability

The proportion of students who have been identified and found eligible for special education in Virginia varies by school division. In recent years, the majority of school divisions' percentage of K–12 students enrolled in special education was similar to the statewide median percentage (Figure 3-1). However, the proportion of K–12 students receiving special education in some school divisions is more than twice as high as others. Those with the highest and lowest proportion of students receiving special education services are generally smaller school divisions, but some have more than 10,000 total students. Economic factors, including the percentage of students qualifying for free and reduced price lunch and poverty rate, and geographic areas of school divisions do not appear to account for the variation in the proportion of students enrolled in special education.

The proportion of students enrolled in special education also varies across school divisions *by type of disability*—indicating that students in some divisions are more likely to be enrolled in special education because of a certain disability than students in other divisions (Figure 3-2). Division-level variation in enrollment by disability is most pronounced in the intellectual disability, other health impairment, emotional disability, and speech or language impairment disability categories. For example, the proportion of students in some school divisions enrolled in special education because of an intellectual disability is two to three times as high as the statewide proportion of students enrolled in special education with an intellectual disability (sidebars). Variation by disability type does not appear to be driven by the size of the division.

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The proportion of students enrolled in special education by disability category compared to the statewide proportion was analyzed by calculating a risk ratio. Risk ratios are used by VDOE and the U.S. Department of Education to monitor identification in special education. (See Appendix B for more information.)

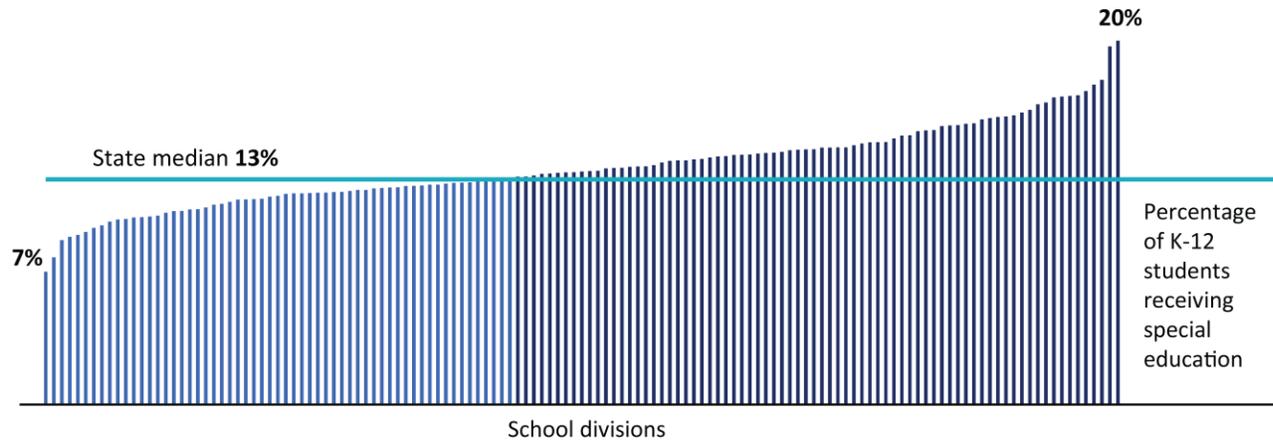
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For the purposes of this analysis, “statewide proportion” does not include the division being analyzed. This approach avoids double-counting the division in the calculation. (See Appendix B for more information.)

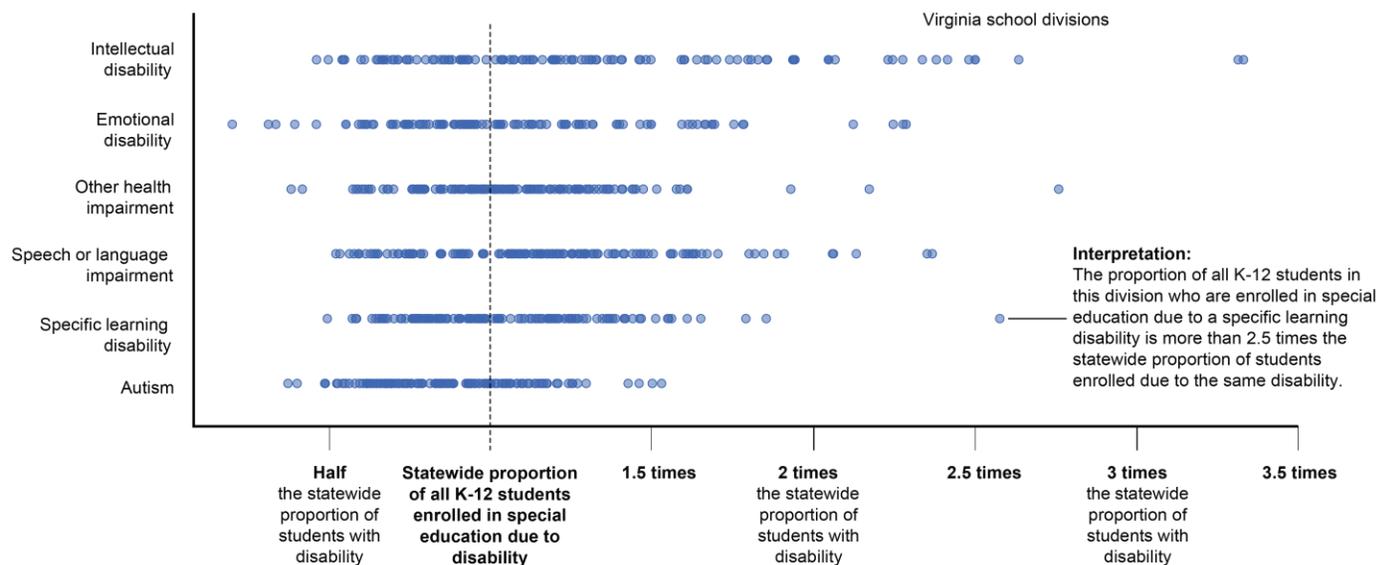
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**FIGURE 3-1**  
**Proportion of all K–12 students enrolled in special education varies by school division**



SOURCE: JLARC analysis of VDOE Student Record Collection data.  
 NOTE: The percentage of K–12 students receiving special education is a three-year average from the 2016–17, 2017–18, and 2018–19 school years.

**FIGURE 3-2**  
**Some school divisions have a considerably higher proportion of students enrolled in special education because of certain disabilities than others**



SOURCE: JLARC analysis of VDOE December 1 Child Count data.  
 NOTE: Proportion of students within each disability category compared to statewide proportion is calculated using a three-year average from the 2016–17, 2017–18, and 2018–19 school years. This analysis includes both primary and secondary disabilities, and does not include school divisions with fewer than 10 students in a given disability category. To avoid double-counting, “statewide proportion” does not include the division being analyzed.

Although some variation across school divisions in special education enrollment is to be expected, an atypically high or low proportion of students in a disability category could indicate that a school division is over- or under-enrolling students because of poor identification and eligibility determination practices. For example, the division might not be appropriately accounting for factors, such as limited English proficiency, when determining a student's eligibility for special education, and inadvertently determining more students eligible than is appropriate.

### Enrollment in special education varies by race

Following national trends, statewide, Black students in Virginia are over-represented in special education, while Asian students are under-represented. During the 2018–19 school year, while 13 percent of all K–12 students statewide were enrolled in special education, 16 percent of Black students and 7 percent of Asian students were enrolled in special education. The proportion of white (13 percent), Hispanic (13 percent), and students of two or more races (12 percent) enrolled in special education in Virginia was similar to the proportion of all K–12 students enrolled in special education (13 percent). Overrepresentation and underrepresentation of Black and Asian students vary across school divisions and Virginia Department of Education (VDOE) regions.

Also following national trends, Black students in Virginia are more likely to be identified and determined to have certain disabilities than students of other races and ethnicities, while Asian students are less likely to be identified and determined to have the same disabilities (Table 3-1). Statewide variation in the proportion of students of other races enrolled in special education is less pronounced across other disability categories.

**TABLE 3-1**  
Likelihood of being enrolled in special education in Virginia varies by disability and race

	Percentage enrolled in special education	Autism	Emotional disability	Intellectual disability	Other health impairment	Specific learning disability	Speech or language impairment
Black	16%	=	↑	↑	↑	↑	=
White	13	=	=	=	=	=	=
Hispanic	13	=	=	=	↓	↑	=
Two or more races	12	=	=	=	=	=	=
Asian	7	=	↓	↓	↓	↓	↓

#### KEY

= Equally as likely to be identified and determined to have disability as peers of other races

↑ More likely to be identified and determined to have disability as peers of other races

↓ Less likely to be identified and determined to have disability as peers of other races

SOURCE: JLARC analysis of VDOE Student Record Collection data.

NOTES: The likelihood represents the risk ratio for each racial group and disability category combination, calculated as a 3-year average from the 2016–17, 2017–18, and 2018–19 school years. The risk ratio describes the likelihood a student of a certain race is enrolled in special education with a given disability relative to the likelihood students of other races are enrolled in special education with the same disability. "More likely" indicates students of a given race are more than 30 percent more likely to be identified and determined as having the given disability. "Less likely" indicates students of a given race are more than 30 percent less likely to be identified and determined as having the given disability.

The U.S. Department of Education and VDOE monitor racial disproportionality in special education, but little is known about the extent to which school division policies and practices inappropriately contribute to the variation in Virginia and across school divisions. Some variation in special education enrollment across racial and ethnic groups should be expected among localities. However, disproportionate representation may also be occurring because of ineffective or problematic identification and eligibility determination practices—a nationwide problem that continues to affect special education (sidebar).

## School divisions inconsistently interpret and apply state eligibility criteria

Stakeholders indicate that inconsistent interpretation and application of the state’s eligibility criteria are primary reasons for variation in special education enrollment. Interviews with various stakeholders, including division-level special education administrators, special education teachers, and VDOE staff, as well as responses to a survey of local special education directors, indicate that a student receiving special education in one division could be found ineligible for special education in another division because of these inconsistencies.

School divisions across the state make inconsistent eligibility determinations for special education. In interviews and survey responses, division-level special education directors and special education teachers expressed concern about the inconsistency of eligibility determination decisions across divisions (sidebar). One special education teacher noted: “[I] struggle to see the consistency [in eligibility determinations] from one county to the next,” and while one county determines a student is eligible for special education, others are “finding kids ineligible based on the exact same data.” Whereas one school division might determine a student is eligible for special education and related services, another could determine the same student is ineligible. This is due to the subjective nature of eligibility determination and teams interpreting the same evaluative material and eligibility criteria differently.

Variation in school division practices and interpretations of eligibility criteria is apparent when students transfer from one school division to another. The majority (54 percent) of division-level special education directors responding to a JLARC survey reported that not all of the students with IEPs who have recently transferred into their school division would have met their division’s eligibility requirements for special education if the student were first evaluated in their division. According to division-level special education directors, the discrepancies most often occur when students have been determined eligible for special education because of a specific learning disability, other health impairment, emotional disability, or autism by another division prior to their transfer.

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**National explanations of differences in identification across students of different races** include racial and cultural bias among individuals making eligibility determinations, and higher risk among students of color of facing societal risk factors, such as poverty, inadequate health care, parents with low education status, and trauma, that affect educational attainment.

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**JLARC staff surveyed all school division-level special education directors.** JLARC received responses from 102 school divisions, representing 88 percent of students receiving special education. The survey response rate was 77 percent. (See Appendix B for more information.)

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## Insufficient state guidance and unclear criteria contribute to inconsistent eligibility determinations

School divisions have considerable flexibility in determining whether students are eligible for special education. Federal regulations define the 14 disability categories eligible for special education under the Individuals with Disabilities Education Act and allow states to further define these categories or develop criteria to guide school divisions' eligibility decisions. The Virginia Board of Education has not provided any additional definitions or clarifications in state regulations. When making eligibility decisions, school divisions may use their own criteria and processes, provided they comply with federal and state regulations.

VDOE has made efforts to minimize inconsistent interpretation of eligibility criteria by developing worksheets and guidance, as well as offering ongoing training and professional development for school divisions. However, these resources have not eliminated the substantial variation across school divisions. Almost all (97 percent) of the special education directors responding to the JLARC survey reported that their division uses either the VDOE worksheets or modified versions of the worksheets when evaluating a student's eligibility for special education. Therefore, different interpretations of these worksheets likely contribute somewhat to school divisions' significant variance in special education enrollment for certain disabilities.

“*The state level eligibility worksheets need a serious update, specifically for emotional disability, other health impairment, and specific learning disability. The state needs to define adverse impact, and for [emotional disability], define social maladjustment. Look at other states and they have significantly better guidance.*”

— **Special education director**  
Local school division

Insufficient guidance and vague terms in the state's eligibility criteria likely contribute to variation in eligibility determinations among school divisions. In interviews, some division-level special education directors reported a need for greater clarity on disability criteria. Further, around one-third of special education directors responding to the JLARC survey thought VDOE could provide more standardized or clarified guidance for certain disability categories. One director noted: “VDOE has communicated that divisions should develop their own thresholds for eligibility. It would be ideal if the VDOE established those thresholds for all divisions to use so that there is consistency across the Commonwealth.” Respondents most commonly cited that additional clarity or standard criteria is needed for the following disabilities: other health impairment, emotional disability, specific learning disability, autism, and developmental delay.

Local special education directors said the eligibility criteria's vague language often leads to inconsistent determinations. In particular, special education directors requested more clarity on what constitutes an “adverse effect” on the student's educational performance. The eligibility criteria for all 14 disability categories use this phrase. For example, an eligibility team may determine that a student has an emotional disability if:

The definition of ‘emotional disability’ is met in accordance with 8VAC20-81-10; and there is an adverse effect on the child's educational performance due to one or more documented characteristics of an emotional disability.

Additionally, special education directors requested more clarity on the “environmental, cultural, or economic” exclusionary factors eligibility teams should consider. Although

these factors may contribute to a student’s learning difficulties, a student is ineligible for special education if these factors are the primary cause of the student’s underachievement. This is a key part of the eligibility determination for two disability categories: specific learning disability and developmental delay.

Federal regulations do not define “adverse effect” or “environmental, cultural, or economic factors,” but states have the authority to define or clarify these terms. Other states have been more proactive in doing so. For example, Maine and Kentucky define “adverse effect” in their state’s special education regulations. Vermont has defined “adverse effect” and additionally set a threshold within the state’s regulations to quantitatively measure the adverse effect of the disability on the student’s performance relative to the grade-level norms. The Idaho State Department of Education developed a guidance document teams can use for considering exclusionary factors when determining whether a student has a specific learning disability. This includes specific questions that can help identify whether a student’s educational performance is due to “cultural factors” or they are experiencing “environmental or economic disadvantage” rather than a learning disability.

### **VDOE’s eligibility criteria should be more clearly defined and explained**

Two actions could be taken to improve the consistency of eligibility determinations in Virginia. First, vague phrases in the state’s eligibility criteria, such as “adverse effect,” could be defined in state regulations. The Virginia Board of Education could use other states’ regulations that establish more specific eligibility criteria as a resource. Second, VDOE could review and improve its eligibility determination worksheets and other guidance, including defining or clarifying vague phrases in the state’s eligibility criteria. In conducting this review, VDOE should collect feedback from division-level special education directors on guidance that should be clarified and review guidance provided by other states’ education agencies. VDOE could consider other states’ guidance provided to school divisions regarding vague or easily misinterpreted phrases. For example, clarity on what “environmental, cultural, or economic” factors to take into account when determining eligibility would decrease some variation in special education enrollment across racial and ethnic groups.

“ I think that if the VDOE provided more specific guidance about exclusionary factors related to special education eligibility, we would not have an over-identification of minority students problem in Virginia. ”

— Special education director  
Local school division

### **RECOMMENDATION 1**

The Virginia Board of Education should more clearly define terms used in 8-VAC-20-81-80 including, but not limited to, terms such as “adverse effect” and “environmental, cultural, or economic factors.”

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### **RECOMMENDATION 2**

The Virginia Department of Education should improve its eligibility worksheets and other guidance documents to better ensure more accurate and consistent eligibility determinations and equal access to special education services across school divisions.

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## **VDOE monitoring of identification and eligibility determination is narrowly focused**

VDOE is required by federal law, as well as federal and state regulations, to monitor school divisions' special education services, including school divisions' practices related to identification and eligibility determinations. Currently, however, VDOE's awareness of potential problems with school divisions' identification and eligibility determination practices is limited.

VDOE's only systematic monitoring of most school divisions' identification and eligibility determination practices focuses on racial disproportionality. Although this is the only identification and eligibility determination monitoring required by federal law, VDOE could also use its monitoring resources to identify other indicators of potential problems, such as variation across divisions in the proportion of students enrolled in special education by disability category.

VDOE's heavy reliance on school divisions to self-report problems also limits its awareness of problematic local identification and eligibility determination practices. School divisions rarely report problems with their identification or eligibility determination practices as they relate to disproportionate representation by race, and VDOE generally does not validate divisions' self-reported compliance. In the 2017–18 school year, VDOE identified 56 school divisions as having disproportionate representation of a racial or ethnic group in certain disability categories. VDOE required these school divisions to evaluate their practices and report any noncompliant or problematic identification and eligibility determination practices. Only one division out of the 56 percent reported inappropriate identification policies or practices.

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**VDOE issued a Request for Proposals in June 2020** for a research study to determine student, school, and community factors that contribute to differences in enrollment in disability categories across divisions. The results of this one-time study could help VDOE improve and target its ongoing monitoring and technical assistance in this area.

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VDOE has the information and staff expertise needed to strengthen its monitoring of special education identification and eligibility determination across the state, and has indicated its interest in improving its monitoring in this area. For example, VDOE regional monitoring staff could be responsible for reviewing available student-level data on an ongoing basis to identify school divisions with an atypically high or low proportion of students within each disability category—as was done in this study (see Figure 3-2, above). VDOE could then have its eligibility specialists review the relevant policies, procedures, and eligibility criteria of identified divisions, as well as a sample of student records, to determine whether the differences in enrollment are caused by problematic policies or practices, or by other factors (sidebar). VDOE could then provide technical assistance, as needed, to correct any problems and use these reviews to inform and improve the technical assistance and guidance it provides to school divisions more broadly.

As part of the recommended comprehensive plan to improve its monitoring of special education (Chapter 8, Recommendation 27), VDOE should strengthen its monitoring of school divisions' identification and eligibility determination policies and practices.

At a minimum, VDOE should develop and implement an ongoing process to (1) identify school divisions with significant variation in the proportion of students receiving special education as compared with other divisions; (2) determine whether a division's relatively high or low enrollment in special education—overall, by disability, or by race—is due to problematic local practices or factors outside the control of school divisions; and (3) provide appropriate technical assistance to ensure divisions accurately identify students who may need special education.



# 4 IEP Development and Implementation

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Once a student with a disability is determined to be eligible to receive special education services, the school division must develop and implement an individualized education program (IEP) for the student. An IEP is a written plan that describes the student's academic and functional needs, establishes goals for the student, and specifies the special education and related services the student will receive to meet his or her needs (sidebar). The IEP serves as a guide for school staff and service providers and allows them to monitor and measure the student's progress toward achieving the IEP's goals. The objective of a well-designed and executed IEP is to ensure that students with disabilities receive a free and appropriate education in the least restrictive environment, the core requirement of the federal Individuals with Disabilities Education Act (IDEA).

Under federal and state law, school divisions are required to develop and regularly update an IEP for every student who is determined to be eligible for special education. School divisions must develop an IEP within 30 days of a student being determined eligible for special education. Following initial development, school divisions are required to review and update each student's IEP at least annually.

Federal and state laws and regulations require that IEPs are developed by a team. The team includes the student's parent(s); general education teacher(s); special education teacher(s); representative(s) from the school division; when appropriate, the student; and other stakeholders, such as service providers, as needed. In practice, the student's special education teacher generally develops a draft of the IEP before the IEP team meeting. The team then meets to review the IEP draft and make any necessary changes. The student's parent(s) must consent to the IEP for it to go into effect.

Federal and state laws and regulations require that each IEP include, at a minimum,

- a description of the student's "present level of performance," which means academic achievement and functional performance, how the student's disability affects involvement and progress in the general curriculum, and the educational needs that result from the disability (sidebar);
- measurable annual goals for each of the student's needs;
- the services and supports that the student will receive to meet the student's needs and make progress toward the student's annual goals; and
- the educational placement (e.g., general education classroom, separate classes within the public school, private special education day school) the IEP team has determined is appropriate for the student.

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**Special education** is the specially designed instruction and associated supports, such as accommodations (e.g. larger print) and modifications (e.g. different assignments), provided to meet the needs of a student.

**Related services** are developmental, corrective, or support services required for a student to benefit from special education. Examples include counseling services, interpreting, speech-language pathology services, physical and occupational therapy, and transportation.

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A student's **educational needs include academic, developmental, and functional needs**. Needs are weaknesses, difficulties, or skills or abilities that need improvement and which are a result of the student's disability. They are a critical aspect considered when developing an IEP.

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Special education services are provided directly to students to help in specific areas of need and include supplemental instruction, such as additional math instruction, and related services, such as speech-language pathology services, occupational and physical therapy, and counseling.

**Accommodations** alter how a student is taught, and include large print worksheets and audio versions of books.

**Modifications** alter what a student learns, and include changes to the curriculum or standards, and reduced complexity or length of assignments.

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Additionally, for students age 14 and older, federal and state laws and regulations require that IEPs include education, employment, training, and, if appropriate, independent living skill goals for after high school. They must also include any services the student needs to meet these post-secondary transition goals.

Effective IEP development is required to meet the educational needs of students with disabilities. Poorly designed or ineffective IEPs can lead to a student not receiving needed services. This can contribute to a regression in a child's academic and functional performance.

Following initial development of a student's IEP, federal and state regulations require school divisions to provide special education and related services in accordance with each student's IEP. Specifically, state regulations require that each IEP "is implemented as soon as possible following parental consent to the IEP." Moving forward, IDEA requires school divisions to have an IEP "in effect" at the beginning of each school year for every student receiving special education, which includes providing the services and supports detailed in the document.

## **IEPs are not consistently designed to be effective and reliable guides for special education services**

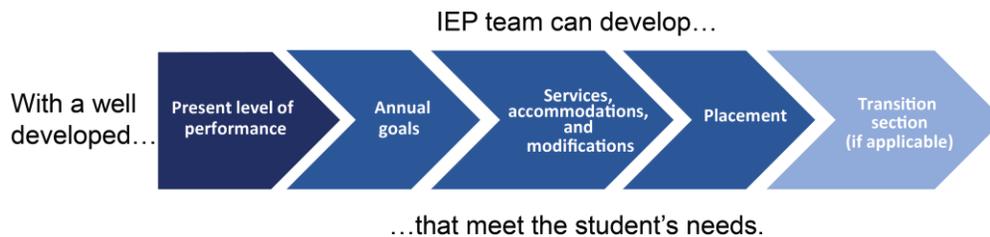
The student's present level of performance is the foundation for developing all of the other IEP components. Therefore, a quality, comprehensive description of the student's present level of performance is imperative to design an IEP that appropriately meets the student's needs. The present level of performance should describe the student's current level of academic achievement and functional performance, needs, and the effect that the student's disability has on progress in the general education curriculum. The IEP team is required to use this information to develop the appropriate annual goals, services, and placement necessary to meet the student's needs and achieve academic progress.

The annual goals in an IEP are also critical to both the development and implementation of a student's special education. The IEP team is required to use the goals to determine the special education and related services the student will receive. Annual goals should be measurable, meet a student's needs, and set adequate targets to monitor the student's progress and measure improvements. Poorly designed goals, or a lack thereof, hinder the IEP team's ability to determine the appropriate placement and services for the student and prevent the student's special education case manager from measuring the student's progress.

Each successive component of the IEP should build off of the previous element, and all components should relate to the student's specific disability. The student's needs identified in the present level of performance should inform annual goals, which should inform the student's services and placements (Figure 4-1). Alignment of these elements creates a cohesive education plan that meets students' individual needs and allows them to make academic progress. Lack of alignment can lead to students not

receiving the services they need or students receiving services they do not need, leading to a misallocation of resources.

**FIGURE 4-1**  
**Present level of performance is the basis for developing the rest of the IEP**



SOURCE: JLARC staff summary of interviews and reviews of literature and guidance documents.

### **Core sections of many IEPs have insufficient detail and lack useful goals**

The quality of IEPs varies widely across Virginia school divisions, and some IEPs do not contain required or relevant information. Common issues with IEPs include problematic descriptions of the student’s present level of performance and needs; problematic annual goals; misalignment across the present level of performance and needs, annual goals, and services; and weak post-secondary transition sections. Interviews with stakeholders, responses to JLARC’s survey of parents, a JLARC review of a sample of IEPs, and reports from VDOE’s on-site monitoring all indicate these problems exist in many IEPs (sidebars).

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**JLARC staff surveyed parents** of students receiving special education to learn about their experience with special education. JLARC received responses from 1,573 parents. (See Appendix B for more information.)

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#### ***Present level of performance***

Although the present level of performance is fundamental to the development of a useful and appropriate IEP, many present level of performance descriptions lack the information necessary for an IEP team to design an appropriate and effective education plan. For example, reports from VDOE’s on-site monitoring indicate that many present level of performance sections are not detailed enough and do not contain information about the student’s disability and its effects on the student’s progress in the general education curriculum. In reviewing a random sample of IEPs across school divisions, JLARC staff identified approximately *one-third* that lacked a description of the student’s academic or functional needs and *one-quarter* that did not describe the disability’s effect on the student’s educational performance.

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**JLARC staff systematically reviewed the content and quality of a representative sample of 90 IEPs** from school divisions of various sizes and regions in the state. Additionally, staff evaluated the post-secondary transition sections of 100 additional IEPs of transition-age students. (See Appendix B for more information.)

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#### ***Annual goals***

Many IEPs also appear to lack appropriate or useful goals. During on-site monitoring visits, VDOE identified that some IEPs lack annual goals entirely and that many goals are not measurable. JLARC’s review of IEPs found that about half (48 percent) of IEPs lacked academic or functional annual goals. In interviews, staff of Virginia’s

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**JLARC staff interviewed staff from all seven of Virginia’s special education Training and Technical Assistance Centers (TTACs) about their experiences working with and perspectives of the state’s special education programs. TTAC staff provide special education technical assistance and training to school division staff throughout the state.**

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Training and Technical Assistance Centers (TTACs), which are located at seven Virginia higher education institutions and provide technical support and assistance to school divisions, echoed this point (sidebar). Some staff noted that IEP goals frequently do not set strong enough expectations for students with disabilities. JLARC’s review found that when goals were included, they were generally measurable (sidebar).

### **Alignment**

Many IEPs in Virginia also appear to lack alignment across the present level of performance, goals, and services in the IEP. For example,

- JLARC staff found that 40 percent of IEPs reviewed lack alignment between the student’s needs, the annual goals, and the services. For example, some IEPs did not include goals or services for all of the student’s needs identified in the present level of performance, while others outlined goals and services for subjects that were not identified as areas of academic or functional need.
- In VDOE’s on-site reviews, staff noted lack of alignment in IEPs as a common issue, specifically in terms of the alignment between the student’s needs and annual goals.
- During interviews with JLARC staff, some TTAC staff noted that they often do not see a direct connection between the present level of performance and the annual goals.
- Twenty-three percent of parents believe their student’s IEP is not sufficiently tailored to their student, and 37 percent believe that the services in the IEP are only “somewhat” (25 percent) or “not at all appropriate” (12 percent) for their student.

### **Post-secondary transition**

The quality of IEPs’ post-secondary transition sections also varies considerably in Virginia. Throughout the study, transition sections were the most commonly cited area of concern related to IEPs. JLARC’s review of IEPs, responses to JLARC’s survey of parents, VDOE’s on-site monitoring, and interviews with stakeholders identified problems with the quality and usefulness of transition goals and services. Problems related to transition planning are discussed in further detail in Chapter 5.

### **Lack of knowledge and expertise among key school staff about IEPs appear to contribute to variation in quality**

The variation in IEP quality appears to be due in part to inconsistent knowledge among key school staff—including special education teachers, general education teachers, and building-level administrators—about IEPs and staff’s roles in developing them. All members of the IEP team are critical to IEP development, and lack of

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*“The biggest complaint we hear is that people don’t know how to write IEPs.”*

— TTAC staff

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knowledge and experience among teachers and administrators can lead to poorly developed, ineffective IEPs.

### ***Inexperienced special education teachers***

Some special education teachers appear to lack expertise in developing high-quality IEPs because of limited experience. In interviews, special education directors noted new special education teachers most often need training on IEP development. Multiple directors said this is the first training they provide to new teachers. As one director stated, this is because “teachers don’t come out of school prepared.” Although IEP development is taught as part of the required coursework in many special education teacher preparation programs in Virginia, special education teachers echoed these concerns, and noted in interviews that this topic is not covered as thoroughly in some programs as others. Despite inconsistent levels of training in this area, special education teachers generally draft the IEPs for all students on their caseload.

Lack of IEP development training and experience is further exacerbated by school divisions’ reliance on provisionally licensed teachers for special education. According to state regulations, provisionally licensed special education teachers are only required to complete one class on the foundations of special education prior to being hired, and there are no specific requirements that they need to understand how to develop an effective IEP. Still, provisionally licensed teachers are typically responsible for drafting IEPs for students on their caseload. In interviews, fully licensed special education teachers noted that they often have to help provisionally licensed teachers write IEPs, sometimes to the point of re-writing the entire document. Chapter 7 includes a discussion of the use of provisionally licensed special education teachers across Virginia school divisions.

