

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
May 15, 2014 – July 14, 2014

Action		Type	
N	No Response	-	Negative
NA	Not Accepted	+	Positive
A	Accepted	0	Neutral

DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
§126-16-1 General				
06-23	Melinda Walton Special Education Director Tyler County Schools Middlebourne WV	On Page 72 Maximum number of Level 1 students allowed to be served in a class is misrepresentative of this level of students' need. A child with mild intellectual disabilities does not require the higher ratio of 1:6 personnel or the class limit of (6). The students at level 1 are much more independent and capable of having their needs met in the same ratio as is listed for Level 2 students.(simply put Level 1 students should be able to be served in a 1:6 or 2:12 ratio environment IF they are not in an inclusive setting)	A+	Add to Chapter 6.4.B. Revising class size for instructional periods for K-5 Level I allows districts to serve students appropriately. Revision is warranted.
§126-16 West Virginia Procedures Manual for the Education of Students with Exceptionalities				
06-02	Karen Breeden Moorefield West	Under "Definitions and Eligibility Criteria" Section J "Orthopedic Impairment" could you please include as an "impairment from other causes" the condition of hydrocephalus (fluid on the brain. This condition has a profound effect on a child's ability to function in a normal school environment. Including, but not limited to, mobility, functionality, ability to learn and retain in a conventional manner. Children who have hydrocephalus have a very different perspective of a learning environment. Their abilities may be limited by physical or mental impairments. Their ability to process and retain most times require a different approach to their educational needs. While this condition is unpreventable, with early diagnosis and treatment, it can be managed. Prognosis can range from the child recovering to have a little or no permanent damage to having severe effects that are not reversible. Their fine and gross motor skills, comprehension, ability to problem solve one situation and apply it to another, as well as potty training and other factors can be severely affected by this condition. I feel that	NAo	The Eligibility Committee determines whether the student meets the eligibility criteria in one of the designated exceptionalities.

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
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§Chapter 1 Free Appropriate Public Education				
05-20	Kim Rodes Director of Special Education Summers Co BOE Hinton WV	Please include a table of contents for entire policy prior to this chapter.	A+	Table of Contents included in Policy 2419. Revision is warranted.
07-14	Clarice Hausch Executive Director West Virginia Advocates, Inc. Charleston WV	-On page 5 to page 6, addressing Medicaid billing changes: West Virginia Advocates recommends that this be clarified, because Number 1, parts a and b indicate that parents will be asked for consent each year (“for the first time and annually thereafter”), but Number 2 refers to a “one-time prior consent”.	NAo	The public agency is required to provide written notification annually not consent. Consent is required initially or when local education agency changes for student.
§Chapter 2 Child Find				
06-03	Vanessa Stone Parent Advocate Falling Waters WV	While these procedures are clearly outlined in this policy, how can the policy be enforced on a local level. For example, there is little if any information distributed to the public in my district for child find, requiring a great deal of advocacy both for disabled and gifted students. There is no public information on gifted identification, and teachers have confused notions about the process. How can this policy better identify and address these discrepancies as well as meet the needs of most commonly underrepresented groups, i.e. minorities, ESL, and twice exceptional students? How does child find adequately address underrepresented groups?	NA-	No changes to Chapter 2 Child Find recommended.
§Chapter 3 Evaluation/Reevaluation				
05-22	Holly Yoke School Psychologist Wood County Schools Parkersburg WV	Sec.4.C. I have concerns about always providing a copy of my psychoeducational eval. report to the EC team members, one of which is the parent, prior to the EC meeting. I believe this will discourage attendance, especially when parents believe that their child will not qualify for services. It also is inconsistent with our professional ethics, which encourages parent participation and	A+	IDEA does not establish a timeline for providing a copy of the evaluation report to the parent. Revision is warranted.

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Comment Log
May 15, 2014 – July 14, 2014

