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WEST VIRGINIA SECRETARY OF STATE

FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY **Education**
RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-016**
RULE NAME **Regulations for the Education of Students with Exceptionalities**

CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

RULE IS LEGISLATIVE EXEMPT
Yes
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW
W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS
Monday, August 14, 2017

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Mary C Tuckwiller -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Title-Series: 126-016 Rule Id: 16407 Document: 49583

126CSR16

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 16
REGULATIONS FOR THE EDUCATION OF STUDENTS WITH EXCEPTIONALITIES (2419)

§126-16-1. General.

1.1. Scope. -- These policies and procedures apply to preschool, early childhood, middle childhood, adolescent and adult students whose educational programs require special education and related services. These apply to three year olds, as of their third birth date, through five year olds with disabilities, students with disabilities ages five through twenty-one, all exceptional gifted students in grades nine through twelve and to all gifted students in grades one through eight as specified. Rights under these regulations cease to apply at the end of the school year in which the student turns twenty-one years of age, that is, the year in which the student is twenty-one years of age prior to September 1 or the student has met graduation requirements for a standard high school diploma.

1.2. Authority. -- W. Va. Const., Article XII, §2, W. Va. Code §18-20-1 et seq., and the Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446.

1.3. Filing Date. -- July 13, 2017.

1.4. Effective Date. -- August 14, 2017.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR16, West Virginia Board of Education Policy 2419, Regulations for the Education of Students with Exceptionalities, filed August 15, 2014, and effective September 15, 2014, and repeals W.Va. 126CSR17, West Virginia Board of Education Policy 2419.11, Rules for Requesting an Exception to the Regulations for the Education of Exceptional Students, filed June 3, 1991, and effective July 15, 1991.

§126-16-2. Purpose.

2.1. The Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446, herein after referred to as IDEA 2004 and the IDEA regulations (34 CFR Part 300), require that the State set forth policies and procedures to demonstrate that the State has established a goal providing full educational opportunity to all students with disabilities who are residents of West Virginia, aged birth through twenty-one years of age and a detailed timetable for accomplishing that goal. The State of West Virginia affirms the goal to provide full educational opportunities by 2020 for all students with disabilities, aged birth through twenty-one years of age, residing within its jurisdiction. The State works toward the realization of this goal through the implementation of, and compliance with, IDEA 2004 and any subsequent reauthorization, state policies and procedures and the implementation of the West Virginia Results and Compliance System Procedures (RCSP).

2.2. West Virginia's mandatory special education statute legislates a child identification effort by county boards of education. Chapter 18, Article 20, Section 2, of the West Virginia Code states, "The board of education of each county is empowered and is responsible for providing suitable educational facilities, special equipment and such special services as may be necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type..." The mandated target group for the state child find requirements includes individuals with disabilities

residing in West Virginia from birth through twenty-one years of age, gifted students from first through eighth grades, and exceptional gifted in grades nine through twelve. Part C of IDEA 2004 requires interagency collaboration in child find activities targeting children from birth through five years of age.

2.2.a. The intent of the federal and state legislative child find mandates is to require an active search by the state and local education agencies for individuals with disabilities ages birth through twenty-one, gifted individuals from first through eighth grades, and exceptional gifted in grades nine through twelve, including students with disabilities who are homeless or are wards of the state and students with disabilities attending private schools, regardless of the severity of their disability, who are in need of special education and related services. Mandated child find activities include identification of students residing in other states who are attending private schools in West Virginia.

2.3. West Virginia Code, Chapter 18, Article 20, the state's mandatory special education statutes, and IDEA 2004 affirm that education is a right extended to all individuals with exceptionalities and not a privilege. These mandates assure that all individuals with disabilities ages three through twenty-one years of age, including students with disabilities who have been suspended or expelled from school, all gifted students in grades one through eight, and all exceptional gifted students in grades nine through twelve, have available a free appropriate public education (FAPE) which includes special education and related services in the least restrictive environment (LRE) to meet their unique special educational needs. This applies to all public agencies that provide special education and related services to students with exceptionalities.

§126-16-3. Incorporation by Reference.

3.1. The West Virginia Procedures Manual for the Education of Students with Exceptionalities is attached and incorporated by reference into this policy. Copies may be obtained in the Office of the Secretary of State and in the West Virginia Department of Education (WVDE).

§126-16-4. Summary.

4.1. Federal statute and West Virginia Code provide requirements for identifying students with exceptionalities whose learning needs are adversely impacted by their disability or giftedness and need special education services and support. Therefore, the term “exceptionality” in this policy and procedures manual refers to eligible students with disabilities and eligible students who are gifted. These policies and procedures outline the responsibilities of the State and local education agency in meeting these requirements.

§126-16-5. Severability.

5.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity must not affect other provisions or applications of this rule.

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126CSR16

INTRODUCTION
West Virginia Procedures Manual for the Education of Students with Exceptionalities

The West Virginia Procedures Manual for the Education of Students with Exceptionalities outlines the policies and procedures districts must follow in meeting the requirements of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), West Virginia State Code, Chapter 18, Article 20 and Regulations for the Education of Students with Exceptionalities (2419).

To receive federal funds available under IDEA 2004, districts must adopt and implement appropriate special education policies and procedures. These policies and procedures must be consistent with federal and state laws, rules, regulations and legal requirements and must be approved by the West Virginia Department of Education (WVDE). This manual is provided to each school district as West Virginia Department of Education (WVDE) approved policies and procedures to be adopted by the district's Board of Education. Any changes to procedures outlined in the manual must have WVDE approval. Appendices supplement the body of the manual and are not to be adopted as, or considered to be, policy.

Chapter 1
FREE APPROPRIATE PUBLIC EDUCATION

A free appropriate public education (FAPE) must be available to all students residing in the state between the ages of three and twenty-one, inclusive, who are eligible for special education services. FAPE is individually determined for each student. FAPE must include special education services in the least restrictive environment (LRE) and may include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms may be found in the glossary. Districts must also ensure that students have available to them the variety of education programs and services available to students without exceptionalities including art, music, industrial arts, consumer and homemaking education and vocational education.

Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the IDEA 2004 means special education and related services that:

1. Are provided without charge at public expense (free);
2. Are provided in conformity with an appropriate individualized education program (IEP) developed in adequate compliance with the procedures outlined in this manual and reasonably calculated to enable the student to receive educational benefit (appropriate);
3. Are provided under public supervision and direction; and
4. Include an appropriate preschool, elementary or secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the WVDE, including the requirements of IDEA 2004.

Section 2. FAPE Considerations

A. District Obligation

The district is required to ensure that FAPE is available to students residing in the district who are eligible for special education services, including students with disabilities who have been suspended or expelled from school as provided for in Chapter 7. This includes students who reside in group, personal care, or foster homes, as well as state operated facilities and students who are migratory or homeless.

The district is obligated to make FAPE available to each eligible student in the district as follows:

1. Students who are at least three years old and are eligible for special education services unless the parent/adult student has refused special education services;
2. Students who have not yet turned twenty-one years of age prior to September 1 and have not graduated with a standard high school diploma; or
3. As specified in West Virginia Code §18-20-1 students with disabilities whose IEPs provide for an alternate (modified) diploma must be allowed to participate in graduation ceremonies with their same grade classmates when requested by parents in writing and must be allowed to continue to receive services until twenty-one years of age.
4. Students with disabilities whose suspension(s) or expulsion(s) results in a change of placement; or
5. Students determined in need of special education and related services, even though the student has not failed or been retained in a course or grade, and is advancing grade to grade.

Special education programs and services may be provided by any one or more of the following:

1. A single local educational agency;
2. Two or more local educational agencies cooperatively;
3. A regional educational service agency (RESA) until July 1, 2018; or
4. Contract(s) for services from other public or private agencies or individuals.

If placement in a public or private residential program is necessary, the program must be at no cost to the parents of the student.

The district's requirement to provide special education services does not relieve an insurer or similar third party from a valid obligation to provide or pay for services for an eligible student. In cases where the payment source for services is being determined, the district must ensure there is no delay in implementing the student's IEP consistent with Chapter 5.

Students with exceptionalities will be provided an instructional day, a school day and school calendar at least equivalent to that established for students without exceptionalities of the same chronological age in the same setting.

B. Applicability to Detained Youth

Eligible students with disabilities who are in state correctional institutions are afforded special education and related services that are in accordance with applicable state and federal laws and regulations. This includes students who had received services in accordance with an IEP, but who had left school prior to their incarceration, as well as students who did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability for Part B services.

C. Using Private and Public Insurance Funds to Provide FAPE

Private Insurance Funds

If a student is covered by a parent's private insurance, the district may access this insurance only if the parent provides informed consent. Each time the district proposes to access the private insurance, the district must obtain written parental consent and inform the parent that his or her refusal to permit the district to access the private insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost.

Public Insurance Funds

The financial responsibility of public agencies, including Medicaid and other public insurers obligated under Federal or State law or assigned responsibility under State policy, must precede financial responsibility of the district. However, if the public agency other than the educational agency fails to provide or pay for special education or related services, the district responsible for developing the student's IEP must provide or pay for these services to the student in a timely manner. Students with disabilities who are covered by public benefits or insurance may not be disqualified from an eligible service for Medicaid reimbursement because that service is provided in a school context.

1. The public agency is required to provide written notification to the child's parents prior to accessing a child's public benefits or insurance for the first time and annually thereafter. The notice must inform the child's parents of the following:

a. Prior written parental consent will be requested to release personal information from a child's education records or information about the services that may be provided for the purpose of billing Medicaid or another specific agency for Individualized Education Program (IEP) services.

b. The consent form will state the student's personal education records and information that will be disclosed, the purpose of the disclosure (e.g. Medicaid billing) and the agency to which the records will be released. By consenting, parents will state they understand and agree that their or their child's public benefits or insurance will be accessed to reimburse the cost of services.

c. Parents cannot be required to sign up for or enroll in public benefits or insurance programs for their child to receive free appropriate public education, that is, IEP services.

d. Parents are not required to pay out-of-pocket expense such as a deductible or co-pay amount resulting from filing a claim, but may pay the cost that otherwise would be paid by parents.

e. Parents must be informed that their public insurance (e.g., Medicaid) will not be billed if it would:
    i. result in a decrease in lifetime benefits;
    ii. result in the child's parents paying for services that would otherwise be covered and that are needed for the child outside of the time the child is in school;
    iii. result in an increase in premiums or discontinuation of public benefits or insurance; or
    iv. risk loss of eligibility for home and community-based waivers based on the total (aggregated) health-related expenditures for the child or the child's parents.

f. Parents have the right to withdraw consent to disclose their child's personal information for billing purposes at any time.

g. Parents' withdrawal of consent, or refusal to provide consent, to release their child's personal information for purposes of accessing their public benefits or insurance (e.g., for Medicaid billing) does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to parents.

2. To access a student's public insurance (e.g., Medicaid reimbursement), the district must obtain and maintain documentation of parent/adult student annual prior consent specifying:
    a. the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child),

    b. the purpose of the disclosure of educational records

    c. the agency to which the disclosure may be made (e.g. Medicaid) and

    d. specifies that the parent understands and agrees that the public agency may access the parent's or the child's public benefits or insurance to pay for services.

3. If a child moves to a new public agency, the new public agency must obtain a new ~~one-time~~ annual prior consent consistent with the services the new public agency is providing to the child.

4. At any time a parent withdraws consent to disclose their child's personal information for billing purposes, the withdrawal must be submitted in writing, and the public agency may no longer bill the child's public insurance.

If it is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a service specified on their child's IEP, the district may use Part B funds to pay for services to ensure FAPE. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR §80.25. If a district spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for the purpose of the maintenance of effort provisions of Part B of IDEA 2004.

D. Extended School Year

The district must ensure that extended school year (ESY) services are available as necessary to provide FAPE as determined by the IEP Team for all students with disabilities including children aged three through five.

E. Nonacademic Services

The district must ensure that students with exceptionalities are afforded an equal opportunity to participate in nonacademic and extracurricular services and activities by providing the supplementary aids and services determined appropriate and necessary by the student's IEP Team.

In addition, physical education services, specially designed if necessary, must be made available to every student receiving FAPE in accordance with West Virginia Board of Education policies.

Section 3. Exceptions to FAPE

The obligation to provide FAPE does not apply to:

- Students ages eighteen through twenty-one who, in the last educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a student with a disability and did not have an IEP. This exception does not apply to a student who had been identified as a student with a disability and had received services in accordance with an IEP but left school prior to incarceration or did not have an IEP in their last educational setting but who had actually been identified as a student with a disability;
- Students who have graduated high school with a standard high school diploma; or
- Students removed from school for disciplinary reasons for less than eleven cumulative school days in a school year.
- Students who are home schooled.

A standard high school diploma is awarded to students who meet graduation requirements aligned with the West Virginia College- and Career-Readiness Standards unless the student pursues an alternate means to earn high school credit through Optional Pathway and receives a high school diploma in accordance with Policy 2444.4: *Issuance of the State of West Virginia Diploma*.

Chapter 2
CHILD FIND

The Child Find system involves three basic steps leading to the determination of whether or not a student requires special education. The steps are location, identification, and evaluation. This chapter describes location and identification activities. The evaluation step is covered in Chapter 3.

Section 1. District Responsibility

The district is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students with disabilities residing in the district, between the ages of three and twenty-one, inclusive, regardless of the severity of the disability, gifted students from first through eighth grades and exceptional gifted students in grades nine through twelve who may need special education. The district is also responsible for coordinating with the West Virginia Department of Health and Human Resources (WV DHHR) regarding the Child Find system for children ages birth to three years.

The Child Find system must include all students suspected of needing special education and related services within the district's geographic boundaries who are:

1. Enrolled in public school;
2. Home schooled;
3. Enrolled in private schools, including religious schools, located in the district;
4. Not enrolled in school, including children ages birth through five;
5. Highly mobile students including migrant students;
6. Homeless students;
7. Wards of the state; or
8. Suspected of having a disability as defined in Chapter 4 even though the student has not failed or been retained in a course or grade and is advancing from grade to grade.

Section 2. Locating Students

Locating students who may need special education services involves coordinating with other agencies and promoting public awareness.

A. Coordination

The WV DHHR WV Birth to Three is responsible for the Child Find system for infants and toddlers, birth to three years of age. Although lead agency responsibility for WV Birth to Three has been designated to the WV DHHR, state and local interagency agreements provide for collaboration and coordination of services. The district should develop local interagency agreements and procedures to maximize resources and services for students and families and ensure a smooth and effective transition from early childhood programs to public school.

B. Public Awareness

Annually, the district must take the necessary ongoing steps to ensure that parents, district staff, private school representatives and the general public are informed of the following:

- The nature of students with exceptionalities;
- The availability of special education and related services;
- A student's right to FAPE;
- Confidentiality protections; and
- The referral process, including the person to contact for initiating a referral.

This information may be provided through a variety of methods such as distributing brochures or flyers, including providing information in school or district publications, disseminating articles and announcements to newspapers, and/or arranging for radio and television messages and presentations.

Section 3. Referrals

A. Referral Sources

A parent or any other interested person or agency may refer a student who is suspected of needing special education and related services. Referrals received from an outside source are forwarded to the student assistance team (SAT) at the student's school for consideration. The district must receive and process these written referrals in accordance with the SAT process described in Section 3.D. for school-aged students. A member of the SAT must provide written assistance to parents who may need additional help to complete their request in writing. For preschool age children or home-schooled students, the referral is received and processed directly by the special education director or designee.

Each district must locate, identify and evaluate all students suspected of needing special education services who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district in accordance with Chapter 8. Referrals for private school students are received and processed directly by the special education director or designee.

B. The Screening Process

As specified in West Virginia Code §18-5-17, developmental screening is the general education process conducted to determine whether there are problems or potential problems in the areas of vision, hearing, speech and language. Screening must be conducted annually for:

- All students entering kindergarten or preschool; and
- All students entering West Virginia public and private schools for the first time.

Additionally, districts must conduct developmental screening for children under compulsory school attendance age upon the request of a parent or guardian of a child residing in the district or attending a private school within the district. This developmental screening must be conducted within thirty school days of the written request. The district is not required to provide such screening to the same child more than once in any one school year. Children identified through the screening process should be referred for further evaluation.

At least ten days prior to initiation of screening activities, districts must provide public notice of the screening program. Information released through media sources should include the purpose, types and dates of screenings and the means for parents to request their child not participate.

C. Student Assistance Team (SAT) Membership and Responsibilities

Consistent with WV Policy 2510, *Assuring the Quality of Education: Regulations for Education Programs*, each public school must establish a SAT that consists of at least three persons, including a school administrator or designee, who must serve as the chairperson, a current teacher(s) and other appropriate professional staff.
The SAT is required to:

1. Receive training in referral procedures for multidisciplinary evaluations, Multi-Tiered System of Supports (MTSS), alternative education placements, disciplinary procedures and other school processes as appropriate for ensuring student progress and maintenance of a safe school environment;

2. Collect and maintain data on the activities of the team, including dates of meetings and the results of its recommendations;
3. Conduct the problem-solving process that includes designing and monitoring implementation of interventions and/or reviewing interventions designed by other school teams;
4. Reviews individual students' needs that have persisted despite being addressed through academic and/or behavioral supports;
5. Allow parents to review recommendations made by team regarding the child's program and to provide feedback to the team about those recommendations;
6. Receive and process written referrals from outside sources suspecting a student may need special education, including referrals and requests for initial evaluations made by parents; and
7. Initiate initial evaluation for special education and related services for students, when warranted based on the outcome of interventions.

D. Procedures for Written Referrals for Special Education Evaluation

As noted previously, the SAT may receive referrals for a variety of purposes. When the referral specifically is a **written referral for special education multidisciplinary evaluation**, or a written parent request for initial evaluation, the following procedures are required.

1. Within five school days of receipt of a written SAT referral for a multidisciplinary evaluation, appropriate persons, must be notified of the date, time, location and specific information needed for the meeting.
2. Within ten school days of receipt of the written SAT referral, the SAT must conduct a review of the area(s) of concern, collect and analyze available educational data and review previous interventions and make a determination regarding further action.

The SAT has the following options:

a. Conduct the SAT problem-solving process:
   - Initiate, continue or modify interventions within a timeline established for the student by the SAT;
   - Review the effectiveness of the SAT's recommendations within the timeline established for the student, but in no case may the review take place beyond forty-five school days;
   - Ensure problem solving activities of the SAT are not used to delay processing a request for initial evaluation where immediate action is warranted; and
   - Close the problem-solving process when appropriate based on results of interventions; or

b. Request an initial evaluation, in cases where warranted, for example, a sensory impairment or other significant disability requiring immediate attention or when presented evidence and documentation of previous interventions sufficient to make a decision; or

c. When a written request for initial evaluation has been initiated by the parent, determine whether the evaluation will be conducted, and provide prior written notice of the decision and a copy of the procedural safeguards to the parent.

3. The SAT must invite parents to review recommendations made by the SAT in regard to the student's program and to provide feedback to the team about those recommendations.
4. Within five days of the SAT decision to request an initial multidisciplinary evaluation, or to conduct an evaluation requested by the parent, prior written notice (PWN) and a copy of the procedural safeguards are provided to the parent, and informed parental consent is requested for conducting the evaluation. The request for parent consent is completed by the MDET at the direction of the special education director or designee. The SAT may serve as the multidisciplinary evaluation team (MDET) to determine the evaluations to be requested, provided it has the required membership for MDET.

5. The principal, classroom teacher or other designated individual is responsible for documenting the date written parental consent for initial evaluation is received and immediately forwarding this request to the special education director or designee.
6. Within five days of an SAT decision to refuse a written parent request for initial evaluation, prior written notice (PWN) and a copy of the procedural safeguards are provided to the parent,

Refer to Chapter 3, Section 3 and Chapter 10, Section 3 for a definition of prior written notice and the required content of the notice.

Chapter 3
EVALUATION/REEVALUATION

Several phases are involved in establishing student eligibility for special education. Chapter 2 discussed procedures to locate and identify students with suspected exceptionalities. This chapter outlines the requirements for evaluations/reevaluations and assessments.

Section 1. Evaluation Team

The evaluation team is a group of people with the responsibility to make decisions regarding evaluation and assessments. This team includes the same membership as the individualized education program (IEP) team (although not necessarily the same individuals) and other qualified professionals as appropriate. The parent/adult student is a member of the evaluation team and must be provided an opportunity to provide input and participate in making team decisions including what additional data, if any, are needed to fulfill the purposes of an initial evaluation/reevaluation. The evaluation team may conduct its business with or without holding a meeting. However, if requested by the parent/adult student, a team meeting will be held. The SAT (Chapter 2 Section 3 D.) is one forum or option for addressing the decisions to be reached by the evaluation team.

Section 2. Planning, Conducting and Timelines for a Multidisciplinary Evaluation

Evaluation means procedures used in accordance with the protection in evaluation requirements of IDEA 2004 and West Virginia Code §18-20-1 to determine whether a student has a disability or is gifted, and the nature and extent of the special education and related services the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade or class. Screening of a student by a teacher or specialist to determine the appropriate instructional strategies for curriculum implementation (e.g., universal benchmark assessments, continuous progress monitoring) is not considered to be an evaluation for eligibility for special education and related services and does not require parental consent. However, the evaluation team may consider the results of such screenings to assist in determining areas to evaluate.

A. Initial Evaluation

The principal, classroom teacher or other designated individual is responsible for documenting the date written parental consent for initial evaluation is received and immediately forwarding this request to the special education director or designee. Within eighty days of the documented date, the district must conduct a full, individual initial evaluation and convene an eligibility committee (EC) to determine the student's eligibility for special education before the provision of special education and related services to a student with an exceptionality. The purpose of an initial evaluation is to gather information to determine:

1. Whether the student has a disability or is gifted;
2. The educational needs of the student, including present levels of academic achievement and related developmental needs of the student;
3. The effects of the exceptionality on educational and functional performance;
4. If the student needs specially designed instruction; and
5. The nature and extent of the special education needed by the student.

The eighty-day timeline will not apply to a district if:

1. The parent repeatedly fails or refuses to produce the student [34CFR§ 300.301 (d)].
2. The student changes district of enrollment during evaluation process [34CFR§300.301(d)]. The exception only applies if the subsequent district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent district agree to a specific time when the evaluation will be completed [34CFR§ 300.301 (e)]. Written documentation of the agreed upon timeline between parent and district is to be developed.
3. Districts are closed due to circumstances resulting in a state of emergency determined by the Governor of West Virginia. The timeline will be extended directly proportional to the duration of the state of emergency.
4. Districts are closed due to weather conditions determined by the county superintendent. The timeline will be extended directly proportional to the duration of the weather conditions. Days missed must be clearly documented in the student's file to accurately record the interruption.
5. Summer break.

As part of an initial evaluation, if appropriate, the evaluation team will review existing evaluation data on the student including:

1. Evaluations and information provided by the parent/adult student; and
2. Data regarding the student's response to scientific research-based general education interventions using:
    a. Current classroom-based assessments and classroom-based observations;
    b. Observations by teachers and related service providers; and
    c. Results from statewide and district-wide testing.

Based on that review, and input from the parent/adult student, the team will decide what additional data, if any, are needed to fulfill the purposes of an initial evaluation. If the team determines that no additional data are needed, the district must notify the parents/adult student of that determination and the reasons for the determination and the right of the parents to request an assessment.

B. Reevaluation

Within three years of the date of the last EC, or more frequently if the parent or teacher requests or conditions warrant (e.g., if the district determines that the educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation), the district must conduct, as appropriate, an individual multidisciplinary reevaluation to determine a student's educational needs and continued eligibility for special education and related services and whether any additions or modifications to the student's special education and related services are needed to enable the student to meet their measurable annual IEP goals and to participate, to the extent appropriate, in the general education curriculum. As part of the reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the student, including:

1. The current IEP and the student's progress toward meeting the annual goals;
2. Evaluations and information provided by the parent of the student;
3. Current classroom-based, local or state assessments and classroom-based observations; and
4. Observations by teachers and related service providers.

This team may conduct its review with or without holding a meeting but must document its decisions on the Reevaluation Determination form.

If the IEP Team decides that additional evaluations are needed, the team will obtain consent as described in Section 3.B., Consent Requirements. This evaluation must be conducted prior to the established triennial review date. For students with giftedness, a reevaluation must be conducted during the eighth grade year to determine eligibility for exceptional gifted

If the IEP Team decides that no additional assessments are needed to determine the educational needs of the student and whether the student continues to be a student in need of special education, the district must provide PWN to the parent/adult student of that determination and the reasons for the determination and of his or her right to request an assessment for this purpose. If the student's parent, teacher or the adult student requests a reevaluation, this evaluation must be conducted prior to the established triennial review date.

The district must also reevaluate a student with a disability before determining that the student is no longer eligible for special education, unless:

1. The student graduates with a standard high school diploma or an alternate (modified) diploma; or
2. The student reaches the age of twenty-one.

For a student whose eligibility terminates under circumstances described above, the district must provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the student in meeting his/her postsecondary goals. PWN must be provided to the parent/adult student if the student is exiting special education due to graduation with a standard high school diploma.

While reevaluation procedures must be provided at no cost to the parent/adult student, reevaluations may not occur more than once a year without district and parent agreement.

C. Additional Evaluations Requested by an EC or IEP Team

Additional evaluations requested by the EC or IEP Team must be completed and an EC or IEP Team meeting held within sixty days from receipt of parental consent for the identified evaluations. Request for parental consent for additional evaluations must be sent within five school days of the EC or IEP Team meeting generating the request for evaluation.

If the EC or IEP team determines that a comprehensive multidisciplinary evaluation is required to determine whether a student meets the criteria for a different exceptionality, the district must conduct the evaluation within eighty days of the documented date of receipt of parental consent.

In those instance when an additional evaluation to be completed by an outside agency has not been completed within sixty days, the district is required to document its reasonable efforts to obtain the additional evaluation within sixty days. In this situation, when a district has documented its reasonable efforts to obtain the evaluation within sixty days, the district is not considered to be in violation of the sixty-day timeline.

D. Parental Request for Additional Evaluation

Upon receipt of a written parental request for an additional evaluation, the IEP team considers the request, with or without holding a meeting, and within five days of receipt provides prior written notice of its response. If the evaluation is conducted, the aforementioned timelines apply. If the parent/adult student requests an additional assessment for reasons other than the determination of educational needs or eligibility, such as admission to

college, the district is not obligated to conduct the evaluation but must consider the request and provide PWN of the district's response to the request.

Section 3. Written Notice and Consent for Evaluation

A. Written Notice Requirements

Within five days of the district's decision to evaluate or reevaluate, written notice requesting consent for evaluation or reevaluation must be provided to the parent/adult student. Written notice must be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent/adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the district must take steps to ensure the parent/adult student understands the content of the notice. Any non-written notice should be documented with written evidence that the requirements of this section have been met.

The written notice must include the following prior written notice (PWN) requirements:

1. A description of the evaluation or reevaluation proposed or refused by the district;
2. An explanation of why the district proposes to evaluate or reevaluate the student;
3. A description of other options the district considered and the reasons why those options were rejected;
4. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused evaluation or reevaluation;
5. A description of any other factors relevant to the evaluation or reevaluation;
6. A statement that the parent/adult student has protection under the procedural safeguards, and a description of how to obtain a copy of the Procedural Safeguards Notice; and
7. Sources to contact to obtain assistance in understanding the Procedural Safeguards Notice.

In addition to PWN, the *Notice of Individual Evaluation/Reevaluation Request* form is provided. The date of receipt by the school/district of the signed parental consent form must be documented in the student's individual West Virginia Education Information System (WVEIS) student record under Student Special Education Information, Student Special Education Referral/Reevaluation Detail.

B. Consent Requirements

1. Definition of Consent

   Consent means that the parent/adult student:

   a. Has been fully informed in his or her native language or other mode of communication of all information relevant to the evaluation for which consent is sought;
   b. Understands and agrees in writing (as indicated by signature) to the carrying out of the activity;
   c. Has been given enough information to make informed decisions about the district's request to conduct an evaluation. Information must be provided on the various types of assessments for which consent is sought;
   d. Understands that the granting of consent is voluntary on the part of the parent/adult student and may be revoked at anytime.

If consent is revoked, the revocation is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Consent for evaluation must not be construed as consent for the initial provision of special education and related services.

2. Consent for Evaluation/Reevaluation

Written consent must be sought for evaluation and reevaluation. Based on recommendations from the evaluation team, the district will seek consent to administer the needed assessments within five days of the decision to evaluate/reevaluate. If the parent/ adult student fails to respond within ten school days of the initial request for consent, the district must mail or hand-deliver a second notice. If the parent/adult student once again fails to respond, the district must document reasonable measures taken to obtain consent, which may include:

a. A record of telephone calls made or attempted and the results of those calls;
b. Copies of correspondence sent to the parent/adult student and any response received; and/or
c. Detailed records of visits made to the parent's/adult student's home or place of employment and the results of those visits.

If the parent/adult student fails to respond after the district has taken reasonable measures to obtain consent for assessments and after the passage of thirty school days from the initial request for consent, the district may:

a. As part of a reevaluation, provide PWN that the district will conduct the reevaluation; or
b. As part of an initial evaluation, pursue the evaluation by using mediation or filing a due process complaint.

If the parent refuses consent, the district may use mediation or due process hearing procedures if the student is enrolled in or seeking enrollment in a public school. However, the district cannot pursue the evaluation if the student is in a parental private placement or is home schooled.

C. When Written Notice and Consent Are Not Required

Neither written notice nor consent is required for:

1. The review of existing data as part of an evaluation or reevaluation;
2. The administration of a test or other assessment that is administered to all students unless consent is required of the parents of all the students;
3. Screening, including monitoring of progress by a teacher or specialist, to determine the appropriate instructional strategies for curriculum implementation; and
4. Initial evaluations, when the student is a ward of the state and is not residing with the student's parent, if:
    a. Despite reasonable efforts, the district cannot discover the whereabouts of the parents;
    b. The rights of the parents have been terminated under state law; or
    c. The rights of the parents to make educational decisions have been subrogated by a judge in accordance with state law and consent has been provided for the initial evaluation by an individual appointed by the judge to represent the child.

D. Information from Other Agencies or Districts

Policy 4350: *Procedures for the Collection, Maintenance and Disclosure of Student Information* and the Family Educational Rights and Privacy Act (FERPA) do not require the consent of the parent/adult student for the district to:

1. Request information from other public school districts that the student has attended; or

2. Send information to other public school districts, including schools maintained by the Office of Diversion and Transition Programs or the West Virginia Schools for the Deaf and Blind, in which the student enrolls or intends to enroll.