VDOE offers some resources, including trainings, about developing IEPs, and additional resources, guidance, and technical assistance are available through state-funded centers and networks, such as the TTACs. Special education directors also reported in interviews that many school divisions conduct their own trainings and have their own guidance materials regarding IEP development. However, more statewide guidance and training in this area is needed. The majority (57 percent) of special education directors responding to JLARC’s survey indicated that additional guidance and training would be helpful for several aspects of IEP development (sidebar). More than half of the special education directors requesting more guidance responded that additional guidance or training is needed in three specific areas: developing IEP goals, aligning IEP goals with students’ needs, and developing transition goals. Comments from special education directors on the survey indicated that more frequent or continuously available training throughout the state would be helpful, especially given the high turnover of special education teachers. In interviews, special education directors and teachers noted that additional examples of useful, high-quality IEPs and their components would be helpful.

“  
*I didn’t even learn how to write an IEP in school. I learned that when I got to where I am.*  
”

— **Special education teacher**

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**JLARC staff surveyed all school division-level special education directors.** JLARC received responses from 102 school divisions, representing 88 percent of students enrolled in special education. The survey response rate was 77 percent. (See Appendix B for more information.)

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“  
*We need as much scaffolding in place to help teachers as possible. Especially unlicensed teachers.*  
”

— **Special education director**  
Local school division

VDOE’s training and guidance documents include a limited number of example IEPs; however, these are not representative of the diverse nature of the population of students receiving special education. For example, the current examples only reflect IEPs for students in three of the 14 disability categories. Additionally, there are no examples that would help special education teachers, or IEP teams, develop effective IEPs for students with severe behavior challenges.

VDOE could leverage other states’ guidance to improve its IEP guidance and training for special education teachers. For example, Colorado’s guidance on designing effective IEPs provides examples of IEP components for 17 hypothetical students of varying ages, disabilities, academic levels, and content needs. These include present level of performance sections, annual goals, accommodations, and transition sections. The guidance document is clear that these examples are for illustrative purposes only and should not be copied and used for actual students’ IEPs.

### RECOMMENDATION 3

The Virginia Department of Education should revise and improve the training and guidance documents it provides to school divisions on the development of individualized education programs for students with disabilities, incorporating more specific examples of high quality present level of performance descriptions, annual goals, and post-secondary transition sections.

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#### ***General education teachers and building-level administrators without training on IEPs***

Other school-level staff, such as general education teachers and building-level administrators, also appear to lack the knowledge and experience to meaningfully contribute to IEP development. They generally do not receive any IEP training even though they are legally required to participate in IEP meetings and are important to developing a comprehensive and appropriate IEP for the student. Current state laws and regulations do not require general education teachers or administrators to be knowledgeable of IEPs or their role as participants in IEP meetings. Stakeholders expressed in interviews that lack of training among these individuals further exacerbates IEP quality issues.

General education teachers are often the school staff who are most familiar with the student. Most students with disabilities spend most of their time in the general education classroom, so general education teachers generally know the student’s strengths and weaknesses in the classroom setting, as well as the student’s current academic and functional performance. Additionally, general education teachers often provide the services, accommodations, and modifications identified in the IEP and have the best knowledge of their own curriculum.

Interviews with special education teachers indicate that general education teachers have limited knowledge of IEP development and their role in the process, despite their potential to contribute significantly to the development of a quality IEP. In interviews,

“  
*On a daily basis, you have an unskilled administrator, a provisionally licensed special education teacher, and a provisionally licensed or unskilled general education teacher trying to sit around and craft an IEP.*  
”

— **Special education teacher**

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special education teachers reported that general education teachers often do not understand IEP development or even why they attend IEP meetings. (Chapter 6 provides more information on gaps in the special education-related knowledge and skills of general education teachers.)

Similarly, unless they were former special education teachers, building-level administrators, such as principals and assistant principals, are reportedly often unfamiliar with IEPs and IEP development. School administrators represent the school division in the IEP meeting. They are responsible for knowing the general education curriculum and the resources available for students in the school division. Interviews with special education teachers indicate that building-level administrators often do not have a background in special education and therefore do not understand their role in the IEP meeting or the ramifications of decisions made in the meeting.

VDOE's IEP training is primarily designed for special education teachers and not other IEP team members. Although school divisions might create their own resources for these individuals, no statewide guidance or training is provided that comprehensively explains each IEP team member's role and responsibility, the IEP development process, or components of an effective IEP.

Additional training for general education teachers, building-level administrators, and any other individuals that participate in IEP meetings but do not have a background in special education would help these team members meaningfully engage in IEP development. Provisionally licensed teachers should also receive this training. Although teachers and administrations must complete several educational trainings, it is important that all IEP team members understand their role and responsibility to ensure students receive needed services through the IEP development process.

VDOE could develop a training module that incorporates this information for IEP team members. The training module could be required to be completed at least once every three years for all members of IEP teams and could use a similar model to VDOE's online dyslexia training module, which state law requires all teachers and administrators to take. The module could also be made publicly available to allow parents to view. If needed, VDOE could leverage the expertise of TTAC staff to develop the training module.

#### **RECOMMENDATION 4**

The General Assembly may wish to consider amending the Code of Virginia to direct the Virginia Department of Education to develop a required training module for individuals participating in individualized education program (IEP) meetings that comprehensively addresses and explains in detail (i) each team member's respective role in the IEP meeting; (ii) the IEP development process; and (iii) components of effective IEPs.

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**States vary in the extent to which parental consent is required.** For example,

In South Carolina, parental consent is not required for any change in placement or services in the IEP after parents have given consent for the initial provision of special education services.

In Kansas, parental consent is required for any “substantial change” (defined as 25 percent or more in duration or frequency) in placement or services in the IEP.

In Virginia, parental consent is required for any revision to the IEP, including placement and/or services.

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**Other common barriers parents responding to the JLARC survey experience are:**

- Work schedule that conflicts with school hours (41 percent of parents who experience a barrier)

- Uncomfortableness or frustration with how school staff treat them or their student (26 percent of parents who experience a barrier)

- Difficulty getting responses to their questions from the school (24 percent of parents who experience a barrier)

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## RECOMMENDATION 5

The General Assembly may wish to consider amending the Code of Virginia to require that all individualized education program (IEP) team members participating in IEP development, with the exception of parents, complete a Virginia Department of Education-approved training regarding their roles in the IEP meeting, the IEP development process, and components of effective IEPs prior to participating in the IEP process and at regular intervals thereafter.

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### **Some parents report not having sufficient opportunity to review and contribute to their students’ IEPs**

Federal and state special education regulations give parents an important role in the development of IEPs and afford them substantial rights. Parents provide valuable insight into the strengths, weaknesses, and needs of the student. Additionally, in Virginia parents have final consent to any changes made to their student’s IEP—a right that some, but not all, states appear to afford to parents (sidebar).

Despite their important role as members of the IEP team, some parents indicate they face barriers to being more involved in IEP development. Most parents (74 percent) responding to JLARC’s survey reported feeling that the IEP team is receptive to their input. However, half (50 percent) of parents indicated that they are hindered from fully participating in their student’s experience, and one of the most common hindrances was not having enough time to review a draft of their student’s IEP before the IEP meeting (sidebar). Thirty percent of parents responding to JLARC’s survey who experienced a hindrance to participating more fully in their student’s school experience indicated that they did not have enough time to review their student’s IEP or proposed changes before the IEP meeting.

Some school divisions provide drafts of IEPs to parents in advance of IEP meetings, and special education directors and teachers indicated that this practice improves meetings. In interviews, some special education directors described that their division provides parents with a copy of the IEP in advance of the IEP meeting, typically between three and seven days before the meeting. Special education directors and teachers noted that when parents have an opportunity to read the IEP ahead of time, IEP meetings are generally smoother and quicker. Additionally, some parents responding to JLARC’s survey were complimentary of their school division’s efforts to provide them with sufficient time to review the IEP prior to the meeting and echoed that it was a helpful practice. Providing parents with an opportunity to review the draft IEP before the IEP meeting would help them provide meaningful input during the IEP meeting.

Federal law, as well as federal and state regulations, require that IEPs be developed by the IEP team *during* the IEP meeting, but a draft IEP is often developed before the meeting by the special education teacher (sidebar, next page). Both VDOE and the U.S. Department of Education have acknowledged that this is a common school division practice. The U.S. Department of Education recommends that *if* a draft IEP is

drafted prior to the IEP meeting, this draft should be shared with parents prior to the meeting. However, state regulations require only that school divisions “give the parent(s) a copy of the child’s IEP at no cost to the parent(s) at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days.”

If the IEP is drafted in advance of the IEP meeting, requiring school divisions to provide a copy of the draft IEP before the IEP meeting would allow parents sufficient time to review the draft and prepare for the meeting. It would also be consistent with federal guidance. At least three states have formalized this expectation in state law or regulations. For example, Maryland law requires that “at least 5 business days before a scheduled meeting of the individualized education program team...appropriate school personnel shall provide the parents of the child with an accessible copy of each assessment, report, data chart, draft individualized education program, or other document that [the] team plans to discuss at the meeting.” Similarly, if a draft IEP is developed in advance of an IEP team meeting, Illinois law requires that it be provided to parents no later than three school days prior to the meeting, and Tennessee regulations require that it be provided no later than 48 hours prior to the meeting.

### RECOMMENDATION 6

The General Assembly may wish to consider amending § 22.1-214 of the Code of Virginia to require that school divisions provide a draft individualized education program (IEP) to parents at least two business days before the scheduled IEP meeting, if a draft IEP is developed in advance of the meeting.

## VDOE’s monitoring of IEP development is minimal

VDOE provides minimal monitoring of IEP development in school divisions, despite how critical the process is to ensuring students receive appropriate special education and related services. For example, VDOE does not evaluate the quality of a school division’s IEPs unless the school division is subject to an on-site monitoring review, which currently occurs in four to five (of 132) school divisions per year. Given the concerns with the variation in IEP quality and the impact that ineffective IEPs can have on the provision of special education and related services, it is important that VDOE effectively monitors the quality of IEPs in school divisions on an ongoing basis.

VDOE has the capability to expand its monitoring of IEP quality by leveraging existing systems and processes. As mentioned above, VDOE hosts Virginia IEP, an online IEP system that is currently used by 70 school divisions and contains all IEPs and related documentation for special education students in those school divisions. Although not all school divisions in Virginia participate in the Virginia IEP system, VDOE could monitor IEPs for the majority of school divisions through this system, and request and review IEPs from school divisions that continue to use their own information system. Additionally, VDOE already reviews the compliance and quality

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Virginia’s special education regulations **do not explicitly prohibit IEPs from being drafted prior to the IEP meeting by a special education teacher**. This practice of drafting IEPs in advance of IEP meetings is commonly used by school divisions.

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“*The school REFUSES to give me a copy of the IEP that they draft prior to the meeting.... I am forced to read while eight people stare and rush me constantly asking, 'Do you need help understanding?' Yet they all had days/weeks to draft it and discuss amongst themselves based on 'their' needs and NOT the child's.*”

— Parent of student with disability

“*When parents have time to read the IEP, the meetings go very smoothly.*”

— Special education director

Local school division

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of IEPs during on-site monitoring visits and could use its existing IEP review process and instrument to systematically evaluate IEPs from a substantial number of additional school divisions each year. Expanding the scope of its monitoring efforts would allow VDOE to better understand the quality of IEPs across school divisions in Virginia. Additionally, VDOE could use the findings of IEP monitoring to inform and improve its IEP development guidance and technical assistance for school divisions. If needed, VDOE could leverage the assistance of TTAC staff to supplement its own staff resources and help conduct these reviews.

#### RECOMMENDATION 7

The General Assembly may wish to consider amending the § 22.1-214 of the Code of Virginia to require that the Virginia Department of Education (VDOE) conduct structured reviews of a sample of individualized education programs (IEPs) from a sufficiently large sample of school divisions annually to verify that the IEPs are in compliance with state and federal laws and regulations and are of high quality. VDOE should provide a summary report of the reviews' findings and required corrective actions to the reviewed divisions' superintendents, special education directors, school board chairs and vice-chairs, and local special education advisory committee.

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## Evidence indicates that school divisions are not consistently providing services and supports in IEPs

Though the majority of school divisions report using several strategies to monitor IEP implementation (Figure 4-2), some limited evidence suggests that IEPs are not being fully implemented as written. In response to JLARC's survey, 28 percent of parents indicated that their student did not receive all of the services listed in their IEP during the 2019–20 school year (prior to the COVID-related school closures). The most common services that were reportedly not received were instructional or testing accommodations (e.g., extended time for testing, large print worksheets/books); instructional or testing modifications (e.g., reduced complexity or length of tests); speech-language pathology services; and occupational therapy services. Additionally, in 20 of the 49 state complaint investigations from the 2019–20 school year, VDOE identified at least one instance of non-compliance in the provision of special education and related services (sidebar).

According to parents, the most common reasons schools gave for not providing special education services listed in their student's IEP included (1) the teacher not having enough time to provide or arrange for services, (2) the teacher not having adequate training to provide the services, and (3) the needed services were not available. While the unavailability of services may be partly beyond the control of the school divisions, particularly in rural divisions, federal and state regulations do not afford school divisions the discretion to not provide needed services because of circumstances such as these.

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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 prior school year.

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**FIGURE 4-2**  
**Most school divisions report using strategies to ensure IEP implementation**

**How does your school division ensure that students are receiving the instructional supports listed in their IEPs?**



SOURCE: Responses to JLARC survey of school division special education directors, July 2020.

NOTES: Figure excludes 10 responses in “other” and two responses in “I can’t think of any particular strategies my division uses” categories. N=102.

VDOE has no information on the extent to which students *actually receive* the services listed in their IEPs unless the school division is subject to an on-site review or VDOE receives a specific state complaint. Implementation of recommendations discussed in Chapters 6, 7, and 8, can help improve IEP implementation both proactively through better provision of services and reactively through improved monitoring efforts. For example, implementation of recommendations in Chapter 8 would enable VDOE to have better awareness of IEP implementation, both by leveraging and improving its existing practices, such as its parent survey, and by expanding its current on-site monitoring activities.

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Implementation of recommendations in Chapters 6 and 7, including better training for general education teachers on special education, would likely help better **ensure students are provided the services in their IEPs**, especially those that are not resource-intensive, such as accommodations and modifications.

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# 5 Post-Secondary Transition Planning and Applied Studies Diploma

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Virginia’s school divisions are required to help students with disabilities prepare for life after high school. While students’ post-secondary goals and plans will vary, most will pursue further education, employment, further training, or independent living. Divisions are required to develop post-secondary transition plans for all students enrolled in special education by their first year of high school or by the age of 14, whichever comes first. Transition plans must be included in the student’s individualized education program (IEP) and describe (1) a student’s post-secondary goals related to education, employment, training, and, where appropriate, independent living, and (2) the specific transition services needed in high school to help students achieve their post-secondary goals. As with other aspects of IEPs, school divisions are required by federal law, as well as federal and state regulations, to provide the transition services listed in students’ IEPs.

Individuals with disabilities are more likely than individuals without disabilities to encounter barriers to achieving gainful employment or further education after they leave high school. According to the U.S. Bureau of Labor Statistics, individuals with disabilities nationally were twice as likely to be unemployed as individuals without disabilities (7.3 percent versus 3.5 percent, respectively) in 2019. Individuals with disabilities were also half as likely to have earned at least a bachelor’s degree as individuals without disabilities (19 percent versus 39 percent, respectively). National research indicates that transition planning and service provision in high school can lead to better post-secondary outcomes for students with disabilities.

In Virginia, effective post-secondary transition planning and services are particularly important for students with disabilities who will be receiving the applied studies diploma, rather than a standard, advanced studies, or IB diploma. These students are likely to experience additional challenges upon exiting high school because the applied studies diploma does not enable its recipients to access the post-secondary opportunities to the same extent as other diplomas, as discussed below.

## **Serious shortcomings in post-high school transition planning require VDOE intervention**

Pursuant to federal law, federal regulations, and state regulations, Virginia school divisions are required to ensure that the IEPs of students age 14 and older have transition plans that are individualized to meet their needs and that are updated annually. Transition plans should include measurable post-secondary goals related to training, education, employment, and where appropriate, independent living skills, and such goals

must be based on transition assessments of the student’s interests and abilities. Transition plans must also include the specific transition services, such as job exploration counseling, work-based learning experiences, and instruction in self-advocacy, that the student needs to achieve their post-secondary goals.

### **School divisions are not consistently providing supports and services that students with disabilities need to be prepared for life after high school**

Evidence indicates that many Virginia students with disabilities do not have adequate transition plans, and that some of these students may not be receiving any transition services. Stakeholders from a variety of perspectives—including division-level special education directors, special education teachers, parents, staff of Virginia’s Training and Technical Assistance Centers (TTACs), regional Department for Aging and Rehabilitative Services (DARS) staff, staff of the Virginia Community College System, and various disabilities advocacy groups—expressed concerns regarding the quality of post-secondary transition supports being provided to Virginia students with disabilities before they leave high school (sidebar). The following statements are reflective of some concerns expressed by these stakeholders:

[Post-secondary transition planning] isn’t great. [Teachers] have to write things in the IEP that kids are never going to do. But DARS is a great resource and getting [students] connected early is important. There could be more robust avenues for post-secondary transition to get [students] supported by more agencies. (Special education teacher)

Transition planning is not rich and is instead a one-size-fits-all approach. There are not enough resources, but transition takes time, and it’s critical. (Parent and chair of a local special education advisory committee)

Responses from JLARC’s parent survey align with these stakeholder concerns and indicate substantial problems with the transition planning and supports that were being provided to students prior to the COVID-19-related school closures in March 2020 (sidebar). Reported problems with transition planning and services included practices that do not follow federal and state laws and regulations. For example, of the parents of students with disabilities who responded to JLARC’s survey and had a student who should be receiving transition services:

- 37 percent reported that their student was not invited to participate in developing their own post-secondary transition plans (*a practice required by state and federal regulations*);
- 38 percent stated that no transition assessment had been conducted for their child (*a practice required by state regulations, federal law, and federal regulations*);
- 29 percent stated that their student’s transition plan had not been updated within the last 12 months (*a practice required by state regulations, federal law, and federal regulations*); and

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**JLARC staff surveyed all school division-level special education directors.** JLARC received responses from 102 school divisions, representing 88 percent of students enrolled in special education. The survey response rate was 77 percent. (See Appendix B for more information.)

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**JLARC staff surveyed parents** of students receiving special education to learn about their experience with special education. JLARC received responses from 1,573 parents, 528 of whom had a student who should be receiving transition services. (See Appendix B for more information.)

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- 29 percent stated that their student was not receiving transition services that were outlined in their IEPs (*a practice required by state regulations, federal law and federal regulations*).

Overall, 38 percent of the parents of students with disabilities who responded to JLARC’s survey and who had a student who should be receiving transition services did not believe their student’s IEP contained the right services or a good plan to help them prepare for life after high school. In open-ended comments, a substantial number of parents provided greater detail on their dissatisfaction with the post-secondary transition planning for their student:

My child’s transition portfolio was completely blank. [The school division] had no response as to why. They refused to consider all of my child’s unique needs and services he will require to meet his goals.

It wasn’t until another older student’s parent told me of what all transition services could be. No one at the school told us of agencies that help with post school things like resumes, job shadowing, transportation, specialized transportation, trade schools, or community college possibilities.

Sadly to say, I am glad that we have left the high school arena, but wish that we had had some support or direction from the high school special education program. My child was not given any tools for success but was merely dumped.

Many transition plans reviewed by JLARC staff were of poor quality and did not include any specific transition services to be provided to the student—confirming some of the concerns raised by stakeholders and parents (sidebar). In fact, in a majority (52 percent) of the transition plans reviewed, the transition goals included were not measurable, specific, useful for planning purposes, or reflective of the student’s interests or abilities that were expressly identified in the IEP. Additionally, about one-quarter (27 percent) of the IEPs of students age 14 and older reviewed by JLARC did not include any transition services to be provided to the student (sidebar).

### **VDOE should play a greater role in ensuring effective post-secondary transition planning is occurring**

The extent and causes of problems with post-secondary transition planning are unknown and are not systematically monitored by VDOE. For almost all school divisions, VDOE relies on one self-reported data point to determine compliance with laws and regulations related to transition plans and services for students with disabilities. The self-reported data point (Federal Indicator 13) suggests that transition planning is going well in Virginia and across divisions—despite evidence and broad stakeholder concerns that suggest the opposite. For example, in FY18, 117 school divisions (89 percent) reported that all IEPs that they reviewed for students

included appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those

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JLARC staff systematically reviewed the content and quality of a random sample of 150 IEPs from school divisions of various sizes and regions in the state. (See Appendix B for more information.)

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In developing transition plans, IEP teams may determine that no transition services are needed and indicate this in the IEP. The 27 percent of IEPs that did not include any transition services excludes circumstances where the IEP team had indicated transition services were not needed.

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postsecondary goals, and annual IEP goals related to the student’s transition service’s needs. (Federal Indicator 13)

The disconnect between JLARC’s findings and publicly reported Federal Indicator 13 data is at least partly due to how school divisions are directed to report their performance on this measure. School divisions are generally only required by VDOE to self-report non-compliant IEPs if, after they reviewed the transition sections of a sample of IEPs, they found an IEP was not compliant and they did not fix the identified case of non-compliance. The actual extent of poor quality transition planning within any particular division is, therefore, unknown to VDOE or to the public.

Stakeholders indicated that inexperienced special education teachers and inadequate knowledge among other IEP team members also contribute to deficient transition planning (sidebar). Thirty percent of special education directors who responded to JLARC’s survey believed additional guidance or training was needed to help IEP teams develop ambitious, appropriate, and measurable transition goals. About 30 percent also believed additional guidance and training was needed to help IEP teams identify and describe the transition services needed to help students meet their transition goals. Recommendations in Chapter 4, if implemented, would help address this issue by improving the guidance and training IEP team members receive.

In the near term, VDOE should ensure students with disabilities are receiving appropriate transition plans and services. In the next two school years, an estimated 23,500 students with disabilities will exit high school in Virginia and will no longer be entitled to services and supports from the K–12 education system. Unless transition planning improves, they may be ill-prepared for life after high school.

VDOE has taken some steps that acknowledge concerns with transition planning and has funded programs intended to help students with disabilities successfully transition to life after high school. Such steps are positive, but a strategic, comprehensive, and coordinated approach is needed to better understand and address the deficiencies in transition planning for students with disabilities. VDOE should (1) conduct a targeted review of the transition sections of a sufficiently large random sample of IEPs in each school division—placing priority on students who are expected to receive the applied studies diploma (for reasons discussed below); (2) communicate its findings to the relevant school division and school board; and (3) hold divisions accountable for correcting any findings of non-compliance, as required by law (sidebar).

VDOE already has a structured tool to conduct these compliance reviews and could use the Virginia IEP system to evaluate the quality of transition sections in IEPs from the 70 school divisions that use the system. It could request a random sample of IEPs from the remaining divisions who are not currently participating in the Virginia IEP system.

Because these one-time reviews and required follow-up are likely to take considerable staff time, VDOE could leverage support from staff of one or more of Virginia’s

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In its 2009 report *Assessment of Services For Virginians With Autism Spectrum Disorders*, JLARC reported inadequate training on transition services can also contribute to the transition planning problems.

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As discussed in JLARC’s 2014 report on low-performing schools, VDOE is limited in its authority to override local school divisions’ budgetary, personnel, and instructional decisions. However, **state law gives the Board of Education the explicit authority to withhold special education funding from school divisions that do not comply with laws and regulations pertaining to special education.** Withholding funds would result in school divisions and local governments having to spend more local funds to ensure that students’ needs are met.

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TTACs to conduct these reviews if needed. The TTACs have staff who have the knowledge and skills needed to conduct IEP reviews.

### RECOMMENDATION 8

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to (i) conduct a one-time targeted review of the transition sections of a random sample of students' individualized education programs (IEPs) in each school division; (ii) communicate its findings to each local school division, school board, and local special education advisory committee; and (iii) ensure local school divisions correct any IEPs that are found out of compliance. The superintendent of public instruction should be directed to submit a letter to the Senate Education and Health and the House Education committees certifying that school divisions have corrected all instances of non-compliance identified through these reviews, which should occur no later than the end of the 2021–22 school year.

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For the longer term, VDOE should develop a robust plan to improve the transition planning and services provided to students, and its oversight of this area. Improvements that result from this plan should be incorporated into the recommended VDOE plan for improving its ongoing monitoring (Chapter 8, Recommendation 27).

After VDOE has a better understanding of the deficiencies within transition programs, it can then improve its training and support to address problems. Improvements could include, but should not be limited to:

- better ongoing monitoring of the quality of transition planning for students with disabilities and the extent to which school divisions are complying with federal and state laws and regulations;
- better guidance for families regarding the transition planning process, their student's rights to transition services, and the process to receive transition services;
- targeted support for divisions that are encountering challenges with the available transition services in their communities; and
- improved training and guidance for school personnel regarding the development of comprehensive, individualized transition plans that (1) are based on transition assessments and (2) identify appropriate transition services.

Additional training and technical assistance may be provided through the Center on Transition Innovations (CTI) at Virginia Commonwealth University. In addition, VDOE should assess whether support for transition planning and services should also be provided through the TTACs (sidebar).

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**All TTACs previously provided technical assistance for post-secondary transition.** However, after the creation of the CTI at VCU, this responsibility was removed from TTACs.

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**RECOMMENDATION 9**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to develop and maintain a robust statewide plan for improving (i) its ongoing oversight of local practices related to transition planning and services and (ii) technical assistance and guidance provided for post-secondary transition planning and services. At a minimum, the plan should articulate how VDOE will reliably and comprehensively assess the compliance and quality of transition plans for students with disabilities in Virginia on an ongoing basis and communicate findings to local school division staff and local school boards. VDOE should submit its plan to the Senate Education and Health and the House Education committees no later than December 1, 2022, and update those committees annually on its progress implementing the plan.

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## **Applied studies diploma does not support students' access to future opportunities and is not well understood**

Instead of receiving a standard, advanced, or IB diploma, students with disabilities can receive an applied studies diploma to indicate that they completed high school (sidebar). However, unlike the other diplomas, students do not need to demonstrate that they have met any particular academic standards or curriculum requirements to receive an applied studies diploma. Instead, they need to complete only the requirements of their IEP.

The applied studies diploma was created by the General Assembly through the Standards of Quality with the expectation that the Board of Education would develop additional requirements. The Code of Virginia states,

Students identified as disabled who complete the requirements of their individualized education programs and *meet certain requirements prescribed by the Board pursuant to regulations* but do not meet the requirements for any named diploma shall be awarded Applied Studies diplomas by local school boards. (§22.1-253.13:4(B))

However, in Virginia regulation there are no additional requirements set for the applied studies diploma, beyond that the student complete the requirements of their IEP:

In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their IEP and do not meet the requirements for other diplomas shall be awarded Applied Studies Diplomas (8VAC20-131-50(D)).

Nineteen percent of Virginia's students with disabilities graduated with an applied studies diploma in 2018, and this proportion has remained relatively stable over the past decade. Students with disabilities in VDOE Region 8 (Southern Virginia), students

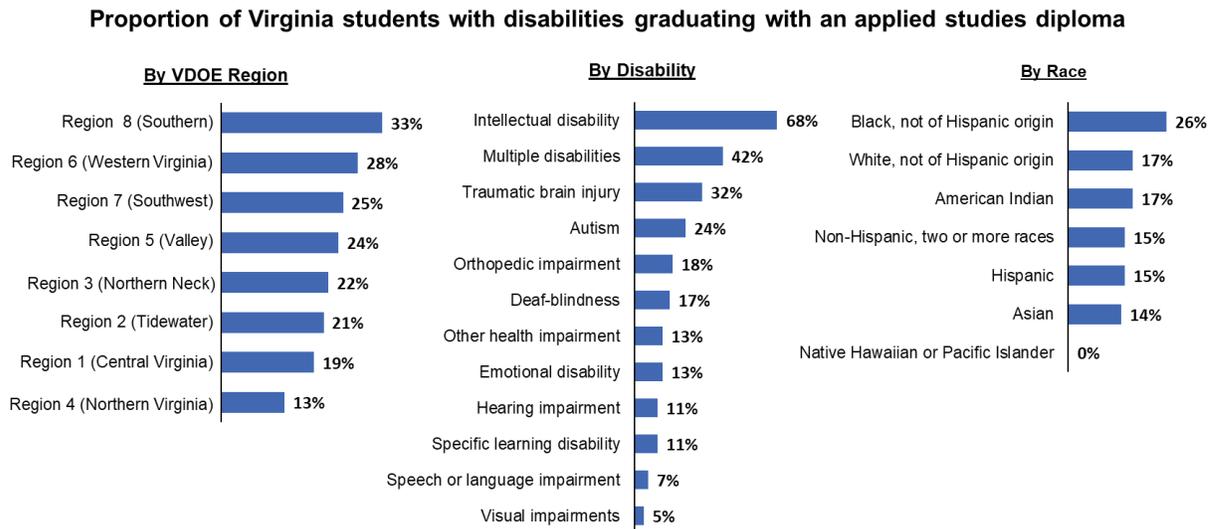
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Prior to 2015, the "applied studies diploma" was referred to as the "special diploma." The criteria for receiving the applied studies diploma remained the same, despite the name change.

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with intellectual disabilities, and Black students with disabilities were the most likely groups of students with disabilities to receive applied studies diplomas (Figure 5-1).