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		ensuring a clear understanding of assessment results. In addition, as one of three school psychologists in a large county (13,000+) students, there are many times that my psychoeducational reports are written the night before or the morning of an EC meeting.		
05-22	Vic Fisher Supervisor, Pupil Services Harrison County Schools Clarksburg WV	I support the extension of the 80 timeline for initial evaluations when districts close due to a state of emergency, weather conditions and summer break.	N+	
05-22	Miranda Haught School Psychologist Wood County Schools Parkersburg WV	Releasing the report to the parent before the meeting is not best practice. Physicians do not release medical findings regarding very sensitive information for the patient to read, figure out, and in this day and age using the internet to create their own conclusions of the report. It is unethical for us to release this information before we speak to the parents regarding what the entire report is about. This would also discourage parental participation. It is already a struggle to get parents involved, so I can already envision parents receiving the report prior to the meeting and just not coming. Another downfall to this idea of giving the report in advance is the fact that there are so many counties in this state that are already overloaded and are in fact, testing machines. We are not able to be utilized for what we are trained for (counseling, etc). So we are churning out reports as fast as we can and sometimes it is not plausible to have a report done days before the meeting. We are stretched thin with 3 school psychs for over 13,000 students. Please understand that the number one reason I am commenting is because I believe it is in the best interest for the child to have parents come to the meeting, have the report presented at that time, and be able to understand all that it encompasses, rather than coming into the meeting (if they do), report in hand, and being against the school. Thank you.	A+	IDEA does not establish a timeline for providing a copy of the evaluation report to the parent. Revision is warranted.

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
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05-27	Sherry Copley Special Services Liaison Marion County Schools Fairmont WV	Requested change: Initial evaluation timeline should be changed to a "school days" number to prevent districts from being accountable for days in which students are not in school (i.e., spring/summer break.	A+	Revised Section 2.A. to reflect summer break. Revision is warranted.
07-14	Clarice Hausch Executive Director West Virginia Advocates, Inc. Charleston WV	-On page 18 under “C. Qualifications and Responsibilities of Evaluators”, the policy states “Each evaluator must make written report(s) available to the EC prior to the meeting in which the report(s) will be considered”. West Virginia Advocates recommends that this sentence be clarified to indicate that making the reports available to the EC includes making them available to the parent.	A+	Revise Section 4.C. to include parent. Revision is warranted.
§Chapter 4 Eligibility				
05-22	Vic Fisher Supervisor, Pupil Services Harrison County Schools Clarksburg WV	<p>Gifted. For students determined eligible for exceptional gifted, I suggest that the continuance of the "Four Year Education Plan" replacing the "Personalized Education Plan" is unnecessary. I suggest that a requirement that "the IEP team must write the Personalized Education Plan and include honors, Advanced Placement (AP) and/or International Baccalaureate (IB) classes, that must be provided for the student in grades, 9-12" would be sufficient.</p> <p>M. Speech Language Impairment Because WV's speech-language impairment data, number of student eligible, continues to exceed the national average, I believe that any revision to policy should attempt to address this disparity. While portions of this policy may strengthen the eligibility criteria, other portions may unintentionally weaken it. Therefore, I recommend that criteria be explicitly returned to each of the SLI eligibility criteria areas, Language Disorder, Speech Sound Disorder, Childhood Onset Fluency Disorder (Stuttering), and Social (Pragmatic) Communication Disorder, rather than</p>	NA-	<p>WV Code §18-2E-36 describes the four-year education plan which will designate honors or advance placement courses.</p> <p>Policy 2510 5.4.d.7 states the four-year plan replaces the PEP.</p> <p>Criteria returned to each of eligibility criteria areas. Revision is warranted.</p>

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
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		<p>being buried in the definition at the beginning of the SLI section. These criteria are: 1. The student's condition adversely affects educational performance. 2. The student needs special education. A second area of concern is within the eligibility criteria for Speech Sound Disorder; #3 preschool students. "Two or more phonemic errors..." and "Two or more phonological processes..." These criteria could be interpreted very subjectively with the end effect of increasing the number students determined eligible within this age group.</p>	A+	
05-23	<p>Karen Cummings School Psychologist Kanawha County Schools Charleston WV</p>	<p>Specific Learning Disability: I like the change to standard 2 rate of learning OR pattern of strengths and weaknesses. Currently I believe we are identifying too many kids as having a specific learning disability that really do not have a specific learning disability. Just because a student fails to achieve an appropriate rate of learning, based on curriculum based measure data, does not necessarily mean they have a learning disability. Also, just because a student achieves an appropriate rate of learning does not mean they do not have a specific learning disability. Curriculum based measure data is only helpful when the appropriate skill is being measured. Our schools across the state are not using the appropriate interventions and curriculum based measures to target skills. I believe the most common error is the use of Oral Reading Fluency data to measure reading. What if there is a comprehension problem and not a oral reading fluency problem? Many schools and interventionist do not understand this concept. In order for rate of learning to properly identify a disability the appropriate measure must be used to test the students skills deficit. Allowing us to use the PSW evaluation approach is a much more sound way of identifying a specific learning disability, especially when the proper rate of learning data is not being collected in schools. I love this change! Thank you for realizing that the way we are doing things currently is not always the best way!</p>	N+	