Parental consent is required prior to the sharing of information between the district of residence and the district where a private school is located if a student has been parentally-placed in the private school.

Before the district seeks to obtain relevant information about a student from other agencies, consent must be obtained from the parents. A copy of the signed consent form for release of information must be included with the letter(s) requesting the information. A copy of the signed consent form for release of information must be maintained in the student's confidential file.

Section 4. Evaluation Procedures

A. Areas to Evaluate

For an initial evaluation, the student must be evaluated in all areas related to the suspected exceptionality including, if appropriate, health, vision, hearing, social and emotional status, adaptive skills, behavioral performance, general intelligence, academic performance, communicative status, motor abilities, assistive technology services and/or devices, post-secondary interests/preferences and vocational aptitudes. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the suspected exceptionality.

For a child who is deaf or hard of hearing, a comprehensive language assessment in the child's language and communication mode must be included in his/her comprehensive evaluation.

B. Evaluation Procedures and Instruments

The district must ensure, at a minimum, that the evaluation or reevaluation meets the following requirements:

1. A variety of assessment tools and strategies must be used to gather relevant, functional, developmental and academic information about the student, including information provided by the parent/adult student. This information must be used to determine:
    a. Whether the student is a student with an exceptionality;
    b. The content of the student's IEP including information related to enabling the student to be involved in and progress in the general education curriculum (or, for a preschooler, to participate in appropriate activities) should the student be determined to require special education and related services.
2. No single measure or evaluation may be used as the sole criterion for determining whether a student is a student with an exceptionality and for determining an appropriate educational program for the student.
3. The district must use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
4. Assessments and other evaluation materials must be:
    a. Selected and administered so as not to be discriminatory on a racial or cultural basis;
    b. Provided and administered in the student's native language and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally unless it is not feasible to do so. Attempts to provide a qualified examiner in the student's native language or mode of communication must be documented;

c. Used for purposes for which they are valid and reliable; and
d. Administered in accordance with any instructions provided by the producer of the assessments.
e. For a child who is deaf or hard of hearing, a comprehensive language assessment in the child's language and communication mode must be included in his/her comprehensive evaluation.

5. Tests and other assessment materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
6. Tests must be selected and administered so as to best ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those are the factors that the test purports to measure). This includes the provision of accommodations, such as assistive technology, braille and interpreters.
7. Assessments of students with exceptionalities who transfer from one district to another district in the same academic year are coordinated with the student's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
8. The district must provide and use assessment tools and strategies that produce relevant information that directly assists persons in determining the educational needs of the student.
9. All services and assessments must be provided at no expense to the parent/adult student.

C. Qualifications and Responsibilities of Evaluators

Individuals conducting evaluations must be:

1. Appropriately certified, licensed or otherwise qualified to administer the evaluations for which they are responsible;
2. Trained in the use of the specific evaluation instruments or techniques for which they are responsible;
3. Knowledgeable in the area of concern; and
4. Knowledgeable in the applicable state and federal regulations.

Each evaluator, including the classroom teacher, must write, sign and date an individual evaluation report. Prior to the reevaluation date or within eighty days of initial parental consent for evaluation, each evaluator must make the written report available to the EC and parent.

Chapter 4
ELIGIBILITY

Several phases are involved in establishing student eligibility for special education. Chapter 3 discussed the requirements for evaluations and assessments. This chapter will outline eligibility requirements, definitions and eligibility criteria.

Section 1. Eligibility Determination

Within eighty days of receipt of consent for an initial evaluation or after the completion of a reevaluation and prior to the established reevaluation date, the district must convene an Eligibility Committee (EC) meeting to determine whether a student is or continues to be a student in need of special education services. EC members should be selected in consideration of the presented evaluation information and must consist of the parent and/or adult student and qualified professionals as follows:

- District administrator of special education, principal or designee;
- Members of the multidisciplinary evaluation team;
- General and/or special educator;
- Additional individuals with specific expertise related to the student and the area(s) of concern;
- For initial EC's, the referring teacher; and
- For students suspected of having a specific learning disability (SLD), the student's general education teacher and at least one person qualified to conduct individual diagnostic examinations of students such as a school psychologist, speech language pathologist (SLP) or reading specialist.

The district must provide written notice to the parent and/or adult student and other EC members of the meeting time, date, place, purpose and invited members no less than eight days prior to the scheduled meeting date. If the parent is unable to attend, the district must use other methods to ensure participation such as videoconferences and conference calls.

The EC will draw upon information from a variety of sources, including, as appropriate, but not limited to, formative assessments, aptitude and achievement tests, parent/adult student input, teacher observations, health, social or cultural background, adaptive behavior, and functional assessments. The EC must ensure that information obtained from all of these sources is documented and carefully considered. The EC will consider these evaluation or reevaluation findings and determine whether the student meets or continues to meet eligibility criteria.

Results of the multidisciplinary evaluation must be utilized by the EC as the primary source of information to determine the student's educational needs and whether the student meets the following three prongs as described in Section 3. State Eligibility Criteria:

- Meets the eligibility criteria in one of the designated exceptionalities;
- Experiences an adverse effect on educational performance; and
- Needs special education; or
- No longer meets the eligibility criteria or no longer needs specially designed instruction.

A student cannot be identified as a student in need of special education services if the primary reason for such a decision is:

- A lack of appropriate instruction in ELA College- and Career- Readiness Standards (CCRS), including the essential components of Reading Foundations-Fluency, Phonics and Word Recognition, Phonological Awareness and Print Concepts.;
- A lack of appropriate instruction in math; or
- Limited English proficiency.

Using the results of the multidisciplinary evaluation, the EC must determine the student's primary exceptionality when more than one exceptionality condition is present. The committee must discuss how each exceptionality affects the student's educational and functional performance and determine and document which has the most adverse impact on the student's participation and progress in the general curriculum.

If consensus upon the primary exceptionality cannot be reached, the district administrator or designee must make the decision and provide the parent/adult student with PWN of the decision.

Section 2. Eligibility Report

Upon completing the review of the student's multidisciplinary evaluation or reevaluation, the EC must prepare an Eligibility Committee Report and provide a copy of the report to the parent/adult student. The parent/adult student and other IEP Team participants must have all the information they need to participate meaningfully in the IEP Team meeting. Copies of the evaluation reports and documentation of eligibility determination must be provided at no cost to the parent/adult student.

Eligibility Committee Report for Evaluation/Reevaluation

The Eligibility Committee Report includes:

1. Signatures with dates and positions of all eligibility committee members;
2. All data on the student as required in the State Eligibility Criteria for the area of suspected exceptionality (see Section 3 of this chapter);
3. The specific exceptionality determined for state and federal reporting purposes;
4. Information about how the student's exceptionality affects his or her educational performance;
5. The committee's decision regarding whether the student needs special education services;
6. Recommendations for those students deemed ineligible for special education to be considered by the SAT or the instruction and intervention team; and
7. The date of the eligibility determination.

The eligibility committee is required to write an Eligibility Committee Report detailing how the student meets eligibility requirements even if no new assessments were conducted. The report must address each required eligibility component and include results of previous assessments if they are being used to determine eligibility.

For students suspected of having a specific learning disability (SLD), the committee must also complete a SLD Team Report (see Section 3.L.). For students who are gifted, the Eligibility Committee Report is required to document compliance with reevaluation timelines.

If a student meets the criteria for blindness, low vision, deafness, hard of hearing or deafblindness on the Eligibility Report, the parents or guardians must be provided information pertaining to the West Virginia Schools for the Deaf and Blind so they are aware of the options available and may make an informed decision regarding educational services and programming for their child.

Section 3. State Eligibility Criteria

The district must use the eligibility criteria and assessment procedures set forth by the WVDE when determining eligibility for special education. These criteria and assessment procedures are listed under items A. – N. in this section. Listed under each exceptionality definition are the eligibility criteria that must be used to determine whether an individual qualifies as a student with an exceptionality in need of special education. To demonstrate eligibility for special education services, a three-pronged test of eligibility must be met.

Three-Prong Test of Eligibility

Requirements of the three-prong test of eligibility are:

1. Meets State Eligibility Requirements: The state eligibility requirements for specific exceptionalities are listed in this chapter.
2. Experiences Adverse Effect on Educational Performance: The term "adverse effect on educational performance" is broad in scope. An adverse effect is a harmful or unfavorable influence of the disability on the student's performance. Educational performance includes both academic areas (reading, math, communication, etc.) and nonacademic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.). Consideration of all facets of the student's condition that adversely affect educational performance involves determining any harmful or unfavorable influences that the disability has on the student's academic or daily life activities. Adverse effect is not solely measured by scores on individual testing but may also be determined through consideration of other data such as classroom performance and retention history. For students who are gifted, the eligibility committee is not required to document an adverse effect; rather, the impact of the giftedness on the student's educational performance must be documented.
3. Needs Special Education: Special education is specially designed instruction, at no cost to the parents, to meet the unique needs of the student with an exceptionality. Specially designed instruction means the content, methodology, or delivery of instruction is adapted, as appropriate, to address the unique needs of the student that result from the student's exceptionality and to ensure access of the student to the general curriculum so that the student can meet the educational standards that apply to all students.

A student is not eligible for special education unless all three of the above components are satisfied and documented. A student who only needs a related service and not special education is not eligible.

Use of Reevaluation Data in Determining Continuing Eligibility

Districts must carefully consider the reevaluation of students initially found eligible for special education. Districts must consider the effect of exiting a student from special education who has received special education for many years and how the removal of such supports will affect the student's educational progress, particularly for a student who is in the final year(s) of high school.

Definitions and Eligibility Criteria

A. Autism

Definition: Autism is a developmental disability, generally evident before age three, significantly affecting verbal and nonverbal communication and social interaction and adversely affecting educational performance. A student who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this section are satisfied. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

Eligibility Criteria for Autism

An eligibility committee will determine that a student is eligible for special education services as a student with autism when **all** of the following American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria (1 through 5) are met:

1. Documentation will assure that the student meets all of a. and at least two from b.:
    a. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:
        i. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
        ii. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
        iii. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.
    b. Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by **at least two** of the following:
        i. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
        ii. Insistence on sameness, inflexible adherence to routines, or ritualized patterns or verbal nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat food every day).
        iii. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g, strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interest).
        iv. Hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).
    c. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).
    d. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
    e. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.
2. The student is diagnosed as having autism by a psychiatrist, physician, licensed psychologist or school psychologist.
3. The student's condition adversely affects educational performance.

4. The student needs special education.
5. The student's educational performance **is not** adversely affected primarily because the student has an emotional/behavioral disorder as defined in this chapter.
   Note: Individuals with a well-established DSM-IV diagnosis of autism disorder, Asperger's disorder, or pervasive developmental disorder not otherwise specified should be given the diagnosis of autism spectrum disorder. Individuals who have marked deficits in social communication, but whose symptoms do not otherwise meet criteria for autism spectrum disorder, should be evaluated for social (pragmatic) communication disorder.

B. Blindness and Low Vision

Definition: Blindness and low vision refers to an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

Eligibility Criteria for Blindness and Low Vision

An eligibility committee will determine that a student is eligible for special education services as a student with blindness and low vision when any criteria of 1 and criteria 2 and 3 are met:

1. The student has a documented visual impairment, not primarily perceptual in nature, as determined by an optometrist, ophthalmologist or neurologist:
   a. Measured acuity of 20/70 or less in the better eye with correction at distance or near;
   b. Visual field restriction of twenty degrees or less in the better eye;
   c. A deteriorating eye condition which will result in loss of visual efficiency (e.g., glaucoma, retinitis pigmentosa, or macular degeneration);
   d. A visual loss caused by a disturbance of the posterior visual pathway and/or cortex with the characteristic behaviors associated with cortical visual impairment; or
   e. Measured acuity of 20/70 or better in the better eye with correction at distance or near and a functional vision evaluation conducted by a certified teacher of the visually impaired determines the student:
      i. has limited ability in visually accessing program-appropriate educational media and materials including but not limited to textbooks, photocopies, chalkboards, computers or environmental signs without modification;
      ii. has limited ability to visually access the full range of program-appropriate educational media and materials without accommodations including but not limited to changes in posture, body movement focal distance or squinting;
      iii. demonstrates variable visual ability due to environmental factors including but not limited to contrast, weather, color or movement, that cannot be controlled, or
      iv. experiences reduced or variable visual ability due to visual fatigue or factors common to the eye condition.
2. The student's physical eye condition, even with correction, adversely affects educational performance.
3. The student needs special education.

C. Deafblindness

Definition: Deafblindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs designed solely for students with deafness or blindness or students who are hard of hearing or partially sighted.

Eligibility Criteria for Deafblindness

An eligibility committee will determine that a student is eligible for special education services as a student with deafblindness when all of the following criteria are met:
The student exhibits characteristics consistent with the definition.

1. The student is diagnosed by an optometrist or ophthalmologist for vision loss and by an otologist, otolaryngologist, or audiologist for hearing loss.
2. The student's condition adversely affects educational performance.
3. The student needs special education.

Deafblindness should be the primary eligibility for a student who meets the above criteria. In addition, a student meeting the above criteria and who also has additional impairments contributing to the student's severe educational needs may be determined eligible for deafblindness.

D. Deafness

Definition: Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects a student's educational performance.

Eligibility Criteria for Deafness

An eligibility committee will determine that a student is eligible for special education services as a student who is deaf when all of the following criteria are met:

1. The student exhibits characteristics consistent with the definition and relies primarily on vision to access spoken communication.
2. The student has been diagnosed by an otologist, otolaryngologist, or audiologist as having a hearing loss.
3. The student's condition adversely affects educational performance.
4. The student needs special education.

E. Developmental Delay

Definition: Developmental delays occur in students, ages three through five, who are functioning at, or lower than, 75% of the normal rate of development in two or more of the following areas:

- Cognition;
- Physical development including gross motor and/or fine motor skills;
- Communication;
- Social/emotional/affective development; and/or
- Self-help skills.

Eligibility Criteria for Developmental Delay

An eligibility committee will determine that a student is eligible for special education services as a student with developmental delay when all of the following criteria are met:

1. The student exhibits characteristics consistent with the definition.
2. The student needs special education.

Special Considerations

1. Special education and related services for the eligible student with a developmental delay will be provided as of the student's third birthday when eligibility is determined prior to the third birthday.
2. Each district will participate in transition planning conferences arranged by the designated lead agency for Part C.
3. For a student transitioning from a Part C early intervention program, an interagency transition plan must be developed to assure that by the time a student turns three years of age either an IEP or Individual Family Service Plan (IFSP) which meets the requirements of Chapter 5, Section 2. IEP Development of these regulations has been developed and implemented by the district.
4. For a student who turns three years old in the spring/summer, the district is responsible for implementation of the IEP or IFSP services for students as of the third birthday, regardless of which agency provides the services.
5. If appropriate, a student who turns three years old in the fall may begin Part B services under the local educational agency at the beginning of the school year preceding the third birthday.
6. If the developmental delay is the result of a vision and/or hearing loss, eligibility must be determined under that exceptionality if the student meets the eligibility for that exceptionality.
7. When a student reaches age six, he or she no longer meets the eligibility criteria for developmental delay; therefore, the IEP Team must follow procedures for reevaluation and reconvene the eligibility committee prior to the student's 6th birthday to determine eligibility under another exceptionality.

F. Emotional/Behavioral Disorder

Definition: An emotional/behavioral disorder means a condition in which a student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems; or
6. Schizophrenia.

The term does not include students who are socially maladjusted unless it is determined they have an emotional/behavioral disorder.

Eligibility Criteria for Emotional/Behavioral Disorder

An eligibility committee will determine that a student is eligible for special education services as a student with an emotional/behavioral disorder when all of the following criteria are met:

1. The student continues to exhibit an emotional/behavioral disorder consistent with the definition after Targeted and Intensive interventions have been implemented within the Multi-Tiered System of Supports (MTSS) framework (e.g., as documented in the WVEIS on the Web Interventions Tab and described in the Specific Learning Disabilities eligibility criteria).
2. The student has been observed exhibiting one or more of the characteristics listed in the definition of emotional/behavioral disorder and the characteristics have been observed and documented:
    a. For a long period of time; and
    b. By more than one knowledgeable observer trained in data gathering; and

c. In more than one setting; and
d. At a level of frequency, duration, and/or intensity that is significantly different from the student's peers in the same or similar circumstances.

3. The student's condition adversely affects educational performance in the area of academics, peer and/or teacher interaction, and/or participation in class/school activities.
4. The student exhibits behavior(s) that is not primarily the result of physical, sensory or intellectual deficits.
5. The student needs special education.

G. Gifted

Definition: Giftedness is exceptional intellectual abilities and potential for achievement that requires specially designed instruction and/or services beyond those normally provided in the general classroom instruction.

Eligibility Criteria for Gifted, Grades One through Eight:

An eligibility committee will determine that a student is eligible for special education services as a gifted student in grades one through eight when the following criteria are met:

1. General intellectual ability score at the 97th percentile rank or higher on a comprehensive test of intellectual ability in consideration of 1.0 standard error of measurement;
2. At least one of the four core curriculum areas of academic achievement at the 90th percentile rank or higher as measured by an individual standardized achievement test, or at least one of the four core curriculum areas of classroom performance demonstrating exceptional functioning as determined during the multidisciplinary evaluation; and
3. The need for specially designed, differentiated instruction and/or services beyond those normally provided in the general classroom. Differentiated instruction for gifted students may include enrichment of the content emphasizing the development of higher-level thinking, including critical thinking, creative thinking, and problem solving skills and/or acceleration of content while the student remains in the chronologically appropriate grade. Related services may include, for example, guidance and counseling, independent study and distance learning. This is not an all-inclusive list.

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Special Considerations:

1. Intellectual Ability. If the student's general intellectual ability score is unduly affected by performance in one or more composite scores, the evaluator may use, for purposes of eligibility, an alternate general ability index or an individual composite measure as permitted in the test manual or other technical reports. The evaluator must include a statement in the report indicating which score is the better indicator of the student's intellectual abilities and the supporting reasons for this determination.
2. Historically Under-represented Gifted Population. Historically Under-represented Gifted Population are those students whose giftedness may not be apparent due to low socioeconomic status, a disability in accordance with this policy, or a background that is linguistically or culturally different. If it is determined that the eligibility criteria and/or assessment instruments discriminate against a student because the student belongs to a historically under-represented gifted population, eligibility for gifted services must be based upon criteria that complement the definition and eligibility for gifted as described in this policy. To determine whether a student demonstrates the potential for intellectual giftedness when the student does not meet the eligibility criteria as described in this policy, the eligibility committee must consider all data gathered by the multidisciplinary evaluation team. These data include, but are not limited to, individual achievement, group achievement,

classroom performance, teacher input, inventories, scales, checklists, student product(s) and parent information. The following lists different procedures that the eligibility committee may use in determining eligibility of a student who belongs to a historically under-represented population. This is not an exhaustive list.

a. Using an alternative assessment to identify giftedness in minority students.
b. Using a matrix to get a total picture.
c. Using parent, student, and teacher rating scales to give added information.

3. There are students who may have exceptional intellectual ability and be disabled. If a student meets he eligibility criteria for both gifted or exceptional gifted and a disability, the disability must be the primary exceptionality.

Eligibility Criteria for Exceptional Gifted, Grades Nine through Twelve

Before the end of the eighth grade year, the IEP Team will:

1. Conduct a reevaluation determination to review existing evaluation data which includes the following:
    a. Evaluations and information provided by the parents of the student;
    b. Current classroom-based assessments and observations; and
    c. Observations by teachers and related service providers; and
2. On the basis of that review, identify what additional data, if any, are needed to determine that a student is eligible for special education services as an exceptional gifted student in grades nine through twelve using one or more of the following criteria:
    a. The eligibility criteria for one or more of the disabilities as defined in this section; and/or
    b. The definition for economically disadvantaged; and/or
    c. The definition for underachievement, which takes into consideration the student's ability level, educational performance and achievement levels; and/or
    d. The definition for psychological adjustment disorder as documented by a comprehensive psychological evaluation.
3. If the student is eligible as exceptional gifted, the district must develop an IEP. If the student is not eligible as exceptional gifted, the IEP Team must review and adjust in consultation with the student's advisor the Personalized Education Plan (PEP) to include courses through the senior year. Courses classified as Honors, Dual Credit, Advanced Placement (AP) and/or International Baccalaureate (IB), classes are to be indicated on the PEP. The implementation and annual review of this plan are required of the district. Students that already have a Four Year Education Plan in place will continue to have the document reviewed.

H. Hard of Hearing

Definition: Hard of hearing is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

Eligibility Criteria for Hard of Hearing

An eligibility committee will determine that a student is eligible for special education services as a student who is hard of hearing when all of the following criteria are met:

1. The student exhibits characteristics consistent with the definition and relies primarily on hearing to access spoken communication.
2. The student has been diagnosed by an otologist, otolaryngologist, or audiologist as having a hearing loss.

3. The student's condition adversely affects educational performance.
4. The student needs special education.

I. Intellectual Disability

Definition: Intellectual disability is defined as significantly subaverage intellectual functioning that exists concurrently with deficits in adaptive skill areas. These deficits are manifested during the developmental period and adversely affect the student's educational performance.

Eligibility Criteria for Intellectual Disability

An eligibility committee will determine that a student is eligible for special education services as a student with an intellectual disability when all of the following criteria are met:

1. General intellectual functioning:
   a. The student with mild to moderate intellectual disability has general intellectual functioning ranging from two to three standard deviations below the mean, in consideration of 1.0 standard error of measurement as determined by a qualified psychologist, using an individually administered intelligence test; or
   b. The student with the most significant cognitive disabilities (moderate to severe intellectual disability) has general intellectual functioning more than three standard deviations below the mean, in consideration of 1.0 standard error of measurement as determined by a qualified psychologist, using an individually administered intelligence test; and
2. The student exhibits concurrent deficits in adaptive functioning expected for his or her age across multiple environments based on clinical and standardized assessments in at least one of the following domains: conceptual, social or practical; and *
   a. If intellectual functioning and adaptive functioning are inconsistent in severity*, an observation must be completed to determine the level of supports required.
   * See Appendix for Severity Levels for Adaptive Functioning.
3. The age of onset is eighteen or below; and
4. The student's condition adversely affects educational performance; and
5. The student needs special education.

Caution is advised when assessing students with cultural and language issues to prevent inappropriate identification of these students as having a cognitive impairment. When determining eligibility, tests measuring intellectual ability must be used with care; that is, only those tests designed and normed for the population being tested may be used. Tests measuring intellectual ability that are translated into another language by the examiner or an interpreter yield invalid test results and must not be used as the basis of the eligibility determination. Evaluation teams must consider using nonverbal tests of intellectual ability when the student is culturally or linguistically diverse.

J. Orthopedic Impairment

Definition: Orthopedic impairment means a severe physical limitation that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., spina bifida, congenital amputation, osteogenesis imperfecta), an impairment caused by disease (e.g., poliomyelitis, bone tuberculosis), or an impairment from other causes (e.g., cerebral palsy, amputations, fractures or burns that cause contracture).

Eligibility Criteria for Orthopedic Impairment

An eligibility committee will determine that a student is eligible for special education services as a student with an orthopedic impairment when documentation of all of the following criteria exists:

1. The student exhibits characteristics consistent with the definition.
2. The student has an orthopedic impairment diagnosed and described by a licensed physician.
3. The existence of educational needs as a result of the orthopedic impairment.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

K. Other Health Impairment

Definition: Other health impairment means having limited strength, vitality or alertness, including heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. These health problems may include, but are not limited to, asthma, , attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke to such a degree that it adversely affects the student's educational performance.

Eligibility Criteria for Other Health Impairment

An eligibility committee will determine that a student is eligible for special education services as a student with an other health impairment when documentation of all of the following criteria exists:

1. The student exhibits characteristics consistent with the definition;
2. The student has a chronic or acute medical or health condition as diagnosed and described by a licensed physician; with the exception of ADHD which can be diagnosed by a school psychologist or licensed psychologist. and
3. The existence of educational needs as a result of the medical or health condition.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

L. Specific Learning Disability

Definition: Specific learning disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculation, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. As specified in §18-20-10:

1. Dyslexia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities.
2. Dyscalculia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with numerical information, learning arithmetic facts, and performing accurate or fluent calculations.

Disorders/Conditions Not Included:

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional/behavioral disorder or environmental, cultural, or economic disadvantage.

A student must not be determined to have a specific learning disability if the determinant factor is any of the following:

1. Lack of appropriate instruction in reading, including the Reading Foundations - Fluency, Phonics and Word Recognition, Phonological Awareness and Print Concepts;
2. Lack of appropriate instruction in math; or
3. Limited English proficiency.

Eligibility Committee (EC) Membership for SLD Determination:

The determination of whether a student manifests a specific learning disability must be made by the student's parent(s) and a team of qualified professionals, which must include:

1. The student's general education teacher; or if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; for a student of less than school age, an individual qualified to teach a student of his or her age; and
2. At least one person qualified to conduct individual diagnostic examinations of the student, such as a school psychologist, speech-language pathologist, or reading specialist.

Eligibility Committees must draw upon information from a variety of assessment tools and strategies and as specified in §18-20-10 ensure all students receive necessary and appropriate screenings and early assessments for specific learning disabilities. The Eligibility Committee may not rely on any single procedure for determining eligibility for special education and related services.

Examples of sources include formative and summative assessments, ongoing progress monitoring, aptitude and achievement tests, cognitive assessments, parent input, and teacher recommendations as well as information about the student's physical condition, social or cultural background, and adaptive behavior. The EC must also ensure that information obtained from all of these sources is documented and carefully considered.

ELIGIBILITY DETERMINATION: MULTI-TIERED SYSTEM OF SUPPORTS

Definition. Multi-Tiered System of Supports (MTSS) is a framework of multiple supports for all students and includes the process referred to as response to intervention (RTI). MTSS includes: 1) Providing high-quality instruction matched to student needs; 2) screening all students for academic and behavior concerns; 3) continuous monitoring of student performance; and 4) using learning rate over time and level of performance to make important educational decisions. It is a systematic multi-level approach for supporting the diverse needs of students in both academic and behavioral domains through the use of universal design for learning (UDL), differentiated instruction and targeted and intensive interventions based on ongoing assessments of student performance. This process is characterized by procedures aligned with the steps of problem solving and documents a student's response or non-response to general education instruction and the student's academic performance in comparison to grade-level standards.

Components of Multi-Tiered Instruction and Intervention

Research based practices that support the MTSS approach include scientifically based curricula and instruction, multi-tiered instruction models, progress monitoring, formative assessment, systematic analysis of academic and behavioral needs by problem solving teams and matching instruction to specific skill deficits and strengths as evidenced by formative assessment.

A multi-tiered framework of service delivery features increasing intensities of instruction in direct proportion to student needs. Embedded in each level are research based instructional practices customized to increase student achievement of targeted skills. Ongoing assessment of student mastery of State-approved grade-level skills is fundamental, and frequent progress monitoring data are used to identify and adjust appropriate target areas for instructional support.

Parent Notice Requirements

When a student participates in the MTSS process and receives targeted and/or intensive supports, the district must notify the student's parents, and maintain documentation that the student's parents were notified, about the following:

1. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
2. Strategies for increasing the student's rate of learning;
3. Information and education to parents regarding specific learning disabilities including dyslexia and dyscalculia and the services available to students as specified in §18-20-10; and
4. The parent's right to request an evaluation at any time throughout the MTSS process.

When a student has been provided an opportunity to learn with the additional targeted and intensive supports provided within the multi-tiered instructional framework described below, and the student's documented instructional response indicates a need for long-term specially designed instruction, a request for parental consent for initial evaluation for special education and related services is made. If consent is given, the student must be evaluated, and eligibility must be determined within 80 days of receipt of parental consent, unless the evaluation timeline is extended by mutual written agreement of the student's parents and the Eligibility Committee.

Universal Instruction

Universal Instruction includes universal screening of all students to determine levels of proficiency or mastery of grade-level content, skills and knowledge. All students are screened at the beginning of the school year to determine which students are at risk for not meeting grade-level standards. Those identified students at risk or not making progress also are screened at the middle and end of the year. Instruction in Universal is aimed at general education classroom instructional objectives that enhance learning within the Universal academic program. Classrooms are characterized by differentiated and scaffolded instruction, use of scientific, research based instructional methods, and ongoing monitoring of student progress. Students who do not achieve mastery on essential State-approved grade-level standards, as substantiated by assessment results, are identified for additional supports at the Targeted Level by a problem-solving team.

Targeted Instruction

The primary goal of Targeted Instruction is to provide short-term strategic instruction to support all students who are performing below State-approved grade-level standards. Targeted Instruction is in addition to Universal Instruction and is provided to small groups of students with similar instructional needs.

Instructional supports may be developed through a problem-solving approach use of academic or behavioral assessments to craft individualized plans or a standard treatment protocol (use of a specific evidence-based practice). Targeted Instruction begins after students have been identified as achieving below State-approved grade-level standards and have demonstrated a lack of response to Universal Instruction.

Students supported by Targeted Instruction receive small group instruction in addition to the time provided to all students in the Universal instructional block. Explicit instruction to address specific needs is used. Targeted Instruction should be implemented for a minimum of one nine-week period, with progress monitoring occurring every two to three weeks to adjust instruction and ensure mastery. Targeted Instruction continues only until the specific concept or behavior is in place (usually short-term). Targeted Instruction may be longer depending on student progress toward benchmarks. Three to five 15 to 30 minute sessions per week are suggested. Subject area, programmatic level and time frame defined by the instructional materials are pertinent variables.

Intensive Instruction

The third level, Intensive Instruction, is designed to provide explicit instruction to students who do not make sufficient progress even when provided focused small group supports. Targeted Instruction must be documented prior to moving a student to Intensive. Intensive Instruction is provided in a small group setting or, as warranted, individual settings. Intensive Instruction should be implemented for a minimum of one nine-week period, but could be longer depending on student progress toward benchmark. Progress monitoring occurs every one to two weeks, and formative assessments are used confirm the student's response to instruction. Three to five 30 to 60 minute sessions per week are suggested. When evidence suggests instructional supports at Intensive Level will be needed long-term, a request for a comprehensive evaluation to determine eligibility for special education and related services should be considered.

Components of a Systematic Problem Solving Process

Systematic problem solving refers to a set of procedures used by an instructional team to examine and analyze the nature and severity of a student's academic or behavioral need. Parent participation is a key component in the process, which includes the following components:

Identify and Define Needs

The student's academic or behavioral need is explained in objective, measurable terms. Both the student and the learning environments are analyzed through data collection (e.g., screening, classroom walk-throughs, observations). The match or mismatch between the learner and his or her learning environment is described.