**Figure 5-1**  
**Students with disabilities in Southern Virginia, students with intellectual disabilities, and Black students with disabilities are the most likely to receive an applied studies diploma**



SOURCE: JLARC analysis of VDOE data

NOTE: Due to small size of some disability categories, rates by disability calculated using average of four-year graduation rates across the 2015–16, 2016–17, and 2017–18 school years; rates by region and by race calculated using 2017–18 data; includes students who had an IDEA-qualifying disability at time of graduation.

### Applied studies diploma does not support students’ access to future educational or career opportunities

The applied studies diploma has limited value helping recipients access post-secondary opportunities, because it does not have any required standards or curriculum. Most notably, neither Virginia’s community colleges nor four-year higher education institutions recognize the applied studies diploma as a high school diploma or equivalent certificate. Students with an applied studies diploma who are interested in pursuing further education from a community college generally must obtain their GED before they can enroll and receive financial aid (sidebar). Similarly, USDOE considers the applied studies diploma to be a certificate, not a diploma, and does not allow VDOE to include the applied studies diploma in its annual report on graduation rates among students with disabilities.

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**Students without a high school diploma or GED may also go through the federal “ability to benefit” process to become eligible for financial aid.** Students must either pass an ability-to-benefit test approved by the U.S. Department of Education or complete six credit hours of courses toward a degree (without financial aid).

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## **Parents are not consistently aware of the applied studies diploma's limitations**

Parents should be made fully aware of the limited value of an applied studies diploma and that it is not a credential that supports students' access to post-secondary opportunities. In some cases, IEP teams make a conscious decision that a student should pursue an applied studies diploma. In other cases, critical decisions made during a student's K–12 experience, such as deciding that the student will not participate in the Standards of Learning assessments (SOLs), can make it difficult for students to eventually obtain a standard diploma—effectively making the applied studies diploma their only option. Additionally, there may be circumstances in which students pursue a standard diploma but are unable to meet the requirements by the time they leave high school and, as a result, are awarded an applied studies diploma.

Stakeholders with a variety of perspectives—including special education teachers, parents, DARS regional staff, and Virginia Community College System staff—expressed concerns that parents and students are not consistently informed of the limitations of an applied studies diploma or that certain education decisions made early in a student's K–12 experience will make it unlikely that they can pursue other diploma options. For example, the following quotes illustrate concerns expressed to JLARC about the applied studies diploma:

When students get to the high school level, and their parents learn that their kids are only on track to get the applied studies diploma, they are upset... Parents are surprised when they learn what the applied studies diploma is 100 percent of the time. (Special education teacher)

We are too quick to put students on [applied studies diploma] paths, and we make those decisions when they are eight to nine years old. They then get to high school and parents find out that their student isn't getting a standard diploma. There needs to be better communication. (Parent and chair of local special education advisory committee)

One thing that is most critical that parents need to understand is that when you agree to an adapted curriculum, you are agreeing to an applied studies diploma. [IEP teams] start asking those questions in elementary school. If a parent doesn't understand the ramifications of that decision, they've made a critical decision that affects the child throughout their entire school career. These decisions are made in kindergarten and first grade, and then the parents are caught off guard later. (Representative of a disability advocacy organization)

We should be transparent upfront if a student is on an applied studies diploma track, and we should be preparing them for employment and the other opportunities that track [affords to them]. (VDOE staff)

Addressing these concerns will likely require near- and long-term solutions, aimed at ensuring parents understand the current applied studies diploma and improving the value of the diploma for future students. In the near term, because one-fifth of students with disabilities graduate with an applied studies diploma, which has long-term

implications for a student's post-secondary opportunities, VDOE and school divisions should take steps to make parents fully aware of its limitations. Currently, almost no such information is available on VDOE's website. More information is available on at least a few school divisions' websites, but even this language can be unclear and misleading. For example, materials on two large divisions' websites imply that students with an applied studies diploma can get into any program at a community college, which is not the case.

To ensure parents are better informed, the General Assembly should direct VDOE to develop clear and simplified guidance for families conveying (1) the limitations of the applied studies diploma; (2) what key curriculum and testing decisions, such as the decision to not have the student participate in statewide SOL assessments, reduce the likelihood that their student will be able to obtain a standard diploma; and (3) a decision to pursue an applied studies diploma may preclude a student's ability to pursue a standard diploma. VDOE could likely develop this new guidance by building on its existing resources, such as the Critical Decision Points for Families of Children with Disabilities, and should work directly with the Parent Educational Advocacy Training Center and the State Special Education Advisory Committee to ensure the guidance is as clear and concise as possible. VDOE should also ensure this information is easily accessible on its website and available in several languages.

The General Assembly should direct local school divisions to provide this information to parents, at a minimum, at the first IEP meeting and anytime when critical decisions are being made that decrease a student's chances of obtaining a standard diploma, such as the decision for the student to not participate in a Standards of Learning test.

#### **RECOMMENDATION 10**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to develop clear and simplified guidance, in multiple languages, for families conveying (i) the limitations of the applied studies diploma; (ii) key curriculum and testing decisions that reduce the likelihood their student will be able to obtain a standard diploma; and (iii) pursuit of an applied studies diploma may preclude a student's ability to pursue a standard diploma.

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#### **RECOMMENDATION 11**

The General Assembly may wish to consider amending section §22.1-253.13:4 of the Code of Virginia to require local school divisions to provide guidance from the Virginia Department of Education regarding the applied studies diploma and its limitations to parents of students with disabilities, at a minimum, (i) at the first IEP meeting and (ii) when curriculum or testing decisions are being made that will negatively impact a student's chances of obtaining a standard diploma.

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## Statewide standards should be established for the applied studies diploma

“  
*[The Applied Studies Diploma] doesn’t do anything... That’s not a meaningful diploma and it needs to be.*  
 ”

— VDOE staff

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In the longer term, the General Assembly could consider following approaches in other states to increase the value of the applied studies diploma for students who receive it. Other states also offer diplomas specifically for students with disabilities, and some are taking steps to ensure that these diplomas are based on clear standards and convey students’ knowledge and achievements to employers and educational institutions. For example, Tennessee, South Carolina, New York, Louisiana, and Alabama provide alternative pathways to graduation for their students with disabilities but have established specific criteria, such as curriculum and skill development requirements, for these diploma options. As mentioned, there are currently no such standards required to receive an applied studies diploma in Virginia, although state law appears to contemplate that the award of an applied studies diploma will be based on the completion of established requirements.

Recognizing the challenges students with an applied studies diploma face after graduation, VDOE has already taken steps to clarify what an applied studies curriculum could look like, but the use of this guidance by school divisions, schools, or IEP teams is optional. VDOE has a “curriculum map” available on its website that IEP teams can use to provide some structure to a student’s experience while pursuing an applied studies diploma, but divisions are not required to use this guidance.

VDOE is also currently developing a standard curriculum for students pursuing the applied studies diploma in Richmond City as part of a memorandum of understanding with that school division. This curriculum could be used as the basis for developing statewide criteria for the applied studies diploma.

Some flexibility in the specific requirements to earn the applied studies diploma is likely appropriate. However, the statewide criteria should ensure that the applied studies diploma is a meaningful credential that equips students with the knowledge and skills necessary to achieve—to the greatest extent practicable given the variation in disabilities and their severity—self-sufficiency after high school. Although it is possible that more robust criteria would result in fewer students earning the applied studies diploma, it would ensure that those who do are equipped with a credential that supports access to future opportunities.

### RECOMMENDATION 12

The General Assembly may wish to consider amending § 22.1-253.13:4 of the Code of Virginia to require the Virginia Board of Education and the Department of Education to develop and implement statewide standards, such as curriculum standards, for earning the applied studies diploma and require school divisions to implement these standards by the beginning of the 2022–23 school year.

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# 6 Inclusion of Students with Disabilities in Academic and Extracurricular School Programs and Activities

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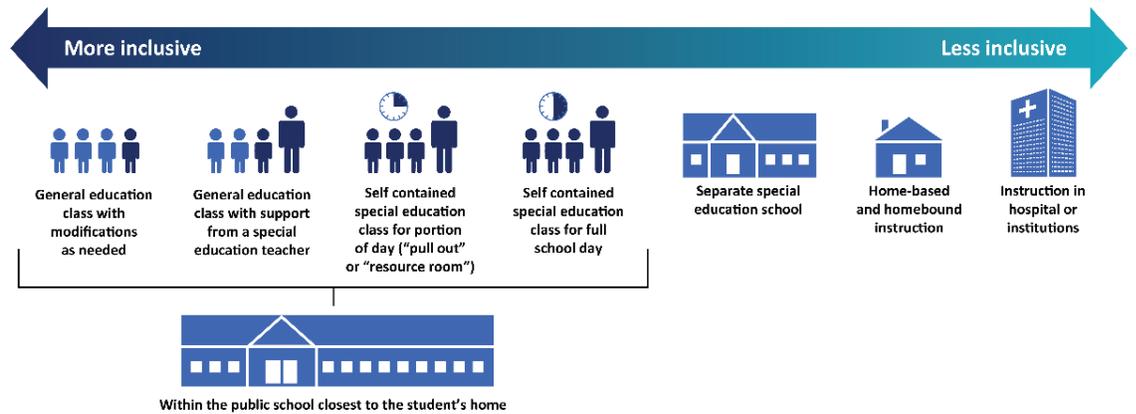
Federal law and regulations, as well as state regulations, require states and school divisions to ensure that students with disabilities have the opportunity to learn alongside their non-disabled peers and to be meaningfully included in the school experience. For example, the Individuals with Disabilities Education Act (IDEA) requires that schools educate students with disabilities in the least restrictive environment appropriate for their needs. Under this requirement, students with disabilities should be educated with their non-disabled peers to the greatest extent possible. Additionally, federal law and state regulations require that school divisions offer students with disabilities an equal opportunity to participate in extracurricular and nonacademic activities, like clubs, athletics, and other school-sponsored programs.

Full inclusion in the general education setting may not be possible or appropriate for all students with disabilities. However, research has demonstrated that inclusive educational experiences can benefit both students with and without disabilities. Students with disabilities educated in inclusive environments have demonstrated less reliance on adults, improved attendance and behavior, and increased independence after high school. Additionally, research indicates that inclusive educational environments do not negatively affect non-disabled students' learning and provide new learning opportunities and peer relationships for all students.

Fundamental to students' ability to interact with and learn alongside their peers is *where* they receive their education. This decision significantly influences how much time students with disabilities are able to spend with non-disabled students (Figure 6-1). However, physically placing students in general education classrooms is not enough to ensure students with disabilities can meaningfully engage in, and benefit from, academic and nonacademic experiences. Inclusion also depends on general education teachers' abilities to effectively teach these students, which sometimes requires managing challenging student behaviors. Finally, school administrators must be able to understand the needs of both students with disabilities and special education teachers to effectively support inclusive educational experiences.

FIGURE 6-1

Students with disabilities can be served in a variety of settings, ranging in level of inclusiveness



SOURCE: JLARC analysis of Virginia Department of Education, "Parent's Guide to Special Education."

## Most students with disabilities are instructed alongside non-disabled peers

The *physical setting* in which students with disabilities are educated provides the foundation for inclusion. If students with disabilities are physically separate from their non-disabled peers for academic instruction, their opportunities to interact with non-disabled peers and benefit from those interactions are significantly reduced. IDEA recognizes the importance of physical inclusion by requiring schools to serve students with disabilities in the least restrictive environment appropriate for their needs.

### Most Virginia students with disabilities are served in public schools, and students are spending more time in the general education setting

IDEA's requirement to serve students in the least restrictive environment assumes that most students with disabilities should be able to be served effectively in the general education classroom at their neighborhood public school. Schools are required to provide supplementary aids and services to enable students with disabilities to learn and participate alongside their peers in this setting (sidebar). A student with disabilities should only be served in separate classes, a separate school, or other less inclusive settings if the student's needs cannot be met in the general education setting with supplementary aids and services.

In Virginia and nationally, approximately 95 percent of students with disabilities are served in public schools. This percentage has remained steady over the past decade. In Virginia, 5 percent of students with disabilities are served in less inclusive settings, including separate public and private special education day schools, home-based and home-bound settings, public and private residential facilities, and correctional facilities.

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**Supplementary aids and services** typically include supports like physical accommodations, assignment modifications, testing adaptations, different instructional methods or materials, specialized equipment, social interaction supports, and direct services.

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The largest portion of these students is served in special education private day schools. The proportion of students with disabilities served in this setting has increased from 1.2 percent to 1.9 percent over the past decade. (JLARC’s recent report on the Children’s Services Act (CSA) found the enrollment increase was driven by new placements, longer stays in private day schools, and children entering at a younger age.)

Within public schools, students with disabilities spend most, and increasingly more, of their time in the general education setting. The median amount of time students with disabilities spent in the general education setting increased marginally from 87 percent to 92 percent between the 2007–08 and 2017–18 school years. This increase represents only about 20 more minutes per typical school day. Students with higher needs typically spend less time in the general education classroom, but time spent in the general education classroom increased primarily for students with higher need disabilities, including students with autism, emotional disability, and traumatic brain injuries. Students with specific learning disabilities and other health impairments also account for a significant portion of increased time in the general education setting.

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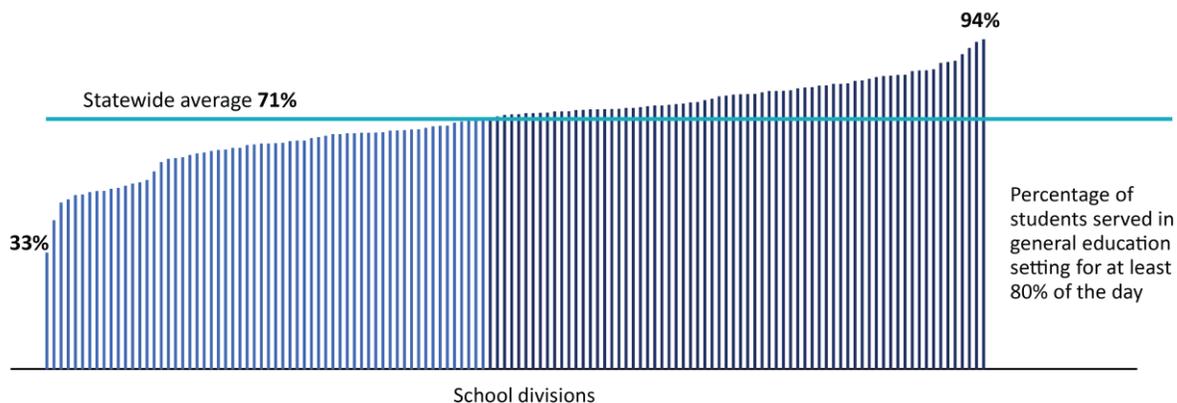
Measures of time spent in the **general education setting** include all activities except those provided in a separate special education environment during the length of the school day.

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### Divisions vary in the extent to which they serve students in inclusive settings

Statewide, an average of 71 percent of students with disabilities spent most (80 percent or more) of their day in the general education setting in federal FY18, but this proportion varies across school divisions (Figure 6-2). The size of the school division, type of locality (city, rural, suburban, or town), and economic factors, including number of students qualifying for free and reduced price lunch and poverty rate, do not appear to account for the variation in the proportion of students spending most of their day in the general education setting.

**FIGURE 6-2**  
The proportion of students who spend most of their time in the general education setting varies across divisions (federal FY18)



SOURCE: JLARC analysis of Federal Indicator 5A data by school division.

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JLARC staff surveyed all school division-level special education directors. JLARC received responses from 102 school divisions, representing 88 percent of students receiving special education. The survey response rate was 77 percent. (See Appendix B for more information.)

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Special education directors of school divisions where students with disabilities spend less time in the general education classroom cite a lack of knowledge and skills among general education teachers and school administrators as a key reason, according to a JLARC survey (sidebar). The second most common factor was a lack of skilled professionals, such as applied behavior analysts and board-certified behavior analysts.

### **Black, Hispanic, and Asian students have spent slightly less time in inclusive educational settings**

Over the past decade, Black, Hispanic, and Asian students have spent *less time* in the general education setting than their peers, although the gap has closed significantly among Black and Hispanic students in recent years. In the 2008–09 school year Black, Hispanic, and Asian students with disabilities lagged behind the state average percentage of time spent in the general education setting by 5, 7, and 5 percentage points, respectively. That gap narrowed to 1 and 2 percentage points for Black and Hispanic students by the 2018–19 school year. However, the gap for Asian students has grown from 5 to 7 percentage points over the same time period.

This gap in proportion of time Asian students with disabilities spend in the general education setting may be partly attributable to discrepancies in identification. In general, Asian students in Virginia are less likely to be identified with a disability than their peers. (More information is available in Chapter 3.) However, when Asian students are identified, they are more likely to be identified with more severe disabilities, which are more challenging to serve in the general education setting.

A greater proportion of Black students are served in less inclusive settings than students of other races. In 2018–19 school year, 93 percent of Black students with disabilities were served in public schools, compared to 95 percent of non-Black students. During the same year, a greater proportion of Black students were served in correctional facilities, public separate schools, private day schools, and homebased settings than non-black students, although the total proportion served in any of these settings was small, ranging from 0.61 percent (correctional facilities) to 2.3 percent (private day schools) of Black students. Between the 2008–09 and 2018–19 school years, differences in the proportion of Black students with disabilities who were receiving special education in correctional facilities compared to non-Black students decreased by about half.

### **Students with disabilities are disproportionately suspended or expelled, further separating them from their non-disabled peers**

A common hindrance to school divisions' ability to serve more students with disabilities in the general education setting is that many of these settings are ill-equipped to manage especially challenging student behaviors. When presented with difficult behav-

ior, teachers or school administrators may resort to removing students from the general education classroom or extracurricular activities, using suspensions and expulsions, seclusion, or sending students to long-term out-of-school placements, like private special education day schools.

### **Students with disabilities are twice as likely to be suspended long-term or expelled, and even more likely in some divisions**

School divisions use “exclusionary discipline” practices more frequently among students with disabilities than students without disabilities. In the 2017–18 school year, Virginia students with disabilities were more than twice as likely than their non-disabled peers to be suspended 10 or more days in a year or expelled. Approximately 1.6 percent of Virginia students with disabilities were suspended 10 or more days in a year or expelled, compared to 0.7 percent of Virginia students without disabilities.

The U.S. Department of Education requires states to monitor disproportionate discipline of students with disabilities in each school division through Federal Indicator 4 (sidebar). Through this monitoring, VDOE has identified at least 36 school divisions each year since the 2013–14 school year that had a significant discrepancy in the rate of long-term suspensions or expulsions for students with disabilities compared with students without disabilities. VDOE considers a significant discrepancy to exist if the risk of discipline for one group is at least twice the risk of the comparison group. For example, in the 2017–18 school year, VDOE identified 37 school divisions in which students with disabilities were at least twice as likely to receive a long-term suspension or be expelled as students without disabilities. In nine divisions, students with disabilities were at least four times as likely to receive a long-term suspension or be expelled (Figure 6-3).

Parents whose students have been removed from the classroom expressed concerns over school divisions’ ability to manage student behavior. In response to JLARC’s survey (sidebar), about 24 percent of responding parents indicated that their student had been removed from the classroom because of behavior in the past three years. Of these parents,

- 49 percent felt their school had not done enough to reduce the amount of class time their student has missed because of behavior challenges, and
- 53 percent felt their student had been inappropriately or excessively disciplined in the past few years, considering their student’s disability.

These survey responses echoed concerns expressed in interviews by other stakeholders that school personnel continue to struggle to appropriately recognize and address disabilities’ impact on behavior. Stakeholders, including parents, also expressed concerns regarding school divisions’ inappropriate use of seclusion as a means of managing student behavior. New regulations governing the use of seclusion and restraint for students are expected to go into effect January 1, 2021 (sidebar, next page).

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#### **Federal Indicator 4 measures rates of suspension and expulsion in two ways:**

A. Percentage of districts identified by the state as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year; and

B. Percentage of districts identified by the state as having a significant discrepancy in the rates of suspensions and expulsions of greater than 10 days in a school year of children with disabilities by race and ethnicity.

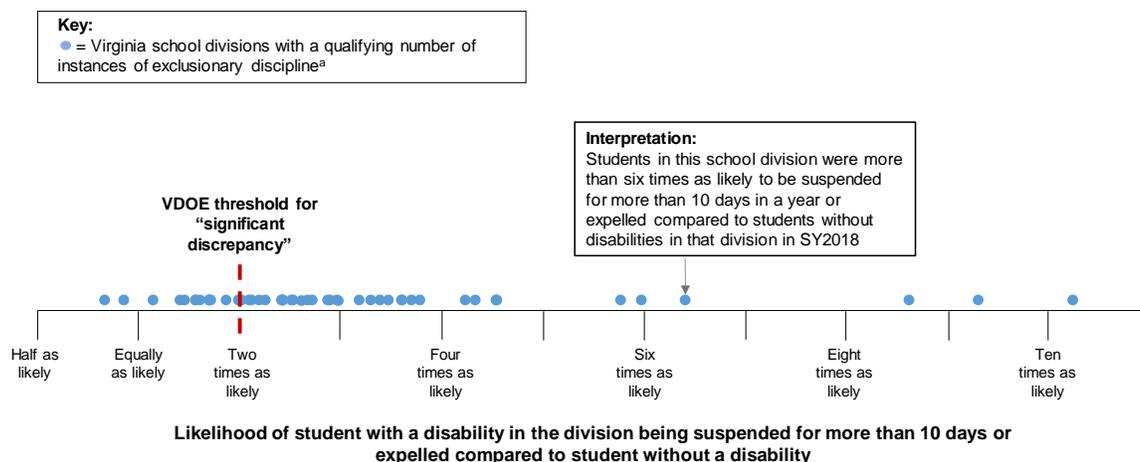
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**JLARC staff surveyed parents** of students receiving special education to learn about their experience with special education. JLARC received responses from 1,573 parents. (See Appendix B for more information.)

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**FIGURE 6-3**  
**Students with disabilities were at least twice as likely to be suspended long-term or expelled than non-disabled students in qualifying school divisions (2017–18 school year)**



SOURCE: JLARC analysis of VDOE Indicator 4A data.

NOTE: <sup>a</sup> All school divisions that had less than 10 instances of students long-term suspended or expelled in either the students with disabilities group or students without disabilities group were excluded. This is consistent with VDOE and OSEP reporting practices and resulted in 83 school divisions being excluded.

**Regulations governing the use of seclusion and restraint** have been developed by the Board of Education over the past few years. The regulations establish a statewide standard for the use of seclusion and restraint, as well as definitions of the practices, specifications for use and design of seclusion rooms, and notification and reporting requirements. The regulations also specify that seclusion and restraint are prohibited as a form of punishment or discipline and should only be used as a last resort to mitigate the risk of serious physical harm to the student or others.

### Alternative approaches to discipline may help reduce disparities

An alternative behavior and discipline model for all students recently adopted by Virginia may help general education teachers better manage behavior of students with disabilities and prevent the overuse of exclusionary discipline. The 2020 General Assembly revised teacher licensure standards to require all new teachers to have instruction in Positive Behavioral Interventions and Supports (PBIS). PBIS is an evidence-based framework that emphasizes teaching positive behavior strategies and behavioral expectations with the goal of preventing disruptive student behavior, which can traditionally lead to exclusionary discipline. PBIS emphasizes integrating systems, data, and practices to better understand students' behavior and inform decisions about behavioral interventions. Rather than relying on traditional punishment, PBIS encourages the use of early interventions, such as breaks, and positive behavior reward systems to support appropriate behavior among all students, but especially for students with disabilities. To some divisions, PBIS will be a new approach to addressing student behavior. However, other divisions, including those who have participated in the state's tiered systems of support program, have started implementing it.

Additionally, in survey responses, division-level special education directors indicated that a lack of professional support staff who can help serve children with challenging behaviors hinders inclusion of students with disabilities. Recommendations presented

in JLARC's recent study, *Review of the Children's Services Act & Private Special Education Day School Costs*, if implemented, may help to address this barrier (sidebar).

## Parents are generally satisfied with their students' inclusion in academic settings but less satisfied with inclusion in extracurricular activities

Successful inclusion of students with disabilities in public schools requires more than just ensuring students are served in the same physical classrooms. Students with disabilities should be able to engage in the academic curriculum and meaningfully interact with peers to fully benefit from inclusion. A school culture that accepts and values students with disabilities, in addition to school personnel who are able to provide effective and differentiated support and instruction to all students, helps to promote a high quality inclusive education.

Currently, no statewide data assesses the quality of inclusion of students with disabilities within school divisions. Available data focuses only on the physical placement and time students spend in the general education classroom. To better understand the quality of inclusion within schools, JLARC surveyed parents of students with disabilities statewide regarding their students' experiences.

### Majority of parents reported satisfaction with inclusive academic experiences, but some expressed concerns

A majority of parents of students with disabilities who responded to JLARC's survey indicated that they were generally satisfied with schools' efforts to educate their student alongside their non-disabled peers. For example, 67 percent believed that their student was being taught alongside their non-disabled peers to the greatest extent possible (Figure 6-4).

Some parents, however, expressed concerns with their schools' efforts to include students with disabilities. About 23 percent of responding parents did not believe their student was taught alongside his or her non-disabled peers to the greatest extent possible. Additionally, about 20 percent of parents did not feel school staff treated their student with disabilities as a valued member of the school community.

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**Recommendation 4 from JLARC's recent study, *Review of the Children's Services Act & Private Special Education Day School Costs*, if implemented, would allow schools to use additional state funds for services delivered to special education students if the services will cost over a certain dollar amount, and the school division has determined that the services may prevent private day school placement. If this recommendation is implemented, more school divisions may be able to purchase services from skilled professionals in more inclusive public school settings.**

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*“The school was content to warehouse my student in a general ed class setting, but did not have any interest in ensuring that he could access curriculum or master material.”*

— Parent of student with a disability

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**FIGURE 6-4**  
**Majority of parents believed their students were being taught alongside their peers to the greatest extent possible**



SOURCE: Responses to JLARC statewide survey of parents of students with disabilities.

NOTE: Percentages may not sum to 100 percent because of rounding.

### Parents reported less satisfaction with extracurricular inclusion, with some citing practices that do not align with federal law

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**Extracurricular and nonacademic services and activities** include counseling services, athletics, recreational activities, special interest groups and clubs, and other school activities sponsored by school divisions.

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Under federal and state regulations, schools are required to take steps to provide students with disabilities an equal opportunity for participation in extracurricular and nonacademic services and activities (sidebar). State regulations require that each student’s IEP includes a statement of the special education and related services, supplementary aids and services, or modifications that are necessary to enable the student to participate in extracurricular and nonacademic activities.

Surveyed parents were less satisfied with their students’ opportunities to participate in extracurricular activities than they were with their students’ academic inclusion (Figure 6-5). About 58 percent of parents who responded reported being at least generally satisfied with opportunities for participation in extracurricular activities, compared to 68 percent reporting being at least generally satisfied with the steps their school had taken to include their student in academic experiences with their non-disabled peers.

Some parents reported concerns in open-ended responses regarding schools’ practices related to extracurricular activities. Examples of separate parent comments include:

There is no effort to include our kids in extracurricular activities; it is almost discouraged.

Participation in extracurricular activities is not possible because there is no support available. We were told the school is only required to provide support during the academic day.

My student was not provided the opportunity to participate in sports or electives. We were told that accommodations could not be made.

**FIGURE 6-5**

**Parents were less satisfied with their student’s opportunities to participate in extracurricular activities**

**Parent satisfaction with the...**



SOURCE: Responses to JLARC statewide survey of parents of students with disabilities.

NOTE: Percentage reporting being “satisfied” includes those who reported being either “generally satisfied” or “very satisfied.” Percentage reported being “dissatisfied” includes those who reported being either “generally dissatisfied” or “very dissatisfied.”

VDOE currently does little monitoring of students with disabilities’ access to extracurricular activities, although it is required by federal regulations to ensure school divisions are taking steps to ensure students with disabilities have an equal opportunity to participate. VDOE does not require school divisions to submit any specific information related to providing students with disabilities opportunities to participate in extracurricular activities and only assesses school division’s efforts in this area during infrequent on-site reviews.

VDOE could improve its awareness of school divisions’ efforts to provide an equal opportunity for extracurricular participation by more frequently reviewing the portion of students’ IEPs that pertain to the services, aids, and modifications necessary for the student to participate in extracurricular activities. This could be achieved through the annual structured review of IEPs recommended in Chapter 4. VDOE should also monitor school divisions’ practices related to extracurricular activities as part of monitoring improvements recommended in Chapter 8.

Additionally, responses to the JLARC survey of parents indicate that some school divisions may not fully understand their responsibility to provide students with disabilities access to extracurricular activities. VDOE could help address this lack of understanding by issuing a superintendent’s memo that clarifies school divisions’ regulatory responsibility to provide students with disabilities an equal opportunity for participation in nonacademic and extracurricular services and activities (sidebar). Further, school divisions could better self-assess their efforts in this area. This self-assessment could be completed as part of a larger self-assessment of the school division’s inclusive practices. A tool for conducting this self-assessment is discussed later in this chapter.

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VDOE uses **superintendent’s memos** to communicate policy and guidance to the state’s school divisions. Memos are posted publicly on a weekly basis.

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### RECOMMENDATION 13

The Virginia Department of Education (VDOE) should, as part of its reviews of school divisions' individualized education programs (IEPs), determine whether the special education and related services, supplementary aids and services, and program modifications that will be provided to enable students with disabilities to participate in nonacademic and extracurricular activities are sufficient, and include its findings and required corrective actions in the summary reports it provides to the reviewed divisions' superintendents, special education directors, and school board chairs and vice-chairs.

