

# Virginia Association for Pupil Transportation (VAPT)



## TRANSPORTING CHILDREN WITH SPECIAL NEEDS IN VIRGINIA

June 24, 2011

# TRANSPORTING CHILDREN WITH SPECIAL NEEDS IN VIRGINIA:



Navigating the Law and Regulations to  
Ensure a Violation Free Trip

# **INTRODUCTIONS**

**The Virginia Department of Education**

**Division of Special Education and  
Student Services**

**Office of Dispute Resolution and  
Administrative Services**

# WHERE IS YOUR COMFORT LEVEL?



# PURPOSE OF PRESENTATION

- The Regulations Governing Pupil Transportation, at 8 VAC 20-70-350, state, in part, that all drivers shall receive training in ...transportation of students with special needs.
- Compliance issues with Special Education laws and regulations related to transportation.
- Requirements -vs- Best Practice
- Better understanding of your role in ensuring that all children receive a free appropriate public education.

# PURPOSE OF PRESENTATION (Continued)

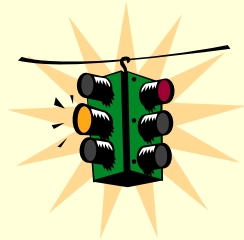
- To discuss the role of the individuals responsible for transportation of students (i.e. Transportation Directors, Bus Drivers, and Special Education personnel) in the special education process - from initial identification through the development of an Individualized Education Program (IEP) for a child with a disability.



# FORMAT

- Your presentation

- Slow down



- Speed up



- Discuss and/or Review



- Limited only by your timeline/available after



**SOMETHING TO GET YOU  
THINKING ON A FRIDAY  
AFTERNOON**







Special education is much like a magic trick. There are lots of steps involved and everyone has to be focused in order to get it right. But when it comes right down to it – it really isn't magic at all, it is a defined process and as long as everyone follows the process, you will be in compliance.

# SPECIAL EDUCATION

## ➤ Definition

- Special education is defined as specially designed instruction provided at no cost to the parent or parents in order to meet the unique needs of a child with a disability

- 8 VAC 20-81-10

# RELATED SERVICES

## ➤ Definition

- Related services are defined as developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education; and **include transportation**.

- 8 VAC 20-81-10

# TRANSPORTATION

## ➤ Definition

– As a related service, transportation is defined to include travel to and from school and between schools; travel in and around school buildings; and any specialized equipment (such as special or adapted buses, lifts and ramps), if required to provide special transportation for a child with a disability.

- 34 C.F.R. 300.34(c)(16)
- 8 VAC 20-81-10

# REGULATING AUTHORITY

- Individuals with Disabilities Education Improvement Act (IDEA 2004)
- Section 504 of the Rehabilitation Act of 1973 (504)
- Americans with Disabilities Act (ADA)
- No Child Left Behind Act (NCLB)
- Regulations Governing Special Education Programs for Children with Disabilities in Virginia (Virginia Regulations)
- Office of Special Education Programs (OSEP)
- Office for Civil Rights (OCR)
- Local policy and procedure



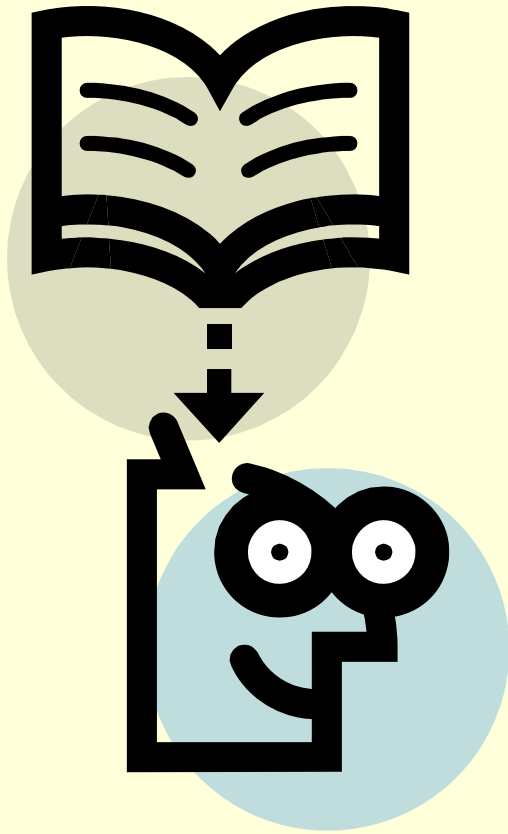
# Virginia Code Requirements

Students with disabilities in Virginia are entitled to be transported to and from the school/class and home at no cost in order to enable the student to obtain the benefit of educational programs and opportunities.