Analyze the Problem

The goal of problem analysis is to determine why this problem or need is occurring. Additional data are collected on the specific academic and/or behavioral need noted in the problem description. Data must be collected over a period of time and must be representative of the student's typical academic performance and/or behavior in the learning environment. Data collection procedures must be reliable, designed for individual student assessment and allow for repeated measurement of the same skills or behavior over time. Use the data to analyze the problem and explore specific evidence-based instruction to address the need.

Develop a Plan

Design an individual student instructional plan by using the data collected over time. Establish the instructional goal(s) for the plan, and describe the instruction to be provided. Include a progress monitoring plan, persons responsible for implementation and projected timelines.

Implement and Monitor the Plan

The plan is monitored for the integrity of implementation. Progress monitoring refers to a systematic, frequent collection of individual performance data. The measures are repeated over time and charted for documentation purposes.

Evaluate and Adjust the Plan

Evaluate the effectiveness of the instruction provided by comparing the student's initial level of performance to performance results achieved as a result of implementing the instructional plan. If the instruction is not producing the desired results, adjust the instructional plan based on the data.

Eligibility Standards

Using the MTSS process and comprehensive assessment the EC determines eligibility for specific learning disability based on the following standards for comparison. Each standard must be discussed at the EC meeting and corresponding documentation must be on file for each student.

Standard 1- Level of Learning

The first element in identifying a student with a specific learning disability is whether the student does not achieve adequately for his/her age or does not meet State-approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards:

1. Oral expression;
2. Listening comprehension;
3. Written expression;
4. Basic reading skill;
5. Reading fluency skills;
6. Reading comprehension;
7. Mathematics calculation; or
8. Mathematics problem solving.

The performance measure used to verify this standard must be both representative of the student's curriculum and useful for instructional planning. The student's response to customized instruction must be documented.

Documentation includes one or more of the following:

- Results of formative assessments administered pre- and post-instruction;
- Cumulative record reviews;
- Student class work samples;
- Anecdotal teacher records; or
- Standardized assessments.

Standard 2- Rate of Learning or Pattern of Strengths and Weaknesses

The second element in identifying a student with a specific learning disability may be met by determining insufficient rate of learning or a pattern of strengths and weaknesses in cognitive and academic abilities.

Rate of Learning

The data gathered through ongoing progress monitoring of the student's performance during an intervention period is used to determine if rate of learning has been met.

This standard is met when the student's learning rate or growth toward target skills is substantially below grade-level peers and, based on progress monitoring data (i.e., charting), a reasonable rate of progress cannot be projected even when the student is provided supplemental intervention instruction of reasonable intensity and duration.

Documentation includes:

- Progress monitoring data collected before, during and after the provision of Targeted instruction and Intensive instruction (suggested minimum nine week period of each) ; and
- Records indicating specific instruction provided, including frequency and duration (e.g., instructional plan, WVEIS on the Web Interventions Tab, daily lesson plan).

Pattern of Strengths and Weaknesses

In addition to not achieving adequately on age or State-approved grade level achievement standards, a specific learning disability may be confirmed if the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the EC to be relevant to the identification of a specific learning disability, using appropriate assessments.

Documentation includes:

- Formal educational, cognitive and/or medical evaluation reports;
- Formative assessments and progress monitoring data; and
- Functional academic and/or behavioral assessments.

Standard 3- Exclusion Factors

The final standard by which the EC may determine SLD eligibility is the assurance that the student's underachievement is not primarily the result of any of the following:

1. A visual, hearing, or motor disability;
2. Intellectual disability;
3. Behavior/emotional disorder;
4. Cultural factors;
5. Environmental or economic disadvantage; or
6. Limited English proficiency.

Documentation includes:

- Formal educational, cognitive and/or medical evaluation reports;
- Formative assessments and progress monitoring data; and
- Functional academic and/or behavioral assessments.

Validating Underachievement

As in determining all other areas of disability, the EC must ensure that the underachievement of a student suspected of having a specific learning disability is not due to lack of appropriate instruction in English language arts, written expression or mathematics, and the team must consider, as part of the evaluation described in Chapter 3, Section 4, the following factors:

1. Data that demonstrate that prior to or as part of the referral process, the student was provided appropriate instruction in general education settings; and
2. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction (i.e., formative and progress monitoring data), which was provided to the student's parents.

Observation Requirement

The student suspected of having a specific learning disability must be observed in the learning environment, including the general classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The EC must decide to:

1. Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for evaluation; or
2. Have at least one member of the evaluation team conduct an observation of the student's academic performance in the general classroom after the student has been referred for an evaluation and parental consent is obtained.

In the case of a student of less than school age or out of school, a group member must observe the student in an environment appropriate for a student of that age. The purpose of the observation is to document how the academic concern impacts the student's academic performance. The observation must also document the name and title of the observer and the site, date and duration of the observation.

Documentation of Student Response to Multi-Tiered Instruction

A thorough review of the following types of documentation will assist the EC in its eligibility determination. Most of this information is gathered and recorded throughout the natural course of a student's instruction, and intervention and does not necessarily constitute additional paperwork requirements.

- A chronology of the student's educational history (i.e., preschool participation, grade retention, special education services, cumulative attendance)
- Formative/classroom and progress monitoring data (e.g., Phonological Awareness Literacy Screening [PALS], DIBELS graphs, teacher-made curriculum-based measurements [CBMs])
- Specific documentation of the nature and intensity of general classroom instruction that evidences high quality instruction in reading/English language arts and mathematics (e.g., lesson plans)
- Comprehensive documentation of the nature (i.e., group size), frequency and duration of customized instruction results (e.g., instruction plans).
- Additional achievement/performance data (e.g., results of informal classroom assessments, teacher observations, grades, behavior data)
- Formal evaluation reports (e.g., standardized psychological and academic assessments)

Written Report Requirements: SLD Team Report

The SLD Team Report must contain a statement of:

1. Whether the student has a specific learning disability;
2. The basis for making the determination, including an assurance that the determination has been made in accordance with required evaluation procedures specified in Chapter 3, Section 4;
3. The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning; and
4. The educationally relevant medical findings, if any;
5. Whether:
    a. The student does not achieve adequately for the student's age or to meet state-approved grade-level standards; and
    b. The student does not make sufficient progress to meet age or state-approved grade-level standards; or
    c. The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards or intellectual development.

6. The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional/behavioral disorder; cultural factors, environmental or economic disadvantage; or limited English proficiency on the student's achievement level.
7. If the student has been provided Multi-Tiered System of Supports (scientific, research-based instruction):
    a. The instructional strategies used and the student-centered data collected; and
    b. The documentation that the student's parents were notified about:
        1. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
        2. Strategies for increasing the student's rate of learning; and
        3. The parent's right to request an evaluation at any time throughout the ~~SPL~~ MTSS process.

Dissenting Opinions:

This report must be dated and evaluation team members must certify in writing whether the report reflects each team member's conclusions. If the report does not reflect an individual team member's conclusions that team member must submit a separate statement presenting the member's conclusions.

M. Speech/Language Impairment

Definition: The Individuals with Disabilities Education Act (IDEA) defines a speech or language impairment as a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance. (See Appendix for Documentation of Adverse Effects on Educational Performance for Students with Speech-Language Impairments) Communication disorders are also defined in the Diagnostic and Statistical Manual of Mental Disorders Fifth Addition (DSM-5) as follows:

- *Language* includes the form, function and use of a conventional system of symbols (i.e., spoken words, sign language, written words, pictures) in a rule-governed manner for communication.
- *Speech* is the expressive production of sounds and includes an individual's articulation, fluency, voice and resonance quality.
- *Communication* includes any verbal or nonverbal behavior that influences the behavior, ideas or attitude of another individual.
- Assessments of speech-language and communication abilities must take into account the individuals cultural and language context, particularly for individuals growing up in bilingual environments.
- Standardized measures of language development and of nonverbal intellectual capacity must be relevant for the cultural and linguistic group (i.e., tests developed and standardized for one group may not provide appropriate norms for a different group.)

Language Disorder: Diagnostic Criteria

1. Persistent difficulties in the acquisition and use of language across modalities (i.e. spoken, written, sign-language, or other) due to deficits in comprehension or production that include the following:
    a. Reduced vocabulary (word knowledge and use).
    b. Limited sentence structure (ability to put words and word ending together to form sentences based on the rules of grammar and morphology).
    c. Impairments in discourse (ability to use vocabulary and connect sentences to explain or describe a topic or series of events or have a conversation).
2. Onset of symptoms is in the early developmental period.

Eligibility Criteria for Language Disorder

An eligibility committee will determine that a student is eligible for special education and/or related services as a student who has a language disorder when the following criteria are met:

1. Two or more procedures, at least one of which yields a standard score, are used to assess both expressive and receptive modalities.
2. Language - A student with a language disorder exhibits:
    a. Language abilities which are substantially and quantifiably below those expected for the students' chronological age and cognitive state of development, resulting in functional limitation in effective communication, social participation, academic achievement, or occupational performance, individually or in any combination.
    b. Norm referenced language tests which yield two subtest or total test scores with the following characteristics: 1.5 or more standard deviations (SD) below the mean, a language quotient/standard score of 78 (mean of 100), a stanine of two and/or a percentile of 8.
    c. Non-standardized/informal assessment indicates that the student has difficulty understanding and/or expressing ideas and/or concepts to such a degree that it interferes with the student's social/educational progress.
    d. For a pre-school child to be considered for language intervention, the child's language should be determined to have a negative impact on social-communicative interactions and one or both of the following characteristics must exist:
        i. Norm referenced language tests which yield two subtest or total test scores with the following characteristics: 1.5 or more standard deviations below the mean, a language quotient/standard score of 78 (mean of 100), a stanine of two and/or a percentile of 8.
        ii. Non-standardized/informal assessment indicates that the student has difficulty understanding and/or expressing ideas and/or concepts to such a degree that it interferes with the student's social/educational progress.
3. The student's disability adversely affects educational performance.
4. The student needs special education.
    a. A communication disorder is not considered the primary disability when the symptoms are attributable to hearing or other impairments that are more appropriately defined under another eligibility category.
    b. A communication disorder is considered a related service when services are required to assist an eligible student with an exceptionality to benefit from special education.

Speech Sound Disorder: Diagnostic Criteria

1. Persistent difficulty with speech sound production that interferes with speech intelligibility or prevents verbal communication of messages.
2. The difficulties cause limitations in effective communication that interfere with social participation, academic achievement, or occupational performance, individually or in any combination.
3. Onset of symptoms is in the early developmental period.

Eligibility Criteria for Speech Sound Disorder (Articulation/Phonology Disorder)

An eligibility committee will determine that a student is eligible for special education and/or related services as a student who has an articulation/phonology disorder when the following criteria are met:

1. At least two procedures are used to assess the student, one of which is a standardized measure.
2. The student's speech is determined to have a negative impact on academic, social and/or vocational functioning, and one of the following characteristics exists:

a. Two or more phonemic errors not expected at the student's current age or developmental level are observed during direct testing and/or conversational speech;
b. Two or more phonological processes not expected at the student's current age or developmental level are observed during direct testing and/or in conversational speech;

3. For a preschool student to be considered for articulation/phonology therapy, the student's speech should be determined to have a negative impact on social-communicative interactions and one or both of the following characteristics must exist:
   a. Multiple phonemic errors that significantly reduce the student's speech intelligibility and are not expected at the student's current age or developmental level are observed during direct testing and/or conversational speech.
   b. Two or more phonological processes that significantly reduce the student's speech intelligibility and are not expected at the student's current age or developmental level are observed during direct testing and/or in conversational speech;
4. Application of developmental norms from diagnostic tests verifies that speech sounds may not develop without intervention. (See Articulation Development Chart in Appendix).
5. The student's disability adversely affects educational performance.
6. The student needs special education.
   a. A communication disorder is not considered the primary disability when the symptoms are attributable to hearing or other impairments that are more appropriately defined under another eligibility category.
   b. A communication disorder is considered a related service when services are required to assist an eligible student with an exceptionality to benefit from special education.

Childhood-Onset Fluency Disorder (Stuttering): Diagnostic Criteria:

1. Disturbances in the normal fluency and time patterning of speech that are inappropriate for the individual's age and language skills, persist overtime and are characterized by frequent and marked occurrences of one (or more) of the following:
   a. Sound and syllable repetitions.
   b. Sound prolongations of consonants as well as vowels.
   c. Broken words (e.g. pauses within a word).
   d. Audible or silent blocking (filled or unfilled pauses in speech).
   e. Circumlocutions (word substitutions to avoid problematic words).
   f. Words produced with an excess of physical tension.
   g. Monosyllabic whole-word repetitions.
2. The disorder causes anxiety about speaking or limitations in effective communication, social participation, or academic or occupational performance, individually or in any combination.
3. The onset of symptoms is in the early developmental period.

Eligibility Criteria for Childhood-Onset Fluency Disorder:

An eligibility committee will determine that an individual is eligible for special education and/or related services as a student who has a fluency disorder when all of the following criteria are met:

1. The student has a fluency rating of moderate or severe on the Suggested Guidelines for Stuttering Services or Suggested Guidelines for Stuttering Services for Preschool (See Appendix).
2. The student's disability adversely affects educational performance.
3. The student needs special education. (Speech/language therapy can be special education or a related service.)
   a. A communication disorder is not considered the primary disability when the symptoms are attributable to hearing or other impairments that are more appropriately defined under another eligibility category.
   b. A communication disorder is considered a related service when services are required to

assist an eligible student with an exceptionality to benefit from special education.

Social (Pragmatic) Communication Disorder: Diagnostic Criteria

1. Persistent difficulties in the social use of verbal and nonverbal communication as manifested by all of the following:
    a. Deficits in using communication for social purposes, such as greeting and sharing information, in a manner that is appropriate for social context.
    b. Impairment of the ability to change communication to match context or the needs of the listener, such as speaking differently in a classroom than on a playground, talking differently to a child than to an adult and avoiding use of overly formal language.
    c. Difficulties following rules for conversation and storytelling, such as taking turns in conversation, rephrasing when misunderstood and knowing how to use verbal and nonverbal signals to regulate interaction.
    d. Difficulties understanding what is not explicitly stated (e.g., making inferences) and nonliteral or ambiguous meaning of language (e.g., idioms, humor, metaphors, multiple meanings that depend on the context for interpretation).
2. The onset of symptoms may occur in the early developmental period but deficits may not fully manifest until social communication demands exceed limited capacities.
3. The symptoms are not attributable to another medical or neurological condition or to low abilities in the domains of word structure and grammar, and are not better explained by autism disorders, intellectual disability (intellectual developmental disorder), global developmental delay, or another mental disorder.

Eligibility Criteria for Social (Pragmatic) Communication Disorder

An eligibility committee will determine that a student is eligible for special education and/or related services as a student who has a Social (Pragmatic) Communication Disorder based on the following:

1. Assessment measures that include norm referenced tests, multiple observations, checklists and structured tasks.
2. Assessment procedures that are contextually based and involve multiple settings and communication partners.
3. Assessment results indicate deficits in functional limitations in effective communication, social participation, social relationships, academic achievement and/or occupational performance, individually or in combination.
4. Social pragmatic communication disorder cannot be diagnosed in the presence of restricted repetitive behaviors, interests, and other activities related to the diagnosis of Autism.
5. The student's disability adversely affects educational performance.
6. The student needs special education.

Voice Disorder: Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:

- Interfere with communication;
- Draw unfavorable attention to the speaker;
- Adversely affect the speaker or listener; or
- Are inappropriate to the age and gender of the speaker.

A voice disorder does not exist when the vocal characteristics of quality, pitch, intensity, or resonance:

- Are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;
- Are the result of regional dialectic or cultural differences or economic disadvantage; or
- Do not interfere with educational or developmental performance.

Eligibility Criteria for Voice Disorder:

An eligibility committee will determine that a student is eligible for special education and/or related services as a student who has a voice disorder (speech impairment) when all of the following criteria are met:

1. The student has a voice production rating of moderate or severe on the Voice Rating Scale for students ages three through twenty-one years. (See Appendix for Voice Rating Scale).
2. The existence or absence of a structural or functional pathology is verified by an otolaryngologist.
3. The student's disability adversely affects educational performance.
4. The student needs special education.

Special Considerations:

1. Cognitive referencing refers to the practice of finding students not eligible for services when their language skills are deemed to be commensurate with their cognitive abilities. IDEA does not require a significant discrepancy between intellectual ability and achievement for a student to be deemed eligible for speech language services. Lack of discrepancy between cognitive level (i.e., mental age) and communication performance (i.e., language age) must not be the sole factor when determining eligibility for a severely speech and language disordered student. Other factors that must be considered are informal evaluation results, physical ability, and educational and therapy history.
2. A student's eligibility for speech and language services cannot be determined on the basis of having a primary language other than English or a language difference. Appropriate evaluation must verify the presence of an impairment in the primary and/or all languages spoken.
3. When verbal communication is not an effective means of communication for the student, the student must receive an Augmentative/Alternative Communication Evaluation to determine the need for an alternative means of communication. All available means of communicating within the student's ability level must be considered. This may include verbal, manual, pictorial or electronic modes of communicating.

N. Traumatic Brain Injury

Definition: Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

Eligibility Criteria for Traumatic Brain Injury

An eligibility committee will determine that a student is eligible for special education services as a student who has a traumatic brain injury when all of the following criteria are met:

1. The student has an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both as diagnosed by a licensed physician.
2. The student's condition adversely affects educational performance.
3. The student needs special education.

Chapter 5
INDIVIDUALIZED EDUCATION PROGRAMS

Special education is defined as specially designed instruction, at no cost to the parent, based on peer-reviewed research to the extent practicable, to meet the unique needs of a student with a disability or giftedness including instruction in the classroom, the home, hospitals, institutions and other settings. The definition of special education also includes instruction in physical education, speech/language therapy, transition services, travel training, assistive technology services and vocational education. Specially designed instruction means adapting the content, methodology or delivery of instruction to:

1. Address the unique needs of the student that result from his or her disability or giftedness; and
2. Ensure access to the general education curriculum so that the student with disabilities can meet the education standards that apply to all students.

The Standards-Based Individualized Education Program (SB-IEP) is a product of collaboration between a parent or adult student and educators who, through full and equal participation, identify the unique needs of a student with a disability or giftedness and plan the special education and related services to meet those needs. It sets forth in writing a commitment of resources necessary to enable the student to receive needed special education and related services. In addition, the IEP is a management tool that is used to ensure that each eligible student is provided special education and related services appropriate to the student's special learning needs. It serves as an evaluation device for use in determining the extent of the student's progress toward meeting the projected outcomes. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether an eligible student is actually receiving the free appropriate public education agreed to by the parents and the school.

Section 1. IEP Initiation

A. Purpose of Meeting

The primary purpose of an IEP Team meeting is to design an IEP that will meet the unique needs of an eligible student. The IEP Team plans the special education and related services designed to provide access to and progress in the general curriculum. The parent or adult student, district personnel and other IEP Team members should come prepared to participate in an open discussion regarding the student's individual needs and how those needs affect the student's mastery of the content standards and objectives. Placement decisions must be considered after the special education services are determined.

Informal or unscheduled conversations involving district personnel on various issues (e.g., teaching methodology, lesson plans or coordination of service provisions) are not considered a meeting as long as no decisions are made regarding issues addressed on the student's IEP. A meeting does not include preparatory activities that district personnel engage in to develop a proposal or a response to a parent or adult student proposal that will be discussed at a later meeting.

B. Team Decision Making

The IEP meeting serves as a communication vehicle between the parent or adult student and district personnel that enables them, as equal participants, to make joint, informed decisions regarding the student's special education services. All members of the IEP Team are expected to work toward consensus regarding the content of the student's IEP to ensure that he or she receives FAPE. Consensus means that all members are in general agreement regarding the IEP content.

If the parent or adult student and other IEP Team members cannot reach consensus regarding an IEP decision, then the district representative on the IEP Team must make the decision and provide PWN of the decision to the parent/adult student at the conclusion of the meeting and prior to implementing the IEP. The parent or adult student may exercise their right to mediation or a due process hearing regarding the decision (Refer to Chapter 11).

West Virginia statute requires that any teacher who disagrees with the IEP Team's decision file a written explanation outlining his/her disagreement or recommendations (West Virginia Code Section §18-20-1c (2)).

C. Scheduling IEP Meetings

An IEP meeting must be convened:

1. To develop an IEP within thirty days of eligibility determination and prior to the initiation of services.
2. To review the IEP periodically, but no longer than 365 days from the date of development of the current IEP. An IEP must be in effect at the beginning of each school year.
3. When another agency fails to deliver transition or other services outlined in the IEP, the IEP Team must reconvene to identify alternative strategies to meet the transition objectives for the child set out in the IEP.
4. Within twenty-one days of a written request by any member including the parent or adult student. However, if the district refuses a parent's or adult student's request to convene a meeting, it must respond to the parent/ adult student within five days of receipt of the request, including provision of prior written notice.
5. Within twenty-one days of receipt of written request by a general education teacher who has responsibility for implementing the IEP in accordance with WV Code §18-20-1c.
6. Within ten school days of any disciplinary removal resulting in a change of placement, the IEP Team must conduct a manifestation determination and if appropriate, complete a functional behavioral assessment and/or develop or review a behavioral intervention plan.

D. IEP Team Membership

The following are required members of the IEP Team:

- **Parent(s)** - This term means a natural, adoptive, or foster parent of a child; a guardian (but not the State if the child is a ward of the State); an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; or an individual assigned to be a surrogate parent.
- Not less than **one general education teacher** of the student, if the student is or may be participating in general education environment (including universal pre-K programs, Head Start). A general education teacher of the student is required to participate in developing the IEP of a student who is, or may be, participating in the general education environment. For preschool – age students, the general education teacher may be the kindergarten teacher or another appropriate designee. Other designees at the preschool level may include a care provider, Head Start teacher or community preschool teacher who meets state and/or national licensing standards. State Code requires the receiving and referring teachers participate in the development of the student's IEP (West Virginia Code §18-20-1c (2)). Participation may be through attendance at the IEP meeting or by the provision of a classroom teacher report to the IEP Team.
- Not less than **one special education teacher of the student or, when appropriate, special education service provider (e.g., speech language pathologist).** Generally, this individual will be the student's special education teacher or provider who has primary responsibility for implementing the student's IEP.

- A **representative of the district** who is qualified to provide or supervise the provision of special education, knowledgeable about the general education curriculum and knowledgeable about the availability of resources of the district and has the authority to allocate resources (one of the other members may be so designated if he/she meets these requirements). Examples include the county administrator of special education (CASE), principal, assistant principal or professional special education personnel. For speech only IEP Team members, the speech/language pathologist may serve as the district representative, if the criteria are met.
- An **individual who can interpret the instructional implications of evaluation results** (who may be one of the other members). Examples include special education specialist, audiologist, special educator, speech/language pathologist, related service provider or school psychologist.
- At parent or district discretion, **others with knowledge or special expertise** regarding the child, including related services personnel as appropriate. The determination of having knowledge and expertise regarding the student will be made by the parent or adult student or district personnel who invited the individual to be a member of the IEP Team.
- The **student** when appropriate, but required when the purpose of the meeting is consideration of the postsecondary goals and transition services needed for reaching those goals.
- To the extent appropriate and with parent or adult student consent, **a representative of any participating agency** that is likely to be responsible for providing or paying for transition services. If a representative does not attend, steps must be taken to obtain participation from the agency in transition planning.
- For a child previously served under West Virginia Birth to Three, at the request of the parent, **invite the Part C service coordinator or other representatives of the Part C system** to assist with the smooth transition of services.
- For a student being considered for or currently in a private school placement made by the IEP Team, ensure participation of **a representative of the private school or facility** through attendance at the meeting, or other methods such as conference telephone calls.

The role(s) filled by each IEP Team member will be designated on the IEP form.

A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of a student with a disability and the district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

Members of the IEP Team may be excused from an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

- The parent or adult student and district consent to this in writing.
- The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

School personnel must contact the parent to discuss excusal(s), obtain parent consent, and provide IEP Team Member In-Lieu-of Attendance Report forms to the identified team member(s). Excused team members must submit the In-Lieu of Attendance Reports form to parents and the IEP Team chair between receipt of parent consent for the excusal and the IEP Team meeting.

E. The General Educator's Role in IEP Development

If a student is or may be participating in the general education curriculum or environment, at least one of the student's general education teachers who is, or may be, responsible for implementing any portion of the IEP must participate in developing the IEP.

The general education teacher's role in the development, review and revision of the IEP includes:

- Discussion of the student's involvement and progress in the general education curriculum;
- Determination of appropriate positive behavioral interventions and strategies for the student; and
- Determination of supplementary aids and services, program accommodations, modifications and supports for school personnel.

F. Invitation to IEP Team Meetings

To the extent possible, the district should encourage the consolidation of all IEP Team meetings, including meetings that may involve eligibility, reevaluation and IEP development.

The district must:

1. Schedule and notify the parent of the meeting at a place and time mutually agreed on by the parent or adult student and the district.
2. Take steps to ensure one or both parents attend or have the opportunity to participate.
3. No less than eight days prior to the meeting unless waived by the parent, provide the parent/ adult student written notice of the meeting using the Notice of EC/IEP Team Meeting form, which includes:
    a. The purpose, time and location of the meeting;
    b. Who will attend the meeting; and
    c. Information regarding the parent's or adult student's right to bring other people who have knowledge or special expertise regarding the student to the meeting. For students who were participating in Part C services, this would include their right to invite the Part C coordinator or representative to attend the first IEP meeting.
4. Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP Team, the notice also must:
    a. Indicate that the purpose of the meeting will be consideration of the post-secondary goals and transition services for the student;
    b. Indicate that the district will invite the student; and
    c. Identify any other agency that will be invited to send a representative with the consent of the parent/adult student.
5. Invite the student, if appropriate or required, to attend and participate in his or her IEP Team meeting. If a purpose of the meeting is to consider transition, and the student does not attend, the district must take other steps to ensure that the student's preferences and interests are considered.
6. Take whatever action is necessary to ensure that a parent or adult student understands the proceedings at an IEP Team meeting, including arranging for an interpreter for a parent or adult student who has a hearing impairment or whose native language is other than English.
7. Document its attempts to arrange a mutually agreed upon time and place for the meeting. Documentation could include records of telephone calls or conversations, copies of correspondence sent to the parent or adult student and any responses received, and detailed records of any visits made to the parent or adult student.
8. If neither parent can attend, provide alternatives to physical meetings such as video and telephone conferencing in the place of physical IEP meetings if the parent or adult student and district agree.
9. If the parent refuses to attend or the district cannot convince the parent to attend, conduct the IEP Team meeting and provide prior written notice of the decisions made.

Section 2. IEP Development

The WVDE provides IEP and special education process forms/templates, including the online IEP, to ensure that all IEPs are developed in compliance with federal and state regulations. Therefore, districts are required to use the WVDE Online IEP in the development of a student's IEP. The IEP requirements are listed below.

A. Student Information

All IEPs must include the required demographic components.

B. Documentation of Attendance

The district must ensure the attendance and participation of the IEP Team members at the IEP meeting. Signatures and positions of team members document attendance.

Team member signatures including parent or adult student do not reflect agreement or disagreement with the IEP, but only indicate attendance.

C. Considerations

In developing each student's IEP, the IEP Team must consider:

1. Strengths of the student;
2. Concerns of the parents for enhancing the education of their child;
3. Results of the initial evaluation or most recent evaluation of the student; and
4. Academic, developmental and functional needs of the student.

The IEP Team must consider the following special factors as applicable and document its consideration in the IEP:

1. For students with giftedness, the IEP Team will consider if acceleration is a focus of gifted service, and if so, its effect on high school graduation;
2. Consider whether the child needs assistive technology devices and services, the type of device and provision for home use, if any;
3. Consider the communication needs of the student;
4. If the student's behavior impedes his or her learning or that of others, the IEP Team will consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
5. If the student has blindness or low vision, the IEP Team will provide for instruction in braille and the use of braille unless the IEP Team determines that braille is not appropriate for the student. This determination can only be made after an evaluation of the student's reading and writing skills, needs and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in braille or the use of braille);
6. In the case of the student who is deaf or hard-of-hearing, the IEP Team will consider the language and communication needs of the student, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, the student's academic level and his or her full range of needs including opportunities for direct instruction in the student's language and communication mode;
7. If the student has limited English proficiency, the IEP Team will consider the language needs of the student as those needs relate to the IEP;
8. Written consent must be obtained to invite agency representative to discuss transition services; and
9. Consider the transition needs of the student.

Accessible Educational Materials Guidance – If the student understands instructional content at grade level, but is unable to read with sufficient accuracy and fluency to support comprehension at the same rate as his/her peers, or cannot physically manipulate the print medium; or due to blindness/low vision cannot see standard print materials, please refer to the Accessible Educational Materials guidance documents on the WVDE website.

D. Present Levels of Academic Achievement and Functional Performance

Using the information considered in Part C., the IEP Team identifies and develops statements of present levels of academic achievement and functional performance and measurable annual goals that enable school personnel to track the effectiveness of services and to accurately report progress toward goals.
Statements of present levels of academic achievement and functional performance must document:

1. How a school-age student's disability or giftedness affects his or her involvement and progress in the general education curriculum, i.e., the same curriculum used by students without disabilities (West Virginia CCRS); or
2. How a preschool student's disability affects his or her involvement and progress in the West Virginia Early Learning Standards Framework and how the disability affects the student's participation in appropriate activities.

Although the content of present levels of academic achievement and functional performance statements is different for each student, each statement must:

1. Be written in objective, measurable terms and easy-to-understand non-technical language;
2. Establish a basis for the other components of the IEP;
3. Provide a starting point for annual goal development; and
4. Articulate the gaps between the student's grade level expectations (CCRS) and his or her demonstrated performance.

E. Goals and/or Objectives

Measurable academic and functional annual goals must be related to the needs described in the present levels of academic achievement and performance statements. Specifically, annual goals must be written to:

1. Include a measurable statement that describes what a student is reasonably expected to accomplish from the special education program within the time period covered by the IEP, generally one year.
2. Enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability or giftedness.
3. Include the timeframe, condition, behavior and the evaluation procedure with performance criteria.

If the student who is deaf or hard of hearing does not demonstrate progress in expressive or receptive language skills as measured through an appropriate assessment tool, the IEP Team must explain the reasons for the lack of progress in meeting the language milestones or progressing towards them and recommend specific strategies, services and programs that will track the child's success towards English literacy.

For students taking the statewide alternate accountability assessment based on alternate academic achievement standards, each goal must have at least two objectives. Objectives must include a statement of how far the student is expected to progress toward the annual goal and by what date.

The IEP Team has the discretion to use objectives for any student eligible for IEP services.