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### RECOMMENDATION 14

The Virginia Department of Education should issue a superintendent's memo clarifying school divisions' responsibility to (i) provide the special education and related services, supplementary aids and services, and program modifications necessary to provide children with disabilities an equal opportunity to participate in nonacademic and extracurricular activities; and (ii) include a description of these aids, services, and program modifications in students' individualized education programs (IEPs), as appropriate.

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## **Despite emphasis on inclusion, Virginia does not prepare general education teachers or administrators with necessary knowledge or skills**

Because most students with disabilities are educated in the general education classroom, general education teachers and building-level administrators should be able to support, educate, and meaningfully include students with disabilities in the general education setting.

General education teachers play a critical role in educating students with disabilities because 71 percent of students with disabilities, on average, receive instruction for most of their day in the general education classroom. Teachers must be able to effectively manage behaviors among students with disabilities to prevent overusing exclusionary discipline, such as suspensions and expulsions. General education teachers should also know how to plan and work with special education teachers to support students with disabilities. General education teachers should understand the IEP development process because they serve a critical role on the IEP development team.

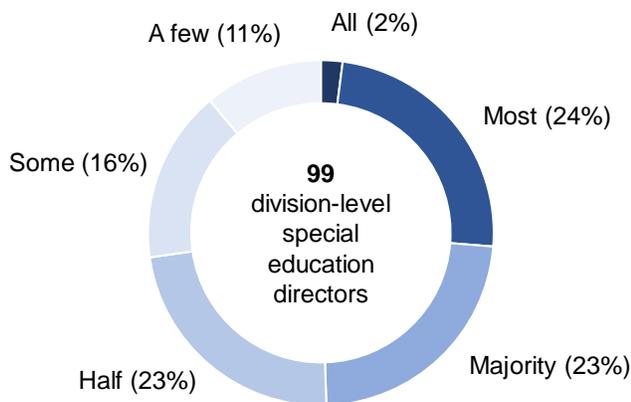
National research shows that school principals are particularly important for developing and maintaining inclusive environments and for supporting and retaining qualified special education teachers. In interviews, special education teachers reported feeling less supported and having more challenges serving students effectively in inclusive settings when administrators are not knowledgeable about special education.

## Many general education teachers are not prepared to teach students with disabilities or work with special education teachers

Many general education teachers do not have adequate skills to effectively teach and support students with disabilities, according to special education teachers, division-level special education directors, VDOE staff, and TTAC staff. Most notably, 50 percent of special education directors responding to JLARC’s survey indicated that they felt *half or fewer* of the general education teachers in their division have the skills necessary to support students with disabilities (Figure 6-6).

**FIGURE 6-6**  
**Special education directors report many general education teachers lack the knowledge and skills needed to effectively support students with disabilities**

**Over the past 3 years, about what proportion of general education teachers in your division do you believe have had the necessary knowledge and skills to effectively support students with disabilities?**



SOURCE: Responses to JLARC survey of division-level directors of special education.

NOTE In survey, “all” was defined as 100 percent, “most” was more than 75 percent, “majority” was more than 50 percent, “half” was about 50 percent, “some” was less than 50 percent, and “a few” was less than 25 percent. Excludes three responses that were reported as “I don’t know.” Percentages may not sum to 100 percent because of rounding.

Special education teachers concurred in interviews that many general education teachers do not understand the strategies or skills necessary to support students with disabilities and expressed concerns about the quality of the academic experiences provided to some students with disabilities in the general education classroom. For example, one special education teacher said: “Some of the general education teachers...are fairly unaware of different evidence-based practices and teaching methods to help students with disabilities in general education. There is a lack of understanding to teach kids with different needs in the general education setting.” Other special education teachers stated:

Many general education teachers don't know or understand what the accommodations are or mean.

[Students with disabilities] are sitting there listening to words they don't understand... Socially, it's great to have them in the classroom, but the education they are receiving is not so good.

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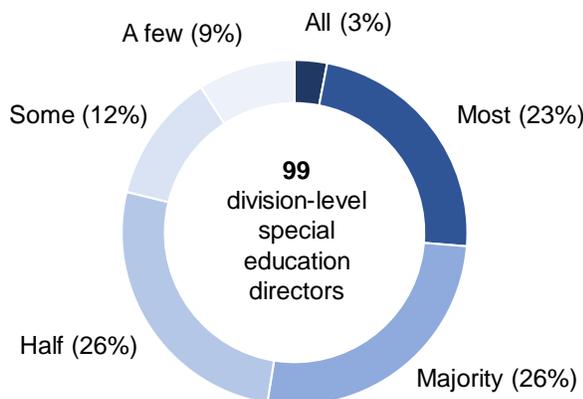
**Collaborative teaching models** allow general education and special education teachers to work together, during both instructional time in the classroom and planning, along with related service providers, to best ensure students with disabilities learn alongside their peers. These models encourage general and special education teachers to work as a team to develop, plan, and deliver instruction to students with disabilities with the use of necessary modifications and supports.

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Many general education teachers also do not effectively collaborate with special education teachers, according to special education teachers and directors. In response to JLARC's survey of division-level special education directors, 47 percent of directors said that *half or fewer* of the general education teachers in their division had the knowledge and skills necessary to effectively collaborate with special education teachers (Figure 6-7). Special education teachers echoed these concerns in interviews, saying general education teachers had little knowledge of their responsibilities in collaborative teaching models, like co-teaching, and how to effectively work together to deliver instruction (sidebar).

**FIGURE 6-7**  
**Division-level directors report many general education teachers lack the skills needed to effectively collaborate with special education teachers**

**Over the past 3 years, about what proportion of general education teachers in your division do you believe have had the necessary knowledge and skills to effectively collaborate with special education teachers as needed?**



SOURCE: Responses to JLARC survey of division-level directors of special education.

NOTE: In survey, "all" was defined as 100 percent, "most" was more than 75 percent, "majority" was more than 50 percent, "half" was about 50 percent, "some" was less than 50 percent, and "a few" was less than 25 percent. Excludes three responses that were reported as "I don't know." Percentages may not sum to 100 percent because of rounding.

Many general education teachers are likely not equipped to adapt instruction for students with disabilities or work with special education teachers because they are not required to have much special education-specific training. For example, state regulations require *special education* teacher preparation programs to teach how to implement collaborative models, including co-teaching and co-planning, and to ensure special education teacher candidates understand the roles and responsibilities of each member of the collaborative team. State regulations do not, however, require *general education* teacher preparation programs to prepare teacher candidates to implement collaborative models of instruction, despite the general education teacher's role in those models.

Currently, general educator teacher preparation programs in Virginia offer courses related to teaching students with disabilities, including courses on collaborative instruction and individualized behavior supports. However, the extent to which candidates are required to take these courses varies by program. For example, all programs appear to require some form of introductory course on teaching students with disabilities, but any additional courses that focus on collaborative instruction or behavior supports are typically only offered as electives.

The General Assembly should direct the Board of Education to review and improve the current regulations for general education teacher preparation programs to ensure new teachers are prepared to educate and manage the behaviors of students with disabilities. At a minimum the regulations should ensure that general education teachers understand the importance of designing and differentiating instruction for students with disabilities and their own role in providing special education, both as a member of the IEP team and through collaborative models. These changes would help ensure that new general education teachers are properly equipped to work with special education teachers and instruct students with disabilities.

Additionally, the General Assembly should direct the Board of Education to revise teacher licensure regulations to require every teacher renewing their license to complete training on teaching students with disabilities. This training should be developed by VDOE and the TTACs and at a minimum should include best practices on differentiating instruction for students with disabilities and providing inclusive education through collaborative models. The training could be provided through an online module and could be made available to all teachers, regardless of their licensure renewal status. This recommendation, if implemented, would be similar to a requirement in Florida's teacher licensure statute that all renewal applicants earn one college credit or equivalent in-service credit on instructing students with disabilities. If implemented, the recommendation would improve the knowledge and abilities of current general education teachers to work with special education teachers and instruct students with disabilities.

Another approach to improving general education teachers' ability to instruct and support students with disabilities would be to develop annual professional development requirements. However, this approach may not be feasible without considering ways

to streamline existing annual professional development requirements, which are numerous. The benefit of annual training would be to ensure that existing general education teachers are routinely updated on the most effective, evidence-based instructional strategies and that teachers are consistently improving their abilities to support students with disabilities.

#### **RECOMMENDATION 15**

The General Assembly may wish to consider including language in the Appropriation Act directing the Board of Education to review and update its regulations of general education K–12 teacher preparation programs to ensure graduates are required to demonstrate proficiency in (1) differentiating instruction for students depending on their needs, (2) understanding the role of general education teachers on the IEP team, (3) implementing effective models of collaborative instruction, including co-teaching, and (4) understanding the goals and benefits of inclusive education for all students.

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#### **RECOMMENDATION 16**

The General Assembly may wish to consider amending § 22.1-298.1 of the Code of Virginia to require all teachers seeking to renew their teaching license to complete training in the instruction of students with disabilities. This training should be developed by the Virginia Department of Education and should include, at a minimum, (1) strategies for differentiating instruction for students with disabilities, (2) the role of the general education teacher in special education, (3) the use of effective models of collaborative instruction, including co-teaching, and (4) the goals and benefits of inclusive education for all students.

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### **Many school administrators do not have the knowledge and skills necessary to support students with disabilities and special education teachers**

Building-level administrators, such as principals and assistant principals, also play a key role in creating inclusive environments for students with disabilities, ensuring students are instructed effectively, and supporting teachers who work with students with disabilities. For example, school administrators should understand

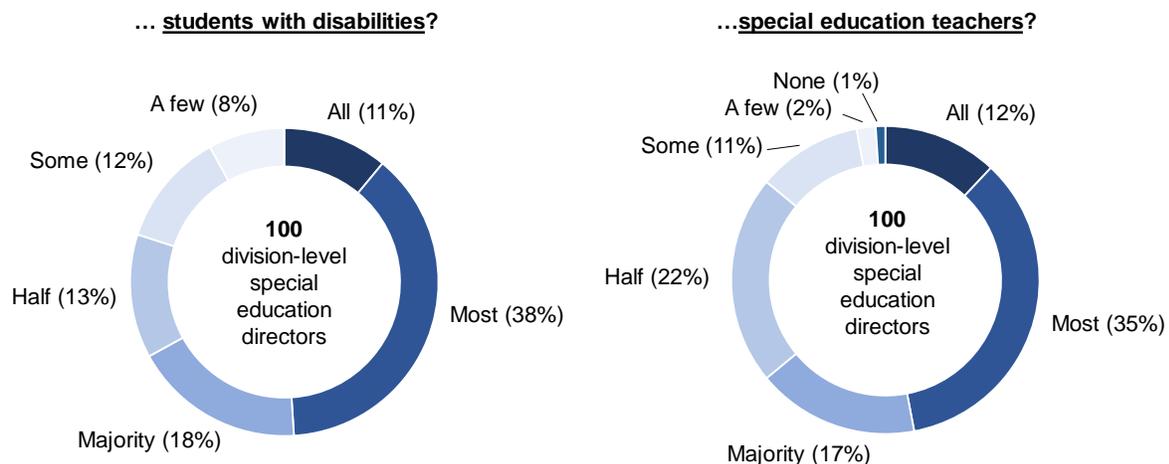
- the roles, responsibilities, and workload of special education teachers;
- the role disabilities can play in behavior and how that behavior should be addressed to best support students with disabilities;
- best practices in inclusive education, such as co-teaching and co-planning;
- schedules that can maximize inclusion opportunities and encourage co-planning and co-teaching between general education and special education teachers; and

- laws and regulations pertaining to the provision of services for students with disabilities, including administrators’ roles and responsibilities within the IEP team.

Building-level administrators in Virginia do not uniformly have the knowledge and skills necessary to support students with disabilities or special education teachers. In interviews, VDOE staff, division-level staff, TTAC staff, and special education teachers from various regions of Virginia emphasized that building-level administrators’ abilities to support students with disabilities and special education teachers varied. Among special education directors responding to JLARC’s survey, 33 percent believed that half or fewer school-level administrators in their division have the knowledge and skills necessary to effectively support *students with disabilities* (Figure 6-8). Similarly, thirty-six percent said they believed that *half or fewer* of school-level administrators in their division have the knowledge and skills necessary to effectively support *special education teachers*.

**FIGURE 6-8**  
**Special education directors reported that school-level administrators do not uniformly have the knowledge and skills necessary to support students with disabilities or special education teachers**

Over the past 3 years, about what proportion of school-level administrators (e.g., principals and assistant principals) in your division do you believe have had the necessary knowledge and skills to effectively support....



SOURCE: Responses to JLARC survey of division-level directors of special education.

NOTE: In survey, “all” was defined as 100 percent, “most” was more than 75 percent, “majority” was more than 50 percent, “half” was about 50 percent, “some” was less than 50 percent, and “a few” was less than 25 percent. Excludes two responses that were reported as “I don’t know.” Percentages may not sum to 100 percent because of rounding.

Interviewees expressed similar concerns about administrators’ abilities to support both students with disabilities and teachers. Several observed that the administrators who were most supportive and knowledgeable about special education were former special education teachers. However, administrators who were not often struggled to support

teachers and students. For example, one TTAC staff member noted “[Administrators] also need to be able to differentiate the supports that the students need...as well as the supports that the teachers need to teach their students...Sometimes the administrators don’t have a good understanding of what those needs might be.”

State licensure regulations and administrator preparation regulations require that administrators receive some training in special education, but it appears that there are opportunities to improve these regulations, given the reported variability in knowledge and skills among administrators. Because school administrators play a critical role in supporting special education and often represent the school on the IEP team, the General Assembly should direct the Board of Education to strengthen the regulations regarding building-level administrator preparation programs. At a minimum, administrator preparation programs and licensing requirements should ensure that administrators are educated on: special education laws and regulations; IEP development; the roles and responsibilities of special education teachers; and appropriate behavior management practices. Administrators should also be aware of best practices in inclusive education, including collaborative models of instruction, co-planning, and appropriate scheduling.

#### RECOMMENDATION 17

The General Assembly may wish to consider including language in the Appropriation Act directing the Board of Education to review and update its regulations governing administrator preparation programs to ensure graduates are required to demonstrate comprehension of (1) key special education laws and regulations, (2) individualized education program (IEP) development, (3) the roles and responsibilities of special education teachers, and (4) appropriate behavior management practices.

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**Federal Indicator 5** measures how much time students with disabilities spend in the general education setting in three categories:

- A. Percentage of students spending 80 percent or more of the day in general education
  - B. Percentage of students spending less than 40 percent of the day in general education
  - C. Percentage of students served in public or private separate schools, residential placements, or homebound or hospital placements.
- 

### **VDOE should take a more comprehensive approach to monitoring inclusion of students with disabilities**

VDOE has limited knowledge of whether students with disabilities are being meaningfully included in academic and extracurricular activities. The agency’s knowledge is limited primarily because (1) the agency does not collect much information about inclusion beyond the required federal indicator data; (2) the agency does not use all of the information it collects; and (3) the quality of some of its data is questionable.

- VDOE’s monitoring of inclusion is limited to measures of physical inclusion, which is primarily assessed through data collection for federal indicator 5 (sidebar).
- Data collected for federal indicator 5 is self-reported and self-certified by school divisions, with little to no validation from VDOE. VDOE staff also expressed concerns to JLARC staff about the quality of this data.

- VDOE's current monitoring of divisions' behavior management is limited to assessing compliance with Federal Indicators 4a and 4b, which focus only on long-term suspensions and expulsions among students with disabilities.
- VDOE relies on divisions to self-report problems with their own policies, procedures, and practices related to behavior management. This approach appears ineffective because divisions rarely self-report any problems. In the 2017–18 school year, only one of 39 school divisions that reported expelling or suspending students with disabilities at least twice as frequently as those without disabilities self-reported that their disproportionate use of discipline was a result of problems with their own policies, processes, and practices.

Improved monitoring should include a more useful parent survey to capture more information on the extent to which students with disabilities are included in schools. VDOE's current annual parents' survey is limited in scope and inadequate for eliciting quality parent feedback. The survey should ask parents about schools' efforts to serve students in the regular education environment, the extent to which parents feel students are able to meaningfully participate in classroom activities with their peers, and the opportunities available to their students to participate in extracurricular and non-academic services and activities. Information gathered from the survey, in conjunction with other monitoring data, should be used to determine which school divisions may need additional assistance implementing inclusive practices for students with disabilities.

Additional approaches to improving VDOE's monitoring, including monitoring related to behavior management and discipline, are discussed in Chapter 8. These approaches include a greater number of on-site monitoring visits by VDOE staff each year and more frequent verification of information school divisions submit to VDOE. In conjunction with the improved parent survey, these changes will allow VDOE to better understand the extent to which school divisions are implementing inclusive education practices.

The General Assembly could also set the expectation that school divisions focus on providing inclusive educational experiences for student with disabilities, like Florida. In 2013, Florida's legislature adopted a statutory provision that defined inclusion and recognized the training teachers and administrators need to support students with disabilities. Florida also revised its teacher licensure renewal requirements to include a stipulation that all teachers receive training on educating students with disabilities. Additionally, Florida statute requires each school division and school to complete a self-assessment on best practices in inclusive education (BPIE) once every three years to help determine short- and long-term plans for improvements in inclusive educational practices. Florida requires that the assessment results be included in publicly available school improvement plans. Staff from Florida's DOE cite these steps, and the BPIE process specifically, as critical contributors to their relatively high rates of inclusion

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Florida's rates of inclusion exceed national averages and have improved significantly over the past decade. As inclusion rates have improved, Florida has seen an improvement in academic performance for students with disabilities and a narrowing of the performance gap between students without disabilities on the National Assessment of Education Performance (NAEP).

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and improved academic performance among students with disabilities in recent years (sidebar).

VDOE already has an inclusive practices self-assessment tool similar to Florida's that was developed with the help of national experts in inclusive education. This tool asks schools to examine their practices across nine key indicators for inclusive schools, which include topics like collaboration among educators, social inclusion, specialized supports, and effective use of resources. Schools then use their responses to the questions in each of the nine indicator sections to determine whether they are in the initiation phase, implementation phase, or advanced phase of inclusive education and to develop an action plan to move to the next phase.

Currently, the use of the self-assessment tool is optional but could be made mandatory. This could help school divisions identify current gaps in their inclusive practices, and could also be used by VDOE to understand where these gaps are, and the technical assistance that may be needed statewide or for each division. Together with the additional preparation and training for teachers and administrators recommended in this chapter, these actions could help ensure students with disabilities are able to more fully benefit from inclusive education.

#### **RECOMMENDATION 18**

The General Assembly may wish to consider amending § 22.1-215 of the Code of Virginia to require each K–12 public school to (i) complete the Inclusive Schools Self-Assessment instrument and action planning tool at least once every three years and (ii) report the results of the assessment and plans for improvement to the division's superintendent, special education director, chairs of the local school board and local special education advisory committee, and to the Virginia Department of Education.

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# 7 Recruiting and Retaining Qualified Special Education Teachers

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Qualified special education teachers are essential to the effective provision of special education services. Becoming a fully licensed special education teacher requires completion of coursework in several areas essential to providing effective special education services, including identification and eligibility determination, IEP development and implementation, and effective instruction for students with disabilities in a variety of settings. Special education teachers have a challenging job and need to be able to:

- understand complex federal and state legal and regulatory requirements relating to special education;
- understand the characteristics and manifestations of different disabilities;
- evaluate students for special education services;
- identify appropriate services and implement accommodations;
- conduct effective case management;
- provide specialized reading and math instruction; and
- collaborate effectively with general education teachers.

School staff in other positions are not required to have this knowledge and skillset, so special education teachers are needed to effectively educate and support students with disabilities.

## School divisions struggle to recruit and retain qualified special education teachers

The Virginia Department of Education (VDOE) has identified special education as among the top three critical teaching shortage areas since it began reporting shortages in 2003. Since 2006, special education has been the top shortage area. The State Special Education Advisory Committee has reported concerns about special education teacher shortages to VDOE since at least 2000.

VDOE does not collect data to measure special education teacher vacancy rates, which is necessary to adequately assess the magnitude of the special education teacher shortage or where state shortages are most severe. Calculating vacancy rates requires data on the number of special education teachers and the number of special education teaching positions in the state, and VDOE does not collect data on either (sidebar). To provide useful information on special education staffing across the state, JLARC staff interviewed stakeholders, surveyed division-level special education directors, and analyzed VDOE data using an *estimated* number of special education teachers in Virginia (sidebar, next page).

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VDOE calculates critical teaching shortages by subject area annually based on the total *number* of teaching positions that are unfilled and *number* of teaching positions that are filled by teachers who are licensed, but who are teaching in academic subject areas other than their area of preparation. This information alone cannot be used to calculate the *proportion* of teaching positions in each subject area that are vacant, either within a division or statewide.

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VDOE does not collect data on the total number of special education teachers in the state. Based on national survey data, JLARC staff estimated that 12.5 percent of licensed teachers in Virginia are special education teachers, and used that figure to estimate vacancy rates for this report. See Appendix B of this report for more detail on this analysis.

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JLARC staff surveyed all school division-level special education directors. JLARC received responses from 102 school divisions, representing 88 percent of students receiving special education. The survey response rate was 77 percent. (See Appendix B for more information.)

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“Regions” refers to VDOE’s superintendent’s regions.

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## Majority of divisions report problems recruiting special education teachers

In interviews and in survey responses, VDOE staff and local special education directors reported that divisions experience longstanding challenges recruiting and retaining qualified special education teachers. VDOE staff shared that special education teaching positions are historically some of the most difficult positions in education to fill. Local special education directors told JLARC staff that they are not consistently able to hire or retain sufficient qualified special education staff. One noted: “We tend to fill [special education] positions after December, if at all.” Another noted: “We added 13 [special education] teacher positions this year, but we couldn’t fill them.”

Further, multiple special education directors said that they have to recruit special education teachers from out of state and expressed concern about competing with nearby school divisions for qualified staff.

Survey evidence further indicates local concern about recruiting and retaining qualified special education teachers. Thirty-seven percent of local special education directors responding to JLARC’s survey reported that their division experienced moderate to substantial difficulty *retaining* qualified special education teachers (sidebar). Sixty-nine percent of responding directors reported that they experience moderate to substantial difficulty *recruiting and hiring* special education teachers. In survey comments, some directors reported that difficulties have worsened recently.

Survey responses also showed that recruitment and retention is more difficult in certain areas of the state. One hundred percent of special education directors in VDOE region eight (Southern Virginia) responding to JLARC’s survey reported that they experience moderate to substantial difficulty *recruiting and hiring* special education teachers; and 60 percent of survey respondents in this region reported moderate to substantial difficulty *retaining* qualified special education teachers.

In interviews, multiple directors mentioned that secondary school special education teachers and teachers providing services to students with severe needs were more difficult to hire than other special education teachers. Seventy-one percent of directors responding to JLARC’s survey said that it is most difficult to hire teachers for students with the most severe disabilities.

## School divisions rely on under-prepared teachers to fill gaps in special education teaching positions

School divisions that cannot recruit fully qualified special education teachers may hire less qualified staff to fill positions—provisionally licensed teachers or long-term substitutes. Fully licensed special education teachers are the most qualified individuals to teach special education and must complete at least 27 semester hours of coursework in special education and, if they complete an approved teacher preparation program, an average of 360 hours of student teaching prior to being hired (Table 7-1). Provisionally licensed special education teachers have not completed the requirements for

full licensure and are required to complete only one class on the foundations of special education prior to being hired, though some provisionally licensed teachers may have additional experience or education. If there are no available fully or provisionally licensed teachers, school divisions may hire long-term substitutes until they can find licensed teachers to fill the vacancies. Long-term substitutes are not required to complete any special education or general education-specific training.

**TABLE 7-1**  
**Special education teachers have varying levels of preparation for their role**

	<b>Minimum education requirements</b>	<b>License duration</b>
Fully licensed special education teacher	<ul style="list-style-type: none"> <li>• Bachelor's degree</li> <li>• Graduate from approved special education teacher preparation program <i>or</i> complete 27 semester hours of coursework in education of students with disabilities</li> </ul>	Ten years, renewable
Provisionally licensed special education teacher	<ul style="list-style-type: none"> <li>• Bachelor's degree</li> <li>• Three semester hours of coursework in the foundations of special education and a planned program of study toward full licensure <sup>a</sup></li> </ul>	Three years with possibility for two one-year extensions, non-renewable
Long-term substitute	<ul style="list-style-type: none"> <li>• High school diploma or equivalent <sup>b</sup></li> </ul>	n/a

SOURCE: JLARC summary of 8VAC20-23-40.

NOTE: This table does not include all licensure requirements nor all paths to licensure. For example, teachers may achieve licensure through out-of-state license reciprocity or the career switcher program. <sup>a</sup>School divisions must also assign provisionally licensed special education teachers a mentor with an active Virginia teaching license and an endorsement in special education. <sup>b</sup>Some divisions have more stringent substitute teacher requirements.

### ***School divisions rely on provisionally licensed teachers for special education more than in other subject areas***

Analysis of VDOE data shows that divisions throughout the state are, on average, three times more likely to hire provisionally licensed special education teachers than provisionally licensed teachers in other subjects. During the 2019–20 school year, an estimated 15 percent (2,038) of special education teachers were provisionally licensed statewide, compared with 5 percent of teachers in other subjects. Based on regulations governing special education teacher caseloads, an estimated 30,000 students with disabilities were being taught by a provisionally licensed special education teacher during the 2019–20 school year (sidebar).

The proportion of provisionally licensed special education teachers hired by school divisions varies across the state. Fourteen school divisions employed no provisionally licensed special education teachers in the 2019–20 school year. In 20 divisions, including large, medium, and small divisions, at least 25 percent of the division's special education teachers were provisionally licensed (Figure 7-1). Special education provisional licensure rates ranged between 9 percent and 27 percent across VDOE regions, with region eight (Southern Virginia) employing the highest proportion of provisionally licensed special education teachers (27 percent) (Figure 7-2). Region eight has had the

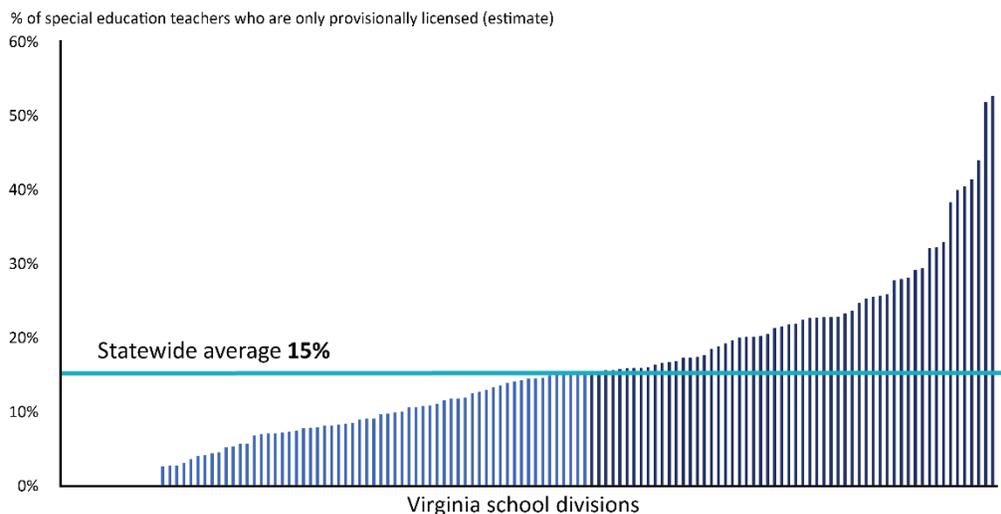
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**Regulatory special education caseload maximums** range between six and 24 students depending on caseload composition. This estimate is based on the median caseload maximum, 15 students. See Appendix D of this report for more information on special education caseloads.

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highest rate of provisionally licensed special education teachers for each of the past three years.

**FIGURE 7-1**  
**Some school divisions rely heavily on provisionally licensed special education teachers (2019–20)**



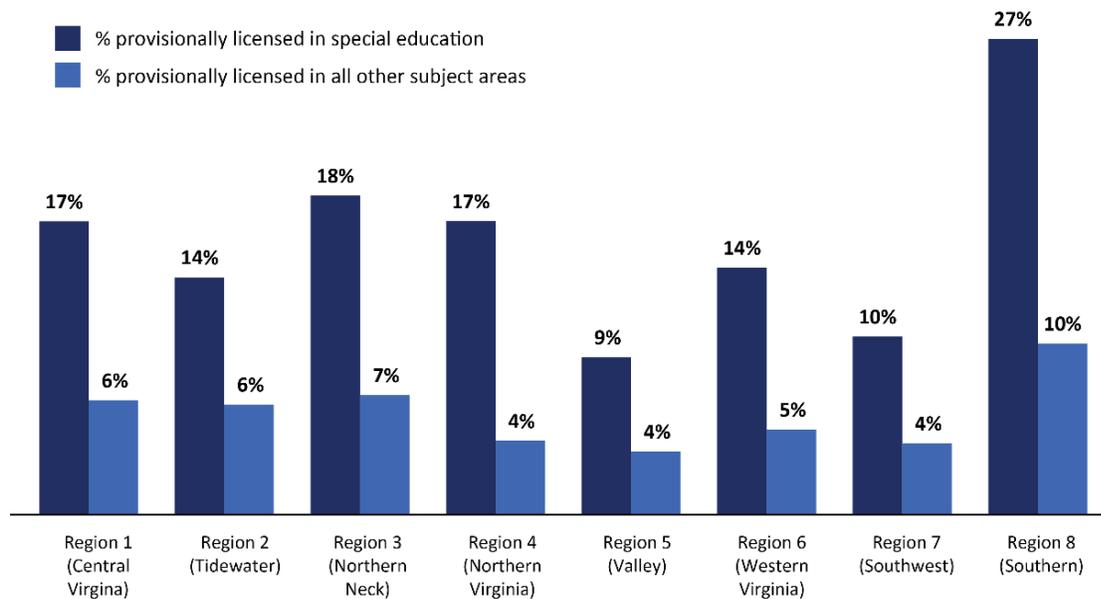
SOURCE: JLARC analysis of VDOE data.