- Code of Virginia § 22.1-221



# TERMINOLOGY



- FAPE
- IEP
- MDR
- FBA
- BIP
- LRE
- Modification
- Accommodation

# FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

## ➤ Definition

- Means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the Virginia Board of Education; include preschool, elementary school, middle school, and secondary school education in the state; and are provided in conformity with an individualized education program that meets the requirements set forth in state and federal regulations.

▪ 8 VAC 20-81-10





# INDIVIDUALIZED EDUCATION PROGRAM (IEP)

## ➤ Definition

- A written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with the specified regulations, which specifies the individual needs of the child and what special education and related services are necessary to meet those needs.

- 8 VAC 20-81-10



# IEP DEVELOPMENT

- Bus driver may be included in the IEP meeting.
- Bus driver input could be critical in the development, review, and revision of a student's plan.



# IEP DEVELOPMENT (Continued)



- Communicate with the IEP Case Manager regarding behavioral incidents; observations of the student; intervention strategies; other concerns.
- Document all behavioral incidents in detail.

# IEP DEVELOPMENT (Continued)



- Note that a related service provider may participate in the meeting by attending the meeting or providing a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.
- More complex services suggest attendance.

# IEP DEVELOPMENT

## What's Included?

- Description of any personnel to assist student
- Description of extent of services provided, such as bus stop or door-to-door transportation, if different than provided for other students
- Least restrictive considerations in the provision of special transportation
- For medically fragile students, provision of any necessary medical procedures on the bus.

# IEP DEVELOPMENT

## What's not Included or is it?

- Bus scheduling matters, including determination of bus route and timing of pickup and drop off
- Selection of bus stop
- Selection of driver and any personnel who will assist the student during transportation
- Decisions about obtaining resources used to provide transportation – private fleet versus contracting with companies who have independently owned vehicles.

# IEP DEVELOPMENT

## Are Goals needed?

- If provided to enable the student to attend school, then no goals or objectives needed.
- If provided for some other purpose related to the student's education and student receives instruction during the provision of the related service then goals must be provided.

See, Letter to Smith, 23 IDELR 244 (OSEP 1995) and Letter to Hayden, 22 IDELR 501 (OSEP1994).

# IEP RESPONSIBILITY

- **School divisions are required** to ensure that each child's IEP is accessible to any service provider who is responsible for the implementation of the IEP and that providers are informed of their responsibilities related to the implementing of the child's IEP and are made aware of the specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP.

- 8 VAC 20-81-110.B.3



# IEP RESPONSIBILITY (Continued)

- **Bus drivers are required** to implement the provisions of the child's IEP that relate to the child's transportation and behavioral needs while in transport.

# IEP RESPONSIBILITY (Continued)

- The IDEA and Section 504 do not specifically address licensing and other qualifying requirements that apply to bus drivers. These requirements are handled as a matter of state law and local policy. See, Letter to McKaig, 211 IDELR 161 (OSEP 1980).

# IEP RESPONSIBILITY (Continued)

- Drivers and other persons involved in providing specialized transportation may be given information about a special needs child, such as the pertinent parts of the student's IEP. However, the personnel responsible for providing specialized transportation services must be given necessary information.

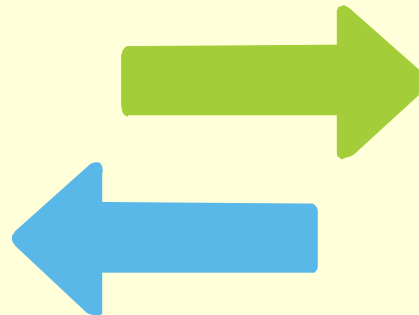
# IEP RESPONSIBILITY (Continued)

- Parents may not demand that they be reimbursed for providing transportation if the division offers an appropriate means of transportation. School offered awarded contract for vehicle- Deleon v. Susquehanna Comm. Sch. Dist, 556 IDELR 260 (3<sup>rd</sup> Cir. 1984). Bus made available- Santa Ana Sch Dist., 505 IDELR 243 (SEA CA 1983)

# IEP RESPONSIBILITY (Door-to-Door)

- OSEP has stated that the decision whether to transport a child from the home or from a local bus stop must be made on an individual basis by the child's IEP team.