For purposes of determining the need for extended school year services, for each student with a disability, the IEP Team must identify at least one critical skill area that is needed for the student to maintain levels of performance. A critical skill is denoted by marking an annual goal or short term objective with an asterisk.

The IEP must include a statement describing how the student's progress toward IEP goals will be measured and when the parent or adult student will be informed of the student's progress toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards).

F. Transition Services

Secondary transition services are defined as a coordinated set of activities for a student with an exceptionality that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The activities include instruction, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a provision of functional vocational evaluation. These activities are based on the individual student's needs, taking into account the student's preferences and interests.

Beginning with the first IEP to be in effect when a student is sixteen years old (or sooner at the discretion of the IEP Team), the IEP must include:

1. Appropriate, measurable postsecondary goals related to independent living skills, if needed;
2. Appropriate measurable postsecondary goals based upon age-appropriate transition assessment related to training, education and employment; and
3. Transition services (including courses of study) needed to assist the student in reaching postsecondary goals identified on the IEP.
4. Pre-employment Transition Services (Pre-ETS) which may include services provided by schools and by the Division of Rehabilitation Services that include:
    - Job exploration
    - Work-based learning
    - Counseling for transition & post-secondary programs
    - Workplace readiness training
    - Self-advocacy training

Districts must begin developing IEPs including secondary transition services with the first IEP in accordance with the timelines listed below:

- Student is fifteen years old by July 1, 2018
- Student is fourteen years old by July 1, 2019

The goals and transition services must be updated on the IEP annually.

Not later than the student's 17th birthday, the IEP must include a statement that the student has been informed whether or not special education rights will transfer to the student on his or her 18th birthday. Special education rights will transfer from the parent to the student when the student turns eighteen years old unless the parent has obtained legal guardianship.

G. Statement of Special Education and Related Services

Each student's IEP must describe the special education and related services, supplementary aids and services, based on peer-reviewed research to the extent practicable, and program modifications or supports for school personnel that will be provided to or on behalf of the student to enable the student to:

- Advance appropriately toward attaining the annual goals;
- Be involved in and make progress in the general education curriculum;
- Have an equitable opportunity to participate in extracurricular and other nonacademic activities; and
- Be educated and participate with other students with and without disabilities.

The description of services in the IEP must identify:

1. Supplementary aids and services and program accommodations, modifications and supports for school personnel. Supplementary aids and services means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students in need of special education services to be educated with students without exceptionalities to the maximum extent appropriate in accordance with LRE requirements. These services must be considered prior to removing a student from the general education classroom.

   The determination of which supplementary aids and services are appropriate for a particular student must be made on an individual basis. Supplementary aids and services are any material/curricular/human resource or assistance, beyond what is normally afforded students without exceptionalities, provided to support a student with an exceptionality's placement. Supplementary aids may include, but are not limited to, large print books, positive behavioral interventions, assistive technology devices, auditory trainers, curriculum accommodations, services and other supports that are provided in general education classes or other education related settings to enable students in need of special education services to be educated with students without exceptionalities to the maximum extent appropriate. Supplementary services may include, but are not limited to direct instruction, peer tutoring and note taking.

   An accommodation can be a device, practice, intervention, or procedure provided to a student with a disability that affords equal access to instruction or assessment. Accommodations do not change the content of the general education curriculum, nor reduce learning or achievement expectations, but allow students with disabilities access to the curriculum through technology, universal design for learning (UDL), differentiated instruction (DI), cognitive strategies instruction and scaffolding.

   Modifications are changes in educational expectations for the student. These include actual changes in the general education curriculum and instruction or the use of an alternative or supplemental curriculum. Examples include mastery of essential concepts, acceleration, different test questions and material at a different reading level.

   Supports for school personnel may include, but are not limited to, additional training in the use of assistive technology, specific instructional strategies or the use of technology; other professional development activities such as mentoring or coaching; and assistance in planning lessons using differentiated instruction.

2. Special Education Services

   Special education services include specially designed instruction to meet the unique needs of the student. Special education services are those necessary to enable the student to achieve the annual goals, make

progress in the general education curriculum and participate in extracurricular and other non-academic activities. Special education services document the goal area requiring specially designed instruction, e.g., English/Language Arts, Math, Behavior or Fine Motor Skills. Special education services are either direct or indirect. Direct services are instruction, therapies or interventions provided one-on-one or in groups to an eligible student in the general education classroom or in a special education school environment, home or community. Indirect services are services provided by a special education teacher or provider to the student's teacher(s) to directly benefit the student. Examples of indirect instruction are designing instructional materials or monitoring behavior management plans.

3. Related Services

The term "related services" refers to transportation and such developmental, corrective and other supportive services required to assist an eligible student to benefit from special education as described in the IEP. These services include, but are not limited to:

- Assistive technology
- Audiology
- Speech-language therapy
- Interpreting services
- Psychological services
- Physical therapy
- Occupational therapy
- Therapeutic recreation
- Counseling services
- Early identification and assessment of students' exceptionalities
- Rehabilitation counseling services
- Orientation and mobility services
- Medical services for diagnostic or evaluative purposes
- School nurse services
- Social work services in school
- Supports for school staff
- Parent counseling and training. Parent counseling and training includes helping a parent understand child development and the special needs of his or her child and acquire skills to support the implementation of his or her child's IEP.
- Transportation

This list of related services is not exhaustive and may include other developmental, corrective, supportive services or transition services. EXCEPTION: The term does not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device or the replacement of such device.

Although services may be of benefit to a student with an exceptionality, all of the services listed above may not be required for each individual student. Related services are the responsibility of the district only if the IEP Team determines they are required to assist the student to benefit from special education. Further, the student is not entitled to related services if:

a. He or she does not need special education, or
b. The parent or adult student does not consent to special education services.

Location, Extent/Frequency and Duration

For each service identified, the IEP must:

1. State the location where services and modifications will be provided. For supplementary aids, services or modifications, state the specific location, i.e., math classroom or community. For special education and related services, indicate the location as special education environment (SEE) or general education environment (GEE).

2. List the anticipated extent/frequency. A specific quantitative amount of time (e.g., minutes per week or month) or a specific description of the instructional/environmental circumstances (e.g., accelerated learning or pre-teaching provided prior to the introduction of new content) is required. Specifying a range is only acceptable if the IEP Team determines that it is necessary to meet the unique needs of the student. A range may not be used because of personnel shortages or uncertainty regarding the availability of staff or services.

3. State the date services will be initiated, in consideration of PWN requirements, and the expected duration of the services and modifications.

H. Extended School Year (ESY) Services

Determination of Services

For students with disabilities, the IEP Team must annually determine and document a student's need for ESY services. Students entitled to ESY services are those who require special education and related services in excess of the regular school year to maintain identified critical skills as described in the current IEP. The IEP Team in making its determination of a student's need for ESY must review documentation that the student exhibits, or may exhibit:

1. Significant regression during an interruption in educational programming;
2. A limited ability to recoup, or relearn skills once programming has resumed;
3. Regression/recoupment problem(s) that interfere with the maintenance of identified critical skills as described in the current IEP; and
4. Other factors that interfere with the maintenance of identified critical skills as described in the current IEP, such as predictive data; degree of progress; emerging skills and breakthrough opportunities; interfering behaviors; nature and/or severity of the disability; and special circumstances.

The lack of clear evidence of such factors may not be used to deny a student ESY services, if the IEP Team determines the need for such services and includes ESY in the IEP.

Documentation of Services

The type and length of the services the student requires is determined on an individual basis by the IEP Team. ESY services must consist of activities developed to maintain critical skills identified on the IEP developed for the academic year. The IEP Team must document the duration, number of hours per week and physical location of the special education and related services to be delivered.

Services

ESY services may not be limited to a particular category of disability or be unilaterally limited in the type, amount or duration of those services and must be provided at no cost to the parent. The district must annually inform parents of students with disabilities of the availability of ESY services and of procedures and criteria for determining a student's need for ESY services, and of their right to refuse ESY services.

I. Statewide and District-wide Achievement Testing

Students with disabilities participate at the grade level at which they are enrolled in all components of the West Virginia Measures of Academic Progress under standard conditions or with accommodations based upon the criteria in either regular or alternate accountability assessments. These have been designed to allow a variety of test administration options in presentation, response, setting or timing/scheduling within Standard Conditions for All Students. The allowable testing accommodations are defined in the West Virginia *Guidelines for Participation in State Assessments* and the test administration manuals.

Role of the Individualized Education Program (IEP) Team

The IEP Team determines how the student participates in the West Virginia Measures of Academic Progress, including whether the student takes the General Summative Assessment or meets the criteria for participation in the

WV Alternate Assessment and whether the student needs allowable accommodations to be assessed appropriately. The testing conditions and accommodations, as appropriate, are documented in the student's IEP and WVEIS Special Education Student Information Record.

The parent, and the student if appropriate, must be involved in and informed of decisions regarding assessment participation. The implications of the decisions must be carefully explained to the parent and the student.

The IEP must specify how the student will participate in all the applicable assessments:

- Standard conditions for all students; or
- With accommodations - specific and acceptable accommodations as defined in the *West Virginia Guidelines for Participation in State Assessments*, if needed for appropriate assessment of the student, must be listed in the IEP and the test/subtest to which each applies; or
- Student meets criteria for WV Alternate Assessment and why the student cannot participate in the regular assessment.

When the student participates in the regular accountability assessment the student will also participate in the other components of the West Virginia Measures of Academic Progress. Accommodations needed for any statewide standardized accountability assessment or district assessment tests, must be specified on the IEP and be acceptable accommodations. Accommodations indicated in the IEP must be provided and documented during test administration to verify appropriate assessment accommodations were implemented.

J. Least Restrictive Environment Considerations and Placement Decisions

Least Restrictive Environment (LRE)

An eligible student must be educated with general education students in the general education classroom to the maximum extent appropriate. Removal from the general education environment occurs only when the nature or severity of the exceptionality is such that education in general classes and other settings with general education

students cannot be achieved satisfactorily even with the use of supplementary aids and services. This requirement is known as the LRE. An appropriate LRE is one that enables the student to receive IEP services and make reasonable gains toward goals identified in an IEP.

In determining an appropriate placement in the LRE, the IEP Team begins with the general education environment with supplementary aids and services. If the student's IEP cannot be implemented in that environment with an expectation of reasonable progress on and achievement of IEP goals, a placement on the continuum of placement options providing less education with students without disabilities may be considered. An eligible student is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and modifications to the general education curriculum.

The IEP must explain the extent, if any, to which the student will **not** participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities and indicate the percentage of time in general and special education.

Participation in Nonacademic and Extracurricular Services and Activities: The IEP Team determines the supplementary aids and services appropriate and necessary for the student to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include, but are not limited to, meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development and assistance in making outside employment available.

The IEP Team must consider the following when determining the LRE in which the IEP can be implemented:

1. LRE: A student receiving special education services is to be educated with age-appropriate non-exceptional peers to the maximum extent appropriate based on the IEP. The LRE decision focuses on with whom the student is educated rather than where the student is educated. This provision includes students placed in public or private institutions or other care facilities.
2. Basis of Placement: Placement decisions are made individually for each student. The services and placement needed by each student must be based on the student's unique needs that result from his or her disability or giftedness, not on the student's category of exceptionality or the availability of placement options, services, staff or space.
3. When to Make and Review Placement Decisions:
    a. Placement decisions for a student are made after all sections of the IEP, except the educational environment section, have been completed.
    b. Placement is determined at least annually by the IEP Team.
4. Neighborhood School: A student with a disability must be enrolled in the school he or she would attend if not disabled, unless the IEP requires another location. If the student cannot be educated in the neighborhood school, the student must be provided an educational program as close to the student's home as possible.
5. Similar-age Peers: In considering a setting outside the general education environment, the IEP Team must determine placement in environments, including classrooms and schools, with similar-age peers.
6. Harmful Effects of Placement: Consideration must be given to any potentially harmful effects of the placement on the student or on the quality of services
7. Array of Services and a Continuum of Placement Options: The IEP Team must consider an array of services and a continuum of placement options to meet the individual needs of each student. The continuum of placement options includes those options listed in this section for students ages six through twenty-one and students ages 3 through 5.

Placement Decisions

In determining an appropriate placement for a student with an exceptionality in the LRE, the IEP Team must consider the student's needs and the services required to meet those needs. The continuum of services for school-age and preschool students ~~is~~ are described below. Regardless of placement, the student must be given access to the general education curriculum unless the IEP Team determines it to be inappropriate.

Placement Options for Students Ages Six Through Twenty-one

Educational time spent in age-appropriate community-based settings that include individuals with and without disabilities, such as college campuses or vocational sites, should be counted as time spent inside the general education classroom.

General Education: Full-Time - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for 80% or more of the school day. This may include students placed in:

- General education class with special education/related services provided within general education class;
- General education class with instruction within the general education class and with special education/related services provided outside the general education class; or
- General education class with special education services provided in a resource room.

General Education: Part-Time - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for no more than 79% of the school day and no less than 40% of the school day. This may include students placed in:

- Resource rooms with special education/related services provided within the resource room; or
- Resource rooms with part-time instruction in a general education class.

Special Education: Separate Class - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for less than 40% of the school day. This may include students placed in:

- Separate special classrooms with part-time instruction in a general education class; or
- Separate special classrooms with full-time special education instruction on a regular school campus.

Special Education: Special School - The student's specially designed instruction and related services are delivered in public or private separate day school facilities. This includes students receiving special education and related services, at public expense, for greater than 50% of the school day in public or private separate schools. This may include students placed in:

- Public and private day schools for students with disabilities;
- Public and private day schools for students with disabilities for a portion of the school day (greater than 50%) and in regular school buildings for the remainder of the school day; or
- Public and private residential facilities if the student does not live at the facility.

Special Education: Out-of-School Environment - The student's specially designed instruction and related services are temporarily delivered in:

- A non-school environment, such as a public library, group home or mental health center;
- A medical treatment facility/hospital; or
- The home.

Special Education: Residential Facility - The student's specially designed instruction and related services are delivered in a facility which provides twenty-four hour care and supervision. This includes students with disabilities who received education programs and lived in public or private residential facilities during the school week, including students receiving special education and related services, at public expense, for greater than 50% of the school day in public or private residential facilities. This may include students placed in:

- Public and private residential schools for students with disabilities; or
- Public and private residential schools for students with disabilities for a portion of the school day (greater than 50%) and in separate day schools or regular school buildings for the remainder of the day.

This does not include students who received education programs at the facility, but do not live there.

Special Education: Parentally-Placed in Private School – The student who is enrolled by his or her parents or guardians in regular parochial or other private schools, whose basic education is paid through private resources, and whose specially designed instruction and related services, at public expense, are provided by the district under a service plan. This does not include students who are placed in private schools by the district.

Special Education: Correctional Facilities - The student's specially designed instruction and related services are delivered in correctional facilities. This includes all students receiving special education in:

- Short-term detention facilities (community-based or residential), or
- Correctional facilities.

Placement Options for Students Ages Three Through Five

Regular Early Childhood Program – The student is attending a regular early childhood program and receives specially designed instruction either in the regular early childhood environment or in another community setting. The early childhood programs include at least 50% students without disabilities and include, but are not limited to:

- Head Start;
- Kindergarten;
- reverse mainstream classrooms;
- private preschools;
- preschool classes offered to an eligible pre-kindergarten population by the public school system; and
- group child care.

The educational environment categories within regular early childhood setting include:

1. The child attends a Regular Early Childhood Program at least 10 hours per week AND is receiving the majority of hours (at least 50%) of special education and related services in the Regular Early Childhood Program.
2. The child attends a Regular Early Childhood Program at least 10 hours per week AND the child is receiving the majority of hours of special education and related services in some other location.
3. The child attends a Regular Early Childhood Program less than 10 hours per week AND the child is receiving the majority of hours (50% or more) of special education and related services in the Regular Early Childhood Program.
4. The child attends a Regular Early Childhood Program less than 10 hours per week AND the child is receiving the majority of hours (greater than 50%) of special education and related services in some other location.

Special Education Program – Special education programs include, but are not limited to, special education and related services provided in:

1. Special education classrooms: The student attends a program in a class that includes less than 50% students without disabilities and receives no services in an early childhood setting. This includes classrooms in:
    a. Regular school buildings;
    b. Child care facilities;
    c. Hospital facilities on an outpatient basis; and
    d. Other community – based settings.
2. Separate schools: Students who receive education programs in public or private day schools designed specifically for children with disabilities and do not attend an early childhood program.
3. Residential facilities: Students who receive education programs in publicly or privately operated residential schools or residential medical facilities on an inpatient basis and do not attend a early childhood program.

Home – The student receives some special education and related services in the principal residence of the student's family or caregivers, and receives no services in an early childhood setting or in a special education setting. The student may receive some services in a service provider location. The term caregiver includes babysitters.
Service Provider Location – The student receives **all** of their special education and related services from a service provider, does not attend an early childhood program or a special education program and does not receive services in the home. Examples of service provider locations include, but are not limited to:

- Private clinicians' offices;
- Clinicians' offices located in school buildings,
- Hospital facilities on an outpatient basis, and
- Libraries and other public locations.

K. Consent for Initial Placement and Revoking Consent

Prior written notice and informed consent are required for the initial provision of special education and related services as described in the IEP. If the parent or adult student to whom rights have been transferred refuses initial consent, the district will not provide special education and related services to the student. The district documents reasonable efforts to obtain informed consent from the parent/adult student for the initial provision of special education and related services.

A parent/adult student may revoke consent for continued provision of special education and related services at any time. The revocation of consent must be in writing. The revocation of consent rule applies to revocation of all special education and related services. Consent cannot be revoked for a particular service. Within five days of receipt of the written revocation of consent, the district must provide prior written notice to the parent, and to the adult student, if applicable, that special education and all related services will cease.

When a parent/adult student refuses to respond to a request for or refuses consent to the initial provision of special education and related services:

1. The district must provide PWN containing all the required content of PWN and must fully inform the parent of the reasons the district believes the student should receive special education and the potential consequences of refusing services, such as implications for student achievement, graduation, discipline protections and transition to post school outcomes.
2. Neither mediation nor a due process complaint may be used to attempt to obtain agreement or ruling that services be provided.
3. The district will not be in violation of the requirement to make FAPE available to the student or the requirement to provide special education and related services; and
4. The district will not be required to convene an IEP meeting or develop an IEP for the student.

Additionally when consent for continued provision of special education and related services is revoked after the student has initially been provided services:

1. The district is not required to amend the student's educational records to remove any references to the student's receipt of special education and related services because of the revocation of consent.
2. The parent/adult student maintains the right to request initial evaluation. A subsequent request for the student to be re-enrolled in special education is treated as a request for initial evaluation.
3. The district is not deemed to have knowledge that the student is a student with a disability, and the student may be disciplined as a general education student and is not entitled to Policy 2419 discipline protections.

L. Parent or Adult Student Disagreement

Parent/adult student disagreements with the provision of a particular service, a change in placement or other IEP components may be addressed by the IEP Team and the dispute resolution processes. If the IEP Team agrees free appropriate public education (FAPE) would be provided if the student does not receive the service or IEP provision in question, the IEP may be revised accordingly. If, however, the IEP Team and parent/adult student disagree regarding IEP provisions, the district provides PWN of the proposed or refused changes. The parent may use dispute resolution processes as defined in Chapter 11.

M. Following the Meeting

At the conclusion of the IEP Team meeting, prior written notice and a copy of the IEP must be provided to the parent /adult student. Prior to the initiation of services, the district must ensure that the student's IEP is accessible to each service provider who is responsible for its implementation, including but not limited to each general education teacher (including teachers of music, musical education, art and driver education), special education teacher, related service provider and other providers. In addition, each teacher and provider must be informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications and supports that must be provided for the student in accordance with the IEP. Teachers in whose class or program a student with exceptional needs is enrolled must participate in the meeting to develop the student's IEP, or read and sign a copy of the student's individualized education program acknowledging that he or she has read and understands it and make modifications for the student, if needed or identified, to help the student succeed in the class or program as specified in WV Code §18-20-1c.

Section 3. IEP Reviews

A. Annual Reviews

Each student's IEP must be reviewed at least annually, once every 365 days. Meetings may be held any time throughout the school year, as long as the IEP is reviewed annually and is in effect at the beginning of each school year. Either at or after the annual review, written notice that the new IEP changes will be implemented must be provided to the parent/ adult student.

The IEP review includes the following purposes:

1. To determine whether the student's annual goals have been achieved;
2. To revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. To consider whether a reevaluation is necessary or to address the results of reevaluation;
4. To address information about the student provided to, or by, the parent or adult student; and
5. To address the student's anticipated needs.

B. IEP Amendments

In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent/ adult student and the district may agree, in writing, not to convene an IEP meeting for the purposes of making such changes, and instead, may develop a written document to amend the student's current IEP. Districts must document the changes made to the IEP on the IEP Amendment Form and provide a copy to the parents. The changes made during the amendment process must be incorporated into the Online IEP. The parent/adult student may request a copy of the revised IEP with the amendment incorporated. The annual review date remains the date of the original Online IEP. In accordance with WV Code §18-20-1c, each service provider impacted by the changes must read and sign a copy of the student's IEP.

C. Other IEP Reviews

If the parent/adult student believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP Team meeting. The district will grant any reasonable request for such a meeting. If the district refuses to convene an IEP meeting requested by the parent or adult student, the district must provide PWN to the parent/ adult student, including an explanation of why the district has determined the meeting is unnecessary.

If any other member of the IEP Team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP Team meeting.

Section 4. IEPs for Transfer Students

A. Transfer from a West Virginia School District

When a student with a current WV IEP transfers school districts within the same school year, and enrolls in a new school, the district must make reasonable efforts to consult with the parent within two school days of initial enrollment and to initiate FAPE for the student within one school day of the parent consultation. FAPE includes services comparable to those described in the previously held IEP. Within ten school days of the parent or adult student consultation, the district must adopt the previously held IEP or develop and implement a new IEP.

B. Transfer from an Out-of-State District

When a student with a disability transfers from out of state to a West Virginia school district within the same school year, and enrolls in a new school, and had an IEP that was in effect in that other state, the district must make reasonable efforts to consult with the parent within two school days of initial enrollment and to initiate FAPE for the student within one school day of the parent consultation. FAPE includes services comparable to those described in the previously held IEP, in consultation with the parent or adult student, the district temporarily adopts the previously held IEP until such time as the district conducts an evaluation, if necessary, determines eligibility and develops and implements a new IEP, if appropriate.

Within two school days of enrollment, the receiving district must request records and supporting documents and any other records related to the provision of special education and related services from the sending district. If the district decides an evaluation is necessary to determine the transfer student's eligibility under West Virginia eligibility criteria, the district must conduct the evaluation using the requirements and timelines for initial evaluation, including obtaining parental consent.

C. Transmittal of Records

The district in which the student was previously enrolled must take reasonable steps to respond within one school day to the request for records from the new/receiving district. This includes schools administered by the Office of Diversion and Transition Programs (ODTP) and the West Virginia Schools for the Deaf and Blind. Parent consent is not required when transmitting records to a district in which the student seeks or intends to enroll.

Section 5. IEPs for Children from the West Virginia Birth to Three Program

A. Transition Planning for Children from WV Birth to Three

The district should develop and have in effect an interagency agreement with the WV DHHR the lead agency for the West Virginia Birth to Three Program under Part C of the IDEA 2004. The agreement will outline the obligations of each agency to ensure a smooth and effective transition of children assisted under Part C WV Birth to Three to programs serving students with developmental delays under Part B county boards of education. All county boards of education are required to develop WV Birth to Three -Part C to B transition procedures in accordance with IDEA.

In the case of a child who may be eligible for services because of developmental delays, the district will participate in a transition planning conference with the family that is arranged by the DHHR. With the family's agreement, the conference will be conducted at least ninety days and no more than nine months prior to the child's third birthday to discuss eligibility requirements under Part B of the IDEA 2004 and any services the child may receive.

The WV Birth to Three has the responsibility to:

1. Review the child's program options for the period from the child's third birthday through the remainder of the school year; and
2. Establish a transition plan that includes steps to support the transition of the toddler with a disability to preschool services. The interagency agreement/Transition procedures from Part C to B must outline the district's participation in this process.

B. IEP or Individual Family Service Plan (IFSP) Required

A child three through five year old who is eligible as a student with developmental delays must have an IEP implemented by his or her third birthday. If a child's third birthday occurs during the summer, the IEP Team must determine the date when services under the IEP will occur. At the discretion of the district, the IEP Team will consider an IFSP, which may be used in place of an IEP, if the child's parent is provided with a detailed explanation of the differences between an IFSP and an IEP and if written parental consent to use the IFSP is obtained. An IFSP may be used in place of an IEP and must be developed in accordance with Part B policies and procedures. The district is not required to develop an IFSP instead of an IEP. The district is required to implement only the educational components of the IFSP, if one is used.

C. Consent and Notice Requirements

1. Initial Provision of Special Education: Regardless of whether a district gains consent to evaluate or does not need to evaluate, when a student with a disability transitions from a Part C program, parental consent for the initial provision of special education and related services in a Part B program and written notice of the proposed IEP or IFSP are required. Eligibility and initial placement must be documented for Part B services.
2. Release of Information: The district must obtain written parental consent for the release of information to obtain pertinent student records from non-educational agencies such as DHHR developmental disabilities programs, medical providers, day-care centers and Head Start.
3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility and the student's present levels of performance, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier to Part C). Otherwise, only written notice to inform the parent of the

district's decision to use the current evaluation data and not to conduct any further assessments must be provided to the parent. The parent must also be informed of his or her right to request additional assessments.

D. Part C to B Transition Timelines Considerations:

The timelines for transition from WV Birth to Three to the local school district will not apply to a district if one of the following is documented:

1. The parent repeatedly fails or refuses to produce the student for an evaluation or otherwise interrupts the evaluation process;
2. the child transferred/moved out of district;
3. The delay was due to exceptional family circumstances including, but not limited to: the family rescheduling or canceling the IEP meeting due to sickness or unavailability of the parent and/or child; and extreme weather conditions or a natural disaster where the length of the delay in conducting the meeting is directly proportional to the duration and severity of the disruption caused by the extreme weather conditions or natural disaster; or
4. The child was referred to WV Birth to Three less than 90 days before the third birthday. When the child is referred to Part B by WV Birth to Three less than 90 days before the third birthday, the evaluation must be completed within 80 days of parent consent, even if the timeline exceeds the third birthdate. Every effort should be made to complete evaluation, eligibility and the IEP, if applicable, by the third birthdate.

E. Child's Status During Due Process Hearing Proceedings

Following the development of an IEP or an IFSP, if an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot "stay put" in Part C when he or she is over the age of three. With written consent of the parent, the child must be placed in the public school until completion of all the hearing proceedings. If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.

F. Procedural Safeguards Notice

A copy of the Procedural Safeguards Notice must be made available to the parent/ adult student only one time a year except that a copy will also be given upon:

1. Initial referral or parental request for evaluation;
2. The first occurrence of the filing of a due process or state complaint;
3. Issuance of a disciplinary notice of suspension or expulsion resulting in a change of placement; and
4. The request of a parent/adult student.

It is recommended that the Procedural Safeguards Notice be given at the annual IEP meeting.

Section 6. Students with Disabilities in Adult Prisons

The following are exceptions for students with disabilities who are convicted as adults under West Virginia law and incarcerated in adult prisons:

1. The student will not participate in statewide assessments.
2. Transition planning and services do not apply if the student will remain in prison beyond his or her 21st birthday.

The IEP Team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

Chapter 6
ADMINISTRATION OF SERVICES

Each district must provide the special education and related services necessary to implement each student's IEP. The federal Education Department General Accounting Rules (34CFR§ 76.731) requires districts to maintain records to show compliance with the IEP.

Section 1. Initiation of Services

A complete IEP must be in effect prior to the provision of special education and related services. For initial IEPs, services must be implemented as soon as possible. Short delays in the immediate initiation of services may occur when IEP Team meetings are held during the summer or a vacation period, or when arrangements for services, such as transportation, must be made. A short delay during the school year should not exceed fifteen days. If the IEP Team determines the student needs extended school year and/or other services during the summer, these services must be provided, otherwise the implementation of the IEP will begin in the fall.

For a preschool student, the IEP must be in effect by the third birthday. If a child's third birthday occurs during the summer the IEP Team must meet to complete the IEP prior to the third birthday and to determine the date when services will be initiated. If the IEP Team determines the child needs extended school year and/or other services during the summer, these services must be provided once the child turns three years of age, otherwise the implementation of the IEP will begin in the fall.

A current IEP must be in effect at the beginning of each school year for each student receiving special education and related services. For a student transferring from another district or state, and in consultation with the parent/adult student, the district must initiate special education services comparable to those provided by the previous district until the current IEP is adopted or revised as specified in Chapter 5, Section 4, IEPs for Transfer Students.

Section 2. Provision of IEP Information

The student's IEP must be accessible to each general education teacher, special education teacher, related service provider and others responsible for its implementation. Each teacher and provider must be informed of his or her specific responsibilities related to implementing the student's IEP.

According to West Virginia State Code, the general education teacher is entitled to a signed copy of the IEP for the student prior to the placement of the student into the general education classroom when the student's IEP requires an adjustment in either the curriculum, instruction or service to be provided by the classroom teacher including modifications and supports that must be provided for the student in accordance with the IEP.

Section 3. Provision of Services

The district must provide:

- A continuum of service options in order to respond to the intensity and severity of students needs;
- Services in school facilities that serve age-appropriate non-exceptional peers;
- Classrooms for eligible school age students with exceptionalities in close proximity to classrooms for age-appropriate non-exceptional peers;
- Classrooms for eligible students with exceptionalities that are adequate and comparable to the classrooms for students without exceptionalities;
- Classrooms/facilities for eligible students who are exceptional and have physical and/or sensory impairments that are in compliance, to the extent necessary, with the requirements of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the specifications

outlined in West Virginia Code, Chapter 18, Article 10F, the current Uniform Federal Accessibility Standards and WV State Board of Education Policy 6200;

- Transportation, specially designed if necessary, for all students with exceptionalities in accordance with West Virginia Code §18-5-13 and State Board of Education policies governing transportation;
- Appropriate grouping of students with exceptionalities for specially designed instruction based upon meeting the students' similar social, functional and/or academic needs, as specified in their IEPs and without regard to identified exceptionality;
- The opportunity for students with disabilities to earn the required credits for graduation;
- Daily monitoring of hearing aids or the external component of a surgically implanted devices worn by students in schools in accordance with established procedures to assure they are functioning properly;
- Assistive technology devices or assistive technology services, or both, to a student with a disability if required as part of the student's special education, related services or supplemental services;
- On a case-by-case basis, school-purchased assistive technology devices are located in a student's home or in other settings if the student's IEP Team determines that the child needs access to those devices in order to receive FAPE; and
- Services for young children in the least restrictive environment which includes utilizing approved participating partners in WV Pre-K. The socioeconomic level, ability and/or funding streams should not be viewed as deterrents to providing fully inclusive programs.

