

Norfolk City Public Schools
Special Education Advisory Committee

Order of Business

February 11, 2021

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| 6:00pm – 6:10pm | 1. Welcome, Introductions, The Purpose of SEAC |
| 6:10pm – 6:15pm | 2. Approval of minutes from prior meeting |
| 6:15pm – 6:30pm | 3. Public Comment. SEAC receives public comment from the community and members. Per SEAC bylaws, public comments are limited to three minutes per person, and if available, SEAC requests a copy of your public comment in writing. A response is not immediately provided. If warranted, a response will be provided at a later date and shared with the SEAC. |
| 6:30pm – 7:00pm | 4. Committee discussion on use of restraint and seclusion policies in Norfolk Public Schools. |
| 7:00pm – 7:30pm | 5. Committee discussion of JLARC K-12 Special Education in Virginia report. |
| 7:30 | 7. Adjournment |

Public comment for Norfolk SEAC

Dear Norfolk SEAC,

As an Educational Advocate on behalf of the Endependence Center, I would like to address the practice of restraint and seclusion. According to 8 VAC 20-81-230 D, the functions of the local advisory committee are to, "Review the policies and procedures for the provision of special education and related services before submission to the local school board." According to *How Safe Is The Schoolhouse? An Analysis of State Seclusion and Restraint Laws*, "data reported in April 2018 showed that in 2015-16, restraint and seclusion were used on at least 120,000 children in school. According to the data, restraint and seclusion were disproportionately used on children with disabilities, and children who were African-American or Native-American." Given that restraint and seclusion affect special education, SEAC should have reviewed JM2 policy before the vote with the school board on 1/20/21. The Endependence center urges SEAC to encourage the school board to eliminate the practice of restraint and seclusion by not adopting the JM2 policy.

Restraint and seclusion practices are dangerous and ineffective at modifying unwanted behavior patterns. "Restraint and seclusion expose children to danger and can escalate difficult behaviors, worsening the situation and interfering with the learning process." Rather the study states that "research shows the preventative interventions, conflict resolutions, and de-escalation often resolves challenging situations and helps prevent the use of seclusion and restraint." (pg. 68).

Not only is restraint and seclusion ineffective, but it is dangerous. Even if restraint and seclusion are limited to emergencies threatening physical danger, these protections are not enough to protect school children (*How Safe Is The Schoolhouse? An Analysis of State Seclusion and Restraint Laws*, pg 27). Laws are open to individual interpretation and require oversight to be effective. The JLARC study has highlighted how the VDOE's complaint process fails to resolve all problems and The VDOE's ongoing monitoring is too limited. These problems would be exasperated if the VDOE is required to monitor all restraint and seclusion cases.

The Norfolk SEAC should advise the school board to eliminate restraint and seclusion in the Norfolk school district and not just offer advice on procedural safeguards.

From: Carter Melin, parent of a Norfolk resident child with autism who has been restrained and has been contracted to a school which utilizes seclusion and restraint by a Children's Services Act Committee.

Regarding: Seclusion and Restraint policy in the Norfolk City Public Schools

Good day Mr. Moynihan,

I want to share with you, the Special Education Advisory Council chair, that my child has been restrained in the past. This has been very traumatizing to my whole family, as it has greatly added to my child's anxiety, including mistrust of all schools and school teachers. For the year or so after being subjected to restraints, my child would always cross the street when we were walking towards men on the sidewalk in our neighborhood, because it is men that often do the restraining.

I am therefore personally against Restraint and Seclusion as a practice, but it appears that the Commonwealth, under 8 VAC 20-750-40 through 8 VAC 20-750-70 indicates that it will be supported as legal.

That being said, I believe that parents deserve to be informed of their rights under these circumstances. I suggest that you provide the following for parents, as a policy for those whose children have been subject to restraint and seclusion:

A clear definition of both Restraint and Seclusion, including its codes paired with a clear definition of False Imprisonment, including its codes, and an explanation on the child's IEP, school record, and court record as to why false imprisonment has not occurred for each usage of Restraint and Seclusion.

I know that you are an attorney, and that you understand that it is important for parents to know why or why not their children were subjected to false imprisonment under 8 VAC 20-750-40 through 70.

I have enclosed the Norfolk Public Schools webpage on this matter for your reference.

Thank You,

Carter Melin

Procedures for Seclusion and Restraint

Positive Behavioral Interventions and Supports

It is Norfolk Public School's intention that in every school, the Principal or Principal's designee will encourage the use of positive behavioral interventions and supports to reduce and prevent the need for the use of physical restraint that can include but are not limited to:

1. Building positive relationships
2. Establishing clear routines and structures within the classroom and school environment
3. Positive reinforcement system for preferred behaviors (token, point, etc.)
4. Use of non-verbal cues & signals
5. Proximity
6. Positive verbal phrasing (Ex. "You're doing a great job!", "Keep going", "I like how you handled that feeling", "Remember to use your strategies", etc.)
7. Frequent reminders of expectations and reinforcers
8. Individual reward systems as needed.
9. Check in/check out system
10. Individual & visual schedules
11. Structured breaks
12. Functional Behavior Assessments (FBA) and Behavior Intervention Plans (BIP)

Seclusion in Norfolk Public Schools

Norfolk Public Schools does not use seclusion within the public school setting.