Letter to Smith 211 IDELR 191 (OSEP 1980)



# IEP RESPONSIBILITY (Door-to-Door)

- Factors to be considered by the IEP team when “door-to-door” transportation services are being considered :
  - Student’s ability to move independently
  - Student’s age
  - Nature of student’s disability
  - Distance to be traveled between the student’s home and bus stop
  - Nature and conditions of the route to be traveled between the home and bus stop

# IEP RESPONSIBILITY (Door-to-Door)

- Examples:
  - ID student with mental age of 5 or 6 to walk .5 mile unacceptable given given maturity and reasoning skills— In Re Student, 505 IDELR 235 (SEA IL 1984)
  - Down Syndrome student severely ID with limited verbal skills, walked slow with clumsy gait—In re Sara S.,507 IDELR 308 (SEA NH 1985)

# Length of Bus Ride

- A school division shall ensure that a child with a disability is provided a commute to and from an education program that is comparable in length to the commute provided to children without disabilities, **unless** the child's IEP team determines that a longer or shorter commute is necessary to ensure the provision of FAPE.

8 VAC 20-81-100.G.3

- Neither IDEA nor Section 504 specifically address the appropriate length of bus rides for Students with Disabilities.



# Length of Bus Ride (Continued)

- Lengthy Bus rides may be discriminatory. Shortened school day (30 min.) not based on educational needs—Sikeston (MO) Sch Dist., 16 IDELR 467 (OCR 1989)

# Length of Bus Ride (Continued)

- Student with orthopedic disability had similar school day in length but travel times for lift-bus were 40 minutes to 95 vs. 10 to 20 minutes for nondisabled students which were two to five times longer in violation of Section 504 and the *ADA—Atlanta (GA) Pub. Sch.*, 16 IDELR 19 (OCR 1989)

# Length of Bus Ride (Continued)

- Shorter school days for certain students with disabilities was based entirely on scheduling of special bus routes—Stafford County (VA) Pub. Sch., (OCR 1990).
- Note that minor deviations in the length of the bus ride from other students or changes for a student with a disability may be considered insignificant or not detrimental to a student's education— DeLeon v. Susquehanna Comm. Sch. Dist., 556 IDELR 260 (3<sup>rd</sup> Cir. 1984).

# MANIFESTATION DETERMINATION REVIEW (MDR)

## ➤ Definition

- A process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.

- 8 VAC 20-81-10



# MANIFESTATION DETERMINATION REVIEW (MDR) (Continued)

- An MDR is required
  - when the school division is considering a long term suspension/expulsion of more than 10 consecutive school days; and
  - when a series of removals constitute a pattern because the removals cumulate to more than 10 school days

# MANIFESTATION DETERMINATION REVIEW (MDR) (Continued)

- The MDR team must determine if the behavior in question:
  - was caused by, or had a direct substantial relationship to, the child's disability; **or**
  - was a direct result of the school division's failure to implement the IEP.

# BUS DISCIPLINE

- Federal and state laws regarding students with disabilities outline procedural protections for these students, including discipline procedures.
- These procedural protections must be applied in **ALL** school environments: the classroom, the cafeteria, and when transported.



# BUS DISCIPLINE (Continued)



- However, the student may be disciplined for behavior incidents occurring while in transport to or from school.
- Two types of bus suspensions:
  - Short-term (1 - 10 days)
  - Long-term (More than 10 consecutive days)



# BUS DISCIPLINE (Continued)

- If alternative arrangements are not made for the student to receive educational services, then a bus suspension will count in the number of removal days – even if the student is not suspended from class.

# BUS DISCIPLINE (Continued)

- Only the school's provision of an alternative means of transportation erases the removal. Otherwise, the bus suspension counts as a disciplinary removal – just like an out of school suspension.
- Impact on student's access to FAPE.