Section 4. Provision of Staff

A. Personnel

Each district must provide personnel as defined in West Virginia Board of Education Policy 5202 and set forth in the Every Student Succeeds Act (ESSA, 2016) and IDEA 2004 who are appropriately trained for the area(s) of exceptionality in which they have primary responsibility and adequate in number to implement the IEP of each eligible student in the district. Service personnel must be appropriately trained and supervised by qualified professionals.

As required by West Virginia Code §18-20-1c, an IEP may specify training for general education teachers to assist them in implementing the IEP goals and objectives. This training may be provided through individual consultation or formal professional development and must be provided by persons trained or certified to address the student's exceptional needs. In addition, general education teachers are entitled to training regarding the integrated classroom program and additional individualized training developed by the district, if requested, to prepare the teacher to meet the exceptional needs of individual students. Whenever possible, this training must be provided prior to placement. Where prior consultation or training is not possible, it must be provided no later than ten days following the placement of the student into the general education classroom. Unavoidable delays in the provision of training must not result in the exclusion of a student from any class.

B. Adequate Staff

It is the responsibility of the district to provide adequate staff to implement the IEP of each student. The number of students served in an instructional period and the assignment of paraprofessionals/aides must be determined based on the intensity of services required by the students. Teachers' class lists and student schedules must be developed and monitored to ensure the implementation of IEP services. While highly qualified teachers and licensed therapists must design and provide initial or original instruction, support personnel can provide reinforcement and practice of previously taught skills or content. Additionally, support personnel may be required to provide assistance to students in response to specific needs related to:

- Significant cognitive and/or sensory impairments;
- Communication;
- Safety;
- Mobility;
- Personal care;
- Behavior;
- Medical/health; or
- Other unique circumstances.

Additional considerations when making staffing determinations include:

- Planning time;
- Data collection, observation, assessment and report preparation;
- Consultation and IEP planning with general educators;
- IEP management;
- IEP Team meetings and meetings with parent(s);
- Age of the students because younger children require more assistance with personal tasks such as toileting, dressing and feeding; and
- Travel time for itinerant personnel.

Staffing for Case Management/Procedural Accountability

To ensure the provision of FAPE and adherence to procedural requirements, professional special education personnel may be assigned a group of students for whom they not only provide direct/indirect special education services but also for whom they provide specific case management/procedural accountability duties such as sending parent notices, scheduling IEP meetings, reporting progress to parents, coordinating services, tracking timelines and managing paperwork. The maximum number of students assigned to service providers is as follows:

Maximum Limits for Case Management Assignments	
Teachers of students with Developmental Delays ages 3-5	20 students with IEPs
Teachers of the Gifted	45
Speech Therapists	50
Teachers of all other Exceptionalities	30/See Class Size Requirement for Instructional Period

These are maximum limits within which the school/district administrator, in consideration of the teacher's schedule and overall responsibilities, must determine the number of students assigned to specific teachers or providers.

Class Size Requirements for Instructional Period

General educators and special educators, including speech language pathologists, work together to provide appropriate instruction for students with disabilities in all instructional environments. A general or special educator may provide direct instruction with the colleague educator providing consultation or modification of materials. Shared instructional models may be implemented or students may work at stations developed or directed by general and/or special educators. The special educator should meet with the general educator on a consistent basis to provide support to the students and the general educator.

All WV Pre-K classrooms (including special education) should to the extent practicable reflect the natural proportions of students with disabilities to those without disabilities within the school or community, but with no more than ten students with disabilities per session. Pre-K classrooms are limited to no more than twenty students per session. Pre-K special education classrooms require at least one aide regardless of the number of students being served. The provision of additional support staff is determined based on student needs and the IEP. The teacher-child ratios for Policy 2419 and 2525 are maximum requirements. This means a local board of education may enroll a smaller number of children in the classroom, if needed. Additionally, all Universal Pre-K classrooms (including special education) must provide a minimum of thirty-five square feet per child of usable indoor space for daily program activities. This requirement may limit the number of children per classroom.

Integrated classrooms – Integration occurs in general education when students with exceptional needs are provided required accommodations (supplementary aids and services). Students with exceptionalities whose individualized education programs require an adjustment in either instruction or service to be provided by the general classroom teacher must approximate natural proportions. When integrated classrooms are established in the four core academic subjects, i.e. English/language arts, science, social studies and math special education students requiring accommodations must not exceed 30% of the total class enrollment.

Co-Taught classrooms – Co-teaching is defined as two or more professionals delivering substantive instruction to a diverse or blended group of students in a single physical space. For co-taught classrooms where instructional responsibilities are shared between the special and general educator, special education students requiring specially designed instruction (special education) must not exceed 50% of the total class enrollment. The special educator should not be assigned to more than one co-teaching classroom during one instructional block.

Special education classrooms for students with disabilities – Students may receive special education services in special education environments. Special education staffing per instructional period is based on the student's level of need without regard to the area of disability. Below are considerations to assist the district special education administrator or designee in determining the needs of the student as Level I, Level II or ~~(optional)~~ Level III.

Students with Level I needs typically, but not exclusively, function within the school setting by:

- Receiving varying levels of assistance from a special educator during general education core academic classes or elective classes;
- Receiving small group instruction within special education classes;
- Taking the regular assessments under standard conditions or with accommodations;
- Participating in physical education classes independently;
- Participating in co-curricular or extracurricular activities independently;
- Receiving special education services in GEFT or GEPT;
- Using assistive technology to access WV CCRS;
- Working toward a standard diploma; or
- Participating in transition activities leading to a vocational completer certificate, postsecondary education, military service or employment.
- Receiving transition services that include coordination and linkages with the WV Division of Rehabilitation Services and adult community providers.

Students identified with Level I needs may reflect varied levels of capacity across the areas below:

- Cognition;
- Academic performance;
- Social interaction;
- Emotional/behavioral areas;
- Communication;
- Sensory abilities;
- Perceptual abilities;

- Motor abilities;
- Health/medical areas; and/or
- Other manifestations of their disability.

Note: Close adult supervision may be provided on a temporary or occasional basis to students with Level I needs who are experiencing unique medical needs, specific short-term difficulties or when the close adult supervision is being faded for students previously identified with Level II needs.

Students with Level II needs typically, but not exclusively, require services such as the following to function within a school setting:

- A markedly modified curriculum with a focus on basic or functional academics and life skills;
- Close adult supervision in structured opportunities when participating in general education classes, co-curricular and/or extracurricular activities;
- Close adult supervision to maintain the safety of the student or others;
- Close adult instruction, assistance and/or supervision with the use of assistive technology, medical equipment, medical procedures, travel training or mobility;
- A wide array and/or intensity of related services;
- A large number of repetitive trials or opportunities to demonstrate skills with a concomitant need for progress monitoring and record keeping on a daily basis;
- Transition activities that focus on vocational classes, supported employment or community-based work exploration;
- Instruction until the age of twenty-one; and/or
- Transition services that include coordination and linkage with the WV Division of Rehabilitation Services and community providers.

Students identified with Level II needs have significant and comprehensive needs related to:

- Cognition;
- Academic performance;
- Functional performance;
- Social interaction;
- Emotional/behavioral areas;
- Communication;
- Sensory abilities;
- Perceptual abilities;
- Motor abilities;
- Health/medical areas; and/or
- Other manifestations of their disability.

Students with Level III needs typically, but not exclusively, demonstrate those needs shown at Level II as well as needs such as those shown below to function within a school setting:

- Intense adult supervision across settings because the student poses a danger to him/herself and/or to others;
- Intensive instruction, services, safety assistance and supervision to learn and maintain skills and to increase independence in activities of daily living; and
- Transition services that include coordination and linkages with the Office of Behavioral Health Services for Intellectual/Developmental Disabilities, (I/DD) Waiver Program, Division of Rehabilitation Services and adult community services and community use.

The following chart provides maximum class size for instructional periods by programmatic level and level of service needs for students with disabilities as determined and documented by the district special education administrator or designee.

Maximum Number of Students per Instructional Period Based on Level of Service

<table>
<tr><th>Grade Span</th><th colspan="2">Early Learning Programs
Grades
K - 5</th><th>Middle Level Programs
Grades
6- 8</th><th>Secondary Level Programs
Grades
9 – 12</th></tr>
<tr><td>Level I Service Needs</td><td>Grades K-2
12
minimum
staffing ratio
1:6</td><td>Grades 3-5
12
minimum
staffing ratio
1:8</td><td>12</td><td>12</td></tr>
<tr><td>Level II Service Needs</td><td colspan="2">12
minimum
staffing ratio
1:6*</td><td>12
minimum
staffing ratio
1:6*</td><td>12
minimum
staffing ratio
1:6*</td></tr>
</table>

* The stated ratio provides a minimum standard for instructional responsibility.

Level I Service Needs

K-2 (1-6) 3-5 (1-8) students: at least one special education teacher is required to provide instruction and direction for the students during an instructional period.
K-2 (7-12) 3-5 (9-12) students: at least one special education teacher and another qualified adult are required to provide instruction and direction for the students during an instructional period.

Level II Service Needs

1-6 students: at least one special education teacher is required to provide instruction and direction for the students during an instructional period.
9-12 students: at least one special education teacher and another qualified adult are required to provide instruction and direction for the students during an instructional period.

Level III

Grade Span	Early Learning Programs Grades K - 5	Middle Level Programs Grades 6- 8	Secondary Level Programs Grades 9 – 12
Level III Service Needs	8 minimum staffing ratio 1:4**	8 minimum staffing ratio 1:4**	8 minimum staffing ratio 1:4**

** The stated ratio for Level III provides a minimum standard for instructional responsibility.

Level III Service Needs

1 – 4 students: at least one special education teacher is required to provide instruction and direction for the students during an instructional period.

5 - 8 students: at least one special education teacher and another qualified adult are required to provide instruction and direction for the students during an instructional period.

When students with different levels of service need are provided instruction in the same class, the minimum staffing ratio for the highest level of need applies. These ratios do not preclude the use of additional staff to support a student with Level II or Level III service needs. Staffing reflects both the standards as set forth in policy and the needs of the student as reflected on the IEP. Chapter 6, Section 4 requires each district to provide personnel in adequate numbers to implement the IEP of each eligible student in the district.

*** Special education classroom for students with giftedness** – When gifted services are delivered in a special education setting, no more than fifteen students may be scheduled in an instructional period.

The following chart provides maximum class size for children with developmental delays, ages three through five.

Maximum Number of Students Per Classroom for Children with Developmental Delays

Program	Maximum Students Per Classroom	Staff
Universal Pre-k with Students with IEPs	20 students per classroom with limit of 10 students with IEPs per classroom	2 staff persons per classroom (1 teacher and 1 additional staff person) with no more than 9 students with IEPs 3 staff persons per classroom (1 teacher and 2 additional staff persons) required for 10 students with IEPs
Special Education Pre-k	8 students	1 teacher and 1 additional staff person
	10 students	1 teacher and 2 additional staff persons

When student numbers exceed staffing ratios a waiver must be submitted. Waivers to staffing ratios may be requested in writing through the OSE waiver process. Waivers may require an on-site visit, will be considered on a case-by-case basis and remain valid for the current school year only.

Chapter 7
DISCIPLINE

According to West Virginia Code §18A-5-1, county boards of education are required to incorporate and implement in the schools a preventive discipline program, which may include Positive Behavior Interventions and Supports (PBIS). If a student's behavior, regardless of the student's disability, impedes his/her learning or the learning of others, the IEP Team must consider the use of strategies, including positive behavioral interventions and supports, to address the behavior. If the IEP Team determines that such services or supports are needed, they must be included in the IEP and be implemented.

Students with disabilities who are subject to disciplinary actions by a district are entitled to all of the due process rights afforded students without disabilities under West Virginia Code §18A-5-1a. In addition to these rights, IDEA 2004 provides added procedures and safeguards for a student with a disability whom the district is considering removing from his or her current educational placement for disciplinary reasons. The district must consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a student with a disability. However, these procedures do not prevent district personnel from maintaining a safe environment conducive to learning that is critical for all students.

Protected Students

These protections are afforded to students with disabilities and students not yet eligible, if the district has knowledge that the student is a student with a disability before the behavior that precipitated the disciplinary action occurred. The district is deemed to have knowledge if one or more of the following is true:

a. The parent/adult student has expressed concern to district professional personnel that results in written documentation, that the student may need special education and related services.
b. The parent/adult student has requested in writing that the student be evaluated for special education.
c. The student's teacher or other district personnel have expressed concern about a pattern of behavior demonstrated by the student directly to the director of special education or to other district supervisory personnel in accordance with the district's established child find system and referral process.

Pursuant to Section 3.B of this chapter, these protections may apply if a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures.

These protections are not afforded to students who:

1. are solely eligible under the category of gifted, and
2. when there is no basis of knowledge that a student has a disability because one or more of the following is true:
   a. an evaluation was conducted and a determination was made that the student did not have a disability;
   b. the parent/adult student did not give written consent for an evaluation; or
   c. the parent/adult student refused special education services.

If the district did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

Disciplinary Removals

Disciplinary removals are out-of-school suspensions, expulsions and placements in interim alternative educational settings (IAES). In determining the number of cumulative school days a student has been removed, consideration may be given to days of removal due to in-school suspensions, partial day suspensions and bus suspensions. An in-school

suspension is not considered a day of suspension for purposes of this chapter as long as the student is afforded the opportunity to continue to participate in the general curriculum, continue to receive services specified on the student's IEP and continue to participate with students without disabilities to the extent he or she would have in his or her current placement. Portions of a school day that a student has been suspended may be considered a removal in regard to determining whether there is a pattern of removals that constitutes a disciplinary change of placement.

Whether a bus suspension counts as a day of suspension depends on whether the bus transportation is a part of the student's IEP. If bus transportation is a part of the student's IEP, a bus suspension must be treated as a disciplinary removal unless the district provides the bus service in some other way, because transportation is necessary for the student to obtain access to the location where services will be delivered. If bus transportation is not a part of the student's IEP, a bus suspension is not a disciplinary removal. In these cases, the student and the student's parent have the same obligation to get the student to and from school as a student without disabilities who has been suspended from the bus. However, the district should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in the IEP and whether the student's behavior on the bus should be addressed in the IEP or in a behavior intervention plan.

Disciplinary Change of Placement

A disciplinary change of placement is a removal from the student's current educational placement for more than ten consecutive school days or a series of removals that constitutes a pattern. A pattern is established when the series of removals totals more than ten cumulative school days in a school year, the student's behavior is substantially similar to his/her behavior in the previous incidents that resulted in the series of removals, and additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. Whether a pattern of removals constitutes a change of placement must be determined on a case-by-case basis by school personnel and must be documented on the Disciplinary Action Review Form (DARF). These determinations are subject to due process and judicial review.

After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent day of removal the district must provide services to the student.

Section 1. District Actions When Removals Are Not Considered a Change of Placement

School personnel may remove any student, including a student with a disability, for up to ten consecutive school days in a school year if the student violates Policy 4373: *Expected Behaviors in Safe and Supportive Schools*. During the initial ten cumulative days of removal, services need not be provided to a student with a disability unless services are provided to students without disabilities. These removals must be applied to the same extent as they are applied to students without disabilities.

School personnel may remove a student with a disability for up to ten consecutive school days per incident for separate acts of misconduct in a school year as long as the removals do not constitute a pattern resulting in a change of placement.

For each subsequent removal beyond ten cumulative school days in a year that is not a change in placement, school personnel in consultation with at least one of the student's teachers must determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. This consultation must be documented on the Disciplinary Action Review Form (DARF).

Section 2. District Actions When Considering a Disciplinary Change of Placement

A manifestation determination is required if the district is considering removing a student with a disability from his or her current educational placement for disciplinary reasons beyond ten consecutive school days or more than ten cumulative school days when the district deems that a pattern exists. A manifestation determination is a review of the relationship between the student's disability and the behavior subject to disciplinary action. This review must be documented on the Disciplinary Action Review Form. Whenever considering a disciplinary action that will result in a change of placement, the district must:

1. Provide same day written notice of the removal, PWN, and the procedural safeguards notice to the parent/adult student of the disciplinary action to be taken; and
2. Within ten school days of any decision to change placement, meet with the parent and relevant members of the IEP Team (as determined by the parent and district) to conduct a manifestation determination by reviewing all pertinent information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:
    a. If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or
    b. If the conduct in question was the direct result of the district's failure to implement the IEP.

If the district, the parent and relevant members of the IEP Team determine that either of the conditions described in a. or b. is met, the conduct must be determined to be a manifestation of the student's disability, and the district must take immediate steps to remedy those deficiencies.

A. District Actions When Conduct is Determined to Be a Manifestation of the Student's Disability

The IEP Team must:

1. Conduct a functional behavior assessment (FBA), unless an FBA was conducted before the behavior, which resulted in the change of placement, occurred;
2. Develop and implement a behavior intervention plan (BIP), or review the existing BIP and modify, as needed, to address the current behavior(s); and
3. Return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP.

B. District Actions When Conduct is Determined Not to Be a Manifestation of the Student's Disability

School personnel may apply relevant disciplinary procedures in the same manner for the same duration as the procedures applicable to students without disabilities, except as provided below:

1. Convene the IEP Team to determine the educational services to be provided to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
2. Provide, as appropriate, a functional behavioral assessment (FBA), and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

C. District Actions When a Behavior Violation Involves Weapons, Illegal Drugs or Serious Bodily Injury

School personnel may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:

1. Carries or possesses a weapon at school, on school premises or at a school function; or
2. Knowingly possesses, carries, or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises or at a school function; or
3. Inflicts serious bodily injury to another person at school, on school premises, or at a school function.

Districts must use the following definitions when removing students because of the above special circumstances:

1. Weapon – a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such a term does NOT include a pocket knife with a blade of less than 2 ½ inches in length (18 U.S.C. Section 930 (g)(s)).
2. Illegal drug – a controlled substance, a drug or other substance identified under schedules I, II, III, IV or V in Section 202(c) of the Controlled Substance Act (21 U.S.C. 812 (c)). An illegal drug does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or used under any other authority under that Act or under any other provision of federal law.
3. Serious bodily injury - a bodily injury that involves:
    a. A substantial risk of death;
    b. Extreme physical pain;
    c. Protracted and obvious disfigurement; or
    d. Protracted loss or impairment of the function of the bodily member, organ or mental faculty.

The IAES must enable the student to receive educational services and participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the student's IEP. As appropriate, the setting must include a functional behavioral assessment and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

D. FAPE Requirements in an Interim Alternative Educational Setting (IAES)

If the student's placement will change to an IAES, the IEP Team must create/select an IAES that enables the student to:

1. Continue to receive education services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his or her IEP; and
2. Receive, as appropriate, an FBA and behavioral intervention services to address the behavior violation so that it does not recur.

Section 3. Additional Disciplinary Considerations

A. Requesting an Expedited Hearing

An expedited hearing is a hearing conducted by a WVDE special education due process hearing officer, that occurs within twenty school days of the request with a decision rendered within ten school days of the hearing.

An expedited due process hearing may be requested if:

1. The parent/adult student disagrees with:
    a. The manifestation determination decision;
    b. Any decision of the IEP Team regarding a change of placement during a disciplinary proceeding; or
    c. The decision regarding the student's placement in an IAES; or
2. The district believes that maintaining the current placement is substantially likely to result in injury to the student or to others.

In an expedited hearing, the due process procedures described Chapter 11, Section 4, will be used with the following exceptions:

1. A resolution session meeting must occur within seven days of the date of the receipt of the due process complaint by the WVDE unless mutually waived by both parties.
2. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days or receipt of the due process complaint.
3. Time periods for disclosure of evidence and evaluations and recommendations based on those evaluations must not be less than five business days prior to the hearing.
4. The hearing must occur within twenty school days of the date the hearing is requested and must result in a determination within ten school days after the hearing with no extensions permitted.
5. The student remains in the IAES pending the decision of the hearing office or until the expiration of the time period provided (no more than forty-five days), whichever comes first, unless the parent/adult student and school personnel agree otherwise.

In making a determination in an expedited hearing, the due process hearing officer may:

1. Return the student from placement from which the student was removed; or
2. Order a change in placement of a student with a disability to an appropriate IAES setting for not more than forty-five days if the district believes maintaining the current placement of the student is substantially likely to result in injury to the student or others.

A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

When a request for an expedited hearing has been made, the student must remain in the IAES pending the decision of the hearing officer or until the expiration of the disciplinary removal, whichever occurs first unless the parent and the state education agency (SEA) or district agree otherwise.

B. Request~~ing~~ an Evaluation for a Disciplined Student

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation must be conducted in an expedited manner. Pending the results of the evaluation, the student remains in the educational placement determined by district officials, which can include suspension or expulsion without educational services if services cease for students without disabilities.

1. If the student is subsequently determined eligible for special education, the district will immediately:
   a. Convene an IEP Team meeting to develop an IEP, and
   b. Conduct a manifestation determination.
      i. If the behavior was caused by or had a direct and substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the LRE.
      ii. If the behavior was not caused by or did not have a direct and substantial relationship to the student's disability, the student is subject to the disciplinary action as determined by school personnel, but he or she is still entitled to receive FAPE, which must be defined by the IEP Team. Educational services cannot cease for more than ten school days in a school year. Educational services must be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. If the evaluation team determines that the student is not a student with a disability and is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students without disabilities who engage in comparable behaviors.

C. Referrals to and Action by Law Enforcement and Judicial Authorities

The district may report a crime committed by a student with a disability to appropriate authorities. The IDEA 2004 does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.

If a student brings a firearm to school, law enforcement must be contacted pursuant to the Gun-Free Schools Act.

If the district reports a crime, it will ensure that copies of the special education and disciplinary records of the student are provided to the appropriate law enforcement authorities for consideration, to the extent the release of records is permitted by the FERPA and WV Board of Education Policy 4350. Generally, the release of records requires parent or adult student consent.

D. Transfer of Discipline Records

West Virginia Code §18A-5-1a requires that when a student transfers to a new school in West Virginia, the principal of the school from which the student transfers must provide written record of any disciplinary action taken against the student to the principal of the school to which the student transfers. WVBE Policy 4350: Collection, Maintenance and Disclosure of Student Information describes the procedures and record requirements for transfer of records between WV schools.

Chapter 8
PRIVATE SCHOOL STUDENTS

Section 1. Definitions of Private School Placements

In order to describe the district's responsibilities for serving private school students, it is helpful to distinguish three separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why.

A. Definition of Voluntary Enrollment by a Parent

A parent may choose to enroll his or her child in a private school for a variety of personal reasons, such as to obtain a religious education, to attend a school with a particular philosophy or curriculum, or because the parent is dissatisfied with the services offered or provided by the district. This is considered a voluntary enrollment.

B. Definition of District Placement

At times, the district may place a student in a private school or facility to fulfill its obligation to provide FAPE. These placements are always made by an IEP Team in accordance with the requirements of Section 3 of this chapter.

C. Definition of Unilateral Placement by a Parent

A parent may withdraw a student with a disability from a public school and then enroll the student in a private school or provide services from a private provider at parent expense because he or she believes the district has not provided FAPE in a timely manner. In this case, the parents may be seeking reimbursement for the costs associated with the placement. This is considered a unilateral placement. All students who are unilaterally placed are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of a unilateral placement is included in Section 4. of this chapter.

Section 2. Students Voluntarily Enrolled by a Parent

To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the district, provision is made for the participation of those students in IDEA, Part B special education and/or related services as determined through a consultation process. The extent of services provided through IDEA, Part B funds is determined based on the number and location of the students enrolled in private schools in the district.

A. Child Find

The district must have an ongoing Child Find system to locate, identify, and evaluate all students with disabilities ages three through twenty-one residing and/or educated within the district's geographic boundaries. This includes students who have been placed by a parent in a private school (including a religious school) located in the district regardless of the student's residency.

The Child Find process must ensure the equitable participation of parentally-placed private school students with disabilities and include activities similar to Child Find activities for public school students including comparable timelines for the evaluation process. The district must consult with private school representatives and representatives of parents who place their children in private schools regarding the Child Find procedures.

B. Annual Count of Eligible Students

The district must conduct an annual count of the number of parentally-placed private school students with disabilities on December 1. This count will be used to determine the amount of funds the district must expend to provide special education and related services to private school students in the next fiscal year in accordance with Section 2 of this Chapter. The district must consult with representatives of private school students to determine how to conduct the count. All eligible parentally-placed private school students are counted, regardless of whether they are receiving services. Each district must maintain and provide the WVDE a record of the number of students evaluated, the number of students determined to be students with disabilities and the number of students receiving services under a Service Plan.

C. Consultation

To ensure timely and meaningful consultation, a district must consult with private school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and/or related services for the students, including the following:

1. Child Find: The Child Find process and how parentally-placed private school students suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
2. Proportionate Share of Funds: The determination of the proportionate amount of federal funds available to serve parentally-placed private school students with disabilities, including the determination of how the amount was calculated.
3. Consultation Process: The consultation process among the district, private school officials and representatives of parents of parentally-placed private school students with disabilities, including how such process will operate throughout the school year to ensure that parentally-placed private school students with disabilities identified through the Child Find process can meaningfully participate in special education and/or related services.
4. Provision of Special Education and Related Services: How, where, and by whom special education and/or related services will be provided for parentally-placed private school students with disabilities, including a discussion of:
    a. Types of services, including direct services and alternate service delivery mechanisms;
    b. How the services provided will be evaluated;
    c. How such services will be apportioned if funds are insufficient to serve all students; and
    d. How and when these decisions will be made.
5. Written Explanation by the District Regarding Services: How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.
6. Written Affirmation: When timely and meaningful consultation has occurred, the district must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the district must forward the documentation of the consultation process to the WVDE.

D. Determining the Proportionate Funding for Private School Students

IDEA requires school districts to use a proportionate share of funds received under Part B to provide services for parentally-placed students with disabilities who attend private schools within the boundaries of the district, regardless of their place of residence. To determine this proportionate amount, the district must first determine the number of these private school students through the Child Find activities developed in the consultation process.

The number of parentally-placed private school students who are found eligible as a student with a disability as of December 1 of the previous year is divided by the total (public and private) number of students with disabilities in the district to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by the district under Part B and Section 619 to determine the district's obligation.

1. State and local funds may supplement but may not supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school students with disabilities.
2. The costs of private school consultations and of carrying out Child Find activities, including individual evaluations, may not be paid from the proportionate share of funds.
3. The cost of any special education or related service, such as direct service, consultation, equipment, materials, or transportation may be used to determine that the district has satisfied its expenditure requirement for private school students with disabilities.
4. If a district has not expended for equitable services all of the funds described in the expenditure requirements by the end of the fiscal year, the district must obligate the remaining funds for special education and related services to parentally-placed private school students with disabilities during a carry-over period of one additional year.

E. Expenditure Requirements

1. The district must control and administer the IDEA, Part B funds used to provide special education and related services for parentally-placed private school students with disabilities.
2. The district may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the district must:
    a. Retain title and exercise continuing administrative control over all equipment and supplies;
    b. Ensure that all equipment and supplies are used only for Part B purposes;
    c. Ensure that all equipment and supplies can be removed without remodeling the private school; and
    d. Remove equipment and supplies if no longer needed or if necessary to prevent unauthorized use.
3. The district may use Part B funds to pay an employee of a private school to provide services to students with disabilities with a Service Plan when the employee performs the services:
    a. Outside of his or her regular hours of duty; and
    b. Under public supervision and control.
4. A district may use IDEA Part B, Section 611 and Section 619 funds to make public school personnel available in other than public facilities to the extent necessary to implement the students' Service Plans and if those services are not normally provided by the private school.
5. Part B and Section 619 funds must not be used to:
    a. Finance the existing level of instruction in the private school or otherwise benefit the private school;
    b. Meet the needs of the private school; or
    c. Meet the general needs of students enrolled in the private school.
6. Part B and Section 619 funds must not be used for repairs, remodeling, or construction of private school facilities.
7. Part B and Section 619 funds must not be used for classes that are organized separately on the basis of school enrollment or religion if the classes are on the same site and include students enrolled in public and private schools.

F. Determination of Services

No private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in the district. Decisions about the services that will be provided must be made in accordance with the consultation requirements in Section C.

1. Following consultation with the private school representatives, the district will make final decisions with respect to services to be provided. Annual consultation is required to make these decisions. The period between consultations may vary based on circumstances within the district, such as significant changes in the total amount of funds to be expended and/or the number and location of private school students with disabilities.
2. If a student is designated to receive services, the district must initiate and conduct meetings to develop, review and revise a Service Plan for the student. A team composed of the same members required for IEP Teams must develop the Service Plan. In addition, the district must ensure that a representative of the religious or other private school attends the meeting. If the representative cannot attend, the district must use other means to ensure participation, including individual or conference telephone calls. The Service Plan must describe the specific special education and/or related services that will be provided to the student in light of the determinations that have been made by the district.

If a parent makes clear his or her intention to keep his/her eligible child enrolled in the private elementary or secondary school located in another district, the district where the student resides need not make FAPE available.

G. Provision of Services

1. Private school students with disabilities may receive a different amount of services than public school students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private school student to receive only a related service or piece of equipment, as determined through the consultation process.
2. Each student receiving services must have a Service Plan that describes the specific special education and/or related services the district will provide in light of the services the district determined, through the consultation process, it will make available.
3. To the extent appropriate, the district must initiate and conduct meetings to develop, review, and revise Service Plans consistent with the requirements for developing an IEP as outlined in Chapter 5.
4. The district must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the district must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
5. Services must be provided by employees of the district or through contract by the district with an individual, association, agency, organization, or other entity.
6. Special education and related services, including materials and equipment, must be secular, neutral and nonideological.
7. Services may be provided on the premises of private, including religious, schools, to the extent consistent with law.
8. Services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.
9. If necessary for a private school student to benefit from or participate in the services the district has selected to provide, the district must provide transportation from the student's school or home to the site where services will be provided. The district must take the student back to either the private school or the home, depending on the timing of the services. Transportation costs may be included in the district's expenditure requirement. The district is not required to transport the student from home to the private school.

H. Content of a Service Plan

Given the services that the district has elected to provide to private school students, the Service Plan must meet the requirements of the IEP to the extent appropriate (see Chapter 5). The Service Plan excludes elements that, although typical for an IEP, would be inappropriate given the services the district has elected to provide.

