

### **Guidance Regarding Implementation Plans in IDEA Due Process Hearings Fully Adjudicated**

This guidance is intended to assist local school divisions in understanding their obligations and responsibilities following a due process hearing. When a due process hearing has been held and fully adjudicated, the local educational agency (LEA) is required to develop and submit an implementation plan for the hearing officer's decision. This guidance should assist LEAs in preparing and submitting an appropriate implementation plan for the decision in various circumstances, including in cases where the LEA is or may be appealing the decision to federal or state court. It also outlines the implications of failure to comply with the hearing officer's order.

1. 8 VAC 20-81-210.N.16 of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* provides that the LEA shall “[d]evelop and submit to the Virginia Department of Education (VDOE) an implementation plan, with a copy to the parent(s), within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.”
2. When the decision is appealed or the school division is considering an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and submission of the implementation plan is “held in abeyance pursuant to the appeal proceedings.” (8 VAC 20-81-210.N.16.a.)
3. When the plan is “held in abeyance” as described in paragraph 2, the school division must submit an interim implementation plan to the VDOE that describes the efforts of the school division to provide a free appropriate public education (FAPE) to the student pending a determination of the appeal. Upon completion of the appeal proceedings, the school division shall provide a final implementation plan that implements the decision of the hearing officer, including such modifications that were ordered by the court as part of the appeal proceedings. (8 VAC 20-81-210.N.16.)
4. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be “implemented while the case is appealed” and an implementation plan must be submitted by the LEA. (8 VAC 20-81-210.N.16.b.)
5. Upon the conclusion of the appeal as described in paragraph 4, the LEA must submit a final implementation plan that reflects the final determination of the courts related to the appeal.
6. The implementation plan:
  - a. Must be based on the decision of the hearing officer (or as modified by the courts if the decision was appealed);
  - b. Shall include the revised Individualized Education Program (IEP) if the decision affects the child's educational program; and

- c. Shall contain the name and position of a case manager in the LEA charged with implementing the decision. (8 VAC 20-81-210.N.16.c.)
7. When an implementation plan has been provided to the VDOE, the plan will be reviewed to determine if the hearing officer's decision has been implemented. If additional information is needed to determine if the hearing officer's decision has been implemented as described in the hearing officer's order, such information will be requested from the LEA. Within the time period established by VDOE, the LEA shall provide such supplemental information necessary to make a final determination that the hearing officer's decision has been fully implemented. (8 VAC 20-81-210.N.17.)
8. If needed, the VDOE may take such actions as are determined essential to determine whether the decision of the hearing officer has been implemented. Such actions may include, but shall not be limited to, a meeting between the school superintendent and the Superintendent of Public Instruction, as well as the Assistant Superintendent for Special Education and Student Services, and if necessary, to be followed by a request that the school superintendent appear before the Virginia Board of Education to report on the matter. (8 VAC 20-81-210.N.17.)
9. The LEA shall provide to the VDOE, upon request, information and documentation that show noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of a final special education hearing officer's decision or a final determination made by the court in an appeal proceeding. (8 VAC 20-81-210.N.17.)
10. The parties may seek court orders that implement the hearing officer's orders and/or the orders of the court during the appeal process. Such orders may be subject to the court's enforcement powers, such as contempt of court proceedings.
11. A party may also seek to use the Special Education Complaint Resolution Procedures to determine whether the LEA has failed to implement a due process decision. (8 VAC 20-81-200.D.3.c.)
12. When a LEA fails to implement the hearing officer's orders and/or the orders of the court issued during an appeal of the decision of the hearing officer, the VDOE shall review the actions of the LEA and its implementation plan. If the Superintendent of Public Instruction, after reasonable notice and opportunity for hearing under 8 VAC 20-81-290, finds that a LEA failed to comply with state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, the Superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be available to that local educational agency until it complies with state and federal laws and regulations. (34 C.F.R. § 300.155). (8 VAC 20-81-280 and 290.)