Seclusion is defined as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.

Interventions that do not constitute seclusion

Provided that no such room or space is locked, the term "seclusion" does not include:

- (i) time out, as defined in this chapter;
- (ii) in-school suspension;
- (iii) detention;
- (iv) student-requested breaks in a different location in the room or in a separate room; (v) removal of a student for a short period of time from the room or a separate area of the room to provide the student with an opportunity to regain self-control, so long as the student is in a setting from which he is not physically prevented from leaving; (vi) the removal of a student for disruptive behavior from a classroom by the teacher, as provided in § 22.1-276.2 of the Code of Virginia; and
- (vii) confinement of a student alone in a room or area from which the student is physically prevented from leaving during the investigation and questioning of the student by school employees regarding the student's knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.

The Circumstances In Which Physical Restraint May Be Employed

NPS personnel may implement a physical restraint only when other interventions are or would be ineffective and only to:

1. Prevent a student from inflicting serious physical harm or injury to self or others;
2. Quell a disturbance or remove a student from the scene of a disturbance in which such student's behavior or damage to property threatens serious physical harm or injury to persons.
3. Defend self or others from serious physical harm or injury;
4. Obtain possession of controlled substances or paraphernalia which are upon the person of the student or within the student's control; or
5. Obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student's control.

Prohibited Actions

The following actions are prohibited in NPS:

1. Use of mechanical restraints.
2. Use of pharmacological restraints.
3. Use of aversive stimuli.
4. Use of prone restraints (i.e. lying face down) or that any other restraints that restricts a student's breathing or harms the student.
5. Use of seclusion that restricts a student's breathing or harms the student
6. Use of physical restraint or seclusion as: (i) punishment or discipline; (ii) a means of coercion or retaliation; or (iii) a convenience; (iv) or to prevent property damage.
Unless a student's damage to property creates an imminent risk of serious physical harm or injury to the student or others, the damage of property does not itself indicate an imminent risk of serious physical harm or injury and shall not be the justification for the restraint of a student.
7. Use of corporal punishment.
8. Use of seclusion rooms or freestanding units not meeting the standards set forth in these regulations.
9. Use of restraint or seclusion when medically or psychologically contraindicated as stated in documentation by the IEP team, 504 team, school professionals, or by a licensed physician, psychologist or other qualified health professional under the scope of the professional's authority.

During the Use of a Physical Restraint

Continuous visual monitoring of the use of any physical restraint is required to ensure the appropriateness of such use and the safety of the student being physically restrained, other students, school personnel, and others. The exception to this provision is allowable when emergency situations in which securing visual monitoring before implementing the physical restraint, in the reasonable judgment of the school employee implementing the physical restraint, result in serious physical harm or injury to persons.

When To End Restraint

Physical restraint shall be discontinued as soon as the imminent risk of serious physical harm or injury to self or others presented by the emergency situation has dissipated.

Notification and Reporting

When any student has been physically restrained, the school personnel involved shall report the incident and the use of any related first aid to the school principal or the principal's designee as soon as possible by the end of the school day in which the incident occurred. The school principal or the principal's designee, or other school personnel shall make a reasonable effort to ensure that direct contact is made with the parent, either in person or through telephone conversation, or other means of communication authorized by the parent (i.e. email). Notification of the incident or any related first aid must be reported to the parent on the day of the incident.

When any student has been physically restrained *after the regular school day*, the above notification requirements shall be made as soon as practicable in compliance with the NPS school crisis, emergency management, and medical emergency response plans. Practicable notification and reporting shall not exceed two school days after an incident in which the physical restraint has been implemented. The school personnel involved in the incident or other school personnel, as may be designated by the principal, shall complete and provide to the principal or the principal's designee, the ***Restraint Documentation Form***. NPS must provide the parent a copy of the ***Restraint Documentation Form*** within seven calendar days of the incident.

Debriefing:

- a. Following an incident of physical restraint, the school division shall ensure that, within two school days, the principal or designee reviews the incident with all school personnel who implemented the use of physical restraint to discuss:
 - 1) Whether the use of restraint was implemented in compliance with this document and local policies; and
 - 2) How to prevent or reduce the future need for physical restraint.
- b. As appropriate depending on the student's age and developmental level, following each incident of physical restraint NPS must ensure that, as soon as practicable, but no later than two school days or upon the student's return to school, the principal or designee shall review the incident with the student(s) involved to discuss:
 - 1) Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers or antecedents.
 - 2) Alternative positive behaviors or coping skills the student may utilize to prevent or reduce behaviors that may result in the application of physical restraint.

The principal or the principal's designee shall regularly review the use of physical restraint to ensure compliance with school division policy and procedures, and, when there are multiple incidents within the same classroom or by the same individual, the principal or the principal's designee shall take appropriate steps to address the frequency of use.