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
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05-30	Sarah Kendall School Psychologist Kanawha County Schools Charleston WV	<p>I am quite concerned about the use of the GAI for Gifted eligibility. The GAI Technical document specifically states that the GAI is not a better estimate of ability and specifies the reasons it was developed and its intended uses - none of which include the use of determining Gifted eligibility. I believe the GAI should not be used for Gifted eligibility determination. Please remove GAI from the regulations.</p> <p>On a different note, I believe that Gifted should not be a part of 2419 and funded with funds that philosophically and maybe legally are intended for students with disabilities. After 25 years of experience, I have yet to see a case of a Gifted child whose educational needs can not be creatively met through the regular educational curriculum - unless of course - they have a disability as well. And if Gifted is to remain an exceptionality of 2419, then the criteria should receive a major overhaul, as the Gifted curriculum seems to focus on academic acceleration - and if this is the focus, then the criteria should hinge on academic achievement scores and performance, not intellect. Many super high achieving kids do not benefit from this academic acceleration of Gifted, because they do not meet the intellectual threshold.</p> <p>Regarding Autism, there is much discussion regarding school psychologists making DSM-IV / DSM - V diagnoses of any kind. I believe that school psychologists are well qualified to make such diagnoses, but others may not feel that way. The current 2419 and proposed revisions for Autism appear to come straight from DSM, so school psychs / school systems have been and will be essentially making DSM dx'es. I believe this is better than fine (school psychs are often in better positions than other licensed clinicians to have access to kids and info to make accurate DSM diagnoses), but some folks have concerns about this. Quite honestly, I see DSM diagnoses of very questionable validity from psychologists outside of the school system with considerable</p>	<p>NAo</p> <p>NA-</p> <p>N+</p>	<p>According to guidelines provided by the National Association for Gifted Children (NAGC), the GAI may be the better indicator when there are large disparities among the Composite/Index scores. Gifted children may be painstaking and perfectionistic on paper-pencil tasks, lowering their Processing Speed Index scores. In addition, they may struggle when asked to recall non-meaningful material, lowering their working memory index. As a result their full scale IQ scores may be lowered sufficiently by processing skills preventing them from qualifying for needed services. Therefore, calculating the GAI, which emphasizes reasoning ability, is justifiable when using comprehensive individual IQ tests to identify children for gifted education services.</p>

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
May 15, 2014 – July 14, 2014

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		frequency. I believe that DSM diagnoses made by school psychologists are likely to be as, if not more valid, than those made by psychologists outside of the school system. May I please have confirmation of receipt of these comments and/or feedback - skendall@mail.kana.k12.wv.us		WV Code §18-20-1 establishes special programs and teaching services for exceptional children (including gifted). IDEA funds are not expended for gifted services.
06-03	Vanessa Stone Parent Advocate Falling Waters WV	While there are clear guidelines for the identification and eligibility of disabled, specific learning disabilities, and gifted students, there is not a clear outline for twice exceptional students. Under the current criteria, children with dyslexia, for example, who are working at or above grade level but are also gifted are unlikely to be identified as the giftedness masks the dyslexia and the dyslexia masks the giftedness. I am glad to see the inclusion of dyslexia in the policy revision, however, these students are underrepresented and require an IEP. Districts will not identify these students without proper training or a state policy or mandate the requires them to do so.	N+	
06-11	Michael Powell School Psychologist Raleigh County Office of Special Programs Beckley WV	The first statement under Pattern of Strengths and Weaknesses is convoluted and confusing. It appears to suggest that a student can show a show a PSW based only on achievement or only based on cognitive assessment. That is if "performance" is in reference to cognitive abilities. Is this not in conflict with what a PSW model represents? Also, I thought one of the primary purposes for PSW is to evaluate the student's cognitive functioning in order to identify an underdeveloped psychological process in order to facilitate better interventions and understanding of the student's difficulties.	NA-	Section 3.L aligned with federal Part B regulations 34CFR 300.309
06-12	Sandra S Stroebe Associate Dean	I want to commend you for changing the SLD diagnostic criteria to align with the federal definition. This permits diagnosis	N+	