I. Dispute Resolution

A private school official has the right to submit a state complaint to the WVDE that the district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. Parents of private school students and private school officials may challenge decisions regarding equitable services by filing a formal state complaint with the WVDE in accordance with procedures outlined in Chapter 11. If the private school official submits a state complaint the private school must provide the basis of the non-compliance to the WVDE. The district will forward the appropriate documentation to the WVDE. If the private school official is dissatisfied with the decision of the WVDE, the official may submit a complaint to the Secretary of the US Department of Education by providing the basis of the complaint against the district to the Secretary, and the WVDE will forward the appropriate documentation to the Secretary.

If a parent files a state complaint, even if the complaint concerns a matter for which the due process procedures are not otherwise available, the state complaint procedures must provide the parent the opportunity to voluntarily engage in mediation to resolve the matter.

Parents of private school students may only file a due process complaint on child find requirements. The due process complaint request must be filed with the district in which the private school is located and a copy must be forwarded to the WVDE.

Section 3. Students Placed by the District

When the district, through the IEP Team, places a student with a disability in a private school or facility, the district must ensure the following:

1. A meeting is initiated and conducted to develop an IEP for the student.
2. All special education procedures and timelines are followed.
3. Special education and related services are provided in accordance with an IEP.
4. A representative of the private school or facility attends the meeting to develop the IEP or other methods are used to ensure participation by the private school or facility, including individual or conference telephone calls if the representative cannot attend.
5. The responsibility for reviewing and revising IEPs remains with the district
6. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP meeting conducted in a geographical area outside the jurisdiction of the district.
7. The placement in the private school or facility is the LRE for that student.
8. The student is provided an education that meets state and district standards.
9. The student is afforded the same rights as students with disabilities who attend public schools. The parent is afforded the same rights as parents of students attending public schools.
10. Even if a private school or facility implements a student's IEP, responsibility for compliance with this part remains with the district and the WVDE.

At the discretion of the district, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting,

the district must ensure that the parent and a district representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

Prior to placing a student with a disability in a private school or facility outside of West Virginia, the district must document the following:

1. FAPE cannot be provided within the district, within the region, or within the state;
2. More than one private school or facility was investigated in regard to the feasibility of providing services;
3. The selected private school or facility has approved status in the state in which it is located, and assurances were provided that the school or facility meets the requirements of the IDEA;
4. A current and complete IEP has been developed; and
5. A current signed contract between the district and the private school or facility exists.

Section 4. Unilateral Placement by a Parent

A. General Provisions for Reimbursement

1. The district is not required to pay for costs of tuition, special education, or related services at a private school or facility for a student who was unilaterally placed there by a parent if the district made FAPE available to the student in a timely manner. However, the student is included in the population considered for services through the consultation process for parentally-placed private school students to the extent applicable. One way for the district to document that FAPE was available is to have developed or reviewed an IEP for a student who has been evaluated and found eligible. If a parent disagrees with the availability of FAPE and there is a question about financial responsibility, the parent may file a due process complaint.
2. If the parent of a student with a disability, who previously received special education and related services from the district, enrolls the student in a private elementary or secondary school without the consent of the district, a court or hearing officer may order the district to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:
    a. The district had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and
    b. The private school placement is appropriate.
3. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards.

B. Denial or Reduction of Reimbursement

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. Prior to removal of the student from the public school, the district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.
2. A judicial decision finds unreasonableness with respect to the actions taken by the parent.
3. The parent did not inform the district in writing that he or she rejected the placement proposed by the district to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This written notification by the parent must be provided to:
    a. The IEP Team at the most recent IEP meeting prior to removing the student from the public school; or
    b. The district, in writing, at least ten business days (including any holidays that occur on a business day) prior to removing the student from public school.

Reimbursement must not be reduced or denied under any of the following circumstances:

1. The district did not notify the parent of his or her obligation to provide the notice set forth in number 3. above.
2. The school prevented the parent from providing notice.
3. The district's proposed placement would likely result in physical harm to the student.

Reimbursement may not be reduced or denied for the parent's failure to provide the notice referenced above, in the discretion of the court or hearing officer if:

1. The parents are not literate or cannot write in English; or
2. The reduction or denial of reimbursement would likely result in serious emotional harm to the student.

Chapter 9
GENERAL SUPERVISION AND ACCOUNTABILITY FOR PERFORMANCE AND COMPLIANCE

Section 1. General Supervision

A. Responsibilities of the West Virginia Board of Education

The West Virginia Board of Education establishes policies and ensures that procedures are in effect to provide a free appropriate public education (FAPE) to all students with exceptionalities in accordance with state and federal laws and regulations. The Board ensures the WVDE implements the general supervision of all programs and services for eligible students with exceptionalities and that all services meet state standards and the requirements of IDEA 2004. All district and state operated programs and the education of all students with exceptionalities residing within the state are under the general supervision of the Board and WVDE.

The West Virginia Board of Education has primary responsibility to:

1. Establish regulations pertaining to the education of all eligible students with exceptionalities in the State;
2. Establish standards pertaining to the education of all eligible students with exceptionalities in the State;
3. Establish regulations to protect student and parent rights as they pertain to the education of all eligible students with exceptionalities in the State;
4. Ensure that eligible students with exceptionalities in the State, including individuals in residential institutions and private schools, receive an education in accordance with State and federal laws;
5. Establish certification requirements for personnel providing educational and related services to eligible students with exceptionalities;
6. Approve allocations and disburse state and federal funds designated for the education of eligible students with exceptionalities;
7. Administer education programs, including programs providing special education and related services for students with exceptionalities, in the State's correctional institutions in accordance with applicable State and federal laws and regulations;
8. Adopt the National Instructional Materials Accessibility Standard for purposes of providing instructional materials to persons with blindness or other persons with print disabilities in a timely manner after publication of the NIMAS in the Federal Register; and
9. Work collaboratively, to the maximum extent possible, with the state agency responsible for assistive technology programs.

B. Responsibilities of the West Virginia Department of Education

The WVDE has the primary responsibility for administering the requirements of the IDEA 2004 and West Virginia Code §18-20-2 and ensuring FAPE for students with exceptionalities. The WVDE has a primary leadership role in developing quality educational services for eligible students with exceptionalities in the State, providing guidance in the implementation of State Board of Education policies and regulations governing the education of eligible students with exceptionalities, and providing direction and assistance for special education services in the State. General supervision responsibilities of the WVDE include administration of funding, monitoring and supervision of local educational agency (LEA) implementation and implementation of interagency agreements to ensure collaboration among agencies serving students with exceptionalities.

The WVDE is responsible for ensuring that:

1. The requirements of IDEA 2004, Part B are implemented;
2. Each educational program for students with exceptionalities administered within the State, including each program administered by any other state or local agency, is under the general supervision of the WVDE and meets the education standards of the WVDE (including the requirements of IDEA 2004, Part B);

3. Policies and procedures implementing the State monitoring and enforcement requirements of the Act are in effect;
4. Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) requirements are met in the provision of special education services to homeless students;
5. The West Virginia Advisory Council for the Education of Exceptional Children is supported in order to provide guidance with respect to the education and related services for students with exceptionalities in the State;
6. Policies and procedures are in place to prevent inappropriate over identification or disproportionate representation by race and ethnicity of students as students with disabilities:
   a. Data are collected and examined to determine if significant disproportionality based upon race and ethnicity is occurring in the State and the districts with respect to:
      i. The identification of students as students with disabilities, including those with a particular impairment;
      ii. The placement in particular educational settings of these students; and
      iii. The incidence, duration and type of disciplinary actions, including suspensions and
      iv. expulsions.
   b. When a significant disproportionality in identification or placement is determined to exist:
      i. A review of the policies, practices and procedures is conducted, and, if appropriate, the policies, practices and procedures used in the identification or placement are revised to ensure that the policies, practices and procedures comply with the requirements of the Act; and
      ii. The district is required to use the required amount of Part B funds to provide early intervening services to students in the district, particularly, but not exclusively, to students in those groups that were significantly over identified; and
      iii. The district is required to publicly report on the revision of policies, practices and procedures described in b.i. above.
7. The necessary procedures are developed, including guidelines, forms and instruments to implement the State Board of Education policies and State and federal laws governing the education of students with exceptionalities;
8. A practical method is developed and implemented to determine which students are currently receiving needed special education and related services;
9. Teachers and administrators in all districts are fully informed about their responsibilities for implementing LRE requirements and are provided with technical assistance and training necessary to assist them in this effort;
10. LRE is effectively implemented for students in private or public institutions, including, if necessary, making arrangements such as memoranda of agreements or special implementation procedures;
11. Copies of applicable standards are disseminated to each private school and facility to which a district has referred or placed a student with a disability;
12. The implementation of all special education programs, including IEP and LRE requirements, for all eligible students with exceptionalities in the state, including students
    placed in residential institutions and private schools, incarcerated youth, and students with disabilities who are convicted as adults under state law and incarcerated in adult prisons is monitored through procedures such as written reports, on-site visits and parent questionnaires to assure the compliance with federal laws and regulations, state laws, policies, standards and regulations;
13. If there is evidence that a district makes placements that are inconsistent with LRE requirements, the WVDE conducts a review of the district's justification for its actions and assists in planning and implementing any necessary corrective actions;
14. Data, including data disaggregated by race and ethnicity, are examined to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities. If discrepancies are occurring, a review of the district's policies, practices and procedures

relating to the development and implementation of IEPs is conducted; if appropriate, they may be revised to include the use of positive behavior interventions and supports, and procedural safeguards, to comply with IDEA 2004.

15. Direct educational services are provided, including special education and related services for students with exceptionalities, in the State's correctional institutions in accordance with written procedures developed to implement applicable State and federal laws and regulations;
16. An opportunity is provided for those private schools and facilities to participate in the development and revision of State standards that apply to them in the provision of services to students with disabilities;
17. Assistance is provided to districts in the development and/or modification of educational programs of study to meet the needs of students with exceptionalities in early, middle, ~~adolescent~~ secondary and adult education;
18. Statewide planning for educational services for eligible students with exceptionalities is completed;
19. The Department participates in the development and provision of programs for the training of educational personnel related to special education issues and services;
20. Liaisons are established with:
    a. Other state and regional agencies, parent and professional organizations, and private agencies serving students with exceptionalities;
    b. Colleges and universities preparing personnel to work with students with exceptionalities; and
    c. Federal projects and national agencies which provide services for students with exceptionalities;
21. Districts, parents and other agencies are informed of the content and implications of regulations and State and federal laws pertaining to the education of eligible students with exceptionalities;
22. Each district establishes, maintains and implements procedural safeguards that meet the requirements of IDEA;
23. Methods for the provision of services are prescribed as follows:
    a. An interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in paragraph b. and the WVDE that are needed to ensure FAPE is provided, including the provision of these services during the pendency of any interagency dispute referred to below. The agreement or mechanism must include the following:
        i. An identification of, or a method for defining, the financial responsibility of each agency, including the state Medicaid agency and other public insurers of students with exceptionalities, for providing any services that are also considered special education or related services. The financial responsibility of each noneducational agency must precede the financial responsibility of the district (or the state agency responsible for developing the student's IEP);
        ii. The conditions, terms, and procedures under which a LEA must be reimbursed by other agencies;
        iii. Procedures for resolving interagency disputes from other agencies or otherwise implement the provisions of the agreement or mechanism; and
        iv. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of any services that are also considered special education.
    b. If any public agency other than an educational agency is otherwise obligated under federal or State law, or is assigned responsibility under State policy or pursuant to paragraph a. of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services relating to assistive technology devices, assistive technology services, supplementary aids, supplementary services, related services transition services) that are necessary for ensuring FAPE to students with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement.
    c. Ensure that a noneducational public agency described in b. of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

d. Ensure that if a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph b. of this section, the district (or state agency responsible for developing the student's IEP) must provide or pay for these services to the student in a timely manner. The district or state agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the district or state agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph a. of this section.

e. Ensure that the requirements are met through:
   i. State statute or regulation;
   ii. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
   iii. Other appropriate written methods as determined by the Chief Executive Officer of the state or designee of that officer; and

f. Document that the state has on file with the Secretary information that demonstrates the requirements of 23. a. – e. are met.

24. The State Performance Plan (SPP) for special education is developed, reviewed and/or revised, including performance goals and indicators, and progress is reported annually, including the progress of students with disabilities on statewide assessments, as required by the United States Department of Education;
25. Valid and reliable data and information needed to report annually to the United States Department of Education are collected, including data for the SPP, Annual Performance Report (APR) and IDEA, Section 618 reports;
26. Districts are given reasonable notice and an opportunity for a hearing under 34 CFR 76.401 (d) prior to the state making a final determination that a district is not eligible for assistance under Part B of IDEA;
27. The State's funding mechanism does not result in placements that violate the LRE requirements and does not distribute funds based on the students' placements that would result in the failure to provide a student with a disability FAPE according to the student's unique needs described on the IEP;
28. State and district personnel are prohibited from requiring parents to obtain a prescription for controlled substances (defined as those substances under schedules I,II,III,IV or V in section 202(c) of the Controlled Substances Act) as a condition of attending school, receiving an evaluation or receiving services;
29. State and district-wide assessments, to the extent possible, are developed and administered using universal design principles; and
30. Developing, annually reviewing and amending as necessary, a state plan for high cost/high acuity funds in accordance with 34 CFR §300.704(c) and West Virginia Code §18-20-5 in consultation with local educational agency representatives, to include a definition of children with high acuity needs.
31. A local school district superintendent may request an exception to Policy 2419: Regulations for the Education of Exceptional Students for extenuating circumstances by submitting a waiver request when student numbers exceed staffing ratios. Waivers to staffing ratios may be requested in writing through the OSE. Waivers may require an on-site visit, will be considered on a case-by-case basis and remain valid for the current school year.

C. Responsibilities of the Districts

The districts, including the West Virginia Schools for the Deaf and Blind and schools under the supervision of the WVDE Office of Diversion and Transition Programs, have the responsibility for implementing the requirements of the IDEA 2004 and West Virginia Code §18-20-2 and ensuring FAPE for students with exceptionalities. Districts have responsibility for providing quality educational services for eligible students with exceptionalities within their jurisdiction.

The districts are responsible for ensuring that:

1. Data that are maintained, collected and reported to the WVDE regarding special education students and personnel are accurate;
2. Information related to parentally-placed private school students is maintained and provided to the WVDE including:
    a. The number of students evaluated;
    b. The number of students determined to be student with a disability; and
    c. The number of students served.
3. The compliance with the regulations of agencies, organizations, or individuals who provide contractual special education and/or related services is monitored;
4. Other agencies, organizations, or individuals are informed of the State and federal requirements pertaining to the education of students with exceptionalities;
5. Ongoing program evaluations are conducted to improve the effectiveness of services provided to eligible students with exceptionalities; and
6. Personally identifiable student data are collected, maintained and disclosed in accordance with state and federal confidentiality requirements.

Section 2. State Performance Plan

West Virginia has a well-established commitment to improving results for all students as established in the Consolidated State Application and Accountability Workbook, and for students with exceptionalities through the Results and Compliance System Procedures (RCSP), IDEA 2004 and the SPP. IDEA 2004 and the SPP further require the district to measure progress through collecting and analyzing data relevant to the established performance and compliance indicators and targets. District plans to maintain progress or correct deficiencies are developed and implemented with stakeholder support.

A. Performance Goals and Indicators

IDEA 2004 requires states to measure progress annually on performance goals and indicators established by the U.S. Department of Education for students with disabilities related to participation and results on statewide assessments, graduation rates, drop-out rates, disproportionality and suspension rates. The SPP sets forth monitoring priorities and seventeen performance and compliance indicators, with measures specified for determining state and district performance. To the maximum extent possible, the goals for students with disabilities must be consistent with the goals and standards established by the State for all students. Performance targets and monitoring procedures for six years are included in the plan.

The SPP monitoring priorities are:

1. FAPE in the LRE, which includes graduation rates, dropout rates, participation and performance in statewide assessment, suspension rates, parent involvement, child find and placement in the LRE;
2. Disproportionality, which includes appropriate identification of racial/ethnic groups as students with disabilities; and
3. General supervision, which includes effective transition from early intervention to public school programs, effective secondary transition and post school outcomes, correction of noncompliance with IDEA requirements and effectiveness of the monitoring and dispute resolution systems.

WVDE Responsibility

The WVDE is required to collect, review and analyze data annually to determine whether the State and each district have met the established SPP targets on each of the seventeen indicators. Data are collected through three sources:

1. WVEIS, a dedicated statewide computer network with an integrated record system for all student, personnel and financial information through which all the data required by Section 618 of IDEA 2004 are collected;
2. The Results and Compliance System Procedures through which districts submit their self-assessment data; and
3. The dispute resolution (complaint, mediation and due process) web-based data systems.

The WVDE is required to report Section 618 data to the United States Department of Education, Education Data Exchange Network (EDEN) and the Office of Special Education Programs (OSEP) and to publicly report state and district data, which is accomplished primarily through the WVDE website. Section 618 reports include assessment participation and results, child count, race/ethnicity, educational environments, suspension, exit and personnel. Results on the seventeen SPP indicators are reported for the state in the Annual Performance Report, and for selected indicators for each district on the WVDE website. The SPP is revised as appropriate to ensure progress.

District Responsibility

The district is the primary unit for improving results, and progress on the SPP priorities and indicators depends on district efforts. The IDEA 2004 requires districts to adopt policies that are consistent with the WVDE's performance goals and indicators. Therefore, on an annual basis and as part of the district self-assessment requirements of the RCSP, the district will:

1. Use data-based decision-making procedures and a local steering committee to review and analyze Section 618 data and additional district-level data to determine if the district is making progress toward the State's performance goals and indicators and district self-assessment improvement plans;
2. Develop, implement, and revise district improvement plans as necessary to make progress toward performance goals and indicators, and submit these plans and progress reports as required to the WVDE; and
3. Correct any noncompliance on SPP compliance indicators within one year of notification by the WVDE.

B. State Monitoring and Determinations

WVDE Responsibility

The WVDE must monitor districts' implementation of the requirements of IDEA and this policy, and must ensure when a district's noncompliance is identified, it is corrected as soon as possible, and in no case later than one year after WVDE's notification of the noncompliance. The district will be notified of the noncompliance in writing. The noncompliance is corrected upon WVDE's review and approval of documentation and evidence submitted by the district of implementation of actions correcting the noncompliance.

District Responsibility

Upon notification in writing of a noncompliance with IDEA or Policy 2419, the district will develop and implement such corrective actions as are required to correct the noncompliance as soon as possible, and in no case later than one year from the date of notification. The district will provide to the WVDE the documentation required to verify the noncompliance has been corrected as soon as possible and within timelines set by WVDE to ensure timely review and approval of the documentation.

C. Statewide and District Assessment Reporting

WVDE Responsibility

The WVDE is required to collect and report statewide and district-wide (if applicable) assessment data, including the:

1. Number of students with disabilities participating in regular assessments and the number of those students who were provided accommodations;
2. The number of students participating in alternate assessment(s); and
3. The performance results of students with disabilities, if doing so is statistically sound and does not disclose results identifiable to individual students.

Whenever the WVDE reports information to the public on the assessment of students without disabilities, it must include the information above, as well as:

1. Aggregated data that includes the performance of students with disabilities together with all other students; and
2. Disaggregated data on the performance of students with disabilities.

District Responsibility

The district is accountable for appropriately including all students in statewide and district-wide assessments, with or without accommodations, if determined appropriate by the IEP Team following the Guidelines for Participation of Students with Disabilities in State Assessment. Therefore, on an annual basis and as part of the self-evaluation requirements of the WVDE's monitoring system, the district must:

1. Ensure that all students with disabilities participate in West Virginia Measures of Academic Progress (WVMAP);
2. Use data-based decision-making procedures to review and analyze district-level data to determine if the district is making progress in including all eligible students with disabilities in the statewide assessment program and in consistently improving the level of performance by students with disabilities; and
3. Develop, implement, and revise district improvement plans as necessary to make progress.

D. Suspension and Expulsion Rates

WVDE Responsibility

The WVDE is required to collect and analyze discipline data, including data disaggregated by race and ethnicity, from districts to determine whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities:

1. Among districts in the state; or
2. Compared to such rates for students without disabilities within the district.

District Responsibility

On an annual basis and as part of the self-evaluation requirements of the WVDE's monitoring system, the district must:

1. Ensure the suspension and expulsion data that it collects and reports to the WVDE are accurate;
2. Use data-based decision-making procedures to review and analyze district-level discipline data to determine if significant discrepancies are occurring between the long-term suspension and expulsion rates for students with and without disabilities; and
3. Develop, implement and revise district improvement plans, and when found to have a significant discrepancy, review and revise policies, procedures and practices as necessary to ensure that they are in compliance with the IDEA 2004 in relation to the following:
    a. The development and implementation of IEPs;
    b. The use of positive behavioral interventions and supports; and
    c. Procedural safeguards.

E. Disproportionality

WVDE Responsibility

The IDEA 2004 requires the WVDE to collect and analyze data to determine whether the state or districts have significant disproportionality of students identified as needing special education based on race and ethnicity. The state is required to report the:

1. Number and percentage of students in each particular racial/ethnic group who are identified as eligible for special education and weighted risk ratio indicating the chances of a student within the racial group being identified;
2. Percentage of students in each racial/ethnic group who are identified under particular categories of disability and weighted risk ratio indicating the chances of a student within the racial group being identified within particular categories; and
3. Percentage of students in each racial/ethnic group who are placed in particular special education settings and weighted risk ratio indicating the chances of a student within the racial group being placed in the setting.

In the case of a determination of significant disproportionality, the WVDE must provide for a review of the policies, procedures and practices used and require any district identified to reserve the maximum amount allowed under law of federal special education funds to provide comprehensive coordinated early intervening services. The district is required to publicly report on the revision of policies, procedures and practices.

District Responsibility

On an annual basis and as part of the self-evaluation requirements of the WVDE's monitoring system, the district must:

1. Use data-based decision-making procedures to review and analyze district-level data on race to determine if significant disproportionality exists; and
2. Review and, if appropriate, revise the district improvement plan, policies, procedures and practices used in the identification or placement of students to prevent disproportionality based on race.

Section 3. Personnel

A. Professional

The district must ensure that personnel working with students with disabilities are fully licensed or certificated whether they contract with or are employed by the district. The district must take measurable steps to recruit, hire and retain personnel who meet WVDE certification, licensure or other requirements for position assignments, including those for teachers, related service providers, paraprofessionals and assistants. Nothing in IDEA 2004 creates a right of action on behalf of a student or class of students for failure to employ fully licensed or certificated personnel or prevents a parent from filing a state administrative complaint about staff qualifications.

Public school special education teachers must meet the personnel qualification requirements in IDEA as amended by the ESSA:

1. Has obtained full state certification as a special education teacher (including participating in an alternate route to certification as a special educator) or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher.
2. Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis.
3. Holds at least a bachelor's degree.

1. All WV education personnel must complete professional learning annually to maintain employment. At least twelve (12) of the hours for speech-language pathologists (SLPs) and speech-language pathology assistants (SLPAs) must relate directly to their professional growth and development. Specific topics should include: augmentative/alternative communication; phonology; articulation; receptive/expressive language; swallowing; fluency; voice disorders; cognitive/social aspects of communication; hearing (impact on speech and language); assessment of students with speech-language disorders and other topics related to the practice of speech-language pathology.

   WVDE Responsibility

   The WVDE is required to provide twelve (12) hours of professional development directly related to speech-language pathologists' professional growth and development. Professional development information must be made available to the districts to facilitate registration.

   District Responsibility

   The district is accountable for documenting speech-language pathologists' participation in twelve (12) hours of professional development directly related to their professional growth development and submit such documentation to the West Virginia Department of Education. District provided professional development must be submitted to the West Virginia Department of Education for approval.

2. All WV education personnel must complete professional learning annually to maintain employment. At least twelve (12) of the hours for school psychologists must relate directly to their professional growth and development as specified by the NASP-Approved Standards and Domains of Practice (Adopted 2010). These areas/domains include data-based decision making and accountability; consultation and collaboration; interventions and instructional support to develop academic skills; interventions and mental health services to develop social and life skills; school-wide practices to promote learning; preventative and responsible services; family-school-community collaboration services; diversity in development and learning; research and program evaluation; and legal, ethical and professional practice.

   WVDE Responsibility

   The WVDE is required to provide twelve (12) hours of professional learning directly related to school psychologists' professional growth and development in collaboration with the professional state association. Professional development information must be made available to districts to facilitate registration.

   District Responsibility

   The district is accountable for documenting school psychologists' participation in the twelve (12) hours of professional development directly related to the school psychologists' professional growth and development. Districts provided professional development must be submitted to the West Virginia Department of Education for approval.

3. As specified in West Virginia Code §18-20-2 and §18A-20-4, a sign support specialist may be assigned to a student who is deaf or hard of hearing in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable.

WVDE Responsibility

The WVDE is required to approve a waiver for sign support specialist serving in lieu of an educational sign language interpreter after two years. This waiver is verification of a professional development plan when an educational sign language interpreter is unavailable.

District Responsibility

The cost of certification renewal and satisfying the requirements of the West Virginia Registry of Interpreters is paid in full by the employer for any service person who is:

a. Employed as an educational sign language interpreter I or II and is required to complete any testing, training or continuing education in order to renew or maintain certification at that level;
b. Employed as an educational sign language interpreter I and is required to complete any testing, training or continuing education to advance to an educational sign language interpreter II; or
c. Employed as a sign support specialist and is required to complete any testing, training or continuing education in order to advance to an educational sign language interpreter I or II.

B. Paraprofessionals, Assistants and Aides

The district may employ paraprofessionals, interveners, assistants, and aides who are appropriately trained and supervised to assist in the provision of special education and related services to students with disabilities if they meet standards established by the WVDE.

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Chapter 10
PROCEDURAL SAFEGUARDS

Education is a fundamental right and a necessary benefit for all West Virginia students. IDEA 2004 and Policy 2419 provide procedural safeguards, that is, procedures to protect the educational rights of students with exceptionalities who need changes in the manner in which their education is provided to ensure it is appropriate for their unique needs. These procedural safeguards ensure the student's right to free appropriate public education through informed parent/adult student participation in the special education process.

This chapter will address procedural safeguards of notice, consent, independent educational evaluation, and access to educational records. The remaining dispute resolution safeguards, state complaints, mediation, due process complaints, private placement, discipline, and attorneys' fees, are discussed in other chapters.

Section 1. Notice Requirements

IDEA 2004 and Policy 2419 require three types of notices, all of which must meet general requirements and additional criteria specific to the type of notice. The three types of notices are:

1. Procedural safeguards notice;
2. Prior written notice; and
3. Notice of meetings.

All notices must be written in the native language of the parent/adult student or other mode of communication used by the parent/adult student (unless it clearly is not feasible to do so) and must be written in an easily understandable manner. If the native language or mode of communication of the parent/adult student is not a written language, the district must take steps to ensure that the notice is translated orally or by other means to the parent/adult student in his or her native language or other mode of communication and the parent/adult student understands the content of the notice. The district must maintain written evidence that these requirements have been met.

Section 2. Procedural Safeguards Notice

To facilitate their informed participation, parents/adult students are informed of the extensive procedural safeguards through the Procedural Safeguards Available to Parents and Students with Exceptionalities document.

A. Procedural Safeguards Notice Contents

The notice includes a full explanation of the following procedural safeguards:

1. Independent educational evaluation;
2. Prior written notice;
3. Parent/adult student consent;
4. Access to educational records;
5. Opportunity to resolve complaints through due process complaints or the state complaint process, including:
    a. Time period in which to file a complaint;
    b. The opportunity for the agency to resolve the complaint;
    c. The difference between the due process and state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
6. The availability of mediation;
7. The student's placement during pendency of decisions in due process hearings;
8. Procedures for students who are subject to placement in an interim alternative educational setting;

9. Requirements for unilateral placements by parents of students in private schools at public expense;
10. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions; and
12. Attorneys' fees.

B. When the Procedural Safeguards Notice Is Provided

The district will provide the parent/adult student a procedural safeguards notice at least once per school year, that is, one copy between July 1 and June 30. Because notice must be provided on each of the following occasions, it may be necessary to provide more than one notice during a school year:

- Upon an initial referral or a parent/adult student request for evaluation;
- Upon the first occurrence of a filing of a due process complaint or state complaint alleging violations of Part B of IDEA 2004;
- Upon notice of a disciplinary removal resulting in a change of placement; and
- Upon request by the parent/adult student.

A parent/adult student may receive the procedural safeguards notice by electronic mail (e-mail) if the district makes that option available.

Section 3. Prior Written Notice

Prior written notice (PWN) is the act of informing a parent/adult student, in writing within a reasonable amount of time, before the district proposes or refuses to initiate or change the student's identification, the evaluation, educational placement, or provision of FAPE. PWN serves two purposes:

1. To provide the parent/adult student with enough information so that he or she is able to fully understand the district's proposed action(s) or refused action(s) and to make informed decisions, if necessary; and
2. To provide a framework for data-based discussion and problem solving.

A. Content of Prior Written Notice

PWN must include the following:

1. A description of the action proposed or refused by the district;
2. An explanation of why the district proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
4. A description of other options the IEP Team considered and the reasons why those options were rejected;
5. A description of other factors relevant to the district's proposal or refusal;
6. A statement that the parent/adult student has protection under the procedural safeguards, and if notice is not an initial referral for evaluation, a description of how to obtain a copy of the Procedural Safeguards Notice; and
7. Sources to contact in obtaining assistance in understanding their Procedural Safeguards Notice.

B. Timeline for the Provision of Prior Written Notice

PWN must be provided to the parent /adult student five days prior to implementing the proposed action or within five days of the refusal. This requirement does not apply to notice of disciplinary removals, which must be provided on the same day the decision to remove the student is made. If the district and parent agree, PWN must be provided and services may be initiated within a reasonable time, which may be fewer than five days.

Section 4. Notice of Meetings

To ensure that one or both of the parents of the student with an exceptionality are present at each meeting and are afforded the opportunity to participate in meetings, including EC and IEP meetings, the district must provide written notice by:

1. Notifying parents/adult students of the meeting early enough, i.e., no less than eight days prior to the scheduled meeting date, to ensure that they will have the opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.

The written notice must include:

1. The purpose, time, and location of the meeting;
2. Who will be in attendance; and
3. An explanation that at the discretion of the district or parent/adult student, other individuals who have knowledge or special expertise regarding the student as determined by the district or the parent/adult student inviting the individual, can attend the meeting.

When scheduling an initial IEP Team meeting for a child who was previously served in the WV Birth to Three program, the written notice must indicate this purpose, and indicate that the district will invite, at the parent's request, the WV Birth to Three service coordinator or other representative to assist with the smooth transition of services.