Accountability: Documenting Multiple Uses of Restraint

1. In the initial development and subsequent review and revision of a student's IEP or Section 504 plan, the student's IEP or Section 504 team shall consider whether the student displays behaviors that are likely to result in the use of physical restraint. If the IEP or Section 504 team determines that a future use is likely, the team shall consider, among other things, the need for: (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; (iii) any new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.
 - a. Within 10 school days following the second school day in a single school year on which an incident of physical restraint has occurred, the student's IEP or 504 team shall meet to discuss the incident and to consider, among other things, the need for: (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; (iii) any new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.
2. For students not described in number 1, within 10 school days of the second school day in a single school year on which an incident of physical restraint has occurred, a team consisting of the parent, the principal or the principal's designee, a teacher of the student, school personnel involved in the incident (if not the teacher or administrator already invited), and other appropriate school personnel, such as a school psychologist, school counselor, or school resource officer, as determined by the school division, shall meet to discuss the incident and to consider, among other things, the need for: (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; and (iii) a referral for evaluation.
3. Nothing in this section shall be construed to (i) excuse the team or its individual members from the obligation to refer the student for evaluation if the team or members have reason to suspect that the student may be a student with a disability; or (ii) prohibit the completion of an FBA or BIP for any student, with or without a disability, who might benefit from these measures but whose behavior has resulted in fewer than two incidents of physical restraint in a single school year.

Reporting to the Superintendent

The principal or the principal's designee shall submit a quarterly report to the Chief of Schools or their designee division to be provided to the superintendent. This report is to be on the use of physical restraint in the school based on the individual incident reports completed and submitted. The division superintendent shall annually report the frequency of such incidents to the Superintendent of Public Instruction on forms that shall be provided by the Department of Education and shall make such information available to the public.

Training

The level one training requires all school personnel to receive initial training regarding the regulations, policies, and procedures governing the use of physical restraint. This is a free online training that is offered in a series of five modules at [ODU VDOE](#) and fulfills the requirements detailed in the Regulations. The modules should be completed in order and are followed by a cumulative quiz that will earn the participant a certificate of completion that must be submitted to the principal (or designee) or immediate supervisor by November 30, 2020.

The advanced training in the use of physical restraint, level two, is required for at least one administrator of each school building and for school personnel assigned to work with any student whose IEP or Section 504 team determines the student is likely to be restrained. NPS will ensure nine trainers from the Departments of Learning Support and Student Support Services participate in an evidenced based intervention that focuses on safe management of aggressive behaviors. These trainers will conduct the annual level two training to all school personnel as required by the regulation no later than the first quarter of each school year.

Annual Review

NPS will review its policies and procedures regarding physical restraint at least annually, and shall update these policies and procedures as appropriate. In developing, reviewing, and revising its policies, NPS shall consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.

Posting of Policies and Procedures

Consistent with the Code of Virginia, a current copy of a school division's policies and procedures regarding restraint shall be posted on the school division's website and shall be available to employees and to the public. In accordance, NPS shall ensure that printed copies of such policies and procedures are available as needed to citizens who do not have online access.

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.

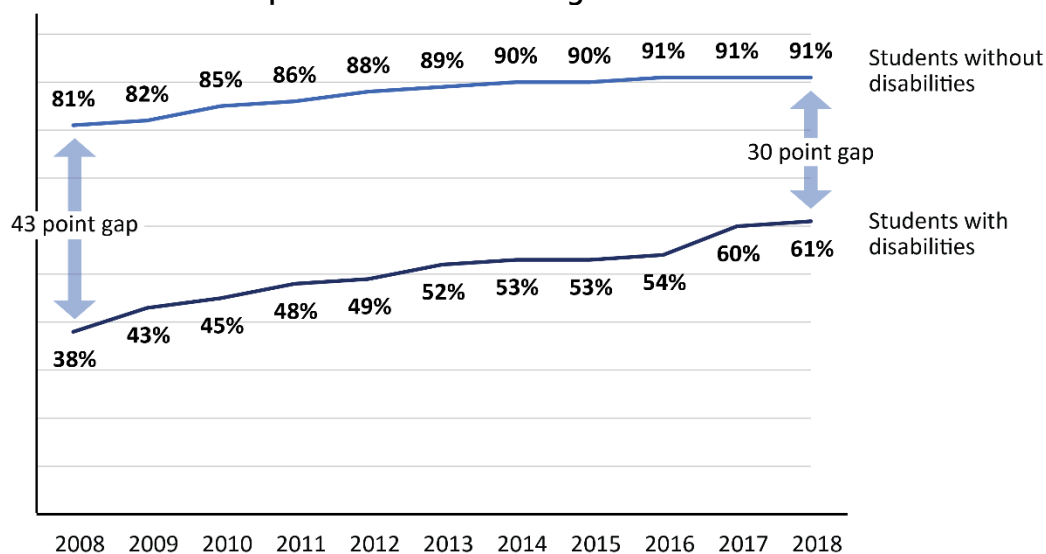
WHY WE DID THIS STUDY

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.