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
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	Marshall University S Charleston WV	uniformity across states to be achieved. It also allows SLD to be more appropriately diagnosed by recognizing the important of evaluating the pattern of strengths and weaknesses.		
07-08	Bridget Bailey CVI Mentor Poca WV	Eligibility for blind and low vision: functional vision assessment should be clarified in glossary.	A+	Functional vision assessment is defined in the glossary. Revision is warranted.
07-14	Clarice Hausch Executive Director West Virginia Advocates, Inc. Charleston WV	-On page 22 under “Eligibility Criteria for Autism”: West Virginia Advocates notes that the DSM-V states that individuals with a “well-established” diagnosis of autism, Asperger’s, or PDD NOS under the DSM-IV should be given the diagnosis of autism spectrum disorder. West Virginia Advocates recommends that this note from the DSM-V be included in Policy 2419 and that children who previously qualified under the autism category with a “well-established” diagnosis not be subject to change.	A+	Note from DSM-V included under Eligibility Criteria for Autism. Revision is warranted.
§Chapter 5 Individualized Education Program				
07-14	Clarice Hausch Executive Director West Virginia Advocates, Inc. Charleston WV	-On page 49, the determination of “accommodations” is added to the list of the general education teacher’s role in the development, review and revision of the IEP. West Virginia Advocates recommends that definitions of “accommodations” and “modifications” be included in the glossary.	A+	Accommodations and modifications are defined in the glossary. Revision is warranted.
		-On page 51, under “D. Present Levels of Academic Achievement and Functional Performance”, “Dynamic Learning Maps (DLM)” replaces the explanation of annual goals and benchmarks/objectives for APTA students. West Virginia Advocates recommends that this section be clarified with a definition of “Dynamic Learning Maps (DLM)” and an explanation of why or in what context it is included here.	NAo	The alternate achievement standards provide the content for students taking the alternate accountability assessment. Dynamic Learning Maps are not mentioned in the policy revision.
		-On page 62 (under “M. Following the Meeting”) and page 63 (under “B. IEP Amendments”), West Virginia Advocates believes that the references to West Virginia Code §18-20-10 are incorrect	A+	Revision is warranted.

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
May 15, 2014 – July 14, 2014

DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
		<p>and should actually be to West Virginia Code §18 - 20 - 1 C (requiring teachers of students with exceptional needs to either be present at an individualized education program meeting or to read and sign a copy of the individualized education program plan). -West Virginia Advocates also recommends that section "M. Following the Meeting" include clarification regarding whether this signature is separate from the attendance page that is signed at the IEP meeting and if parents will have access to this documentation.</p>	NAo	<p>The signature is separate from the attendance page. The attendance page is only to be signed by those actually at the IEP Team meeting. Parents may have access to documentation through the principal.</p>
§Chapter 6 Administration of Services				
05-22	Vic Fisher Supervisor, Pupil Services Harrison County Schools Clarksburg WV	I recommend an increase in the "Maximum Number of Students per Instructional Period Based on Level of Service" for Level I Service Needs for Early Learning Programs Grades K-5 from the current 6 students to 8 students. Our special educators indicate that 8 is a workable number and would not adversely impact the quality of special education services they are able to provide.	NAo	Revising class size requirements for instructional periods for K-5 Level 1 allows districts to serve students appropriately. Revision is warranted.
06-18	Debbie Bever Director Ritchie Harrisville WV	On Page 72 Maximum number of Level 1 students allowed to be served in a class is misrepresentative of this level of students' need. A child with mild intellectual disabilities does not require the higher ratio of 1:6 personnel or the class limit of (6). The students at level 1 are much more independent and capable of having their needs met in the same ratio as is listed for Level 2 students.(simply put Level 1 students should be able to be served in a 1:6 or 2:12 ratio environment IF they are not in an inclusive setting)	A+	Revising class size requirement for instructional periods for K-5 Level 1 allows districts to serve students appropriately. Revision is warranted.
06-18	Kimberly D. Kehrer Director of Special Programs Pleasants County	On page 72, there is a discrepancy in the student/staff ratio between the Level I and Level II elementary students. In the current procedures/policy, a Level I elementary special education classroom can only serve 6 students maximum; however, a Level	A+	Revising class size requirement for instructional periods for K-5 Level 1 allows