If the purpose of the meeting includes the consideration of post secondary goals and transition services for the student, at age sixteen, or younger if appropriate, the written notice must also indicate this purpose, indicate that the district will invite the student and identify any other agency that will be invited to send a representative. The parent/adult student must provide written consent to invite an agency representative to attend the IEP Team meeting.

Section 5. Parental Participation

To ensure parental participation in the special education process, the district must afford the parents of a student with an exceptionality an opportunity to inspect and review all education records with respect to the identification, evaluation and educational placement of the student, and the provision of a free appropriate public education to the student. The procedures for accessing education records are outlined in West Virginia State Board of Education Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data.

Parents must also be afforded an opportunity to participate in meetings with respect to the identification, evaluation and educational placement of the student, and the provision of a free appropriate public education to the student. Therefore, the district must take whatever action is necessary to ensure that the parent understands the proceedings at a meeting including arranging for an interpreter for parents with deafness or whose native language is other than English.

The district may conduct the EC and/or IEP Team meeting without a parent/adult student in attendance only when the district has documentation that reasonable measures have been taken to ensure parent/adult student participation. If unable to convince the parent/adult student that he or she should attend, the district must have a record of its attempts to arrange a mutually agreed upon time and place such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parent/adult student and any responses received; and/or
3. Detailed records of visits made with the parent/adult student and the results of those visits.

If neither parent can attend, the district must use other methods to ensure parent/adult student participation, including individual or conference telephone calls.

The district must obtain written parental consent for the initial provision of special education services and provide the parent a copy of the IEP, at no cost to the parent.

Section 6. Informed Consent

Informed consent is written approval given by a parent/adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information must be provided in the native language or mode of communication of the parent/adult student. The parent/adult student must be informed that the approval is voluntary and may be revoked at any time. Consent is indicated by the parent's /adult student's signature. If a parent/adult student revokes consent, the revocation is not retroactive, that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked. If consent is revoked after the student has initially been provided special education and related services, the district is not required to amend the student's educational records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

A. Informed Consent Required

Informed written consent is required before:

1. Conducting an initial evaluation or reevaluation to determine whether a student is eligible for special education when this involves more than a review of existing information. The district need not obtain parental consent for a reevaluation if the district can demonstrate and document that it made reasonable efforts to obtain consent and the parent has failed to respond.
2. Initially providing special education and related services to a student with a disability. Parent consent for initial evaluation may not be construed as consent for the initial provision of special education and related services. When a student with a disability transitions from WV Birth to Three to Part B services, the district must provide the student's parents a detailed explanation of the differences between an IFSP and an IEP. If the parent chooses an IFSP, the district obtains informed consent from the parent.
3. Disclosing personally identifiable information from the student's education records, unless provided as an exception under the FERPA and Policy 4350. The written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.
4. Accessing public benefits or insurance or private insurance to pay for services listed in the IEP. (See Chapter 1, Section 2, C.)
5. An agency representative likely to pay for or provide transition services attends an IEP meeting.
6. Personally identifiable information is released between officials in the district of residence and the district in which the private school is located.

B. Informed Consent Not Required

The district is not required to obtain informed consent in the following situations:

1. When a review of existing data is part of an evaluation or a reevaluation.
2. When tests are administered to both general and special education students in a grade or class and consent is not required for all students.
3. When a teacher or related-service provider conducts observations, ongoing classroom evaluation, or criterion-referenced tests, as described in the IEP, to determine the student's progress toward goals and benchmarks/objectives on the IEP.
4. When disclosing personally identifiable information to persons authorized to have access under FERPA.

C. Refusal to Give Consent

For initial evaluations, if the parent refuses consent or the parent fails to respond to a request to provide consent, mediation or due process procedures may be used, if appropriate. The district may not use the mediation or due process procedures if consent for the initial evaluation involves a student who has been parentally enrolled in a private school or is being home schooled.

If the parent refuses consent for or refuses to respond to a request for consent to initial provision of special education and related services after the district has documented reasonable efforts to obtain consent, the district cannot use mediation or due process to obtain placement. In this situation, the district is not considered in violation of the FAPE requirement and is not required to convene an IEP Team meeting or develop an IEP for the child for whom the parent refused consent.

The district may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit or activity, except as required by this part.

D. Failure to Respond to a Request for Consent Regarding Reevaluation

When a parent/adult student fails to respond to reasonable measures taken by the district to obtain written consent to determine continued eligibility, the district may proceed with the reevaluation. The district must have a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment.

E. Revoking Consent

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked only before the action occurs. Consent must be revoked in writing. If at any time subsequent to the initial provision of special
education and related services the parent/adult student revokes consent in writing for the continued provision of special education and related services, the district may not continue to provide special education and related services, but must provide prior written notice complying with Chapter 10, Section 3. before ceasing provision of special education and related services. The district is not considered in violation of the FAPE requirement and is not required to convene an IEP Team meeting or develop an IEP for the student for whom consent is revoked. Dispute resolution procedures may not be used to obtain agreement or a ruling that the services may be provided to the student,

Section 7. Independent Educational Evaluations

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the district responsible for the education of the student in question.

A. Right to an Independent Educational Evaluation

1. A parent/adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the district. The parent/adult student is entitled to only one IEE at public expense in response to a district evaluation.
2. The parent/adult student has the right to an IEE at his or her own expense at any time.
3. If the IEE meets the criteria outlined in Chapter 3, Section 4, the EC/IEP Team must consider the IEE in its decision making process.
4. The parent/adult student is not automatically entitled to have additional assessments beyond those determined necessary for an evaluation. However, if the parent/adult student is interested in additional

or different assessments and the district refuses to provide them, he or she may pursue additional assessments through a due process hearing request. In addition, the district may initiate a due process hearing to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the evaluation conducted by the district was appropriate, the parent/adult student still has the right to an IEE but at his or her own expense.

5. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the district was not appropriate.

B. Procedures for Requesting an Independent Educational Evaluation

Within five days of a parent/adult student's written request for an IEE at public expense, the district may ask why he or she disagrees with the evaluation obtained by the district, but the district cannot require an explanation. Within ten school days of the written request for an IEE, the district must give the parent/adult student information about where the IEE may be obtained and the agency criteria, consistent with evaluation criteria described in Chapter 3, applicable for IEE including:

1. The location for the evaluation;
2. The required qualifications of the examiner; and
3. The maximum allowable charges for specified evaluations based on reasonable and prevailing rates typically paid by the district for similar evaluations, to eliminate unreasonably excessive fees, including travel costs for necessary services not available in the community.

Except for the criteria listed above, the district may not impose other conditions or timelines if doing so would be inconsistent with the parent's/adult student's right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

A parent/adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's cost criteria. If an IEE that falls outside the district's cost criteria is justified, that IEE will be publicly funded.

C. District Responsibilities Following Independent Educational Evaluation Requests

If a parent/adult student requests an IEE at public expense, the district must do one of the following within ten school days of written request:

1. Agree, in writing, to pay for an IEE at reasonable and prevailing rates, and provide the district's IEE criteria and information about where an IEE may be obtained.
2. Offer WVDE mediation to try to resolve differences. This is only available if parents agree to mediate.
3. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the parent/adult student may pursue an IEE, but at his or her own expense.

If a parent/adult student asks the district to pay for an IEE that has already been obtained, the district must:

1. Pay for the IEE; or
2. Request WVDE mediation when parents agree to mediate; and/or
3. Request a due process hearing within ten school days of the receipt of the evaluation report to show that the evaluation obtained by the parent/adult student did not meet the criteria for a publicly funded IEE; or
4. Request a due process hearing within ten school days of billing to demonstrate that the district's evaluation was appropriate. The district does not have to pay for an IEE if the hearing officer finds for the district.

D. Considerations of the Independent Educational Evaluation Results

If a parent/adult student obtains an IEE and makes that evaluation available to the district, the results must be considered by the district, if the IEE meets the district's criteria, in any decision made with respect to the provision of FAPE. The results may also be presented as evidence at a hearing regarding the student. This is true regardless of whether the IEE is at the expense of the parent/adult student or district.

The results of an IEE cannot be the sole determining factor for eligibility. The EC has the responsibility to use existing evaluation data and other information from a variety of sources, in addition to the IEE, to determine whether a student has an exceptionality or continues to have a disability under Policy 2419.

Section 8. Surrogate Parents

A surrogate parent is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA 2004. The surrogate parent may represent a student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of FAPE to the student.

A. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district's special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

1. A parent cannot be identified.
2. A parent cannot be found after reasonable efforts to locate the parent.
3. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student's education, including special education, provided he or she meets the criteria for a district-appointed surrogate.
4. The student is an unaccompanied homeless youth as defined in Section 725 (6) of the McKinney-Vento Homeless Assistance Act.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the natural parent is available but chooses not to participate. When a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth below. The district will make reasonable efforts to assign a surrogate within thirty days after it determines that the student needs a surrogate.

B. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement and the provision of FAPE. The district must ensure the person selected and appointed as a surrogate parent:

1. Has knowledge and skills that ensure effective representation of the student.
2. Has no personal or professional interest that conflicts with the interest of the student.
3. Is not an employee of the WVDE, the district, or any other agency that is involved in the education or care of the student.

A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs may be appointed as temporary surrogates without regard to the above requirements until a surrogate can be appointed that meets all of the requirements of this section.

Section 9. Adult Students and the Transfer of Rights

An "adult student" is a student who is at least eighteen years of age to whom special education rights have transferred under the IDEA 2004 and West Virginia Code.

A. Discussion of the Transfer of Rights

Not later than the student's 17th birthday, the IEP Team must discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns eighteen years of age unless a court has appointed a legal guardian to represent the educational interests of the student. Beginning not later than the 17th birthday, the IEP must include a statement that the student has been informed of the rights that will transfer at age eighteen.

B. Notice of Transfer of Parental Rights at Age Eighteen

When the student's special education rights transfer at age eighteen, the parent and student must be notified that rights have transferred. The IEP must contain a statement that the student has been informed of the special education rights that have transferred to him or her.

C. Written Notice and IEP Team Participation

The right to receive written notice is always retained by both the parent and adult student. The parent will continue to receive copies of any notices, including those listed in Section 1 of this chapter. While a parent has the right to receive notices, only the adult student has the right to make decisions regarding his or her educational program.

Section 10. Confidentiality and Access to Records

The district must collect, use, and maintain information about a student to make appropriate decisions concerning special education and the provision of FAPE. IDEA 2004 and FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes also provide for the right of the parent/adult student to review and inspect records. The full requirements may be found in West Virginia State Board of Education Policy 4350: Collection, Maintenance and Disclosure of Student Data. School personnel with responsibilities for educational records must be trained in these policies.

Additional procedural safeguards include the right to file a state complaint alleging a violation of IDEA 2004, Policy 2419 or Policy 4350, the right to request mediation and the right to file a due process complaint. These procedural safeguards may be found in Chapter 11, Dispute Resolution.

Chapter 11

DISPUTE RESOLUTION

A variety of options are available to resolve disagreements between parents/adult students and districts related to the implementation of state and federal special education laws and regulations regarding the identification, evaluation or educational placement of a student or the provision of FAPE. The WVDE administers a dispute resolution system including the following processes that may be used singly or in combination:

1. Facilitated Individualized Education Program Team Meeting
2. State complaint including early resolution;
3. Mediation; and
4. Due process complaint including a resolution process.

Section 1. Facilitated IEP Team Meeting

A Facilitated IEP Team meeting is a voluntary early dispute prevention option utilizing an impartial facilitator to guide the IEP process during the meeting and to assist members of the IEP Team to communicate effectively. A student's IEP is developed by a collaborative team whose required members share responsibility for the process, content and results. An IEP Facilitator provides assistance to the IEP Team as a preventative measure before a potential conflict develops into a more serious dispute. The IEP Facilitator is an impartial third party, not a member of the IEP Team, and has no stake in decisions made by the team. Facilitation is the process of helping the IEP Team complete a task, solve a problem or come to agreement to the mutual satisfaction of the participants.

A. Responsibilities of an Individual/District Requesting a Facilitated IEP

A district and/or parent/adult student may request a Facilitated IEP by submitting a written request to the WVDE. The WVDE has made available a form for requesting a Facilitated IEP although its use is not required. The request must contain an original signature (i.e., facsimiles and e-mails will not be accepted). The district and/or parent/adult student must agree to use the Facilitated IEP process. A request must be made at least two weeks prior to the scheduled IEP Team meeting.

B. Responsibilities of the West Virginia Department of Education

The WVDE administers a system which ensures:

1. The Facilitated IEP is voluntary and agreed to by both parties;
2. The Facilitated IEP is not used to deny or delay a parent/adult student's right to a hearing on the issue or to deny any other rights afforded under Part B of the Act;
3. The Facilitation is conducted by a qualified and impartial facilitator who is trained in facilitation techniques;
4. Facilitators are assigned from the list of qualified facilitators on a rotational basis and are available during the timeframe for the IEP Team meeting;
5. The Facilitated IEP is free to the parties;
6. The Facilitated IEP Team meetings are scheduled in a timely manner and adhere to all required timelines.

The IEP Facilitator must be:

1. Qualified and trained in effective facilitation techniques and be verified by the WVDE as having met the requirements for qualified facilitators and be on the WVDE-maintained list of qualified individuals, and
2. Impartial (the criteria for impartiality are listed below).

The IEP Facilitator must not:

1. Be an employee of the WVDE or an employee of the district who is involved in the care and education of the student;
2. Have a personal or professional interest that conflicts with the facilitator's objectivity; or
3. Have a student enrolled in the district involved in the Facilitated IEP.

When a Facilitated IEP Team Meeting occurs as a result of a state complaint, mediation or a due process hearing, the procedures as stated in Section 1.B may be altered by an agreement, decision or order.

Section 2. State Complaint Procedures

The federal regulations for implementing Part B of IDEA 2004 require each state to administer a complaint system for investigating and resolving state complaints. A formal state complaint is a charge that special education laws or regulations are not being followed by a district or public agency.

A. Responsibilities of an Individual/Organization Filing a State Complaint

An individual or organization, including one from another state, may file a state complaint under the procedures described below. The complaint must be in writing and include:

1. A statement that a public agency or the WVDE has violated a requirement of Part B of IDEA 2004 or its implementing regulations or West Virginia Code §18-20 and implementing regulations Policy 2419: Regulations for the Education of Students with Exceptionalities and/or Policy 4350: Procedures for the Collection, Maintenance and Disclosure of Student Data;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations against a specific student:
    a. The name and address of the residence of the student;
    b. The name of the school the student is attending;
    c. In the case of a homeless student (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434 a (2), available contact information for the student and the name of the school the student is attending;
    d. A description of the nature of the problem of the student, including facts related to the problem; and
    e. A proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. The party filing the complaint must forward a copy of the complaint to the district or public agency serving the student at the same time the party files the complaint with the WVDE. The WVDE has made available a form for filing a state complaint. Although the use of this form is not required, the complaint must be in writing and meet the criteria in 1. – 4. as described above.

B. Responsibilities of the West Virginia Department of Education

The WVDE has adopted written procedures for responding to or investigating complaints and widely disseminates these procedures to parents and other interested individuals including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities in the state.

Within sixty days after the complaint is filed, the WVDE must:

1. Carry out an independent on-site investigation if the WVDE determines the state complaint is sufficient. The WVDE will conduct an on-site investigation, if determined necessary based upon the nature of the allegations, review of information submitted by the parent/adult student and the district and information obtained through telephone interviews;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the district with the opportunity to respond to the complaint, including at a minimum, a proposal to resolve the complaint; and an opportunity for the district and the parent/adult student to voluntarily engage in mediation and/or early resolution;
4. Review all relevant information and make an independent determination as to whether the public agency is violating state or federal special education laws or regulations;
5. Issue a written decision to the district and the parent/adult student that addresses each allegation in the complaint and contains:
    a. Findings of facts and conclusions;
    b. The reasons for the WVDE's final decision; and
    c. Procedures for effective implementation of the WVDE's final decisions, if needed, including:
        i. Technical assistance activities;
        ii. Negotiations; and
        iii. Corrective actions, including timelines, to achieve compliance. Timelines for completion of corrective activities will only be extended, if requested by the district within five days of the district's receipt of the decision, based upon exceptional circumstances.
6. Address the district's failure to provide appropriate services, including corrective activities to effectively address the needs of the student, and appropriate future provision of services for all students with disabilities; and
7. Permit an extension of the sixty-day time limit only if exceptional circumstances exist with respect to a particular complaint or if the parent and the district involved agree to extend the time to engage in mediation or other alternative dispute resolutions.

C. State Complaints and Due Process Complaints

If a written state complaint is received that is also the subject of a due process complaint, or contains multiple issues of which one or more are part of the due process complaint, the WVDE must set aside any part of the state complaint that is being addressed in the due process complaint until the conclusion of the hearing. Any issue that is not a part of the due process action will be resolved following the established state complaint procedures and timelines. For issues that are addressed in the due process hearing, the hearing officer's decision is binding on those issues and the WVDE must inform the complainant to that effect. Any remaining issues not addressed in the due process hearing decision will be investigated upon receipt of the hearing decision by the WVDE in accordance with the established state complaint procedures and timelines.

If an issue raised in a state complaint filed under this section has previously been decided in a due process hearing involving the same parties, the due process decision is binding on that issue and the WVDE must inform the complainant that the state complaint process cannot be used to overrule the due process decision.

A state complaint alleging a district's failure to implement a due process hearing decision must be investigated and resolved by the WVDE utilizing the state complaint procedures described in Section 1.B. of this chapter.

D. Early Resolution to State Complaints

Either the district or the parent/adult student may request early resolution to a state complaint investigation by contacting the other party and participating in a local conference if both the district and parent voluntarily agree to utilize the early resolution option. If early resolution is reached on any or all allegations within fifteen days of being notified of the receipt of the state complaint, the school district need not submit its written response to the allegations to the WVDE, and the state complaint will be considered resolved. However, the district must provide to the WVDE the signed Verification of Early Resolution form. Allegations not resolved will be investigated using these procedures.

Section 3. Mediation

Mediation is an informal, non-adversarial, confidential and voluntary process in which an impartial third party, the mediator, provides an opportunity to the parties involved in a dispute to resolve their differences and create a mutually satisfactory solution. IDEA 2004 requires that each state make mediation available to help districts and parents/adult students resolve disputes relating to any matter under IDEA. Mediation may take place at any time regardless of the filing of a due process and/or state complaint. Another component of the mediation system is an optional meeting to encourage mediation, which is described in Part C of this section.

The WVDE makes mediation information available to parents/adult students through the WVDE procedural safeguards document when a state complaint is filed for the first time, when a due process complaint is received and/or upon request of a parent/adult student or district who are attempting to resolve differences relating to the identification, evaluation or educational placement or the provision of FAPE to a student with a disability or an exceptionality.

A. Responsibilities of an Individual/District Requesting Mediation

A district and/or parent/adult student may request mediation by submitting a written request to the district or the WVDE. The WVDE has made available a form for requesting mediation although its use is not required. The request must contain an original signature (e.g., facsimiles and e-mails will not be accepted). The district and/or parent/adult student must both agree to use the mediation process.

If the parties resolve the dispute through the mediation process, the mediator will help the parties execute a legally binding agreement that sets forth that resolution. The agreement must:

1. State that all discussions that occurred during the mediation process will remain confidential and not be used as evidence in any subsequent due process hearing or civil proceedings; and
2. Be signed by both the parent/adult student and the representative of the district who has the authority to bind the district.

If mediation fails to produce an agreement, or if either party requests termination of the mediation process, the mediator must issue a statement to the parties and the WVDE that the process has been terminated.

An agreement reached by the parties through WVDE mediation is enforceable in state and federal courts.

B. Responsibilities of the West Virginia Department of Education

In accordance with IDEA 2004, the WVDE administers a system of mediation, which ensures:

1. Mediation is voluntary and is agreed to by both parties;
2. Mediation is not used to deny or delay a parent/adult student's right to a hearing on the issue, or to deny any other rights afforded under Part B of the Act;
3. Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques;

4. Mediators are assigned from the list of qualified mediators on a rotational basis;
5. Mediation is free to the parties;
6. Parties to the mediation are informed of the confidential nature of the discussions that occur during mediation and these discussions may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute;
7. Parties may be required to sign a confidentiality agreement at the conclusion of the mediation;
8. Mediation sessions are scheduled in a timely manner and must be held in a location that is convenient to the parties in the dispute; and
9. That, if the parties resolve the dispute through the mediation process, the parties must execute a legally binding agreement that:
    a. Describes the resolution;
    b. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
    c. Is signed by both the parent/adult student and a representative of the district who has the authority to bind the agency.

Mediators must be:

1. Qualified and trained in effective mediation techniques and in the requirements of IDEA 2004 and Policy 2419 (i.e., verified by the WVDE as having met the requirements for qualified mediators and on the WVDE-maintained list of qualified individuals); and
2. Impartial (the criteria for impartiality are listed below).

Mediators must not:

1. Be an employee of the WVDE or an employee of the district that is involved in the care and education of the student; or
2. Have a personal or professional interest that conflicts with the person's objectivity, including, but not limited to, representing boards of education or parents against boards of education (i.e., attorneys, advocates) and having a student enrolled in the district involved in the dispute.

A person who otherwise qualifies as a mediator is not an employee of the WVDE or an employee of the district solely because he or she is paid by the WVDE to serve as a mediator.

C. Meeting to Encourage Mediation

For parents and schools that choose not to use the mediation process, districts may establish procedures to offer parents/adult students an opportunity to meet at a convenient time and location with a disinterested party who:

1. Is under contract with an appropriate alternative dispute resolution entity, or a parent and training information center, or community parent resource center; and
2. Who would explain the benefits of, and encourage the use of the mediation process to the parents/adult students.

Section 4. Due Process Complaints

A due process complaint to request a due process hearing may be filed to resolve disputes on any matter related to the identification, evaluation, educational placement of a student or the provision of a FAPE. The procedures relevant to due process complaints do not apply to students placed in a private school by the parent for issues regarding the provision of services, however, due process procedures do apply to child find, evaluation and reevaluation. Additionally, a parent who has unilaterally placed their child in a private school where FAPE is an issue, may file a due process

complaint. Impartial due process hearing officers contracted by the WVDE conduct all hearings. Appeals of hearing decisions must be filed in state or federal court.

A. Filing a Due Process Complaint

A parent/adult student, the district or an attorney representing a party may file a due process complaint by contacting the district superintendent or the WVDE. The WVDE has a form available for submitting a due process complaint. Although the use of this form is not required, the complaint must be in writing and mailed or hand delivered to the other party and the coordinator responsible for due process complaints at the WVDE.

A due process complaint must be initiated within two years of the date the parent/adult student or district knew or should have known of the disputed decision or alleged action that forms the basis for the complaint. The two-year timeline will not apply if the parent/adult student was prevented from filing a complaint due to specific misrepresentations by the district that it had resolved the problem forming the basis of the due process complaint or the district's withholding information it was required to provide to the parent/adult student.

The WVDE informs a parent/adult student of any free or low-cost legal or other relevant services available to him or her if a due process complaint is filed or if the parent/adult student requests such information.

The burden of proof will be on the party seeking relief in accordance with the decision in Shafter v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163L. Ed.2d 387 (2005).

The party, or the attorney representing the party, must forward a copy of the due process complaint to the other party and to the WVDE, which must remain confidential.

B. Due Process Complaint Components

A due process complaint must be made in writing and must include the following:

1. The student's name, address of the residence of the student and the school the student is attending;
2. In the case of a homeless child or youth (within the meaning of the McKinney-Vento Homeless Assistance Act), available contact information for the student, and the name of the school the student is attending;
3. A specific description of the student's problem relating to the proposed or refused initiation or change, including the facts pertaining to the problem;
4. A proposed resolution of the problem to the extent known and available at the time; and
5. The signature of the individual requesting the due process hearing.

C. Sufficiency of Due Process Complaints

The district or the parent/adult student may not have a hearing on a due process complaint or participate in an early resolution session unless the due process complaint is sufficient; that is, meets the criteria in 1. – 5. listed in Section B., Due Process Complaint Components.

The due process complaint must be considered sufficient unless the district or the parent/adult student receiving the due process complaint notifies the hearing officer and the other party in writing within fifteen days of receipt of the due process complaint that the receiving party believes that the due process complaint does not meet the requirements of 1. – 5. as listed in Section B., Due Process Hearing Complaint Components.

The due process hearing officer must make a determination of sufficiency, on the face of the complaint, within five days of receiving notice that the party subject to the due process complaint believes that the due process complaint is insufficient. The hearing officer must immediately notify the parties in writing of the determination.
A party may amend a due process complaint only if:

1. The other party consents in writing to the change and is given the opportunity to resolve the due process issues through the resolution process described below; or
2. The hearing officer grants permission to amend the due process complaint no later than five days before the due process hearing begins.

If a party files an amended due process complaint, the timelines begin again for the resolution meeting and the resolution period as described in Section E., Resolution Process.

D. Responding to a Due Process Complaint

The party, the district or the parent, receiving a due process complaint must, within ten days of receiving the due process complaint notice send to the other party a response that specifically addresses the issues raised in the due process complaint notice and include the following:

1. An explanation of why the district proposed or refused to take the action raised in the due process complaint;
2. A description of other options the IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report that the district used as a basis for the proposed or refused action; and
4. A description of other factors relevant to the district's proposal or refusal.

Providing the parent/adult student with PWN does not preclude the district from asserting that the parent/adult student's due process complaint was insufficient, where appropriate.

E. Resolution Process

Resolution Meeting

The purpose of the resolution meeting is for the parent/adult student to discuss the due process complaint, and the facts that form the basis of the due process complaint, so the district has the opportunity to resolve the dispute that is the basis for the due process complaint. Within fifteen days of receiving a due process complaint from the parent as the party and prior to initiating a due process hearing, the district must convene a resolution meeting.

The "resolution team" includes the parent/adult student, a representative of the district who has decision-making authority and relevant members of the IEP Team as determined by the school district and the parent/adult student who have specific knowledge of the facts identified in the complaint. The district's attorney will not attend the resolution session unless an attorney will accompany the parent/adult student.

The district must proceed with the resolution meeting even if it has challenged the sufficiency of the parent's due process complaint. The WVDE or district may not suspend the 15-day resolution meeting timeline while schools are closed for breaks or holidays.

If the district has not resolved the due process complaint to the satisfaction of the parent/adult student within thirty days of the receipt of the due process complaint, the due process hearing may occur and the timeline for issuing a decision begins at the expiration of this thirty-day period.

Resolution Period

The resolution meeting need not be held if:

1. Both parties agree in writing to waive the meeting; or
2. Both parties agree to participate in mediation.

Except where 1. or 2. above apply, failure of the parent/adult student to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. If the district fails to hold the resolution meeting within fifteen days of receiving notice of a parent's/adult student's due process complaint or fails to participate in the resolution meeting, the parent/adult student may seek the intervention of a hearing officer to begin the due process hearing timelines. In cases where the district is unable to obtain the participation of the parent/adult student in the resolution meeting after reasonable efforts have been made and documented as specified in Chapter 10, Section 5, Parent Participation, the district may at the end of the thirty-day resolution period request that a hearing officer dismiss the parent's/adult student's due process complaint.

Adjustments to the 30-day Resolution Period

The 45-days timeline for the due process hearing starts the day after one of the following occurs:

1. Both parties agree in writing to waive the resolution meeting;
2. After either the mediation or resolution meeting starts, but before the end of the thirty-day period, the parties agree in writing that no agreement is possible; or
3. If both parties agreed in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or district withdraws from the mediation process.

Written Settlement Agreement

If a resolution is reached regarding the issues raised in the due process complaint, the district representative and parent/adult student will sign a legally binding document that is enforceable in state and federal court. If the parties sign a written agreement that adjusts the thirty-day resolution period by one of the three methods described above, either party may void this agreement within 3 business days of signing the agreement.

F. Responsibilities of the West Virginia Department of Education

IDEA 2004 requires that each state administer a due process complaint system as a means to resolving disputes between districts and parents/adult students. The WVDE has the following responsibilities with regard to the implementation of the WVDE due process complaint system:

1. Provide assistance in alternative means for submitting due process complaints in instances where parents are unable to submit written requests;
2. Develop a model form to assist parents/adult students in filing a due process complaint;
3. Maintain a list of attorneys trained to serve as hearing officers. The listing must include a statement of the qualifications of each person and must be provided to each district and to any party who requests the information in writing;
4. Inform the parties of the availability of mediation when a due process complaint is initiated or the parties request the information;
5. Provide information regarding any free or low-cost legal, and other relevant services in the area, to the parent/adult student if the parent/adult student requests the information or when the parent/adult student or district files a due process complaint;
6. Ensure that all required timelines for due process complaint resolution process and due process hearings are met; and

7. Transmit findings and decisions from due process hearings, after deleting any personally identifiable information, to the West Virginia Advisory Council for the Education of Exceptional Children and make those findings and decisions available to the public.

G. Qualifications of Due Process Hearing Officers

WVDE will ensure that due process hearing officers, at a minimum, have the following qualifications:

1. A law degree;
2. Admission to the West Virginia State Bar;
3. The knowledge of, and the ability to understand IDEA 2004 and federal regulations and Policy 2419 pertaining to the Act, and legal interpretations regarding special education law, regulations and state policy by federal and state courts;
4. The knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;
5. The knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice;
6. Competencies in due process, special education law, effective writing and speaking, decision-making and related areas, as evidenced through application, interview, and competency-based training; and
7. Impartiality (see specific criteria listed below).

Due process hearing officers must not be:

1. A person who is an employee of the WVDE or the district that is involved in the education or care of the student; or
2. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing; or
3. A lawyer who represents boards of education or parents in actions against boards of education.

An otherwise qualified due process hearing officer:

1. Must be ineligible to begin hearing officer training or to serve as a hearing officer during the pendency of any action in which he or she represents boards of education or parents in actions against boards of education and for one year following the conclusion of this representation; and
2. Is not an employee of the WVDE solely because he or she is paid by the Department to serve as a hearing officer.

H. Selection of Due Process Hearing Officers

Upon receipt of a written request for a due process complaint, the WVDE must select a hearing officer by:

1. Using a rotational selection process from the list of qualified hearing officers;
2. Making an initial determination whether the hearing officer has a personal or professional interest which would conflict with objectivity in the hearing;
3. Selecting a new hearing officer if conflict is determined or the hearing officer is unavailable to conduct the hearing within timelines; and
4. Allowing either party to submit a challenge for cause to remove a hearing officer. This challenge must be submitted in writing to the hearing officer.