NOTE: Estimated rates based on JLARC assumption that 12.5 percent of Virginia teachers teach special education. Fourteen school divisions had no provisionally licensed special education teachers in school year 2019–20.

Though many provisionally licensed special education teachers likely meet more than the minimum requirements, and the capabilities of individual teachers vary, stakeholders expressed concern that provisionally licensed teachers do not always have the necessary skills to provide effective special education services. For example, in response to JLARC’s survey of special education directors, 57 percent of division-level directors estimated that half or fewer of all provisionally licensed special education teachers in their division have the necessary knowledge and skills to effectively serve students with disabilities (Figure 7-3). The research literature supports stakeholder concerns and shows that well-prepared teachers are more likely to be effective and less likely to leave their positions than their less prepared peers.

FIGURE 7-2

Every region employs provisionally licensed special education teachers at a higher rate than provisionally licensed teachers of other subjects (2019–20)



SOURCE: JLARC analysis of VDOE data.

NOTE: Rates based on JLARC assumption that 12.5 percent of Virginia teachers teach special education. See Appendix B of this report for more detail.

### ***School divisions use long-term substitutes with no required training in special education to fill vacancies***

Any positions that divisions cannot fill with fully or provisionally licensed teachers are considered vacant positions. However, until divisions can find a licensed teacher to fill vacancies, they may hire long-term substitutes to teach students receiving special education. Twenty-nine percent of division directors responding to JLARC's survey said that their divisions use long-term substitutes when they are unable to recruit qualified special education teachers.

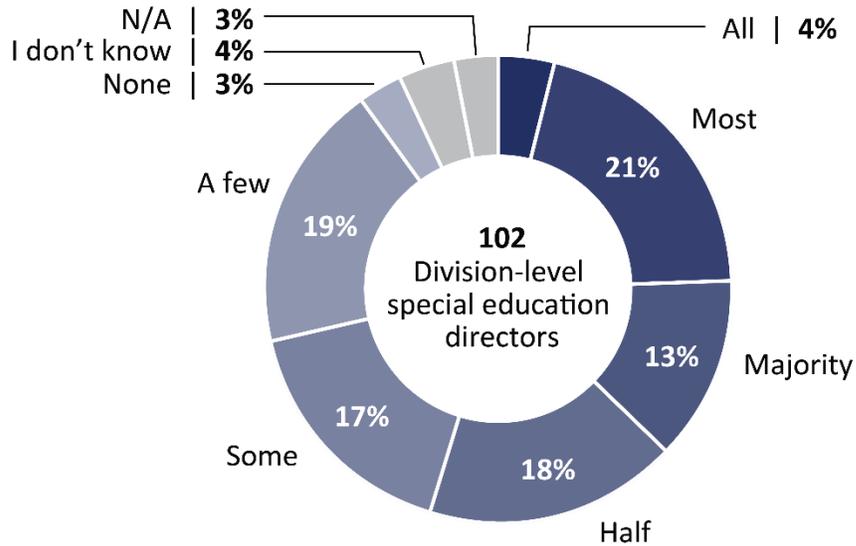
JLARC analysis finds that special education teaching positions are twice as likely to be vacant as teaching positions in other subjects. JLARC estimates that, in the 2019–20 school year, 1.6 percent of special education teaching positions (211 positions) were vacant across the state, compared with 0.8 percent of teaching positions in other areas. Based on regulations governing special education teacher caseloads, these vacancies affected an estimated 3,000 special education students that school year.

Estimated special education teacher vacancy rates vary substantially across the state. During the 2019–20 school year, estimated regional vacancy rates ranged from 0.3 to 4.2 percent (Figure 7-4). That year, region eight (Southern Virginia) had the highest

**FIGURE 7-3**

**Division-level directors report many provisionally licensed special education teachers lack necessary skills to effectively support students with disabilities**

**Over the past 3 years, about what proportion of provisionally licensed special education teachers in your division do you believe had the necessary knowledge and skills to effectively serve students with disabilities?**



SOURCE: Responses to JLARC survey of division-level directors of special education.

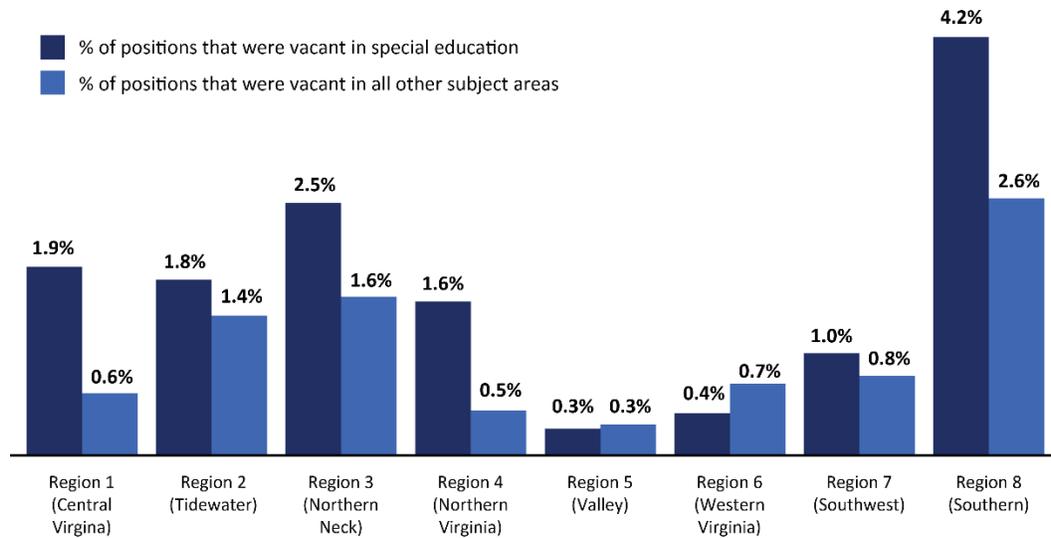
NOTE: In survey, “all” was 100 percent, “most” was more than 75 percent, “majority” was more than 50 percent, “half” was about 50 percent, “some” was less than 50 percent, and “a few” was less than 25 percent.

estimated vacancy rate, followed by region three (Northern Neck). These regions had the highest estimated special education teacher vacancy rates for each of the past three years.

Though there are fewer vacant positions than positions filled by provisionally licensed teachers, division special education directors expressed serious concerns about vacancies’ impact on special education services. Respondents to JLARC’s survey of local special education directors stated that long-term substitutes lack the “ability to complete certain essential functions such as IEP writing and case management” and that hiring them “places an unqualified person in the position.”

**FIGURE 7-4**

**In most regions, the estimated proportion of special education teaching positions that are vacant is higher than estimated vacancy rates in other subject areas (2019–20)**



SOURCE: JLARC analysis of VDOE data.

NOTE: Excludes non-instructional positions such as administrators, guidance counselors, and speech pathologists. Rates based on JLARC assumption that 12.5 percent of Virginia teachers teach special education. See Appendix B of this report for more detail.

## Special education staffing challenges appear to be driven by low supply, retention problems, and compensation concerns

To address the challenges divisions face maintaining a qualified special education workforce, it is necessary to understand their underlying causes. The key factors that contribute to these challenges are an insufficient supply of qualified teachers, teacher working conditions, and low compensation.

### Virginia has a low supply of special education teachers, driving recruitment problems for school divisions

One key factor driving special education teacher recruitment challenges is that there is an insufficient number of qualified teachers to meet divisions’ needs. When asked what factors make it difficult to recruit and hire qualified special education teachers, 90 percent of division special education directors responding to JLARC’s survey said “lack of qualified applicants to fill positions.” In interviews, division-level special education directors reported recruiting teachers from other states, competing with neighboring divisions for qualified teachers, and training provisionally licensed teachers only to have them leave to teach in a neighboring locality. Each of these issues points to a low supply of qualified special education teachers in Virginia.

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The average teacher turnover rate in Virginia is 10 percent, according to a report from the Virginia Board of Education. The special education teacher turnover rate is likely higher than average, with recent estimates as high as 16 percent.

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Since 2013, the number of special education teacher preparation programs has increased from 20 to 25, while the number of individuals completing a teacher preparation program at a Virginia college or university has remained relatively stable, averaging 343 per year. In contrast, the population of students receiving special education services has increased by 5 percent.

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VDOE conducted a statewide survey of teacher working conditions during the 2018–2019 school year. Approximately 55,000 teachers, including 13,000 special education teachers responded to the survey.

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U.S. Department of Education data on the number of students who complete teacher preparation programs indicates that there are not enough credentialed special education teachers graduating from Virginia higher education institutions to meet statewide demand. Assuming a *conservative* turnover rate of 10 percent, JLARC estimates that there were approximately 1,500 special education teacher positions to fill at the beginning of the 2019–20 school year across Virginia (sidebar). However, only 303 students graduated from Virginia colleges and universities with a special education teaching credential in 2019, leaving divisions to fill an estimated 1,200 positions from other sources, including provisionally licensed teachers or long-term substitutes (sidebar). Furthermore, difficulty recruiting and retaining special education teachers is a national issue that limits the ability of Virginia school divisions to recruit teachers from other states.

### **Special education teachers planning to leave their jobs report frustration with school administrators and general education teachers**

Inadequate support from building-level administrators and inconsistent knowledge among general education teachers about how to work effectively with special education teachers contribute to difficulty retaining special education teachers in Virginia. In interviews, local special education directors and special education teachers emphasized that, when administrators and general education teachers carry out their special education-related responsibilities well, they make it easier for special education teachers to do their jobs effectively. However, when they do not, special education teachers may need to take on additional responsibilities or carry out their existing responsibilities alone, contributing to burnout and, in some cases, turnover.

Data from VDOE’s 2019 working conditions survey also indicates that special education teachers are substantially more likely to leave when administrators are not supportive and colleagues do not collaborate to provide special education services (sidebar). According to survey results, special education teachers who were planning to leave their schools were much more likely to express dissatisfaction with the knowledge and support of school administrators and the level of collaboration in their schools than teachers who were planning to stay. Compared with special education teachers who were planning to stay, special education teachers who planned to leave were between three and four times *less likely* to agree that:

- they feel respected by the school administrators;
- school administrators understand how children learn;
- school administrators set high expectations for all students;
- teachers receive feedback that can help them improve their teaching, and;
- they feel comfortable raising issues and concerns that are important to them with school administrators.

Compared with special education teachers planning to stay, special education teachers who planned to leave were also between three and four times *less likely* to agree that:

- teachers and other adults at their school collaborate to make it run effectively;
- teachers and other adults at their school support one another to meet the needs of all students; and
- teachers engage in collaborative problem solving at their school.

As discussed in Chapter 6, there are opportunities to improve the knowledge and abilities of general education teachers and administrators. Implementation of Recommendations 15 and 16 would improve general education teachers' special education-related knowledge and skills and would likely help improve working conditions for special education teachers. Similarly, implementation of Recommendation 17 would improve school administrators' preparedness to work with and supervise special education teachers and support students with disabilities.

### **Dissatisfaction with compensation contributes to difficulties recruiting and retaining special education teachers**

In interviews and survey responses, division-level special education staff indicated that dissatisfaction with compensation contributes to special education staffing challenges. Compensation was the second most cited contributor to difficulties recruiting and retaining special education teachers on JLARC's survey of division special education directors. Forty-five percent of survey respondents said that dissatisfaction with compensation contributes to difficulties recruiting and hiring special education teachers, and 41 percent of respondents said that it contributes to difficulties retaining teachers.

Interviewed special education teachers and directors stated that special education teachers should be paid more because of their additional responsibilities, such as case management and IEP development. Some division directors asserted that special education teachers should be paid more because they are so hard to recruit and retain. In general, special education teachers have the same starting salary as general education teachers, but school divisions have discretion to differentiate pay.

### **VDOE should develop a robust strategic plan to help address longstanding teacher recruitment and retention challenges**

VDOE is responsible for helping ensure the state has enough teachers, including special education teachers, to effectively serve its students. The Code of Virginia directs the superintendent of public instruction to survey school divisions to identify critical teaching shortage areas. Virginia regulations governing special education direct VDOE to help ensure that students with disabilities receive special education services from qualified staff, including "requiring local educational agencies to take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities."

VDOE does not collect the basic information needed to understand the magnitude of the special education teacher shortage. VDOE does not know how many special education teachers there are in Virginia. Without information on the number of special education teachers, VDOE cannot accurately measure the severity of shortages or identify where problems are most pronounced, nor can it develop an informed and targeted plan to help address these shortages. Given VDOE’s responsibility to help ensure school divisions have sufficiently qualified special education teachers, VDOE needs a robust strategic plan to address long-standing challenges recruiting and retaining special education teachers.

Other states have recognized that addressing recruitment and retention problems requires coordinated and sustained efforts. For example, in 2017, the Colorado Departments of Education and Higher Education published a strategic action plan for “attracting and retaining excellent educators” that identifies geographic and subject areas that experience the most difficulty attracting and retaining teachers and presents recommendations to address challenges in highest need areas. Virginia’s strategic plan should similarly target areas of highest need and consider changes to its data collection and efforts to improve special education teacher recruitment, mentorship for new teachers, and retention.

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From *Operations and Performance of the Virginia Department of Education* (2020)

**Recommendation 11:** The Board of Education should direct school divisions to annually report the number of filled and unfilled teaching positions, by endorsement area and subject area when possible.

**Recommendation 12:** The Virginia Department of Education should calculate teacher vacancy rates by division, region, and endorsement area, and make these calculations publicly available on its website.

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### **Data collection**

VDOE should first implement Recommendations 11 and 12 of JLARC’s 2020 report on the *Operations and Performance of the Virginia Department of Education*. This would require VDOE to collect and report data on the number of filled and unfilled teaching positions by subject area, endorsement area, and locality (sidebar).

National research and other states recognize that effective teacher recruitment and retention strategies should be based on data that connects information from teacher preparatory programs with school divisions’ specific hiring needs. Maryland, North Carolina, Tennessee, and Kentucky have data systems that link teacher staffing data by subject area with data from state teacher preparation programs to determine whether those programs are preparing an adequate number of teachers to meet divisions’ specific needs. VDOE should consider creating a similar system as it develops plans to address teacher recruitment and retention.

VDOE should also collect data to evaluate whether current attempts to improve teacher recruitment and retention work. For example, VDOE could calculate the proportion of provisionally licensed special education teachers that eventually become fully licensed and the number of special education teachers who receive out-of-state license reciprocity.

### **Recruitment**

VDOE’s plan should include strategies to encourage more individuals to become special education teachers. For example, Virginia could subsidize tuition for special education teacher preparation programs, conditioned on graduates agreeing to teach

special education in a Virginia school division for a certain time period. Virginia has already made some progress in this area with the Virginia Teaching Scholarship Loan Program, which provides loans to cover the cost of teacher preparatory programs that are forgiven if the teacher works in a critical shortage area, including special education, for two years after program completion. Few people participate in this program, however. During the 2019–2020 school year, only 14 people who enrolled in special education teacher preparation programs received the scholarship loan. As recommended by the Board of Education’s Advisory Committee on Teacher Shortages, VDOE’s strategic plan should consider ways to improve the efficacy of this program and other options for increasing interest in special education (sidebar).

### **Retention**

In addition to data collection and recruitment, VDOE’s strategic plan should address strategies for retaining special education teachers. Education research identifies school climate, including administrator quality, as a key predictor of whether teachers leave their positions. Implementing Recommendation 17 in Chapter 6 of this report is a key step in strengthening administrator support of special education teachers.

Research also shows that targeted financial incentives help increase teacher retention in teaching areas that typically face shortages. North Carolina and Tennessee offered \$1,800 and \$5,000 bonuses to teachers in hard-to-staff areas and found that payments increased retention by 17 percent and 20 percent, respectively. The Advisory Committee on Teacher Shortages recommended the state consider a similar strategy.

### **Mentorship**

High quality supports for novice teachers, including mentorship programs, have been effective strategies for improving teacher retention. VDOE already has a teacher mentorship program but does not target subject or geographic areas with the most significant staffing challenges. As recommended by the Advisory Committee on Teacher Shortages, VDOE’s strategic plan should include recommendations for improving the existing mentorship program. A first step would be to implement Recommendation 13 of JLARC’s 2020 report on the *Operations and Performance of the Virginia Department of Education*, which directs VDOE to allocate mentorship program funds to divisions with the most significant teacher shortages (sidebar).

### **Strategic plan development and implementation will require resources**

To ensure that the strategic plan is actionable, VDOE should clearly direct recommendations to the entity responsible for implementing them, which could include VDOE, the General Assembly, the Board of Education, SCHEV, and institutions of higher education. VDOE should also estimate costs associated with recommendations so that programs are funded appropriately. Finally, to ensure that VDOE and other stakeholders remain committed to addressing staffing challenges over the long term, VDOE

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**North Carolina’s Teaching Fellows program** is a “competitive, merit-based forgivable loans for service program” that has provided funds for thousands of students who teach special education or STEM in North Carolina Public Schools. The Advisory Committee on Teacher Shortages recommended Virginia consider creating a similar program in its 2017 report.

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From *Operations and Performance of the Virginia Department of Education* (2020)

**Recommendation 13:** The Virginia Department of Education should develop and implement a methodology to allocate teacher mentorship funds to school divisions with the largest teacher shortages.

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should report annually to the General Assembly on its progress implementing the strategic plan and the status of special education teacher workforce challenges throughout the state.

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From *Operations and Performance of the Virginia Department of Education* (2020)

**Policy Option 4:** The General Assembly could appropriate additional funding for three new staff positions in the Office of Teacher Education to strengthen its role in helping school divisions with the most substantial teacher recruitment and retention challenges.

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Writing and implementing a strategic plan will take significant work and staff time. Implementing a policy option in JLARC's 2020 report on *Operations and Performance of the Virginia Department of Education* to increase staffing in VDOE's Office of Teacher Education and Licensure could provide enough personnel to take on this task (sidebar).

#### **RECOMMENDATION 19**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to develop and maintain a statewide strategic plan for recruiting and retaining special education teachers. At a minimum, VDOE's strategic plan should (i) use data analyses to determine divisions' specific staffing needs on an ongoing basis; (ii) evaluate the potential effectiveness of strategies for addressing recruitment and retention challenges, including tuition assistance, differentiated pay for special education teachers, and the expansion of special education teacher mentorships; and (iii) estimate the costs of implementing each strategy, including the extent to which federal funds could be used to support implementation. VDOE should present its plan to the Senate Education and Health Committee and the House Education Committee no later than November 1, 2021, and update those committees annually on its progress implementing the plan.

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## **Standards of quality could better reflect resources needed to adequately staff special education**

As part of this study, JLARC staff were directed to review special education student-staff ratios to determine whether any adjustments to regulatory ratios are needed. JLARC reviewed Virginia's current regulatory caseload maximums and process for funding special education staffing positions, best practices for determining appropriate special education staffing levels, and considerations for a potential update to Virginia's special education staffing model.

Feedback from stakeholders, including special education teachers, local special education directors, and subject-matter experts, suggests that Virginia's current special education staffing model does not fully reflect the staffing resources needed to serve students, particularly in inclusive settings. For example, 54 percent of respondents to a JLARC survey of special education directors said that Virginia's caseload standards do not adequately reflect staffing needed to provide an appropriate education for students with disabilities.

VDOE calculates school divisions' funding for special education staffing using both Standards of Quality (SOQ) staffing minimums in the Code of Virginia and the Appropriation Act as well as the minimum special education staffing requirements in state

regulations. SOQ staffing minimums for special education require school divisions to have *at least six* special education or occupational-vocational instructional positions per 1,000 students (all students, not just those receiving special education) in average daily membership (ADM). At a minimum, every division must receive funding to staff special education at this level.

As a potential alternative to SOQ minimum requirements for special education staffing, state regulations provide two methods for VDOE to calculate staffing requirements based on special education teacher caseload maximums. These methods are based on (1) the amount of the school day special education students spend receiving services and (2) their disability category. VDOE compares staffing requirements calculated based on regulatory caseload maximums to the minimum established by the SOQ and bases funding on whichever staffing requirements are higher.

Virginia's regulatory staffing requirements for special education recognize that varying student needs and caseload compositions affect special education teacher workloads by considering disability, time spent in the general education classroom, and classroom composition. However, they could more fully consider the severity of student needs, the scope of teacher responsibilities, and the special education service setting—all of which can have important implications for a special education teacher's workload (sidebar).

Other states more fully incorporate severity of student need, scope of teacher responsibilities, and special education service setting into their regulatory caseload maximums than Virginia. For example, West Virginia's caseload maximum regulations include consideration of severity of need, scope of teacher responsibilities, and service setting; Arkansas's and South Carolina's include service setting; and Georgia's includes student need and service setting.

Updating Virginia's special education minimum staffing requirements would require additional review by the Board of Education. The Board of Education could conduct a study to identify ways to incorporate considerations of severity of need, including how to measure need, scope of teacher responsibilities, and special education service setting into Virginia's special education staffing model and determine the impact of those considerations on caseload maximums. Other states, such as West Virginia, Arkansas, South Carolina, and Georgia could be valuable resources for this effort. (See Appendix D for more information about Virginia's special education staffing model and considerations for a potential update to this model.)

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**Severity of student needs** refers to the intensity of support students need to meet their IEP goals. Students can have a wide range of needs within a given disability category.

**Scope of teacher responsibilities** refers to the number of students on teachers' caseloads and other factors, such as the range of grades they support and whether they have support from a paraprofessional.

**Service setting** refers to where a special education teacher provides services. For example, self-contained classrooms, co-teaching in one or more classrooms, or providing support services across multiple classrooms.

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# 8 State Supervision of Virginia’s Special Education System

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Under Part B of the Individuals with Disabilities Education Act (IDEA), states are required to maintain effective supervision over the local provision of K–12 special education services to students with disabilities. In addition to providing guidance and technical assistance for local school divisions, state education agencies are required by federal regulations to have policies and procedures that enable them to (1) proactively identify problems in special education and (2) investigate specific problems brought to their attention about the special education services students receive, or should be receiving. State education agencies are also required by federal regulations to ensure any non-compliance identified through these systems is fixed in a timely manner.

Effective, targeted, and timely procedures for state supervision are necessary to give families assurance that the public education system is providing students with disabilities an appropriate education that prepares them for adulthood. This is especially critical for caregivers of students with the most severe disabilities. The likelihood that these students will need more comprehensive services, coupled with the extraordinary demands of caring for their students outside of the school day, necessitates a functional, transparent, and accessible special education system.

Effective supervision can also help caregivers of students with disabilities avoid costly, time-consuming legal remedies when they believe students are not receiving the services that they are entitled to under federal and state laws. Ultimately, when caregivers and students are unable to resolve problems they have experienced within their school or school division, they should be able to rely on the state—as the supervisor of the system—to help them address these concerns in a timely manner and work to provide needed solutions.

Effective state supervision can also provide legislators and administrators basic assurances that laws and regulations pertaining to special education are being followed by school divisions and that any significant problems will be identified by the state education agency and resolved in a timely manner.

The Virginia Department of Education (VDOE), as the statutorily designated supervisor of Virginia’s special education services, maintains monitoring systems for identifying problems proactively and reactively, as required by federal and state laws. Proactively, VDOE collects and reports data from school divisions as required by the U.S. Department of Education (USDOE). It also conducts systematic on-site visits to several school divisions per year—using the USDOE-required data as the primary basis for deciding which school divisions to visit. Reactively, VDOE, like other state education agencies, maintains a state complaint service that is designed to investigate specific reports from parents and other concerned individuals regarding non-compliance with

federal and state laws, such as a school division not providing legally required special education services.

Since 2012, USDOE has determined that Virginia’s special education services—and VDOE’s general supervision over those services—have met federal requirements, but a recent report by USDOE expressed concerns about the sufficiency of VDOE’s supervision over special education. In June 2020, the USDOE’s Office of Special Education Programs (OSEP) found that VDOE’s general supervision efforts were inadequate and directed VDOE to develop a plan to improve them. In its letter, the OSEP concluded that

[VDOE] does not have procedures and practices that are reasonably designed to enable the State to exercise general supervision over all educational programs for children with disabilities administered within the State, to ensure that all such programs meet the requirements of Part B of IDEA, and to effectively monitor the implementation of Part B of IDEA.

As of November 2020, OSEP was still reviewing VDOE’s proposed corrective actions.

Improvements to VDOE’s monitoring systems would give the public greater confidence in VDOE’s supervisory capabilities and would increase VDOE’s value to Virginia’s special education system and the students it serves. It would also help alleviate, to some extent, the acrimony that appears to be growing between some parents of students with disabilities and school divisions.

## **VDOE’s state complaint investigations appear to meet federal requirements**

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**A state complaint can be filed by any person who believes there was a possible violation of special education laws and regulations.** Most commonly, complaints allege a procedural violation related to a student’s special education, such as a school division not providing legally required services included in a student’s IEP.

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VDOE is required by federal law to investigate specific allegations of local non-compliance with laws and regulations that govern special education, and it does this through its state complaint services. The number of state complaints per year varies but has remained between 121 and 160 over the past decade (sidebar).

VDOE is responsible for conducting a complete review of all relevant documentation and considering all facts presented to determine whether complaint allegations are founded. After investigating the specific allegation(s) of non-compliance, VDOE issues a report (called a “letter of findings”) to the student’s parent and relevant school division. VDOE is also required to include corrective action to remedy the impacts of any non-compliance it identifies. VDOE’s Office of Dispute Resolution and Administrative Services (ODRAS) is responsible for reviewing, investigating, and resolving all special education complaints.

## **VDOE appears to consider relevant evidence and develop supported conclusions when investigating complaints**

VDOE’s approach to investigating state complaints appears to meet the minimum requirements in federal and state law and regulations (sidebar). VDOE’s written procedures for investigating and resolving state complaints mirror federal requirements, and these procedures allow both parties to present information that VDOE needs to make its determinations.

In practice, VDOE’s state complaint staff, who are attorneys, appear to follow written procedures, consider evidence submitted by the complainant, and make determinations based on applicable laws, regulations, or standards. A JLARC review of a sample of letters of findings from complaints between 2017 and 2020 demonstrated that VDOE staff considered each allegation of non-compliance, the evidence submitted by complainants, and any additional evidence submitted by school divisions (sidebar). Letters of findings, some of which are more than 30 pages in length, contain explanations of the evidence considered and how VDOE reached its determinations.

VDOE’s conclusions regarding each allegation appear to consider the evidence submitted by both parties and the applicable laws, regulations, or standards, and have resulted in divisions being found out of compliance. For example, since school year 2014–15, VDOE has found at least one instance of non-compliance in about 40 percent of completed investigations per year. In instances where VDOE determines the evidence that was submitted contains conflicting facts or allegations or is insufficient, VDOE tends *not* to find the school division to be out of compliance.

## **Most investigations are conducted within required 60-day timeframe, but VDOE should clarify and track extensions it grants itself**

VDOE generally conducts its reviews within the federally required investigation timeline but could better clarify when it extends this timeline. Once a complaint is received, federal regulations stipulate that VDOE has 60 calendar days to investigate and issue its letter of findings, unless (1) both parties in the complaint agree to an extension or (2) in “exceptional circumstances.” A review of VDOE tracking data indicates that about 71 percent of investigations were conducted within the 60-calendar day time limit between 2016–17 and 2018–19. However, VDOE extended the 60-day time limit for 45 complaints during this same time period, and 40 (89 percent) of these 45 extensions were made because of “exceptional circumstances.” In some cases, such as the COVID-19-related school closures and complicated investigations, extensions because of exceptional circumstances may be warranted. However, VDOE does not consistently track the causes of the delays and has been inconsistent in tracking the length of extensions in recent years. According to VDOE tracking data, extensions added an average of 23 days in 2016–17 and 19 days in 2017–18 to resolve the complaint.

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As required by federal regulations, state regulations require VDOE to completely review all relevant documentation and make a determination of compliance or non-compliance on each issue raised in a complaint. VDOE is expected to make its determinations based on the facts and applicable laws, regulations, or standards. Regulations also authorize VDOE to conduct on-site investigations and interviews, as necessary.

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JLARC staff conducted a review of 95 letters of findings resulting from state complaints from the 2017–18, 2018–19 and 2019–20 school years. 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.

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It is important that letters of findings are issued in a timely manner, especially in cases alleging that students are not receiving needed services, and that VDOE develop criteria for its use of “exceptional circumstances” extensions to ensure they are used only when absolutely necessary. A definition of exceptional circumstances is not provided in federal or state regulations, nor does VDOE currently provide a definition in its state complaint procedures.