# ALTERNATIVE ARRANGEMENTS

- Changing the school division's mode of transportation.
- Parentally provided transportation.
- Public transportation.
- Must be of **no cost** to child or parent.
- IEP Team decision to permanently change.

# OTHER DISCIPLINE ISSUES

- May also be occasioned by a specific behavior.
- Without consideration to the relationship of the behavior to the child's disability, if a child commits one of the following three behaviors, the child may be placed in an interim alternative educational setting (IAES) for up to 45 school days.

# OTHER DISCIPLINE ISSUES

- The student carries or possess a dangerous weapon
  - Does not include “look alike” weapons
- The student **knowingly** possess or uses illegal drugs or sells or solicits a controlled substance.
  - Does not include “over the counter” medications
- The student inflicts serious bodily injury
  - Serious bodily injury means a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the functions of a bodily member, organ or mental faculty.

# OTHER DISCIPLINE ISSUES

- If a safety/danger situation exists for the child or others, school personnel may assign the student to IAES for up to 10 school days after consultation with the special education teacher.
- May also:
  - Seek parent consent to change the IEP for a longer IAES removal, or
  - Seek a hearing officer order through an expedited due process hearing (The hearing officer may place the student in an IAES for up to 45 school days.); or
  - Seek a court injunction.

# OTHER DISCIPLINE ISSUES

- School personnel may consider any unique circumstances on a case-by-case basis when deciding to order a change in placement for a child violating a school conduct code.

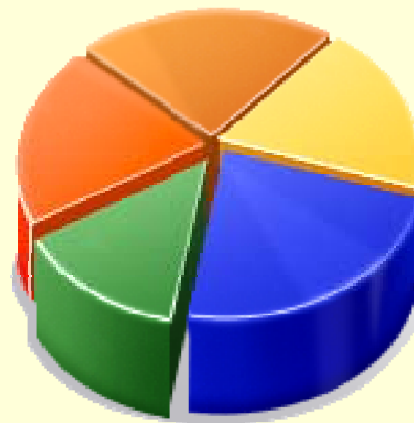


# FUNCTIONAL BEHAVIORAL ASSESSMENT (FBA)

## ➤ Definition

- A process to determine the underlying cause or functions of a child's behavior that impede the learning of the child with a disability or the learning of the child's peers.

- 8 VAC 20-81-10





# BEHAVIORAL INTERVENTION PLAN (BIP)

## ➤ Definition

- A plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with a disability or the learning of others or behaviors that require disciplinary action.

▪ 8 VAC 20-81-10



# LEAST RESTRICTIVE ENVIRONMENT (LRE)

## ➤ Definition

- Means that, to the maximum extent appropriate, children with disabilities are included with their non-disabled peers and that their exclusion occurs only when the severity of the disability is such that participation with the use of supplementary aids and services cannot be achieved satisfactorily.