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
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DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
	Schools St. Marys WV	II elementary special education classroom setting can serve up to 12 students by adding additional staff. In essence, Elementary Level I only has the option of a 6:1 ratio, but an Elementary Level II has the options of a 6:1 ratio OR a 12:2 ratio. Because Level I students have less severe needs by definition, it makes sense that their needs should be able to be met in a classroom with the same amount of students and staff as the Level II students.		districts to serve students appropriately. Revision is warranted.
06-18	Angela Domico Cox Special Ed Director Wirt County Schools Elizabeth WV	The ratio restrictions (1:6)for Level 1 students is more restrictive than what is required for higher needs Level 2 students. This seems illogical. The Level 1 ratio needs to mirror that of the Level 2 students.	A+	Revising class size requirement for instructional periods for K-5 Level 1 allows districts to serve students appropriately. Revision is warranted.
§Chapter 7 Discipline				
05-20	Kim Rhodes Director of Special Education Summers Co BOE Hinton WV	Pg 78 section "C" Please rephrase first line to read „regardless of whether the behavior is a manifestation or not..."	A+	Section 2.C aligned with federal Part B Regulations 34.CFR.300.530 (g). Revision is warranted.
07-14	Clarice Hausch Executive Director West Virginia Advocates, Inc. Charleston WV	-On page 78, under “District Actions When Conduct is Determined Not to Be a Manifestation of the Student’s Disability”, the new policy states that a functional behavior assessment (FBA) must be conducted “unless one was conducted before the behavior that resulted in the change of placement occurred.” West Virginia Advocates recommends that this time period be defined: what is “before”? And: how long “before” the behavior is acceptable?	NAo	“Before” in this section means an FBA has been conducted and a BIP has been developed prior to the most recent behavior that included the 11 th day.
§Chapter 9 General Supervision and Accountability for Performance and Compliance				
06-03	Vanessa Stone Parent Advocate Falling Waters WV	How is the state certain that districts are compliant? Aside from self-reporting and data collection, how does the state enforce compliance. There is a gap between procedural safeguards for parents/adult students and Accountability for Performance and	N-	

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
May 15, 2014 – July 14, 2014

DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
		Compliance. How can parents ensure their district is compliant and meeting state standards?		
06-12	Sandra S Stroebel Associate Dean Marshall University S Charleston WV	Would you consider changing the wording for the WVDE Responsibility for providing 12 hours of professional development to school psychologists to include the words "in collaboration with the professional state association." Our professional state associations are built on providing professional development. Although you have stated your intent is to collaborate with WVSPA, without any reference to this there is the possibility the WVDE could provide professional development and take the place of the professional organization. This would not be beneficial to our state.	A+	Add to Section 3.A.2. "in collaboration with the professional state association." Revision is warranted.
§Chapter 10 Procedural Safeguards				
05-22	Vic Fisher Supervisor, Pupil Services Harrison County Schools Clarksburg WV	I support the proposed change that would allow the IEP team and parent to initiate services within fewer than 5 days after the IEP meeting. A delay in services when both parties agree otherwise is not in the best interest of the student.	N+	
05-30	Sarah Kendall School Psychologist Kanawha County Schools Charleston WV	parents should be allowed to waive - in writing - pwn in order to expedite process if they wish	N+	
§Chapter 11 Dispute Resolution				
05-27	Gregory Bailey Lawyer Morgantown WV	Alignment w/ the US Supreme Court decision relating to burden of proof is welcome. There are conflicting hearing officer decisions on this issue. By WV statute, the WVBOE is prohibited from exceeding federal special education requirements. In the interest of clarification, I suggest the paragraph simply state: "The burden of proof will be in the party seeking relief, in accordance with the decision in Shaffer v. Weast, 546 U.S. 49, 126	A+	Revised Section 4.A. to include recommendation. Revision is warranted.

Policy 2419: Regulations for the Education of Students with Exceptionalities
Comment Log
May 15, 2014 – July 14, 2014

DATE	INDIVIDUAL ORGANIZATION	COMMENTS	ACTION/TYPE	RATIONALE
		and thus removes the right of either party to void an agreement reached in the due process within three business days of signing the legally binding agreement. West Virginia Advocates disagrees with this proposed change.		
§Glossary comments				
05-20	Kim Rodes Director of Special Education Summers Co BOE Hinton WV	Please include definitions for "Modifications" and "Accommodations."	A+	Accommodations and modifications are defined in the glossary.
05-22	Vic Fisher Supervisor, Pupil Services Harrison County Schools Clarksburg WV	A definition of "Pattern of Strengths and Weaknesses" may be helpful (expanding somewhat on what is offered in chapter 4. Add UDL to glossary and acronyms. Add a definition of Standards Based SB-IEP.	A+ A+ A+	Pattern of strengths and weaknesses defined in the glossary. UDL defined in the glossary and added to acronyms. Standards Based Individualized Education Program defined in the glossary
07-08	Bridget Bailey CVI Mentor Poca WV	Assessment should be added and include the CVI assessment.	A+	Functional Vision Assessment defined in the glossary and includes CVI assessment.