To further improve accountability for extensions granted because of exceptional circumstances, VDOE should require staff of its Office of Dispute Resolution and Administrative Services to consistently track the duration between VDOE's receipt of each sufficient complaint and its issuance of the letter of findings, including the length of any extensions granted during the investigation. Staff should also be required to report at least quarterly to the superintendent of public instruction on the specific reasons for granting extensions because of exceptional circumstances, as well as the amount of time beyond the 60-day deadline staff took to complete each investigation.

#### **RECOMMENDATION 20**

The Virginia Department of Education (VDOE) should (i) develop criteria for what constitutes “exceptional circumstances” that warrant extension of the 60-calendar day regulatory timeline for complaint investigations; (ii) include these criteria in its publicly available complaint resolution procedures; (iii) consistently track the duration between VDOE's receipt of each sufficient complaint and its issuance of the respective letter of findings; and (iv) require staff to report at least quarterly to the superintendent of public instruction on the specific reasons for granting an extension because of “exceptional circumstances” and the amount of time it took to complete each investigation beyond the 60-calendar day time limit.

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## **VDOE's handling of complaints against school divisions does not ensure that issues are resolved**

An effective state complaint system can be valuable to parents of students with disabilities because it serves as a no-cost independent review of alleged violations of law or regulation. It can also reduce the need for parents of students with disabilities to pursue time-consuming, difficult, and costly legal avenues to ensure their students receive the services they are entitled to under federal and state laws:

The State complaint procedures, which are under the direct control of the SEA, provide the parent and the school district with mechanisms that allow them to resolve differences without having to resort to a more costly and cumbersome due process complaint, which, by its nature, is litigious. (USDOE)

VDOE is required by federal and state laws and regulations to ensure that any identified non-compliance is corrected, whether through ongoing monitoring or state complaint investigations. To support a state's ability to enforce corrective actions, federal

regulations provide state education agencies with the authority to withhold special education funds, in whole or in part, from school divisions that are not complying with federal law or regulations. Similarly, state law gives the Board of Education explicit authority to withhold special education funds and provide services to affected students if a division does not correct identified non-compliance. State regulations detail the process through which the board and the superintendent of public instruction can use this authority. VDOE staff could not recall an instance where the board had used this authority to withhold and redirect special education funds.

When VDOE identifies non-compliance through its state complaint investigations, it specifies the steps the school division must take to be compliant. In complaints involving a failure to provide required special education services, VDOE is responsible for ensuring the corrective actions remedy this failure, including through make-up (or “compensatory”) services for the student (sidebar).

### **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.

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**Compensatory services** may be provided to students with disabilities when school divisions are unable to (or fail to) provide students with needed services.

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“*The state complaint sent the resolution back to the IEP team, which was useless.*”

— **Parent of student with disability**

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“*As a former educator, I have learned that the complaint process produces no real results for children and families other than headaches for families and advocates.*”

— **Parent of student with disability**

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**JLARC staff surveyed parents** of students receiving special education to learn about their experience with special education. JLARC received responses from 1,573 parents. (See Appendix B for more information.)

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*“ I have filed [several] complaints to VDOE... I have found that VDOE is NOT impartial. The odds are stacked against parents and even if the school is found in non-compliance, nothing happens.”*

**— Parent of student with disability**

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**In resolving a state complaint where VDOE finds a school division failed to provide appropriate services,** VDOE is required by federal and state regulations to address (1) the failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services; and (2) the appropriate future provision of services for all children with disabilities.

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Other corrective actions required by VDOE do not consistently ensure that identified non-compliance is corrected. For example, if a school division is found to have violated procedural requirements, the most common corrective action requested by VDOE is the issuance of a memorandum to the involved personnel informing them of the regulatory requirements. Other than requiring documentation that the memorandum has been sent, there is no further follow-up by VDOE to ensure that the school personnel are knowledgeable of and able to appropriately follow policies and procedures in the future and avoid further non-compliance. In some instances, however, VDOE has required more substantive corrective actions, such as requiring training or professional development for school personnel or requiring a change of placement for the student.

Ineffective required corrective actions likely contribute to dissatisfaction among parents who have filed complaints through VDOE. In interviews and survey responses, parents indicated that they believed their complaints were not handled fairly through VDOE's state complaint services, and multiple parents expressed dissatisfaction with the lack of accountability school divisions faced from VDOE in instances of founded non-compliance (sidebar). Similarly, other stakeholders representing parents in dispute resolution cases expressed concerns regarding VDOE's lack of assertiveness in requiring remedies for the adverse impacts that violations have on students. In interviews, these stakeholders indicated that VDOE's practice of not mandating remedial action and returning decisions to school divisions only delays students' receipt of needed services.

VDOE's state complaint services do not adequately ensure identified problems are corrected and remedied. VDOE's practice of deferring compensatory services and other corrective action decisions to the IEP team is primarily founded in the belief that decisions regarding individual students are best made at the local level. While each student receiving special education services has unique needs that are best known by his or her IEP team, VDOE needs to hold each school division accountable for providing legally obligated services to students. Federal and state regulations require that the state education agency ensures that any identified non-compliance, including the failure to provide needed services, is corrected as soon as possible.

The General Assembly should direct VDOE to review and revise its state complaint procedures to ensure that they meet federal and state requirements (sidebar). VDOE's revised procedures should ensure that it requires and enforces corrective actions that will fully and appropriately remedy any negative effects of school divisions' non-compliance. VDOE's required corrective actions should also be sufficient to ensure that relevant personnel are knowledgeable of, and able to implement, appropriate practices that will prevent similar non-compliance in the future.

## RECOMMENDATION 21

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to revise its state complaint procedures and practices to ensure it requires and enforces corrective actions that (i) achieve full and appropriate remedies for school divisions' non-compliance, including, at a minimum, requiring school divisions to provide compensatory services to students when it determines divisions did not provide legally obligated services and (ii) ensure relevant personnel understand how to avoid similar non-compliance in the future.

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### **VDOE does not review identified compliance violations not specifically alleged in complaints or that are over a year old**

During a complaint investigation, VDOE complaint specialists may receive or find evidence of non-compliance that was not specifically alleged in the initial complaint. JLARC staff identified multiple instances in VDOE letters of findings where VDOE staff encountered evidence that showed possible (or certain) violations of laws or regulations by school divisions but that were dismissed because the violations were not specifically alleged in the original complaint. Similarly, in other VDOE letters of findings, parents or other complainants included evidence of possible violations of laws or regulations by school divisions, but the allegations were dismissed because they were outside of the one-year statute of limitations in state regulation (sidebar).

VDOE does not have a formal process to address non-compliance (or potential non-compliance) found during state complaint investigations that is not specifically alleged by the complainant or that falls outside of the one-year statute of limitations. State education agencies are allowed to use alternative approaches to ensure possible non-compliance is investigated and corrected, even if the non-compliance cannot be addressed through the state complaint in which it was alleged. For example, VDOE could develop a formal process to forward non-compliance found during an investigation that was not part of the initial complaint to staff in VDOE's Office of Program Improvement, who are responsible for ongoing monitoring of divisions' special education programs.

In its June 2020 report, the USDOE's Office of Special Education Programs (OSEP) also faulted VDOE for not having a formal process for investigating credible allegations of non-compliance. In that report, the OSEP noted:

The State's general supervisory and monitoring responsibilities are broader than [due process and state complaint procedures] and must encompass some means of considering, and if appropriate, addressing, credible allegations of LEA non-compliance with IDEA requirements. Completely ignoring credible allegations of non-compliance is not a reasonable method of exercising the State's general supervisory responsibilities. OSEP is aware that many States properly have a practice of responding proactively—through investigation or other means—outside of the formal dispute resolution mechanisms, when parents or other stakeholders provide credible information alleging non-compliance by an LEA.

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State complaints must address an action that occurred less than one year prior to the date the complaint is received. Federal guidelines allow—but do not require—states to extend this time limit beyond one year.

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Following this statement, OSEP also expressed its concerns about VDOE's ongoing monitoring process, noting: "It is also important to note that the State's current monitoring system does not appear sufficiently comprehensive to ameliorate the practice of ignoring credible allegations of LEA non-compliance."

VDOE staff have indicated that they intend to take steps to improve communication between VDOE's complaint staff and ongoing monitoring staff. VDOE should build on these planned efforts to formalize and strengthen the agency's supervisory capabilities. VDOE staff are developing a request for proposal for an integrated internal monitoring system that would allow monitoring staff to see which school divisions have been subject to state complaint investigations and for what reasons. VDOE also developed an interoffice form for reporting concerns across offices and divisions within the agency. As part of these efforts, VDOE should develop written policies and procedures for tracking, reviewing, and resolving allegations of non-compliance that are credible but do not meet the current regulatory standard for state complaints. These policies and procedures should include a formalized and written process to refer credible allegations to VDOE monitoring staff for further review. VDOE could review approaches used by other agencies with investigative responsibilities, such as the Virginia Department of Social Services, the Office of the State Inspector General, and the Virginia Department of Health Professions, to inform its revised policies and procedures.

#### **RECOMMENDATION 22**

The Virginia Department of Education should develop 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. These policies and procedures should include expectations and mechanisms for collaboration between the Office of Dispute Resolution and Administrative Services and the Office of Special Education Program Improvement to investigate and resolve alleged violations that do not qualify for state complaint investigations.

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Parents have the option to file a state complaint prior to pursuing mediation or a due process hearing on behalf of their student. However, they are not required to do so and can use either dispute resolution avenue first.

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### **More assertive VDOE would reduce burden on parents to pursue mediation or due process**

Parents of students with disabilities have other state-level avenues to ensure their student receives services they are entitled to, but parents' need to pursue these other avenues could be reduced with a more aware and assertive VDOE (sidebar). In addition to state complaints, IDEA gives parents two routes for resolving disputes or addressing issues with school divisions: mediation and due process.

- **Mediation** involves the use of an impartial, trained mediator to assist parents in negotiations with school divisions regarding disagreements over students' special education services. Mediation is a voluntary option that may be requested by parents or school divisions but can only occur if both parties agree to participate. VDOE's primary role in mediation is to train and contract with a group of mediators who can assist in negotiations. VDOE is responsible for supervising and evaluating this group of mediators.
- **Due process hearings** are administrative hearings in which an impartial hearing officer, authorized by the Supreme Court of Virginia, is responsible for resolving a dispute between a parent, or child with a disability, and a school division. Hearings can be initiated by either party, and hearing officers will render a decision in favor of one party, or issue a split decision. VDOE is not directly involved in conducting due process hearings.

Unlike state complaints, VDOE is not responsible for conducting mediation and due process hearings. Instead, VDOE's responsibility is to facilitate the provision of these services. For example, VDOE's primary responsibilities for mediations are to train and contract with a group of mediators to assist in negotiations and to supervise and evaluate these mediators. Similarly, VDOE is not directly involved in conducting due process hearings. The agency's primary role is to ensure that regulations governing the proceedings are appropriately followed, including timelines for initiating hearings and issuing decisions. VDOE also is required to provide specialized training to due process hearing officers annually on federal and state special education law and regulations.

A relatively small proportion of parents pursue either mediation or due process to resolve disputes with their student's school division, and parents are frequently unsuccessful through due process (sidebar). Between 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. Mediations, although infrequently used, are more likely to result in an agreement, with an average annual success rate between 70 and 78 percent.

Several structural factors make due process a challenging and generally unsuccessful avenue for parents to hold school divisions accountable for providing services to their students. In the vast majority of cases, parents are required to bear the burden of proof that the school division's actions or decisions related to their student's special education were not appropriate. In the absence of explicit federal or state laws specifying which party bears the burden of proof, current federal case law requires the party who initiates the due process hearing to bear the burden of proof in the case (sidebar). Since school year 2010–11 parents have initiated 96 percent of the due process cases in Virginia. According to national experts, meeting this burden of proof is a challenge for parents.

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**Between school year 2013–14 and school year 2017–18, VDOE received an average of 181 due process hearing and mediation requests each year.** This represents about only 10.6 due process and mediation requests per 10,000 students with disabilities in Virginia each year. The number of requests are expected to go up as a result of the COVID-19-related school closures.

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**Some states, including Delaware, New Jersey, and Connecticut have shifted the burden of proof from parents to school divisions** in most matters addressed at due process hearings.

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Additionally, most parents pursue due process hearings without legal representation—making it unlikely that they will succeed. National experts, Virginia hearing officers, and attorneys representing clients in due process hearings indicate that parents often do not understand the procedural components of due process hearings and face particular challenges when they represent themselves. Since school year 2010–11, parents have been represented by attorneys in only 33 percent of hearings in Virginia. In contrast, school divisions have been represented by attorneys in more than 90 percent of hearings during the same time period. This places parents at a distinct disadvantage in many cases, as parents are ill-equipped to effectively navigate the process and argue their case. Since school year 2010–11, parents represented by an attorney have prevailed at twice the rate of cases in which they had no attorney.

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**Texas and Florida have instituted requirements that non-attorney advocates must abide by certain ethical and conduct standards to represent parents.** In these states, advocates must be approved by hearing officers to represent parents. Currently, there are no ethical or conduct requirements for non-attorney advocates in Virginia, and no federal standards exist for special education advocates.

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The lack of legal representation appears to be driven by a significant lack of affordable attorney representation for parents. Few attorneys are well versed in special education law, according to stakeholders, and those who are knowledgeable may be too expensive for most families to afford. Access to low-cost attorney representation is reportedly very limited. In some cases, parents have sought the assistance of non-attorney advocates in due process hearings. Virginia currently allows non-attorney advocates to represent parents in due process hearings, while many other states do not. 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 (sidebar).

Improvements to both VDOE's state complaint services and ongoing monitoring, as discussed below, could reduce the need for parents to resolve disputes through these more burdensome mechanisms.

## **Information available to parents about state-level dispute resolutions options is insufficient**

VDOE and school divisions are required by state regulations to fully inform parents of their rights under federal and state laws and regulations related to special education. As part of this requirement, school divisions must inform parents of the dispute resolution services available to them, including state complaint services, mediation, and due process hearings. VDOE provides several documents online that are intended to help parents understand their rights and their options for resolving disputes through state-level dispute resolution services. Resources provided by VDOE include a "Parent's Guide to Special Education," a "Virginia Procedural Safeguards Notice," and a "Parents' Guide to Special Education Dispute Resolution." School divisions are required to provide parents with a copy of the Virginia Procedural Safeguards Notice on an annual basis, and most parents responding to JLARC's survey reported that school divisions are doing this.

Responses to JLARC's survey of parents of students with disabilities indicate, however, that many parents are not being adequately informed of the state-level supports available to them if they have a dispute with their student's school. Of the 281 parents who responded to the survey and who said they have had a dispute about special education services in the past three years *that was not resolved*, 204 (73 percent) said their school division did not explain the state-level dispute resolution options available if a dispute could not be resolved locally. Of the 510 parents who had a dispute with their school or school division about special education within the past three years (whether it was resolved or not), 201 (39 percent) parents said they did not pursue a state-level dispute resolution option through VDOE because they were unaware of them.

Parents also appear to be unaware of VDOE's special education parent ombudsman service, which is available to help any parent in Virginia who has questions about special education services, their rights, or the dispute resolution options available if they cannot resolve a dispute with their school division. Although there is no data on the extent to which parents are aware of VDOE's special education parent ombudsman service, JLARC survey responses and interviews suggest its existence is not widely known. Only one of the 1,573 parents who responded to JLARC's survey mentioned interacting with the ombudsman. Similarly, no stakeholders, with the exception of VDOE staff, mentioned the existence of the ombudsman during the course of JLARC's interviews.

One of the reasons parents may be unaware of state-level supports available is that the information about their rights and the dispute resolution processes on VDOE's website is not readily apparent. For example, as of October 2020, the Virginia Procedural Safeguards Notice, which explains parents' and students' special education rights, is made available on two VDOE webpages, both of which contained at least 50 other links, all of which are highlighted in red but are of varying levels of importance. Implementation of Recommendation 4 of JLARC's 2020 report *Operations and Performance of the Virginia Department of Education*, which directs VDOE to periodically review its website, could help ensure that parents are able to more easily locate the resources already available on VDOE's website (sidebar).

Similarly, VDOE is not effectively publicizing its special education parent ombudsman service and could make its services more widely known. As of November 2020, the primary page on VDOE's website that is dedicated to providing information about its special education ombudsman service contains only general information about the role and skills of an ombudsman, including the Swedish origins of the term "ombudsman." VDOE also briefly mentions the existence of the special education parent ombudsman in its parent's guide to special education, but this description provides only vague information about the role of the ombudsman, noting that it "provides assistance and information on special education."

To ensure families are made aware of the parent ombudsman, VDOE should develop a comprehensive and easy-to-understand one-page summary, in multiple languages, of

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From *Operations and Performance of the Virginia Department of Education* (2020)

**Recommendation 4:** The Virginia Department of Education should periodically review its website to ensure the content is current, relevant, accessible, and intuitively organized.

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the roles and responsibilities of the parent ombudsman, specific supports the ombudsman can provide to families, and information about how to contact the ombudsman. VDOE should ensure this one-page summary is readily apparent and easily accessible on VDOE's website.

### **RECOMMENDATION 23**

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.

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VDOE should also elevate the ombudsman position to report directly to the superintendent of public instruction or other individual in the VDOE leadership outside of the Department of Special Education and Student Services. Elevating the position would enable the ombudsman to better ensure that common or urgent problems raised about school divisions' special education services or about VDOE's supervision of these services, can be elevated to the superintendent's attention, as appropriate, and effectively addressed. Currently, VDOE's special education parent ombudsman is located in the Office of Facilities and Family Engagement, which reports to the assistant superintendent of special education and student services, who heads the Department of Special Education and Student Services.

### **RECOMMENDATION 24**

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.

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**To preserve confidentiality**, neither the systematic tracking nor the reporting by the ombudsman should include personally identifiable information.

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If needed, the General Assembly could create additional ongoing oversight of special education through the new Office of the Children's Ombudsman. The office, which was created by the 2020 General Assembly, will be located in the governor's office and is authorized to investigate complaints alleging state or local violations of laws or regulations pertaining to child protective services, foster care, and adoption. It is also required to report annually on its activities and any recommendations for needed changes to legislation, rules, or policies. The General Assembly could add similar responsibilities and authorities pertaining to complaints regarding the provision of special education services or VDOE's supervision of these services. In 2020, the Maryland General Assembly added additional ongoing monitoring of its special education system by creating a special education ombudsman position within its state office of

attorney general. The purpose of Maryland's new special education ombudsman is to provide legal information to parents, to help ensure the special education system functions as intended, to identify and report patterns of complaints made by parents, and to identify any recommendations to improve the state's implementation of special education services.

If a similar ombudsman position were created within Virginia's Office of Children's Ombudsman, the need for additional resources for the office, as well as its roles and responsibilities relative to VDOE's current activities, such as VDOE's state complaint services, would need to be considered.

## **VDOE's ongoing monitoring is too limited to identify some significant problems in special education**

In addition to investigating state complaints, state education agencies are required by federal law and regulations to monitor the implementation of IDEA in their respective states on an ongoing basis. State education agencies are required by federal regulations to report annually on school divisions' performance in certain priority areas using valid and reliable information, and ensure that any identified non-compliance is corrected within a timely manner. Under federal law and regulations, the primary focus of the state's monitoring activities must be on (1) improving educational results and functional outcomes for all children with disabilities and (2) ensuring that school divisions are complying with federal special education laws.

### **VDOE relies primarily on limited federal indicator data and generally does not validate school divisions' self-reported assessment of their compliance with IDEA**

VDOE collects certain federally required data related to school divisions' K-12 special education services and has relied primarily on this data to monitor school divisions' performance and compliance with state and federal laws and regulations. This "federal indicator data" provides insight into some aspects of school divisions' special education services, including graduation rates among students with disabilities, disproportionate representation of certain racial and ethnic groups in special education, and the timeliness of eligibility determinations after a student is identified.

VDOE's use of federal indicator data to monitor most school divisions' special education services is not inherently problematic, but the extent to which VDOE relies on this data limits its ability to detect important problems that may be occurring within Virginia's special education system. For example, federal indicator data provides virtually no insight into the quality and effectiveness of IEPs, even though IEPs are foundational to effective special education services (as discussed in Chapter 4).

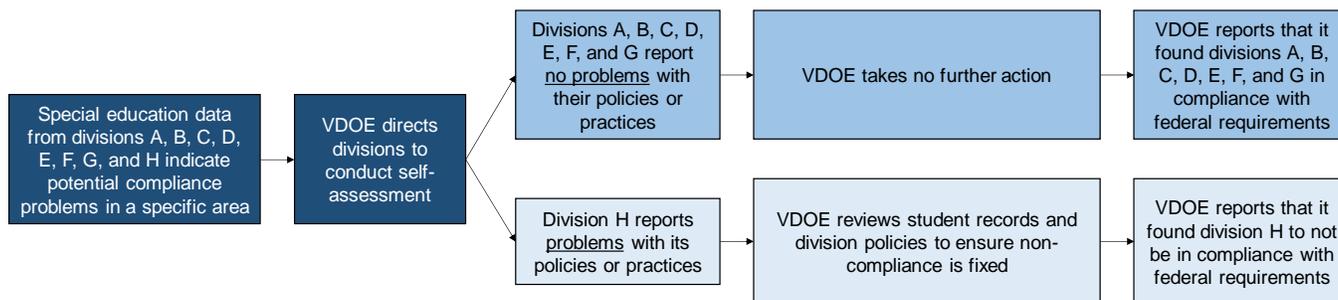
VDOE’s awareness of problems in special education is also limited because it relies heavily on school divisions to self-report problems with their own policies, procedures, or practices, and generally does not verify the results of divisions’ self-assessments (Figure 8-1). As mentioned in previous chapters, self-reported *non-compliance* by divisions rarely occurs, and VDOE does not have a formalized process for verifying divisions’ compliance determinations, such as through random audits.

VDOE’s problematic reliance on self-reported data was identified as an agency-wide issue in two prior JLARC reports, *Operations and Performance of VDOE (2020)* and *The Reorganization of the Department of Education (1991)*.

Although it is possible that school divisions rarely find compliance problems when they conduct their reviews, VDOE defers too often to school divisions’ self-determinations (sidebar). For example, Chapter 5 of this report highlights significant challenges with school divisions’ transition planning for students with disabilities, including many parents reporting practices that are not consistent with federal and state laws. However, based on school divisions’ self-determinations, VDOE found 99.25 percent compliance across divisions in this area during the 2018–19 school year.

To ensure the primary data used to monitor school division performance is valid, VDOE should randomly audit and verify school divisions’ self-determinations of compliance with all six IDEA federal compliance indicators. The verification process should include a random sample of divisions each year and ensure that all divisions’ self-determinations are reviewed and verified no less frequently than once every five years.

**FIGURE 8-1**  
**VDOE’s role in identifying and correcting compliance problems is generally limited to those school divisions that self-report problems**



SOURCE: Interviews with VDOE monitoring staff, reviews of VDOE policies, procedures, and monitoring materials.  
 NOTE: Reflects VDOE’s approach to all compliance indicators (Indicators 4, 9, and 10, 11, 12, and 13). VDOE also reviews a very small number of student records (three to five total) relating to Indicators 11, 12, and 13 if school divisions self-report non-compliance in any of these indicators.

**RECOMMENDATION 25**

The Virginia Department of Education should develop and implement a process for systematically auditing and verifying school divisions’ self-determinations of compliance with all Individuals with Disabilities in Education Act performance indicators. The verification process should include a random sample of divisions each year and ensure that all divisions’ self-determinations are reviewed and verified no less frequently than once every five years.

VDOE's public characterizations of school division compliance with federal indicators also warrant clarification. VDOE should ensure the public understands VDOE's role in monitoring the data, the extent to which the department has validated the information, and clear explanations of what the indicators are measuring. By law, VDOE is required to report publicly on the performance of Virginia school divisions in various aspects of special education. However, as currently presented publicly, the measurements used for some federal indicators and VDOE's role in validating divisions' compliance are mischaracterized. For example, in Indicator 13—which pertains to the compliance of transition planning sections of IEPs—VDOE does not make clear that divisions have had the opportunity to correct self-identified non-compliance and so the publicly reported performance does *not* reflect any non-compliance that has been self-identified and corrected.

Similarly, VDOE's description of Indicator 4a—which pertains to a division's use of suspensions and expulsions—suggests that VDOE has reviewed school divisions' policies, practices, or IEPs and reached a conclusion on divisions' compliance. In reality, such reviews are not occurring for most divisions. Instead, the measure reflects school divisions' compliance, as determined by the school divisions themselves.

#### **RECOMMENDATION 26**

The Virginia Department of Education (VDOE) should review and revise, as appropriate, its federal indicator-based public reports on school divisions' special education services to ensure they accurately and clearly articulate (i) the extent to which the school division's self-reported performance or compliance has been independently validated by VDOE and (ii) what each performance or compliance indicator is actually measuring.

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#### **VDOE's on-site reviews appear to be useful, but too few divisions are subject to them**

Since 2015, VDOE has annually conducted on-site reviews of some school divisions' special education programs (sidebar). Of the 19 on-site reviews assessed for this report, VDOE's monitoring staff typically spent three to five days in a school division to review their special education program using structured on-site review instruments. Prior to the on-site review, VDOE monitoring staff review relevant information, such as student-level data and recent performance reports. Methods used during the on-site reviews include reviewing student records, interviewing school personnel, conducting classroom observations, and interviewing parents and, in some cases, students.

After a review is completed, VDOE issues a report that describes its findings and recommendations related to compliance and program quality. Monitoring staff follow-up to ensure any findings of non-compliance are resolved as soon as possible, but no later than 12 months after they are brought to the division's attention. Beyond compliance, VDOE staff may also recommend additional changes to policies or practices

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School divisions are selected for on-site monitoring primarily based on their federal indicator data. VDOE staff also noted that other factors, such as the experience of the division-level special education director, are also considered when selecting divisions for on-site monitoring.

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to address issues related to program quality. Problems identified in VDOE's reviews generally reflect many findings described in this JLARC report.

Too few of these on-site reviews are being conducted annually to have an impact statewide. Since FY16, only 22 of 132 school divisions (17 percent) have been subject to an on-site review, an average of four per year. Additionally, these divisions represent only about 11 percent of total statewide special education enrollment. Further, given that these few on-site reviews are targeted at divisions performing poorly on federal indicator data (or self-reporting poor performance), the vast majority of divisions could conceivably go over a decade without receiving an in-depth review of their special education programs from VDOE.

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**Florida, North Carolina, Ohio, South Carolina, and West Virginia conducted at least 13 in-depth on-site reviews in their most recently reported calendar year.** These other states have two to 12 monitors responsible for conducting ongoing monitoring for special education. VDOE has 12 staff in its Office of Program Improvement, eight of whom are designated monitors.

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Other states conduct more on-site reviews each year, even with similar or fewer monitoring staff, and VDOE should evaluate opportunities to reallocate existing resources to conduct more in-depth on-site reviews per year (sidebar). VDOE may be able to free up staff resources by reducing the number of VDOE staff who participate in each on-site review. On average, eight VDOE staff participate in each structured on-site review. Having such a large monitoring team for each on-site review may not be necessary given that these on-site visits are structured and that the in-depth follow-up technical assistance is primarily provided by staff of Virginia's Training and Technical Assistance Centers.

### **School divisions view VDOE's technical assistance favorably, including after specific instances of non-compliance are identified**

School divisions appear to be generally satisfied with VDOE's technical assistance and guidance, which suggests that any improvements to VDOE's ongoing monitoring, including those discussed above and below, would be beneficial and well received by divisions. In interviews, division-level special education directors reported general satisfaction with VDOE's technical assistance and guidance in the area of K-12 special education. Similarly, of the 102 division-level directors of special education that responded to JLARC's survey, 78 percent reported they were very satisfied or generally satisfied with the technical support and guidance provided to their division in the area of K-12 special education. Only 7 percent reported they were generally dissatisfied or very dissatisfied.

Additionally, among the 53 division-level directors of special education who reported their school division had been required to address non-compliance during the past three years, 46 (87 percent) said they felt VDOE provided sufficient guidance and support to help address the identified areas of non-compliance.

### **VDOE should expand its ongoing monitoring to proactively identify problems with the delivery of special education services**

As mentioned throughout this report, VDOE has no formal processes to answer important questions about the experiences of students with disabilities in most school

divisions. For example, VDOE's current monitoring approach does not allow it to answer the following questions:

- Are there some school divisions whose graduation rates among students within a certain disability category are lower than expected and what is contributing to lower-than-expected graduation rates? (Chapter 2)
- Do any school divisions appear to be under-enrolling students with certain disabilities in special education, and, if so, to what extent are those divisions' policies and practices, such as poor identification practices, contributing to this relatively low enrollment? (Chapter 3)
- What is the general quality of IEPs across Virginia school divisions, and where should divisions focus greater attention to ensure students have useful and appropriate IEPs? (Chapter 4)
- Are school divisions denying services to students because they are too expensive or unavailable? (Chapter 4)
- Are school divisions providing the legally obligated services and supports for students listed in students' IEPs? (Chapter 4)
- Are school divisions providing students with needed post-secondary transition services? (Chapter 5)
- Are school divisions ensuring students with disabilities have equal opportunities to participate in extracurricular activities with students without disabilities, as required by federal law? (Chapter 6)
- Which divisions are relying on a high proportion of provisionally licensed special education teachers or long-term substitutes to provide special education services and could the state do more to support these divisions? (Chapter 7)

These questions could at least partially be answered by VDOE either (1) analyzing data it already maintains or (2) taking new, but relatively cost-efficient steps to improve its monitoring of Virginia's K-12 special education services. For example, VDOE could

- use state data to identify school divisions that appear to be under- or over-enrolling students in special education within specific disability categories (not just by race or ethnicity) (Chapter 3);
- review a random sample of IEPs for each division at least once every three years to understand the quality of IEPs being produced. VDOE could use the statewide IEP online system to review a sample of IEPs for the 70 divisions currently enrolled in that system and could request a random sample from non-participating school divisions. VDOE could also leverage TTAC resources to conduct these reviews if central office resources are limited (Chapters 4 and 5);

- improve the breadth and depth of the annual parent survey so that VDOE can identify common concerns raised by parents in school divisions (Chapters 4, 5, and 6); and
- develop policies for, and implement, targeted, focused on-site monitoring in school divisions where data, state complaints, and survey results indicate problems exist (Chapter 8).