▪ 8 VAC 20-81-10

# TRANSPORTATION AND LRE

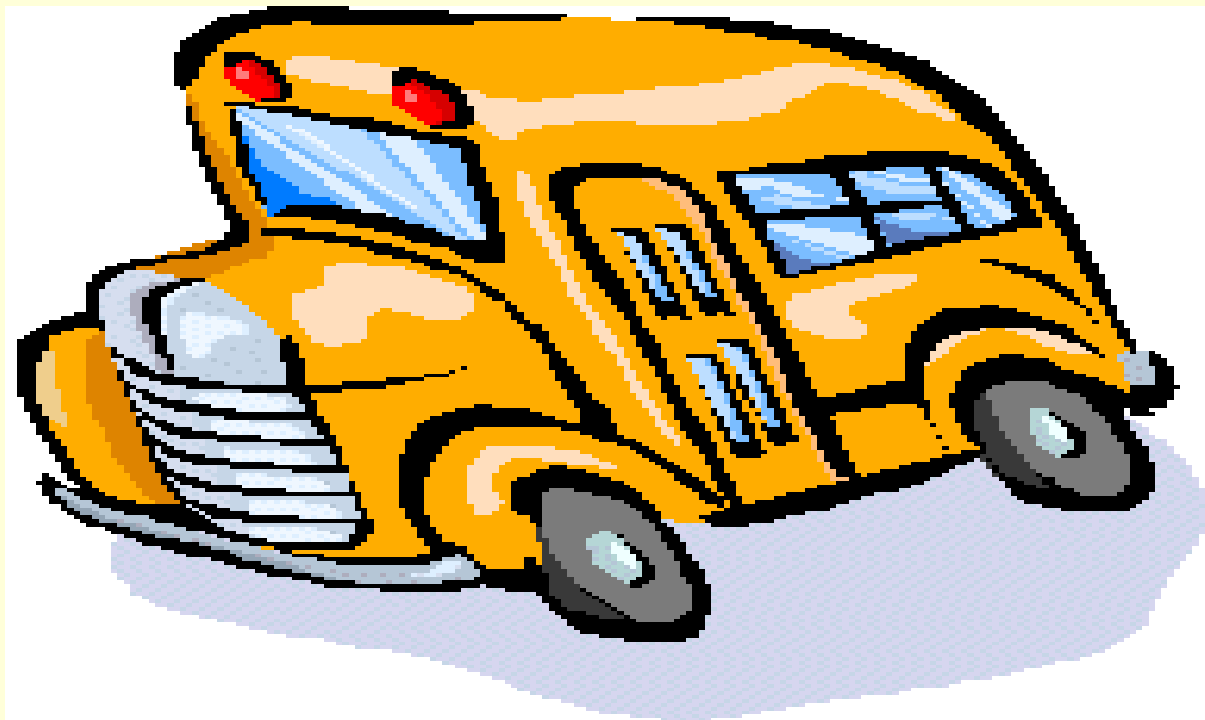
- IEP Team determines how the child will be transported:

By bus ...



# TRANSPORTATION AND LRE (Continued)

By “special” bus ...



# TRANSPORTATION AND LRE (Continued #2)

... or by alternative means!



# TRANSPORTATION AND LRE (Continued #3)

- The IEP Team must consider whether regular transportation can be implemented with supplemental aids and services.
- Whether the advantages to the student of riding in regular transportation outweigh the benefits of a more restrictive transportation arrangement.
- Negative impact on other students

# MODIFICATION -VS- ACCOMMODATION

- Modification
  - Usually involves a physical change
- Accommodation
  - Usually requires a special circumstance to occur for the child

# MODIFICATION -VS- ACCOMMODATION (Continued)

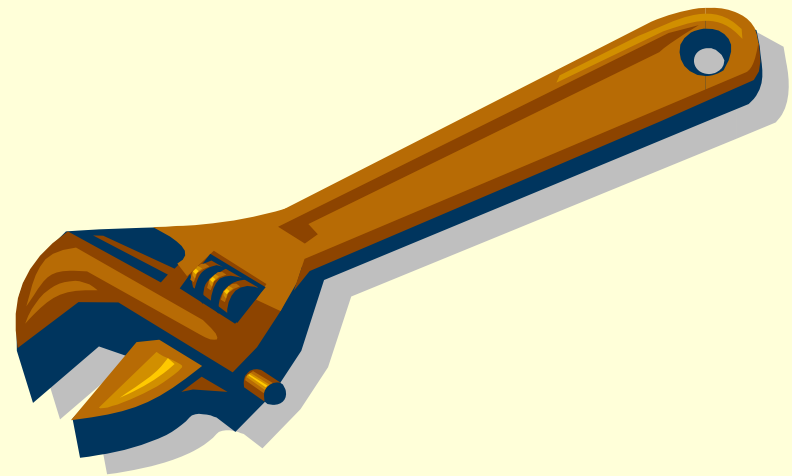
- The IEP should outline any modifications or accommodations required for transportation.





# MODIFICATION

- Special Harness Installed
- Ramp
- Elevator
- Wheelchair access
- Others?



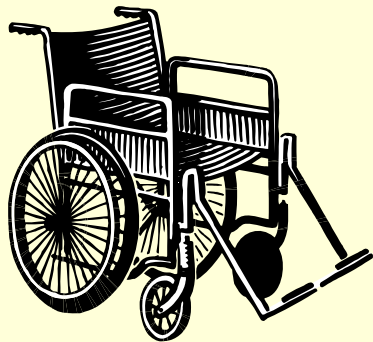
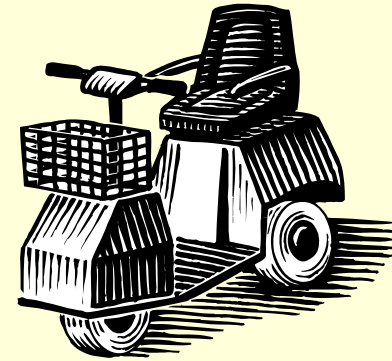
# ACCOMMODATION

- “Last On – First Off”
- “Door-to-Door”
- Bus stop -vs- Home Pick-up
- Use of an Aide/Escort
- Supervised Bus
- Seat Placement
- Seating Arrangement
- Special Route
- Length of Ride
- Shortened Route
- Alternative Transportation
- Signaling
- Others?