During the course of this study, and after OSEP's report was issued, VDOE began making changes to its ongoing monitoring processes that are intended to improve its awareness of school divisions' compliance with special education laws and regulations. However, these changes appear to be insufficient to materially improve its awareness of problems within Virginia's special education system. For example, VDOE plans to require each school division to conduct a new self-assessment every six years on several aspects of special education related to compliance with certain laws and regulations, but it is not clear that another division self-assessment, conducted on a six-year cycle, would represent a material improvement to VDOE's monitoring capabilities.

VDOE has presented some of these improvement plans publicly, but the planned changes remain unclear. For example, VDOE has presented contradicting plans for validating (or auditing) school divisions' self-reported compliance going forward. In September 2020, VDOE reported publicly through a superintendent's memo that it will conduct desk audits on any school division that reports 100 percent compliance on federal indicators. However, in an October 2020 internal policies and procedures document, VDOE notes that it will conduct desk audits on school divisions that report *less than 100 percent compliance*—an approach that is consistent with current practices, where VDOE generally validates only self-reported non-compliance. Further, in neither document does VDOE specify whether it intends to audit self-reported compliance on *some* federal indicators, as is current practice, or verify performance on *all* federal indicators—the latter of which would be a material improvement.

VDOE should develop and implement a clear and comprehensive plan to improve its monitoring of school divisions' special education services going forward to ensure it has an adequate understanding of key problems school divisions and students are experiencing. As part of this plan, VDOE should review opportunities to leverage existing data and information that is collected or modify existing data collection tools, such as the parent survey, to improve its awareness of local-level problems. VDOE should also review opportunities to reallocate existing resources and leverage federal funding to improve its monitoring activities. These monitoring improvements should include additional on-site reviews each year to ensure all school divisions receive in-depth on-site reviews at least once every five years and to verify that identified problems are resolved.

### **RECOMMENDATION 27**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to develop and implement a clear and comprehensive plan to improve its approach to monitoring Virginia's special education system on an ongoing basis. At a minimum, the plan should clearly describe VDOE's procedures for effectively determining whether school divisions are complying with state and federal requirements pertaining to (i) identification and eligibility determination processes; (ii) individualized education program development and implementation, (iii) post-secondary transition planning; (iv) inclusion in academic and non-academic experiences and the use of discipline; and (v) special education staffing. The plan should also propose actions to increase monitoring capacity and on-site visits with existing resources and by leveraging available federal funding. VDOE should present its plan to the Senate Education and Health Committee, the House Education Committee and the Joint Legislative Audit and Review Commission no later than November 1, 2021.

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## **Expanded supervision may require additional VDOE staff resources, contingent on review of current staff responsibilities**

Implementing the recommendations issued in this report will require additional work by VDOE staff. Specifically, VDOE will need to revise and augment training and guidance tools and documents, design new ways to monitor school divisions' special education staffing and programs, systematically review student IEPs, enhance its focus on remedying the state's special education teacher shortage, and improve the effectiveness of its investigations into and responses to special education-related complaints it receives from parents. Additionally, JLARC's 2020 *Review of the Children's Services Act and Private Special Education Day School Costs* recommended that VDOE take on new responsibilities for funding the cost of student placements in private special education day schools.

VDOE, and specifically its Department of Special Education and Student Services, may require additional full-time staff to effectively implement these recommendations. The special education department currently has 67 staff, 55 of whom are assigned to special education. The operations of this department are almost entirely federally funded (\$11 million in federal funds and \$115,000 in state general funds). As part of its overall effort to improve the operations of the special education department, VDOE should first determine whether it can make more efficient use of its existing 55 special education staff, such as by delegating assignments more efficiently. This may require working with the USDOE to determine whether VDOE has the flexibility to assign new responsibilities to federally funded staff. VDOE should also determine whether it can devote fewer resources and less time to less important or less urgent activities, while still meeting the state and federal government's expectations for its

supervisory role. It could also determine if there may be additional funding through USDOE to pay for any necessary new positions.

After identifying opportunities to use existing VDOE staff and federal funds to implement this report's recommendations, VDOE could, in the next introduced state budget, seek additional state funds to create and fill any needed new positions.

## Appendix A: Study resolution

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### Effectiveness of Virginia’s Special Education Programs

Authorized by the Joint Legislative Audit and Review Commission on December 10, 2018

WHEREAS, the federal Individuals with Disabilities Education Act (IDEA) cites improving educational results for children with disabilities as essential to ensure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities; and

WHEREAS, the Code of Virginia directs the Board of Education to ensure that children with disabilities have free access to an appropriate education meeting their needs (§ 22.1-214 A); and

WHEREAS, school divisions are legally required to provide physical, medical, psychological, rehabilitation, occupational, therapeutic, and speech and auditory services, as needed, to each child deemed to have a disability (including a developmental delay); and

WHEREAS, Virginia’s 132 school divisions provide special education services in elementary and secondary schools, as well as 11 regional special education programs that serve multiple school divisions, and other settings such as a home or a hospital, as appropriate; and

WHEREAS, school divisions are required to develop and follow an individualized education program (IEP) for children identified as having a disability; and

WHEREAS, through its Training and Technical Assistance Centers, the Virginia Department of Education (VDOE) seeks to provide special education guidance and technical support to school divisions; and

WHEREAS, in Virginia, more than 150,000 school-age children have been identified as having a disability (12 percent of all school age-children in Virginia public schools), and more than 17,000 children under the age of six have been identified as having a disability; and

WHEREAS, federal IDEA grants total \$263 million, state funds total \$513 million, and localities also provide substantial funding for special education services; and

WHEREAS, Virginia’s school divisions are generally meeting federal IDEA targets for graduation and parental involvement, but missing federal targets for serving children in the least restrictive environment and developing reading and math skills; and

WHEREAS, court decisions—especially the 2017 U.S. Supreme Court decision in *Endrew F. v. Douglas County School* that schools need to ensure students make “appropriately ambitious” progress—necessitate robust special education services and public resources; and

WHEREAS, the Joint Legislative Audit and Review Commission (JLARC) has not systematically reviewed special education since 1984; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission that staff be directed to review the effectiveness of Virginia's special education programs. In conducting its study, staff shall assess (i) spending trends in special education and related services, and major drivers of spending changes over time; (ii) the processes used to identify, refer, and determine eligibility for services for children who may have a disability or developmental delay; (iii) the effectiveness and consistency of the process used to determine the services needed for each child, and least-restrictive settings in which to provide those services, including services and settings funded through the Comprehensive Services Act; (iv) the process through which school divisions determine placements for students, in regional special education programs or in private facilities; (v) the performance, as measured through federal IDEA and other relevant performance indicators, of programs and services for children with disabilities; (vi) the effectiveness of VDOE's special education monitoring, guidance, and support, including through Training and Technical Assistance Centers; (vii) the adequacy and consistency of school division training and expertise in special education; and (viii) coordination across programs and services, including early childhood, K-12 programs, private facilities, educational services, social services, and other programs and services. JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including local school divisions and school boards, local departments of social services and boards, and Community Services Boards shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.

## Appendix B: Research activities and methods

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Key research activities JLARC performed for this study include:

- structured interviews with leadership and staff of the Virginia Department of Education (VDOE) and other state agencies, school division-level special education directors, special education teachers, parents of students enrolled in special education, due process hearing officers, special education advocates, and subject-matter experts in Virginia and other states;
- surveys of division-level special education directors and parents of students enrolled in special education;
- analysis of VDOE data;
- structured reviews of individualized education programs (IEPs);
- observations of IEP team meetings;
- reviews of state special education complaints to VDOE's Office of Dispute Resolution and Administrative Services;
- review of national research; and
- reviews of federal and state laws, regulations, and policies relevant to the provision and administration of special education in Virginia.

### Structured interviews

Structured interviews were a key research method for this report. JLARC conducted 96 interviews. Key interviewees included:

- VDOE staff;
- division-level special education directors and special education teachers;
- state and local special education advisory committees;
- staff of Virginia's Training and Technical Assistance Centers (TTACs);
- other special education stakeholders and subject-matter experts in Virginia;
- other states' education agency staff; and
- U.S. Department of Education Office of Special Education Programs (OSEP) staff.

### *VDOE staff*

JLARC staff conducted 18 structured interviews with VDOE staff, including VDOE regional monitoring staff. Topics varied across interviews but were primarily designed to understand VDOE's supervisory functions, including ongoing monitoring, state complaint services, due process and mediation services, and other support activities. VDOE staff were also asked for their perspectives on any opportunities to improve Virginia's special education system.

### ***Division-level special education directors and teachers***

JLARC staff conducted individual and group interviews with special education directors and teachers in Virginia school divisions of various sizes and in different areas of the state, including:

- Buena Vista City Public Schools,
- Chesterfield County Public Schools,
- Culpeper County Public Schools,
- Danville Public Schools,
- Fairfax County Public Schools,
- Fredericksburg City Public Schools,
- Henrico County Public Schools,
- Highland County Public Schools,
- King William County Public Schools,
- Mecklenburg County Public Schools,
- Montgomery County Public Schools,
- Prince William County Public Schools,
- Roanoke City Public Schools,
- Virginia Beach City Public Schools, and
- Wise County Public Schools.

Interview topics focused on various aspects of school divisions' special education services, including identification and eligibility determination, IEP development and implementation, dispute resolution, inclusion, and satisfaction with state guidance, technical assistance, and monitoring. Interviews also covered challenges school divisions encounter in their efforts to provide special education services, including challenges recruiting and retaining qualified special education teachers. Interviews with special education teachers focused on their workload, job satisfaction, challenges they experience when providing special education services.

### ***State and local Special Education Advisory Committees***

JLARC staff conducted phone interviews with chairs of the State Special Education Advisory Committee and eight local special education advisory committees. Local special education committees were selected to ensure JLARC staff interviewed one from each VDOE region and that they represented school divisions of various sizes. JLARC staff interviewed chairs of the following local special education advisory committees:

- Alleghany County Public Schools,
- Charlottesville City Schools,
- Halifax County Public Schools,
- Hanover County Public Schools,
- Loudoun County Public Schools,
- Norfolk Public Schools,
- Pulaski County Public Schools, and

- Stafford County Public Schools.

Interview topics included members' concerns about the provision of special education in their school division related to identification, eligibility determination, IEP development, IEP implementation, inclusion, recruiting and retaining qualified special education teachers, and procedural safeguards.

JLARC staff also collected perspectives of Virginia's State Special Education Advisory Committee members during a March 2020 meeting.

### ***TTAC staff***

JLARC staff conducted phone interviews with the directors and staff from all seven of VDOE's special education TTACs. These included VDOE's TTACs at:

- College of William and Mary,
- George Mason University,
- James Madison University,
- Old Dominion University,
- Radford University,
- Virginia Commonwealth University, and
- Virginia Tech.

Interview topics included TTAC's roles in providing technical assistance to school divisions, key policies and practices school divisions should be using when providing special education and related services, concerns about the provision of special education across the state, and key opportunities to improve Virginia's special education system.

### ***Stakeholders and subject-matter experts in Virginia***

JLARC staff conducted structured interviews with other special education stakeholders and subject-matter experts to understand their perspectives on a variety of topics. Interviewees included members of

- the National Association of State Directors of Special Education;
- Virginia Public Education Coalition;
- Virginia Association of Elementary School Principals;
- Virginia Association of School Superintendents; and
- Virginia Council of Administrators of Special Education.

JLARC also interviewed stakeholder groups who represent students enrolled in special education and their parents, including:

- Advocates for Justice,
- Council of Parent Attorneys and Advocates,
- disAbility Law Center of Virginia,
- Parent Educational Advocacy Training Center; and
- The ARC of Virginia.

These interviews were used to gather stakeholder perspectives on several topics, including satisfaction with the provision of special education in Virginia, challenges and concerns with the provision of special education, ideas for addressing concerns, and actions taken in other states to address similar challenges.

Additionally, JLARC interviewed experts at Radford University and the University of Virginia regarding special education best practices, special education and general education teacher preparation, and the special education teacher shortage.

### ***Other states***

JLARC staff conducted phone interviews with staff at state education agencies in Florida, Georgia, Indiana, Kansas, Missouri, North Carolina, Ohio, and Pennsylvania. These interviews focused on the general provision of special education in these states, as well as policies, procedures, and initiatives related to inclusion, post-secondary transition, and monitoring of school divisions.

### ***Surveys***

JLARC conducted for this study: (1) a survey of school division-level special education directors and (2) a survey of parents of students enrolled in special education in Virginia.

#### ***Survey of division-level special education directors***

The survey of division-level special education directors was administered electronically to special education directors in all 132 school divisions. Topics included processes used for student identification, eligibility determination, IEP development, IEP implementation, and inclusion; their division's experience recruiting and retaining special education teachers; their perspectives on school-level staff's special education-related knowledge and skills and special education teacher caseloads; their perspectives on VDOE's technical assistance and support; and challenges their division faces in providing special education. JLARC received responses from 102 directors, for a response rate of 77 percent. The directors that responded are from school divisions that represent 88 percent of Virginia's K–12 students, as well as 88 percent of students enrolled in special education.

#### ***Survey of parents of students enrolled in special education***

JLARC staff developed and administered a survey of parents of students who were enrolled in special education or who had received special education services within the past three years. JLARC staff partnered with faculty of the Spanish-English Translation Interpretation program at Virginia Commonwealth University to translate the survey and make it available in both English and Spanish.

The survey was posted on JLARC's website and made publicly available for about 45 days. VDOE staff also notified parents that the survey was open and encouraged participation through several approaches including:

- posting information about the parent survey on VDOE's website;
- sharing information about the parent survey through VDOE's Twitter and Facebook accounts, with 14,700 and 10,282 followers, respectively;

- sharing information about the parent survey to 58,000 recipients who were signed up to receive VDOE’s newsletters; and
- notifying all division-level directors of special education about the parent survey through an assistant superintendent’s memo.

Members of Virginia’s State Special Education Advisory Committee also shared the survey link with members of their constituency groups.

Topics covered in the parent survey included parents’ experiences during the identification, eligibility determination, and IEP development processes; the appropriateness of and their satisfaction with the services and placement that their student receives, including post-secondary transition services; their student’s experience with discipline and behavior management; and their knowledge of their rights and experience with the dispute resolution processes.

JLARC received 1,573 responses from parents of students enrolled in special education in 91 Virginia school divisions.

### **Data collection and analysis**

JLARC staff collected several types of data from VDOE to analyze for this study. JLARC received student-level data from VDOE on student records, graduation outcomes, test scores, and discipline. JLARC staff also accessed data from OSEP.

#### ***Analysis of special education enrollment (Chapter 1)***

JLARC staff used data from VDOE (Student Record Collection and December 1 Child Count) and OSEP (Part B Child Count and Educational Environments) to analyze special education enrollment and student characteristics in Virginia and to compare Virginia’s special education enrollment to that in other states. JLARC staff calculated the proportion of Virginia students receiving special education services by disability category, federally reported race, gender, and grade in each school division between the 2008–09 and 2018–19 school years. JLARC staff used data available through OSEP to compare trends in Virginia’s special education population to those in other states and nationwide.

#### ***Analysis of graduation outcomes of students enrolled in special education (Chapter 2)***

JLARC staff used graduation data from VDOE to calculate four-year graduation and dropout rates for all Virginia students between the 2008–09 and 2018–19 school years.

JLARC staff followed VDOE guidelines for calculating graduation and dropout rates. Accordingly, graduation rates are calculated as:

$$\frac{\text{Graduates in year } x}{(\# \text{ of first time entering 9th graders in year } x - 4) + (\text{students who transferred in}) - (\text{students who transferred out or died})}$$

VDOE defines dropouts as students who

- were enrolled during the previous school year but were not enrolled on October 1 of the current school year and have not graduated high school, OR
- students who were not enrolled on October 1 of the previous school year and were expected to be enrolled and have not graduated high school.

Dropout calculations exclude students that have transferred, have a school-recognized temporary absence, or have died.

Staff calculated four-year graduation rates by diploma type, including the standard diploma, advanced studies diploma, international baccalaureate (IB) diploma, and applied studies diploma. Staff analyzed the difference in graduation and dropout rates between students without disabilities and students who had an IDEA-qualifying disability at the time of graduation. JLARC staff calculated four-year graduation and dropout rates statewide, by locality, and by VDOE region. Staff also calculated four-year graduation and dropout rates by primary IDEA disability category and federally reported race category.

### ***Analysis of math and reading SOL scores (Chapter 2)***

JLARC staff used VDOE data to analyze math and reading SOL pass rates for all Virginia students between the 2012–13 and 2018–19 school years. JLARC staff chose this timeframe because a new reading SOL test was introduced during the 2012–13 school year that affected scores statewide.

To calculate pass rates, JLARC staff included students who took math or reading SOL tests (including plain English tests) and excluded students who took alternative or substitute assessments such as the Virginia Alternative Assessment Program, the Virginia Modified Achievement Standards Test, and the Virginia Substitute Evaluation program. Students were considered to have passed if they received a score of 400 or higher *on their most recent recorded attempt* at a given test. For example, if students failed the Grade 3 Reading SOL on their first try and passed on their second try, this analysis counts their second try, but not their first.

JLARC staff calculated math and reading SOL pass rates statewide and by locality, VDOE region, primary IDEA disability category, and federally reported race category.

### ***Analysis of variation in special education enrollment (Chapter 3)***

JLARC staff used Student Record Collection and December 1 Child Count data from VDOE to analyze the variation in special education enrollment across the state and school divisions, including across student characteristics like race and disability category. JLARC analyzed the variation in special education enrollment by comparing the proportion of all K–12 students in each school division enrolled in special education. Staff also analyzed the proportion of students enrolled in special education in school divisions compared to the statewide proportion by calculating risk ratios. A risk ratio represents the “risk” that a student is enrolled in special education relative to the “risk” all other students are enrolled in special education. Risk ratios are used by OSEP and VDOE to analyze disproportionate representation in special education.

JLARC staff analyzed variation in overall special education enrollment statewide and across school divisions, and enrollment by disability category. For overall special education enrollment, JLARC calculated and compared the proportion of K–12 students that receive special education. For enrollment by disability category, JLARC calculated the proportion of all K–12 students identified as having each of the 14 disability categories identified in IDEA statewide and in each school division. Students were considered to be identified as having a disability if it was listed as their primary or secondary disability. Variation in overall special education enrollment and by disability category was analyzed using a three-

year average over the 2016–17, 2017–18, and 2018–19 school years. JLARC staff compared special education and disability prevalence across school divisions to identify outliers.

JLARC used risk ratios to measure and compare how the proportion of students enrolled in special education varied by (1) disability category, (2) race, and (3) both disability category and race category. OSEP and VDOE use risk ratios to analyze disproportionate representation in special education because they measure the frequency with which one group is identified as needing special education relative to other groups. JLARC staff calculated all risk ratios using a three-year average over the 2016–17, 2017–18, and 2018–19 school years.

JLARC staff calculated risk ratios to measure how the proportion of students enrolled in special education varies across school divisions for disability type. Specifically, JLARC calculated risk ratios for students in each school division identified as having autism, emotional disability, intellectual disability, other health impairment, specific learning disability, and speech or language impairment. For each school division, six risk ratios (one per disability category) were calculated as follows:

$$\frac{\frac{\text{Number of students receiving special education with [disability category] in School Division A}}{\text{Number of total K-12 students in School Division A}}}{\frac{\text{Number of students receiving special education with [disability category] in all school divisions other than School Division A}}{\text{Number of total K-12 students in all school divisions other than School Division A}}}$$

JLARC staff did not calculate risk ratios for school divisions with less than 10 students in a disability category (a practice used by OSEP and VDOE).

JLARC staff also calculated risk ratios to measure how the proportion of students enrolled in special education varies by race, and how this varies by region. Seven racial groups used were based off the race codes used by the federal government and included: American Indian/Alaska Native; Asian; Black or African-American; Hispanic of any race; Native Hawaiian/Other Pacific Islander; two or more races, non-Hispanic; and white. For the state and each region, seven risk ratios (one per race category) were calculated as follows:

$$\frac{\frac{\text{Number of [race]students receiving special education}}{\text{Number of total K - 12 [race]students}}}{\frac{\text{Number of non - [race] students receiving special education}}{\text{Number of total K - 12 non - [race] students}}}$$

JLARC staff did not calculate risk ratios for regions that had less than 100 students of the race being assessed.

Finally, JLARC staff calculated risk ratios to measure how the proportion of students identified and determined to have certain disabilities varies by race. JLARC staff calculated and analyzed statewide risk ratios for each combination of race and the six most-prevalent disability categories (autism, emotional disability, intellectual disability, other health impairment, specific learning disability, and speech or language impairment). One risk ratio per combination of disability category and race was calculated as follows:

$$\frac{\frac{\text{Number of [race]students receiving special education with [disability category]}}{\text{Number of total K - 12 [race]students}}}{\frac{\text{Number of non - [race] students receiving special education with [disability category]}}{\text{Number of total K - 12 non - [race] students}}}$$

### ***Analysis of placement of students enrolled in special education (Chapters 1 and 6)***

JLARC used December 1 Child Count data to calculate the proportion of students with disabilities served in different special education placement settings between the 2008–09 and 2018–19 school years. Special education placement settings included public day school, private special education day school, homebased, public separate school, correctional facility, private residential school, public residential school, service provider setting, home, and hospital. Staff calculated the proportion of students enrolled in special education served in each setting each year statewide, by locality, and by VDOE region. Staff also calculated the proportion of students in each setting by primary IDEA disability category and federally reported race category.

JLARC also used December 1 Child Count data to calculate the mean and median proportion of the day that students with disabilities spend in the general education classroom between the 2008–09 and 2018–19 school years. As with the placement setting analysis, JLARC staff calculated the mean and median proportion of the day students spent in the general education classroom statewide and by locality, VDOE region, primary IDEA disability category, and federally reported race category.

### ***Data analysis of discipline of students enrolled in special education (Chapter 6)***

JLARC staff analyzed discipline data collected by VDOE as part of the federal indicator data collection. This data included the number of long-term suspensions and expulsions of both students with disabilities and students without disabilities in each school division. This data was used to calculate risk ratios to determine the relative risk of long-term suspension or expulsion for students with disabilities compared to their peers without disabilities. Additionally, this data was used to assess the relative risk of long-term suspension and expulsions for students with disabilities by race or ethnicity.

JLARC staff followed OSEP guidelines and VDOE practices in calculating discipline risk ratios. To determine the relative risk for students with disabilities of experiencing exclusionary discipline, JLARC staff divided the number of students with disabilities who had been suspended long term or expelled by the total number of students with disabilities in the school division. Relative risk for students without disabilities was calculated the same way. A ratio was calculated by dividing the risk for students with disabilities by the risk for students without disabilities. Similar ratios were calculated for students with disabilities by race and ethnicity. In those calculations, the comparison group was students with disabilities in all other racial or ethnic groups in the school division.

JLARC staff did not calculate risk ratios for school divisions in which less than 10 students were subject to long-term suspension or expulsion in a particular group (i.e., students with disabilities or students with disabilities of a particular race or ethnicity). This data was analyzed for FY16 through FY19.

### ***Analysis of special education spending (Chapter 1)***

JLARC staff analyzed education expenditure data collected by VDOE. This data included federal, state, and local spending on special education and all other K–12 education. The special education expenditure data includes K–12 spending in public day school, regional special education programs, and homebased and homebound settings. This data does not include special education spending in state-operated facilities or through the Children’s Services Act. The total education spending data includes all pre-K through 12<sup>th</sup> grade education spending in public day schools but excludes non-public day programs and services provided in state-operated facilities. This data was available annually for FY10 through FY19.

JLARC staff also analyzed VDOE’s central office special education spending using agency expenditure data. This data was available annually for FY10 through FY19.

### ***Federal indicator data (Chapters 3, 5, 6, and 8)***

JLARC staff analyzed state and division-level federal indicator data collected by VDOE for its annual performance report to the U.S. Department of Education. The federal indicator data provides information on the outcomes of students enrolled in special education and assesses Virginia and school divisions’ compliance with special education laws and regulations.

Staff analyzed state and division-level data for Virginia related to the timeliness of special education eligibility determinations; suspension and expulsion rates, including by race and ethnicity; disproportionality in special education identification by race and ethnicity, overall and by disability category; transition planning; and post-secondary outcomes. This data was available annually for FFY11 through FFY18.

JLARC used federal indicator data on students’ post-secondary outcomes to analyze the post-secondary outcomes of Virginia students who receive special education services. Staff also analyzed the differences in post-secondary outcomes across school divisions while accounting for division-specific characteristics including unemployment rates, free and reduced lunch rates, and population densities.

JLARC used national post-secondary outcome federal indicator data that is publicly available through OSEP to compare the outcomes of students enrolled in special education in Virginia to students in other states. JLARC used the most recent report from FFY17 to conduct this comparison.

### **Structured IEP reviews**

JLARC staff reviewed and evaluated two random samples of IEPs. Staff reviewed 90 IEPs sampled from all students with records in the Virginia IEP system. In addition, staff reviewed 150 transition sections of IEPs sampled from students in grades nine and above in the Virginia IEP system.

JLARC staff used VDOE December 1 Child Count data from the 2018–19 school year to identify students enrolled in special education that have records in the Virginia IEP system. Students were sorted into three strata based on the size of the school division they attend and randomly selected from these subpopulations. These students’ records were then located in the Virginia IEP system, and the most-recent IEP was reviewed and evaluated.

JLARC staff reviewed IEPs systematically using an evaluation tool based on VDOE’s student record review document used during on-site monitoring visits. Specifically, JLARC staff extracted the elements of the document related to IEPs, including placement and post-secondary transition, and made additional modifications as needed. The tool was then reviewed by staff from two TTACs, whose feedback was incorporated into the final evaluation tool.

JLARC staff evaluated whether IEPs included statutorily required components, including the present level of performance sections; annual goals; services, accommodations, and modifications; placement rationales; and post-secondary transition sections, including transition goals and services. Additionally, JLARC staff evaluated the overall alignment of the document, assessing whether each component seemed necessary and appropriate based on the preceding components.

The findings of these structured IEP reviews are outlined in Chapters 4 and 5.

### **Observations of IEP team meetings**

JLARC staff attended several IEP team meetings to observe how these meetings proceed and team members’ roles in the meetings. JLARC attended meetings from several school divisions and for students of different ages and with different disabilities. Parental permission was given for all meetings that JLARC observed. Because of the COVID-19 pandemic, these meetings were held virtually.

### **Review of state complaints**

JLARC staff reviewed letters of findings from 96 state complaints filed with VDOE by parents and other stakeholders. This review included 58 complaints filed for 2019–20 school year through July 2020, as well as at least 10 randomly selected complaints from the 2017–18 and 2018–19 school years. JLARC staff also reviewed all systemic complaints filed between the 2017–18 and 2019–20 school years. In addition to reviewing the letters of finding, JLARC staff reviewed VDOE complaint tracking logs associated with each complaint. Tracking logs were reviewed for 2014–15 through 2019–20 school years.

For each letter of findings, JLARC staff reviewed the total number of issues alleged; issue topics, whether an on-site review was conducted; whether VDOE staff interviewed involved parties; the total number of findings of non-compliance, including those related to the provision of services; corrective action required; and any issues that were excluded from investigation. JLARC staff reviewed tracking logs associated with each letter of findings to assess the timeliness of complaints investigations and corrective action plan implementation. JLARC staff reviewed the overall thoroughness of each complaint investigation and VDOE’s complaint investigation procedures to assess alignment with federal and state statutory and regulatory requirements. The findings of this review of state complaints are outlined in Chapter 8.

### **Review of national research**

JLARC staff reviewed peer-reviewed academic research on special education, as well as research published by government agencies and advocacy groups. JLARC staff reviewed articles from *Exceptional Children*, *Harvard Educational Review*, *Educational Leadership*, *Remedial and Special Education*, *International Journal of Special Education*, *Research and Practice for Persons with Severe Disabilities*, *the Learning Policy Institute*,

*the American Journal on Intellectual and Developmental Disabilities, Intervention in School and Clinic, and Policy Analysis for California Education.* JLARC also reviewed publications from the U.S. Department of Education's Office of Special Education and Rehabilitative Services, and other federally funded entities such as the Government Accountability Office, Congressional Research Service, Institute of Education Sciences, and the National Technical Assistance Center on Transition.

JLARC staff reviewed numerous publications from national organizations, including the Council for Exceptional Children, the National Association of School Psychologists, the Association for Psychological Science, the Hammill Institute on Disabilities, the National Center on Educational Outcomes, and the National Association of State Directors of Special Education, among others.

JLARC staff also reviewed best practices published by the IRIS Center at Vanderbilt University's Peabody College, the Maryland Coalition for Inclusive Education, the University of Montana Rural Institute on Disabilities, the SWIFT Center at the University of Kansas, the Center for Civil Rights Remedies at the University of California-Los Angeles, and the Curry School of Education and Human Development at the University of Virginia.

## **Document review**

JLARC staff reviewed various VDOE documents and materials made available to parents of students enrolled in special education, school divisions, and special education service providers, including teachers, as well as information presented on VDOE's website. JLARC staff also reviewed numerous other documents and literature pertaining to special education in Virginia and nationwide, such as:

- Virginia laws, regulations, and policies relating to the responsibilities and requirements of school divisions and VDOE;
- federal laws, regulations, and policies relating to the activities of the U.S. Department of Education, and responsibilities and requirements of state and local education agencies;
- other states' special education laws, regulations, policies, and processes, including their graduation pathway options and state-level monitoring activities; and
- legislative reviews of other states' special education programs.

## Appendix C: COVID-19 Impacts on Special Education

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JLARC's *Operations and Performance of the Virginia Department of Education*, which was released in October 2020, provides information regarding the Virginia Department of Education's (VDOE's) overall response to the COVID-19 pandemic and resulting school closures and re-openings. Appendix C of that report summarizes VDOE's overall guidance to school divisions in response to the COVID-19 pandemic and provides information on school divisions' satisfaction with VDOE's guidance. It also notes that media reports reflect substantial dissatisfaction among parents with schools' responses to COVID-19.

During this study, JLARC staff surveyed school division-level special education directors and parents of students with disabilities about their experiences during the COVID-19-related school closures. Given the evolving nature of the pandemic and ongoing response, JLARC staff did not reach definitive conclusions about VDOE or school divisions' responses but sought to provide insight into some key challenges in special education resulting from the COVID-19 pandemic.

### **Divisions report general satisfaction with VDOE guidance and face common challenges related to special education services during the COVID-19 pandemic**

As part of this study, JLARC staff surveyed all division-level special education directors to get their perspectives on several topics, including their experiences during the COVID-19-related school closures that began in March 2020. The survey was conducted during July and August 2020, as divisions prepared plans to return to instruction, whether virtually, in person, or both. JLARC received responses from 102 (77 percent) of Virginia's 132 school divisions. These 102 school divisions represent 88 percent of students enrolled in special education in Virginia. (Additional details on JLARC's survey of special education directors is available in Appendix B.)

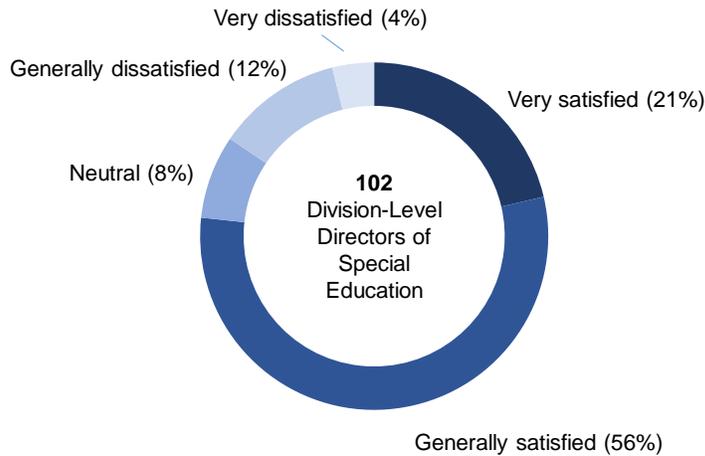
Most school divisions reported that they were generally or very satisfied with the guidance provided by VDOE regarding the provision of K–12 special education during the COVID-19-related school closures (Figure C-1). Among the 16 percent of school divisions that expressed dissatisfaction with the VDOE guidance, most noted concerns either with its usefulness or timeliness. Most interviewed special education directors expressed greater frustration with the guidance from the U.S. Department of Education than by VDOE. Similar concerns were mentioned in open-ended comments from some directors of special education.

School divisions most commonly reported that conducting eligibility determinations, providing remote instruction, and meeting federally reported timelines were among the top five challenges their division experienced during the school closures (Figure C-2). About half of special education directors responding to the survey reported that ensuring students' access to needed technology, providing related services (such as physical and occupational therapy) remotely, and assessing students' progress toward meeting IEP goals were also among their division's top challenges.

**FIGURE C-1**

**School divisions were generally satisfied with guidance provided by VDOE pertaining to K–12 special education during the COVID-19-related school closures**

**How satisfied have you been with the guidance provided to school divisions by the Virginia Department of Education regarding the provision of K-12 special education services during the school closures?**

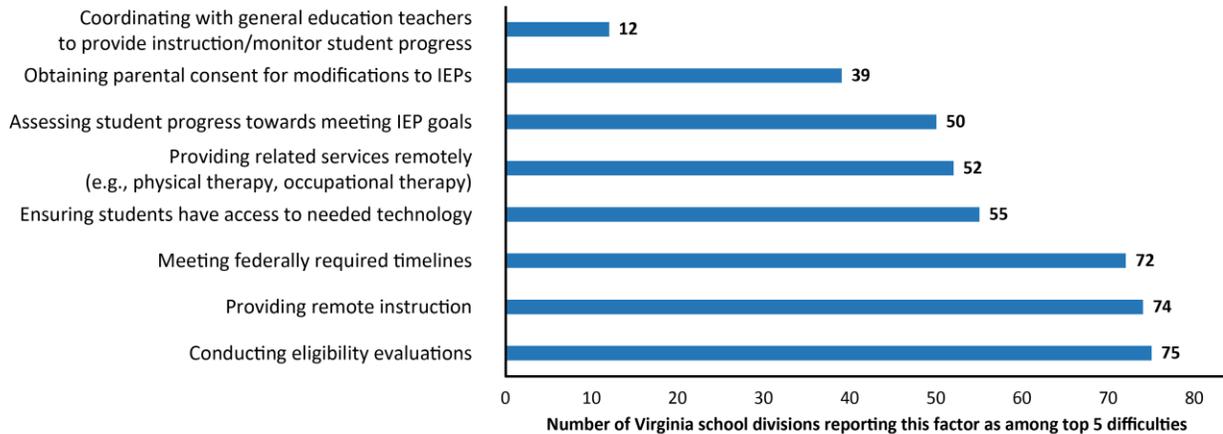


SOURCE: JLARC survey of school division special education directors, July 2020.

NOTE: Figures do not sum to 100 due to rounding.

**FIGURE C-2**

**School divisions reported experiencing common challenges with eligibility determinations, meeting federal timelines, and providing virtual instruction and related services**



SOURCE: JLARC survey of school division special education directors, July 2020.

NOTE: Figure excludes nine responses in "Other" category. N=102

Special education directors were also asked to summarize their primary concerns about resuming K–12 special education and service provision once schools reopen, and the concerns varied. However, many expressed concerns about the health and safety of students and staff, the ability to provide needed special education services and supports to students, particularly with more severe disabilities,

technological barriers to effective virtual instruction, including a lack of access to internet, and the provision of remedial and compensatory services to students.

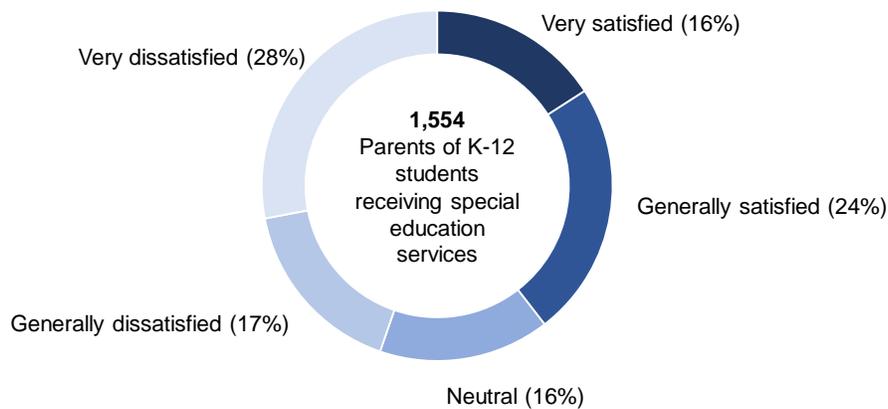
**Parents report mixed satisfaction with school divisions’ responses to the COVID-19-related closures**

JLARC staff also surveyed parents of Virginia K–12 students receiving special education services in August and September 2020, and part of the survey asked about their satisfaction with their school division’s efforts to educate and support their student(s) during the COVID-19 related school closures. A total of 1,573 parents responded to the survey—representing 91 (69 percent) of Virginia’s 132 school divisions.

Parents reported mixed levels of satisfaction with the communications they received from their school division regarding the COVID-related school closures and the impacts of these closures on their student’s educational experience (Figure C-3). Of the 1,554 parents expressing an opinion, about 40 percent reported they were at least generally satisfied with their school division’s communications, while 45 percent reported that they were either generally or very dissatisfied. Some parents reported little to no communication by their school division regarding their student’s special education services.

**FIGURE C-3**  
**Parents reported mixed levels of satisfaction with the communications from their school divisions during the COVID-19-related school closures**

**How satisfied have you been with the communications provided by your student’s school or school division regarding the COVID-19-related school closures and the impacts of these closures on your child’s educational experience?**



SOURCE: JLARC survey of parents of students receiving special education services, August–September 2020.  
 NOTE: Excludes responses expressing “no opinion.” Figures do not sum to 100 because of rounding.

Parents were also asked about their satisfaction about their opportunities to participate in IEP team meetings during the school closures, and respondents also reported mixed levels of satisfaction. Of those parents who expressed an opinion on this question, about 43 percent of parents reported they were at least generally satisfied with their opportunities to participate in IEP team meetings, and 38 percent reported that they were either generally or very dissatisfied (Figure C-4). Some parents reported not being offered any IEP meetings or opportunities to discuss changes to IEPs. For example,

“I got a new IEP to sign and that was it. I refused to sign it. I heard nothing further.”

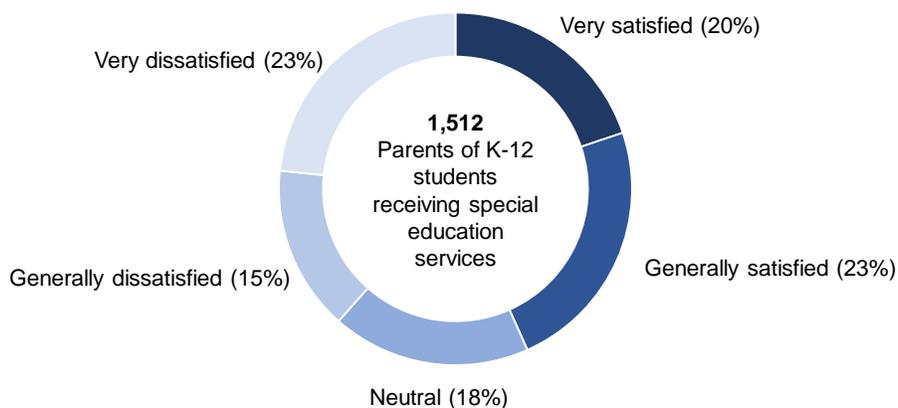
“I have been unable to get a response from my student’s IEP team at school. Services and instruction have not supported my son’s needs, and he has regressed significantly.”

“No IEP meeting has been scheduled. I do not know who [my student’s] current special ed case manager is.”

**FIGURE C-4**

**Parents also reported mixed levels of satisfaction with the opportunities they had been provided to participate in IEP team meetings**

**How satisfied have you been with the opportunities you have been provided to participate in Individualized Education Program (IEP) team meetings by your student’s school during the COVID-19 related school closures?**



SOURCE: JLARC survey of parents of students receiving special education services, August-September 2020.

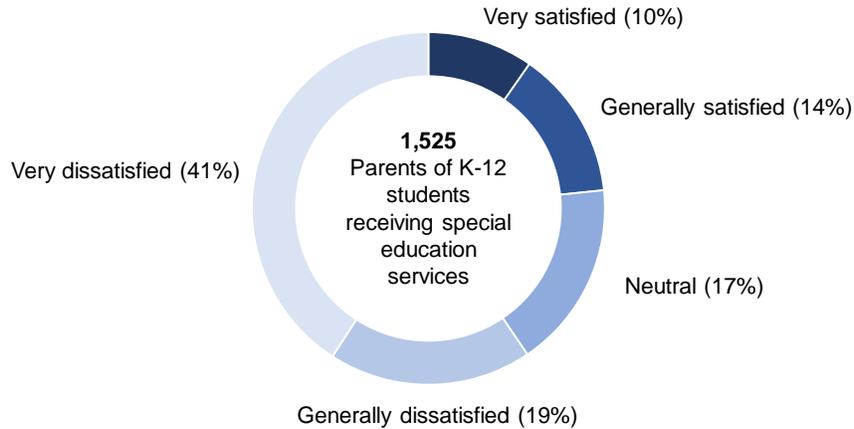
NOTE: Excludes responses expressing “no opinion.” Figures do not sum to 100 because of rounding.

Parents were generally much less satisfied with the distance learning and support services provided to their student during the COVID-19-related school closures. Of parents expressing an opinion in this area, only 24 percent reported being at least generally satisfied. Sixty percent reported being either generally dissatisfied (19 percent) or very dissatisfied (41 percent) with the learning and support services provided to their student (Figure C-5).

FIGURE C-5

Only a quarter of parents reported at least being generally satisfied with the distance learning and support services provided to their student during the COVID-related-school closures

How satisfied have you been with the distance learning and support services provided to your student by your student's school during the COVID-19 related school closures?



SOURCE: JLARC survey of parents of students receiving special education services, August–September 2020.

NOTE: Excludes responses expressing “no opinion.” Figures do not sum to 100 due to rounding.

In open-ended responses, many parents expressed their frustration with the services, or lack of services, their student received during the closures. Many parents reported that their student received little or no services during the school closures. For example,

“Fourth quarter last school year, our child received virtually no education or support. We received about 50 pages of worksheets in an email and 2 phone calls from a teacher. Our child could not access education. He did not receive any IEP supports or services.”

“During the COVID-19 closure there has been no attempt to continue the learning path for my son’s IEP goals. There has been little communication on what the IEP accommodations will look like going forward or if the IEP will be followed. We have no idea what his academic goals will be at this point, if they will be reducing minutes given for each subject, or if he will even be on track for graduation in 2 years following the current path of learning. We are frustrated with the virtual learning option...”

“My son’s services were cut on March 2, 2020.”

“[My student] received no services, in person and virtual were never offered for speech or OT. We got suggestions from the speech therapist for the summer, but the OT never reached out to me about our son at all!”

“Everything was removed from his IEP during the “learn at home” period that started last March. No additional help has been received. No information on this upcoming school year and how his IEP will be handled. We chose virtual learning for the first semester and no one (teachers included) seem to have a grasp on how it all will go.”

“I understand the difficulties of the Spring. At the same time, I felt I was the one who was explaining to teachers how my child’s needs and IEP goals could be met and there was little to no collaboration between general and special educators.”

“My child has not received services of any kind since March 2020.”

“Honesty, we felt as if we lost everything overnight and there was never a point where anyone reached out to see how my child was doing. I understand initially that this was unprecedented, but after a month, 2 months, I expected something...”

## Appendix D: Virginia’s special education staffing model

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House Joint Resolution 79, referred to JLARC during the 2020 Session, supplements the original study resolution and directs JLARC staff to examine student-staff ratios for special education. The resolution asked JLARC to determine the prescribed and actual ratios of students to special education instructional and support personnel in Virginia’s public elementary and secondary schools and recommend whether any adjustment to such ratios is necessary. There is no statewide data available to determine the *actual* ratios of students to special education instructional and support personnel. However, JLARC reviewed Virginia’s current process for funding special education staffing, best practices for determining appropriate special education staffing levels, and considerations for a potential update to Virginia’s special education staffing model.

### Virginia governs local special education staffing through the Standards of Quality and regulatory caseload maximums

Since 1971, the Constitution of Virginia has required the Virginia Board of Education to prescribe standards governing the quality of education that school divisions must provide. The Standards of Quality (SOQ) apply to various aspects of K–12 education, including special education, and include the type and minimum number of staff resources in each school division. The state and localities share the responsibility to provide school divisions with funds to meet the standards.

There are two steps to determining localities’ SOQ funding allocations. First, the Virginia Department of Education (VDOE) uses various methodologies to calculate the necessary instructional and support staffing levels and associated costs for each locality. Second, the state uses the local composite index, which measures a locality’s ability to pay relative to other localities, to determine the state and local share of funding needed to meet previously calculated staffing needs.

VDOE’s process for calculating localities’ funding for special education staffing includes SOQ staffing minimums outlined in the Code of Virginia and in the Appropriation Act and minimum special education staffing requirements set forth in state regulations. SOQ staffing minimums for special education require school divisions to have *at least six* special education or occupational-vocational instructional positions per 1,000 students (all students, not just those receiving special education) in average daily membership (ADM). This ratio acts as a special education staffing “floor.” Every division must receive funding to staff special education at this level.

In addition to the SOQ, state regulations provide two methods for calculating minimum special education staffing requirements. Regulations divide children receiving special education services into two categories: those receiving Level I services and those receiving Level II services. Students receiving Level I services receive special education services for less than 50 percent of the school day. Students receiving Level II services receive special education services for 50 percent or more of the school day. The first method for calculating minimum special education staffing requirements outlined in regulations assumes students receiving Level I and Level II services are served *separately* (Table D-1). The second method assumes students receiving Level I and Level II services are served *together* (Table D-2).

**TABLE D-1**  
**Method 1: Students receiving Level I and Level II services served *separately***

Disability Category	Level II: Maximum number of children on a caseload		Level I: Maximum number of children on a caseload
	With paraprofessional 100% of time	Without paraprofessional 100% of time	
Autism	8	6	24
Deaf-blindness	8	6	
Developmental delay: age 5-6	10	8	
Developmental delay: age 2-5	8 center-based; 10 com- bined	12 home-based and/or itinerant	
Emotional disability	10	8	24
Hearing impairment/deaf	10	8	24
Intellectual disability	10	8	24
Learning disability	10	8	24
Multiple disabilities	8	6	
Orthopedic impairment	10	8	24
Other health impairment	10	8	24
Speech or language im- pairment	NA	NA	68 (Itinerant)
Traumatic Brain injury	May be placed in any program according to IEP		

SOURCE: 8VAC20-81-340

NOTE: Regulations do not include caseload requirements for vision-impaired students

**TABLE D-2**  
**Method 2: Students receiving Level I and Level II services served *together***

Disability Category	Level II: Points per student on caseload		Level I: Points per student on caseload
	With paraprofessional 100% of time	Without paraprofessional 100% of time	
Autism	2.5	3.3	1
Deaf-blindness	2.5	3.3	1
Developmental delay: age 5-6	2.0	2.5	1
Emotional disability	2.0	2.5	1
Hearing impairment/deaf	2.0	2.5	1
Intellectual disability	2.0	2.5	1
Learning disability	2.0	2.5	1
Multiple disabilities	2.5	3.3	1
Orthopedic impairment	2.0	2.5	1
Other health impairment	2.0	2.5	1
Traumatic Brain injury	2.0	2.5	1
<b>No caseload should exceed 20 points</b>			

SOURCE: 8VAC20-81-340

NOTE: Regulations do not include caseload requirements for vision-impaired students

During each SOQ re-benchmarking period, which occurs during the summer of odd years, VDOE uses December 1 Child Count data to calculate minimum special education staffing requirements for each school division according to their actual special education enrollment. To do so, VDOE first calculates minimum staffing using both methods one and two (Tables D-1 and D-2). VDOE then compares the results of each calculation and chooses the lowest cost staffing allocation. Finally, VDOE compares the calculated staffing allocation to the staffing floor in the SOQ. If the staffing allocation calculated using regulatory minimum staffing requirements meets or exceeds the minimum set forth in the SOQ, then school divisions receive funding according to the allocation calculated using regulatory minimums. If the staffing allocation calculated using regulatory minimum staffing requirements is below the allocation set forth in the SOQ, school divisions receive funding according to the SOQ, such that all school divisions receive funding for a *minimum* of six special education or occupational-vocational teachers per 1,000 average daily membership.

### **Special education staffing models should consider student’s severity of need, scope of teacher responsibilities, and special education services settings**

Special education teachers need manageable caseloads to effectively ensure that students with disabilities receive special education services as required by the Individuals with Disabilities Education Act (IDEA) and as prescribed by their individualized education programs (IEPs). Because of the individualized nature of special education services, the number of children on a caseload alone does not sufficiently capture a special education teacher’s workload. Caseload size and composition affect the amount of work a special education teacher must complete to meet children’s needs. For example, a child with severe needs will require more intensive services from a special education teacher than a child with mild needs. Alternatively, providing support to two children with mild needs in *different* general education classrooms requires more work than if those same children were in the *same* class. An additional class means the special education teacher may have to provide services in two locations or collaborate with two general education teachers instead of one.

To account for the variability in teacher workload associated with different caseload compositions, caseload standards should include considerations related to severity of student need, scope of teacher responsibilities, and special education service settings.

- Severity of student needs refers to the intensity of support students need to meet their IEP goals. A student’s disability category is not a sufficient proxy for severity of need, since students can have a wide range of needs within a given category.
- Scope of teacher responsibilities refers not only to the number of students on a teacher’s caseload, but also to other factors, such as the range of grades they support, the number of classrooms they collaborate in, whether or not they have support from paraprofessionals or other personnel, whether they are responsible for instructing all students on their caseloads, etc.
- Service setting refers to where a special education teacher provides services. For example, a teacher may provide services in a self-contained classroom, co-teach in one or more classrooms, or provide support services across multiple classrooms.

## **Standards of quality could better reflect resources needed to adequately staff special education**

Virginia's current regulatory caseload maximums recognize that varying student needs and varying caseload compositions affect special education teacher workloads by considering disability, time spent in the general education classroom, and classroom composition. However, regulations could also consider the severity of student needs, the scope of teacher responsibilities, or the special education service setting. Differentiating caseload maximums based on disability and time spent in the general education classroom allows for some consideration of student severity of need, but subject matter experts repeatedly emphasized that students' needs can vary widely within a given disability category. Beyond considering whether a paraprofessional is present, Virginia's current caseload maximums do not take into account scope of teacher responsibilities or special education service setting.

Feedback from stakeholders including special education teachers, local special education directors, and subject-matter experts suggest that Virginia's current special education staffing model may not reflect the staffing resources needed to serve students in inclusive settings. For example, 54 percent of respondents to a JLARC survey of special education directors said that Virginia's caseload standards do not adequately reflect staffing needed to provide an appropriate education for students with disabilities.

Other states more fully incorporate severity of student need, scope of teacher responsibilities, and special education service setting into their regulatory caseload maximums. For example, West Virginia's caseload maximum regulations include consideration of severity of need, scope of teacher responsibilities, and service setting; Arkansas and South Carolina's include service setting; and Georgia's include student need and service setting.

Updating Virginia's special education minimum staffing requirements would require additional review by the Board of Education. The Board of Education could conduct a study to identify ways to incorporate considerations of severity of need, including how to measure need, scope of teacher responsibilities, and special education service setting into Virginia's special education staffing model and determine the impact of those considerations on caseload maximums.

## **Appendix E: Agency response**

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As part of an extensive validation process, the state agencies and other entities that are subject to a JLARC assessment are given the opportunity to comment on an exposure draft of the report. JLARC staff sent an exposure draft of this report to the Virginia Department of Education (VDOE) and secretary of education.

Appropriate corrections resulting from technical and substantive comments are incorporated in this version of the report. This appendix includes a response letter from VDOE.



# COMMONWEALTH of VIRGINIA

James F. Lane, Ed.D.  
Superintendent of Public Instruction

DEPARTMENT OF EDUCATION  
P.O. BOX 2120  
RICHMOND, VIRGINIA 23218-2120

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December 7, 2020

The Honorable Hal E. Greer  
Director  
919 East Main Street  
Suite 2101  
Richmond, VA 23219

Sent via email

Dear Director Greer:

The Virginia Department of Education (VDOE) has reviewed the forthcoming Joint Legislative Audit and Review Commission (JLARC) report on *K-12 Special Education in Virginia* and thanks your team for their diligence in this important review. The VDOE concurs with the findings in this review, and in this response, the VDOE seeks to reaffirm our commitment to serving students with disabilities, supporting special education teachers and monitoring divisions to ensure positive outcomes for all our students. Amongst the recommendations, we commit to address the five major themes that emerged to enhance special education in the Commonwealth, including state monitoring, dispute resolution, family engagement, teacher support and preparation to eliminate shortages, and Individualized Education Program (IEP) development and quality. We resolve to implement those recommendations in this report under our control where possible and support items that need action by the General Assembly and the Board of Education.

The equitable provision of special education services is a core priority of the VDOE and we take our responsibilities to serve students with disabilities, equip parents and advocates, and to hold local educational agencies (LEAs) accountable to the

provisions of the *Individuals with Disabilities Education Act* (IDEA) very seriously. This commitment and focus is demonstrated by the substantial resources that the VDOE provides through funding to support family engagement activities, collaborative partnerships, and technical assistance focused on the provision of high-quality services and support to Virginia's students with disabilities and their families. Additionally, for the last seven years Virginia has earned the U.S. Department of Education's highest rating for improving outcomes for students with disabilities and for compliance with the federal *Individuals with Disabilities Education Act*. However, we also recognize the unique role our department plays in monitoring divisions for compliance with IDEA and notable areas for enhancement and improvement in that regard as outlined in JLARC's review. Many of the recommendations in the report require additional state level monitoring of local responsibilities. Such increased compliance activities would be implemented and managed effectively by VDOE if and when policymakers concur. In the interim, we will commit to implementing those activities where code or regulatory changes, or new resources are not required. As evidenced by the JLARC report, *Operations and Performance of VDOE*, VDOE is well managed; when issues are identified they are addressed quickly and effectively.

To comprehensively address many of the monitoring issues identified in the report, the last section of the report suggests that existing resources may need to be reevaluated and new resources will be required at the Virginia Department of Education. We strongly encourage the General Assembly to consider such investments to make sure our agency is staffed and resourced to meet any of the new and updated requirements and recommendations in the report. The VDOE will work with the Board of Education to recommend updates to the Standards of Quality to ensure we are resourcing schools and divisions in a manner that will ensure these recommendations are properly and fully implemented in our schools as well. Ideally, we would also like to see a significant increase to the federal investment in special education, as promised yet never realized since the inception of IDEA, along with updates to the Standards of Quality.

We applaud the information in the report about the need for supports and resources focused on inclusion for students with disabilities in the Commonwealth. We also agree with the report's focus on the need to support the development of staff across educational settings to become more aware of the needs and requirements in serving students with disabilities. This staff development is a shared responsibility between the VDOE and local divisions, and VDOE will continue to work diligently to provide relevant, high quality training and technical assistance at scale for use by division leaders and staff.

The VDOE pledges to address the areas mentioned in the report and continue our strong commitment to serve students with disabilities and their families throughout the Commonwealth. This includes improving state monitoring efforts, ensuring IEPs are more effective tools for student growth, providing technical assistance and training for division staff, enhancing requirements for education preparation programs, implementing a more comprehensive dispute resolution process, improving guidance on family engagement, creating strategic plans to increase teacher compensation and eliminate teacher shortages, and using data collection and analysis to inform programmatic approaches and policy development. We look forward to working with you to make the necessary policy and financial commitments for the state agency and local school divisions to ensure students with disabilities are served equitably in every division in the Commonwealth.

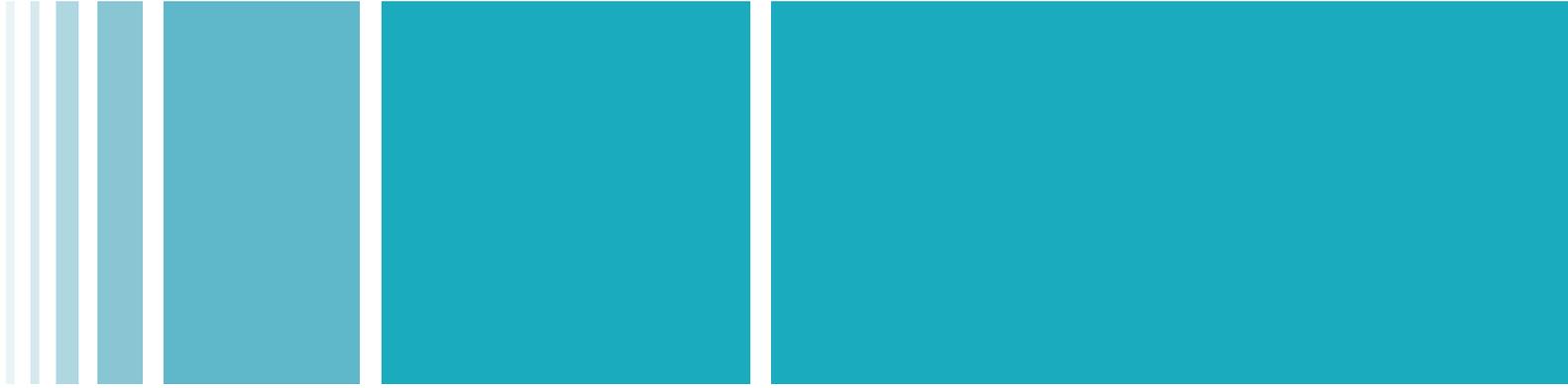
Sincerely,

A handwritten signature in black ink, appearing to read "James F. Lane".

James F. Lane Ed.D.  
Superintendent of Public Instruction

JFL/sh





[JLARC.VIRGINIA.GOV](http://JLARC.VIRGINIA.GOV)

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