# OTHER ISSUES

- Driving techniques
- Types of wheelchair
  - Preparation of wheelchair prior to loading
  - Proper tie-down



# MEDICAL ISSUES

The school division has a responsibility to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school.

- 34 C.F.R. 300.34(b)(2)(ii)



# SPECIAL CIRCUMSTANCES

- Out of District
- Foster Care

Decision on who provides transportation rests on whether the school division is responsible for the provision of FAPE.

# 504 PLAN

- Governed by:
  - Section 504 of the Rehabilitation Act of 1973
- Developed in accordance with the policies established by the local school division.
- Requirements for implementation remain the same as for IEP implementation.

# RESPONSIBILITIES

- Referring
- Conferring
- Implementing
- Documenting
- Reviewing



# “POTHOLES” TO AVOID

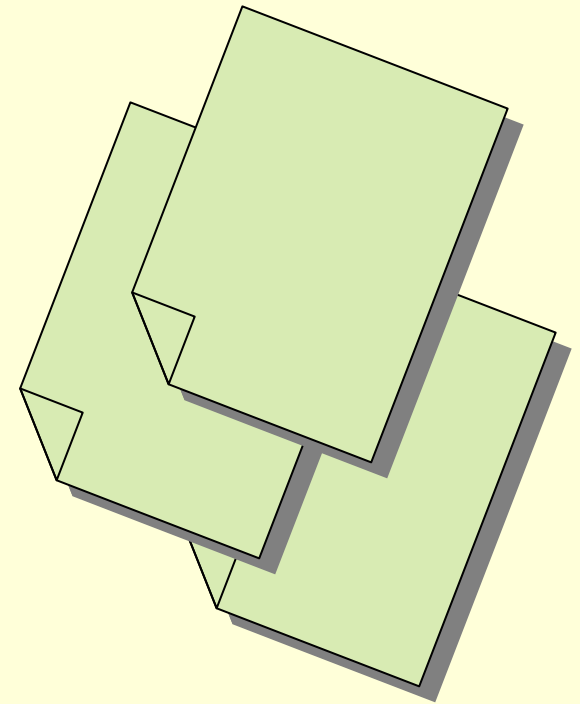
- Assumptions
  - Not a SPED child
- Not following up on suspicions
- Independent Decision Making
- Not Communicating
- “Living on an Island”
- “Out of Sight Out of Mind”
- Assuming Responsibility
- Failing to Document





# DOCUMENTATION

- When you are sure – Document
- When in doubt – ask questions – Document
- Be Proactive – Document
- Maintain Documentation



# CONSEQUENCES OF A VIOLATION

- Parental/Advocate Complaint
  - “Blue Lights”
- Notice of Complaint
  - “Citation”
- Investigation
  - “Pleadings”
- Letter of Findings
  - “Guilty” or “Not Guilty”
- Corrective Action
  - “Fine”
- School administration decision for any personnel action

# REFERENCES

- Federal Regulations

<http://www2.ed.gov/legislation/FedRegister/finrule/2006-3/081406a.pdf>

- State Regulations

[http://www.doe.virginia.gov/special\\_ed/regulations/state/regs\\_speced\\_disability\\_va.pdf](http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf)

- LRP Publication

*What Do I Do When ... The Answer Book on Transportation for Students with Disabilities* (2<sup>nd</sup> Edition 2007)

<http://www.shoplrp.com/product/p-300124.html>

# TIME FOR QUESTIONS

My thoughts on questions!

- Without questions, there can be no answers?
- Unasked questions go unanswered!

# ONE LAST THOUGHT ...



You make a difference, without you - the final piece could be missing.

# CONTACT INFORMATION

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# ADDITIONAL CONTACT INFORMATION

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