I. Due Process Hearing Rights

The party requesting a due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

Any party to a hearing or an appeal has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to students with exceptionalities; State law determines whether parties have the right to be represented by nonattorneys at due process hearings.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses and compel the production of relevant documents;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain written, or at the option of the parent/adult student, electronic, verbatim record of the hearing; and
5. Obtain written, or at the option of the parent/adult student, electronic findings of fact and decisions.

In addition, the following apply to disclosure of information:

1. At least five business days prior to conducting a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
2. A hearing officer may bar any party that fails to comply with the above from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

Parents/adult students involved in hearings must be given the right to:

1. Have the student who is the subject of the hearing present;
2. Open the hearing to the public;
3. Have the record of the hearing and the findings of fact and decisions provided at no cost to the parent/adult student;
4. Be provided with interpreters for the deaf or interpreters fluent in the primary language of the home as needed at public expense at all stages of the due process procedures;
5. Have the hearing conducted at a time and place that is reasonably convenient; and
6. File a due process complaint on an issue separate from a due process complaint already filed.

J. Student's Status During Proceedings

During the pendency of any administrative or judicial proceeding regarding a due process complaint (except as provided for under Section L., 5.), unless the state or local agency and the parent/adult student agree otherwise, the student involved in the complaint must remain in his or her current educational placement. If the complaint involves an application for initial admission to public school, the student, with the consent of the parent, must be placed in the public school until the completion of all the proceedings.

If a complaint involves initial services for a child transitioning form Part C to Part B and the child is no longer eligible for Part C services because he/she turned three, the district is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of services, the district must provide those services that are not in dispute between the parent and the district.

If the decision of a hearing officer in a due process hearing agrees with the parent/adult student that a change of placement is appropriate, that placement must be treated as an agreement between the district and the parent/adult student.

K. Timelines and Convenience of Hearings

Not later than forty-five days after the expiration of the resolution process thirty-day period or the adjusted time periods described in Section 3, E., the hearing officer will issue a final decision, mailing a copy of the decision to each of the parties.

A hearing officer may grant specific extensions of time beyond the above timeline at the request of either party.

Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent/student involved.

L. Expedited Due Process Complaint

An expedited due process hearing is used only for disciplinary issues (refer to Chapter 7, Section 3.A) and may be requested with the WVDE, under the following circumstances:

1. The parent/adult student with a disability disagrees with a decision regarding a manifestation determination or with any decision regarding placement for disciplinary reasons, or
2. The district believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others.

M. Due Process Hearing

The impartial hearing officer must:

1. Preside at the hearing;
2. Conduct the proceedings in a fair and impartial manner; and
3. Take steps to assure that the hearing will be conducted and completed in an efficient manner.

Hearing officers must have the power to issue subpoenas requiring testimony and/or the production of books, papers, and physical or other evidence. Any person served with a subpoena pursuant to this section may object and ask the hearing officer in writing to quash or modify the subpoena as illegally or improvidently issued. The hearing officer must immediately issue a decision on that validity of the subpoena. Any person served with a subpoena pursuant to this section must have the right to petition the United States District Court for the county in which the hearing is to be held for an order to quash any subpoena issued pursuant to this section. A hearing officer may petition said court for an order of enforcement of a subpoena issued by the hearing officer. Nothing in this section must prohibit the hearing officer from refusing to issue subpoenas which are requested for purposes of harassment, abuse of process, delay or which are obviously directed to persons who have no direct evidence in the matter to be heard.

A hearing officer's determination of whether a child received FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:

1. Impeded the student's right to FAPE;
2. Significantly impeded a parent's/adult student's opportunity to participate in the decision-making process regarding the provision of a FAPE; or
3. Caused a deprivation of educational benefit.

A hearing officer may order a district to comply with procedural requirements regardless of whether a district's failure resulted in a denial of FAPE.

A decision made in a hearing is final except that any party involved in the hearing may appeal the decision through civil action.

N. Civil Action

Any party aggrieved by the findings and decisions made in the hearing has the right to bring a civil action with respect to the due process hearing complaint notice in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within 90 days of the issuance of the hearing officer's written decision.

In any action brought under the above, the court must:

1. Receive the records of the administrative proceedings;
2. Hear additional evidence at the request of a party; and
3. Grant the relief that the court determines to be appropriate based upon the preponderance of the evidence.

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act. The procedures under 300.507 and 300.514 must be exhausted to the same extent as required had the action been brought under section 615 of the Act.

O. Attorneys' Fees

Parents are informed through the procedural safeguards notice that reasonable attorneys' fees may be awarded to parents of students with disabilities to cover attorneys' fees when the parent of a student with a disability is the prevailing party, subject to certain constraints, and that such attorneys' fees may be agreed to by the parties or awarded by a court. IDEA, Part B funds may not be used to pay attorneys' fees.

The court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing party who is the:

1. Parent of a child with a disability;
2. WVDE or district against the attorney of a parent/adult student who files a complaint that is frivolous, unreasonable or without foundation, or against the attorney of a parent/adult student who continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or
3. WVDE or district against the attorney of a parent/adult student, or against the parent/adult student, if the parent's/adult student's due process complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

A court awards reasonable attorneys' fees based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process complaint, at any time more than ten days before the proceeding begins;
2. The offer is not accepted within ten days; and
3. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP Team, including resolution meetings, unless the meeting is convened as a result of a due process decision or judicial action.
The court may award attorneys' fees and related costs to a parent/adult student who is the prevailing party and who was substantially justified in rejecting the settlement offer.

The court may reduce the amount of the attorneys' fees if the court finds the:

1. Parent/adult student, or the parent's/adult student's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
2. Amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
3. Time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. Attorney representing the parent/adult student did not provide to the district the appropriate information in the due process complaint notice.

The above provisions 1-4 do not apply if the court finds that the WVDE or district unreasonably protracted the final resolution of the action or proceeding or there was a violation of procedural safeguards.

GLOSSARY

Acceleration	Moving through a prescribed course of study at a faster or earlier rate. Acceleration includes, but is not limited to: compacted classes/schedules, testing out, advanced placement (if college credit is earned), fast-paced curriculum and high school credit for college classes.
Accommodation	An accommodation is an effort to alter the representation, presentation, or the student's engagement with the curriculum to enhance access and progress. Accommodations are changes in assessment or curriculum that do not alter the validity, reliability, or security of the test or curriculum. An accommodation does not alter what the student is expected to know. Accommodations do not change the content and are not considered interventions.
Adaptive Physical Education	General physical education, which has been modified or adapted, so that a student with disability can participate in the general physical education program. Modifications may include, but are not limited to, instructional adaptations and/or modified or specialized equipment.
Adaptive Skills	Those skills necessary to function adequately within a person's present environment. These skill areas are: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.
Adult Education	The educational program that addresses the intellectual, physical, social/emotional and occupational needs of persons sixteen years old and older who presently are not enrolled in a public school.
Adversely Affects	Interferes with the student's educational performance to the extent that the student is unable to achieve in the general education program within the range of functioning of the student's chronological age peers without exceptionalities.
Age-Appropriate	The term applies to peers of similar chronological ages or settings in which peers of similar chronological ages without exceptionalities are served.
State-Defined Alternate Diploma	Eligible students with disabilities who have been determined by an IEP Team to be unable, even with extended learning opportunities and significant instructional accommodations, to meet state and county standard graduation requirements may receive a State-defined alternate diploma. These students participate in the alternate assessment based on alternate academic achievement standards. The State-defined alternate diploma must be standards-based, be aligned with State requirements for the regular high school diploma and be obtained within the time period for which the State ensures the availability of a free appropriate public education (FAPE).
Annual Goal	Measurable statements developed from the present levels of educational performance that project what a student with an exceptionality can reasonably be expected to accomplish within a twelve-month period. For students with exceptionalities, annual goals must relate to helping students be involved in and progress in the general curriculum. For students with disabilities, annual goals will

also address other educational needs that arise due to the student's disability and help them participate in extracurricular and nonacademic activities.

Assistive Technology Device

Any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of students with disabilities. The term does not include a medical device that is surgically implanted, or the replacement of such a device.

Assistive Technology Service

Any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
4. Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a student with a disability or, if appropriate, that student's family; and
6. Training or technical assistance for professionals, (including individuals providing education or rehabilitation services) employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student with a disability.

Audiological Services

Services provided by a qualified audiologist include:

1. Identification of students with hearing loss;
2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
6. An appropriate aid, and evaluating the effectiveness of amplification.

Behavior Intervention Plan (BIP)

Written, purposeful and individualized plan based upon a student's functional behavioral assessment. The BIP describes the positive behavioral interventions, strategies and supports required to implement the student's IEP goals and objectives in the areas of social, emotional and/or behavioral development. The BIP may include, but is not limited to:

Environmental modifications that reduce the likelihood of the problem behavior;

1. Guidance, structured opportunities and/or instruction in the use of new skills as a replacement for problem behaviors;
2. Consequences to promote positive change and diminish problem behavior;
3. A crisis management plan (if appropriate); and
4. Procedures for monitoring, evaluating and reassessing the plan as necessary.

Business Day	Means Monday through Friday, except for Federal and State holidays, (unless holidays are specifically included in the designation of business day).
Career and Technical Education	Organized educational programs that are directly related to the preparation of individuals for employment.
Case Management	The maximum number of students for whom a special education teacher has primary responsibility in performing the administrative functions of the IEP process including: 1. Setting up meetings; 2. Ensuring appropriate forms are completed; 3. Ensuring timelines are met; and 4. Notifying participants of the times and dates of meetings.
Class List	The maximum number of students for whom a special education teacher has responsibility for direct instruction per instructional period.
Close Adult Supervision	The provision of staff to address the behavioral, academic, medical, health, safety or other needs of a student to enable them to make progress toward the goals of their IEP and be educated in the least restrictive environment.
Collaboration	A style of interaction in which two or more professionals work together toward a common goal.
Communication	Includes the ability to comprehend and express information through symbolic behaviors (e.g., facial expression, body movement, touch, gesture). Specific examples include the ability to comprehend and/or receive a request, an emotion, a greeting, a comment, a protest, or rejection. Higher level skills of communication (e.g., writing a letter) would also relate to functional academics.
Community- Settings	Community environment(s) in which the student will be expected to use/apply the skills or behaviors that are being learned.
Community Use	Refers to the appropriate use of community resources. This includes traveling in the community, shopping for groceries and other items, purchasing or obtaining services from community businesses (e.g., gas stations, repair shops, doctor's offices), attending places of worship, using public transportation, and using public facilities (e.g., schools, parks, libraries, recreational centers, streets, sidewalks, theaters). Related skills include appropriate behavior in the community, indicating choices and needs, social interaction, and the application of functional academics.

Confidentiality	The protection of all personally identifiable data, information and records collected or maintained by any agency or institution under the general supervision of the West Virginia Board of Education.
Consent	1. The "parent" has been fully informed of information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; 2. The "parent" understands and agrees in writing to the carrying out of the activity for which her or his consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; 3. The "parent" understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and 4. If a "parent" revokes consent, that revocation is not retroactive (i.e. it does not negate an action that has occurred after the consent was given and before the consent was revoked).
Consultation	An interaction in which a party provides assistance and expertise to assist another party. A special education teacher in WV who is not certified or highly qualified in the core academic area being taught serves in a consultative role as he or she contributes to teaching and learning in that core content area. Examples of these responsibilities are provided in Policy 5202.
Continuum of Alternative Placements	A range of settings in which eligible students with exceptionalities receive special education and related services.
Controlled Substance	A drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812 (c)).
Core Academic Subjects	English language arts/reading, mathematics, science, foreign language, civics and government, economics, arts, history and geography.
Co-teaching	When two or more educators co-plan, co-instruct, and co-assess a group of students with diverse needs in the same general education classroom. (Murawski, 2005).
Counseling Services	Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
Critical Skills	The cognitive, physical, communication, and/or social/emotional abilities needed for the student to maintain current levels of performance.
Dangerous Weapon	A weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such a term does NOT include a pocket knife with a blade of less than two and one-half inches in length (18 U.S.C. Section 930(g)(2)).

Day; Business	Day means calendar day unless otherwise indicated as school day or business day.
Day; School Day	Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day.) School day means any day, including a partial day that students are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without exceptionalities.
Destruction	Physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
Direct Services	Instruction, therapy or interventions provided one-on-one or in groups to an eligible student with an exceptionality in school, home or community settings.
Disciplinary Removal	Any instance in which a child is removed from his/her educational placement for disciplinary purposes, including in-school suspension, out-of school suspension, expulsion, removal by school personnel to an interim alternative educational setting for drug or weapon offenses or serious bodily injury, and removal by hearing officer for likely injury to self or others.
District	Has the same meaning as county school or local education agency. In West Virginia there are fifty-seven local school districts which include the fifty-five county districts, the West Virginia Schools for the Deaf and Blind and the schools operated by the WVDE, Office of Institutional Education Programs.
Drug Offenses	The use, possession, sale, or solicitation of drugs as identified in 21 U.S.C. Section 812(c). These offenses do not include use, possession, sale or solicitation of alcohol or tobacco.
Early Identification and Assessment	The implementation of a formal plan for identifying a disability as early as possible in a child's life.
Early Learning Programs	The educational program that addresses the intellectual, physical, and social/emotional needs of learners, across all programs and areas of study in grades Pre-K –five.
Economically Disadvantaged	A student whose family income meets the federal guidelines for reduced or free school lunch.
Education Records	Those records which are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution.
Educational Sign Language Interpreter	A paraprofessional meeting the requirements of Policy 5202: *Licensure of Professional/Paraprofessional Personnel*, who provides related services using sign language/communication systems and spoken languages in public school settings for purposes of providing access to the general curriculum, classroom dynamics, extracurricular activities and social interactions for students who are deaf and hard of hearing.

Educational Performance	A student's functioning (or performance) relative to age/grade performance in programs of study, basic communication skills, social interaction and emotional development within the school and/or community environments.
Eligible Students with Exceptionalities	Those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained in this document, have been identified as having one of the following exceptionalities: 1. Autism, emotional/behavioral disorder, blindness and low vision, speech/language impairment, deafblindness, deaf and hard of hearing, gifted, exceptional gifted (grades nine - twelve) intellectual disability, orthopedic impairment, other health impairment, developmental delay, specific learning disability, traumatic brain injury; and 2. Need special education.
Eligible Students with Disabilities	Those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained in this document, have been identified as having one of the following disabilities: 1. Autism, emotional/behavioral disorder, blindness and low vision, speech/language impairment, deafblindness, deaf and hard of hearing, intellectual disability, orthopedic impairment, other health impairment, developmental delay, specific learning disability, traumatic brain injury; and 2. Need special education.
Equipment	Means: 1. Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and 2. All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.
Evaluation	Procedures used in accordance with the protection in evaluation requirements of IDEA 2004 to determine whether a student is exceptional and the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student, and do not include basic tests administered to or procedures used with all students in a school, grade, or class.
Executive Skills	Those functions, which enable a person to plan, sequence and self-monitor multi-step activities and engage in organized, purposeful behavior.

Expulsion	An action taken by the district removing a child from his/her regular school for disciplinary purposes for the remainder of the school year or longer, in accordance with district policy. Includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days.
Extended School Year Services	Special education and related services that are provided to a student with a disability beyond the normal school year of the district, in accordance with the student's IEP, and at no cost to the parents of the student; and that meet the standards of the state educational agency.
Firearm	Any weapon, which will expel a projectile by action of an explosion.
Formative Assessment	An on-going classroom based assessment of student progress within an instructional program, which provides feedback to the student and information for the teacher to use in making necessary instructional adjustments, such as reteaching, alternative approaches or more opportunities for practice.
Free Appropriate Public Education (FAPE)	Special education and related services which: 1. Are provided at public expense, under public supervision and direction, and without charge to the parent; 2. Meet the standards of the state education agency, including the requirements of these regulations; 3. Include preschool, elementary school or secondary school education in the State, and 4. Are provided in conformity with an Individualized Education Program.
Functional Behavioral Assessment (FBA)	A sequential, multi-step, team evaluation process that helps to determine the purpose and the effect of the problem behavior(s) so that IEP goals and objectives can be identified, and interventions and modifications can be developed and implemented, specifically through a student's Behavioral Intervention Plan. A FBA requires that both school personnel and the parents evaluate the behaviors of concern within the broader perspective of the student's home and school environments.
Functional Listening Evaluation (FLE)	A FLE is conducted to assess how a student's listening abilities are affected by noise, distance and visual input in the student's natural listening environment.
Functional Vision Assessment (FVA)	A FVA is conducted by a teacher of the visually impaired (TVI). For children with visual impairments, it determines what they can see, how they use their vision (including sustainability of use), and under what conditions they can see. Its focus is on accessing the wide range of educational materials available across all environments. A comprehensive FVA is needed to identify adverse impact and determine the specially designed instruction necessary. After the initial comprehensive FVA, updates are recommended annually or if there is a change in vision, environments or educational materials; it is a rolling assessment. It is typically not done with children who are totally blind or have light perception only. For children with cortical vision impairment(s), the FVA encompasses the ten characteristic behaviors associated with CVI.

General Curriculum	The curriculum adopted by a district, schools within the district, or where applicable, the state education agency for all students from preschool through secondary school. In these regulations, the term means the West Virginia College- and Career-Readiness Standards (WVCCRS).
General Education	An educational program designed to meet the needs of all students in Pre-K, early childhood, middle childhood, adolescent or adult education. Instruction in a general education program includes community based, general and/or vocational education.
General Intellectual Functioning	Acquired learning and learning potential as measured by a systematic evaluation with one or more of the individually administered general intelligence tests or procedures.
Health and Safety	Maintaining one's own well-being; appropriate diet; illness identification, treatment, and prevention; basic first aid; sexuality; physical fitness; basic safety (e.g., following rules and laws, using seat belts, crossing streets, interacting with strangers; seeking assistance), regular physical and dental check-ups; and daily habits. Related skills include protecting oneself from criminal behavior, indicating choices and needs, interacting socially and applying functional academics.
High Cost/High Acuity	A child with a disability with an IEP is defined as a high cost child or child with high acuity needs if the cost of providing an education to the child is greater than three times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act) in West Virginia.
Historically Under-represented Gifted Population	Those students whose giftedness may not be apparent due to low socioeconomic status, a disability in accordance with this policy, or a background that is linguistically or culturally different.
Home Living	Daily functioning within a home; housekeeping, clothing care, property maintenance, food preparation, planning and budgeting for shopping, home safety and daily scheduling. Related skills include orientation, behavior in the home and neighborhood, communication of choices and needs, social interaction and application of functional academics in the home.
Homeless Children	As defined in the McKinney-Vento Homeless Assistance Act.
Illegal Drug	A controlled substance; but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional, or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal Law.
Independent Educational Evaluation	An evaluation conducted by a qualified evaluator who is not employed by the district responsible for the education of the student in question, and who is selected by the party seeking the independent evaluation.

Indirect Services	Consultative services provided by a special education teacher or service provider to the individuals responsible for the provision of services described in the IEP to directly benefit the student. Indirect services include, but are not limited to, selecting or designing materials and/or activities, monitoring behavior management plans or evaluating progress on short term objectives.
Individualized Education Program (IEP)	A written statement for an eligible student with an exceptionality that is developed, reviewed and revised in accordance with Policy 2419 and IDEA 2004.
Individualized Education Program Team or IEP Team	A group of individuals described in regulations that is responsible for developing, reviewing or revising an IEP for an eligible student with an exceptionality.
Individualized Family Service Plan (IFSP)	A written plan for providing early intervention services to a child and the child's
In-school Suspension	Instances in which a child is temporarily removed from his/her classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision.
Interveners	An intervener is a specially trained person who works consistently one-to-one with a student who is deafblind. The intervener facilitates access to the environmental information that is usually gained through vision and hearing but which is incomplete to the child who is deafblind. The intervener helps the student gather information, learn concepts and skills, and develop communication and language.
Instructional Day	Minimum number of instructional minutes per program level as specified in Policy 2510.
Interim Alternative Educational Setting	An appropriate setting determined by the student's IEP Team in which the student is placed for no more than forty-five school days. This setting enables the student to continue to receive educational services and participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the IEP. As appropriate, the setting includes a functional behavioral assessment and behavioral intervention services and modifications to address the behavior violation so that it does not recur.
Interpreting Services	With respect to students with deafness or who are hard of hearing: includes oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell.
Least Restrictive Environment	The educational placement which provides the services/conditions necessary to meet the unique educational and behavioral needs of the student, while providing the student with integration to the maximum extent appropriate with peers without exceptionalities.

Leisure	A variety of leisure and recreational interests that reflect personal preferences and choices. Public activities should reflect age and cultural norms. Skills include choosing and initiating activities, using and enjoying home and community leisure and recreational activities along and with others, playing socially with others, taking turns, choosing not to participate in leisure activities, participating longer and expanding one's awareness and repertoire of interests and skills. Related skills include behavior in the leisure and recreation setting, indicating choices and needs, social interaction and application of functional academics and mobility.
Local Educational Agency	A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. The term includes: 1. An educational service agency, as defined in these regulations; and 2. Any other public institution or agency having administrative control and direction of a public elementary or secondary school.
Manifestation Determination	The process by which the district, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) determine whether the child's behavior that led to the disciplinary removal is related to his or her disability.
Mediation	An informal, non-adversarial and voluntary process in which the parties involved in a dispute are given an opportunity through an impartial third party, called a mediator, to resolve their differences and find a solution satisfactory to the parties involved.
Medical Services	Services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.
Meeting	A meeting does not include informal or unscheduled conversations involving district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if these issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
Middle Level Programs	The educational program that addresses the intellectual, physical, and social/ emotional needs of learners across all programs in areas of study in grades six - eight.
Modification	Substantive changes in an assessment or academic curriculum that changes the rigor or expectation. Modifications are generally made for students with significant intellectual or physical disabilities. A modification does alter content knowledge expectations.

Multidisciplinary Evaluation	Comprehensive procedures used to determine whether a student is exceptional and the nature and extent of the special education and related services that the student needs. The term means procedures that are conducted by a team of individuals representing a variety of disciplines. These procedures are used selectively with an individual student and do not include basic tests administered to or procedures used with all students in a school, grade or class.
Multidisciplinary Evaluation Team	A group of qualified personnel representing a variety of disciplines which determines the areas to be evaluated and conducts the multidisciplinary evaluation.
Multi-Tiered System of Supports (MTSS)	A three tired framework that promotes a well-integrated system connecting general, supplemental, gifted and special education in providing high quality standards-based instruction, interventions and challenges that are matched to students' academic, social-emotional and behavioral needs.
Native Language	1. If used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student; 2. In all direct contact with a student (including evaluation of the child), the language normally used by the student in the home or learning environment; or 3. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the student (such as sign language, braille or oral communication).
Non-academic Services	Non-academic and extracurricular services and activities are those provided by the local educational agency in addition to the required and elective programs of study. The term includes counseling, athletics, transportation, health services, recreational activities, special interest clubs or groups sponsored by the district, referrals to agencies, which provide assistance, and employment of students, including both employment by the district and assistance in making outside employment available.
Non-aversive Behavioral Strategies	Strategies that are employed to change or maintain behavior without the application of a noxious or painful stimulus or the use of a strategy that results in severe physical/emotional stress/discomfort or the prolonged depravation of movement or basic biological needs.
Normal Rate or Level of Development	The average rate or level of developmental functioning as exhibited by students of the same chronological age. Rates or levels of development are indicated by age-equivalency measures such as developmental age, mental age, developmental quotient, intelligence quotient, standard scores and percentile and are dependent upon the type of evaluation instrument used.
Objective Criteria	Standards established to determine whether a student is learning or has achieved a skill and if instruction is effective.

Objectives	Measurable, intermediate steps between a student's present levels of academic achievement and functional performance and the annual goals. Objectives are based on a logical breakdown of the major components of the annual goals.
Occupational Therapy	Services provided by a qualified occupational therapist, which include: 1. Improving, developing or restoring functions impaired or lost through illness, injury or deprivation; 2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and 3. Preventing, through early intervention, initial or further impairment or loss of function.
Orientation and Mobility	Services provided to students with blindness or have low vision by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, including: 1. Teaching students spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain or regain orientation and line of travel (for example, using sound at a traffic light to cross the street); 2. Teaching students to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; 3. Teaching students to understand and use remaining vision and distance low vision aids, as appropriate; and 4. Other concepts, techniques and tools, as determined appropriate.
Out-of-School Suspension	Instances in which a child is temporarily removed from his/her school for disciplinary purposes to another setting (e.g., home, behavior center). This includes both removals in which no IEP services are provided because the removal is ten days or less, as well as removals in which the child continues to receive services according to his/her IEP.
Out-of-State Placement	The placement of a student with a disability in a school/facility located outside of the state for special education and related services.
Parent	1. A biological or adoptive parent; 2. A guardian, generally a person authorized to act as the parent or authorized to make educational decisions for the child; 3. An individual acting in the place of a biological or adoptive parent (e.g., grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for a child's welfare; 4. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent; or 5. A surrogate parent who has been appointed in accordance with state and federal requirements. The term does not include the state, if a child is a ward of the state. State law may provide that a foster parent qualifies as a parent under IDEA 2004 and this policy if: 1. The natural parents' authority to make educational decisions on the child's

behalf has been extinguished under state law;
2. The foster parent has an ongoing, long-term parental relationship with the child;
3. The foster parent is willing to participate in making educational decisions on the child's behalf; and
4. The foster parent has no interest that would conflict with the interests of the child.

When more than one party is qualified to act as a parent, the biological or adoptive parent must be presumed to be the parent unless this individual does not have the legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of the child, then such person or persons must be determined to be the "parent" for purposes of implementing IDEA 2004 and Policy 2419.

Parent Counseling and Training	Assisting parents in understanding the special needs of their child, providing parents with information about child development and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
Parent Training	Activities to improve the parents' understanding of child development, the specific educational needs of their exceptional child, procedural safeguards and surrogate responsibilities. The term includes the training of parents in specific skills relating to the management or education of the child while at home.
Parental Consent	See Consent.
Part B of the Individuals with Disabilities Education Improvement Act (IDEA)	Part B requires that states ensure students with disabilities aged three through twenty-one are provided a free appropriate public education. Part B services are overseen by the West Virginia Department of Education (WVDE) and implemented by the local school districts. Educational services under Part B are designed and provided through the Individualized Education Program (IEP) process.
Part C of the Individuals with Disabilities Education Improvement Act (IDEA)	Part C requires that states have a statewide comprehensive coordinated interagency system of services for infants and toddlers with disabilities from birth through age two. Under Part C, the governor designates a lead agency to implement Part C in the state. In West Virginia, the lead agency is the West Virginia Department of Health and Human Resources (WV DHHR). Services under Part C are designed and delivered through an Individualized Family Service Plan (IFSP).
Participating Agency	A state or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing services to the student.
Pattern of Strengths and Weaknesses (PSW)	PSW is an approach used to identify students with specific learning disabilities. This approach is used to identify whether a child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-

approved grade-level standards, or intellectual development that is determined by the Eligibility Committee to be relevant to the identification of a specific learning disability, using appropriate assessments.

Personally Identifiable — Information that includes:

1. The name of the student, the student's parent, or other family member;
2. The address of the student;
3. A personal identifier, such as the student's social security number or student number; or
4. a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Personnel — A person who has met state educational agency approved or recognized certification, licensing, registration or other comparable requirements, which apply to the area in which he or she is providing special education or related services.

Physical Education — The development of:

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted physical education, movement education and motor development.

Physical Therapy — Services provided by a qualified physical therapist.

Placement — The setting in which the eligible exceptional student receives special education and related services. For students ages six through twenty-one, these settings are: General Education - Full-Time, General Education - Part-Time, Special Education - Separate Class, Special Education - Special School, Special Education - Out-of-School Environment and Special Education - Residential Facility. For students ages three - five, these settings are: Early Childhood Program, Special Education Program, Home and Service Provider Location.

Positive Behavioral Interventions, and Supports (PBIS) — A broad term that describes a comprehensive, research-based, proactive approach to behavioral support aimed at producing comprehensive change for students with challenging behavior. PBS encompasses multiple approaches: changing systems, altering environments, teaching skills and appreciating positive behavior. The goal of PBS is not to eliminate the behavior but to understand the behavior's purpose (based upon information from the student's functional behavioral assessment) so that the student can replace it with new, pro-social behaviors that achieve the same purpose. PBS strategies may include, but are not limited to:

1. Altering the classroom environment;
2. Increasing predictability and scheduling;
3. Increasing choice making;
4. Making curricular adaptations;
5. Appreciating positive behaviors; and/or
6. Teaching replacement skills.

Pre-ETS	The Pre-Employment Transition services may include services provided by schools and by the Division of Rehabilitation Services that include: • Job Exploration • Work-based learning • Counseling for transition & post-secondary programs • Workplace readiness training • Self-advocacy training
Present Levels of Academic Achievement and Functional Performance	Specific statements that describe the effect of the student's exceptionality on his/her educational performance, including how the student's exceptionality affects the student's involvement and progress in the general education curriculum; or for preschool children, how the exceptionality affects the child's participation in age-relevant developmental activities. These statements are written in objective measurable terms, to the extent possible, using relevant information such as recent evaluation reports, statewide testing results, current progress data and parent information.
Prior Written Notice	A written notice to inform a parent/adult student of the district's proposal or refusal to initiate or change the student's identification, evaluation, educational placement or provision of FAPE. The notice must be provided to the parent/adult student within a reasonable amount of time prior to implementing the proposed action/refusal.
Private/Religious School	An educational facility operated by a non-public agency or organization.
Procedural Safeguards	The due process protections afforded in the implementation of the West Virginia special education process.
Procedure	Any written course of action set forth to implement federal, state, and local policy which includes: 1. A description of the actions to be undertaken; 2. The criteria or standards to be used when decisions are required; 3. The person(s) responsible for such actions, and 4. The timelines for completion. Written procedures must describe actions in terms, which are both measurable and operational.
Program of Study	A Pre-K through grade twelve curricular sequence that constitutes the subject matter to be offered in the public schools of West Virginia (e.g., English language arts, science, mathematics, social studies, vocational education, business education).
Psychological Adjustment Disorder	Significant emotional or behavioral symptoms that adversely affect a student's educational performance documented by a comprehensive psychological evaluation.

Psychological Services	Includes: 1. Administering psychological and educational tests, and other assessment procedures; 2. Interpreting assessment results; 3. Obtaining, integrating and interpreting information about child behavior and conditions relating to learning; 4. Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests; 5. Planning and managing a program of psychological counseling for students and parents; and 6. Assisting in developing positive behavioral intervention strategies.
Public Agency	State educational agency, regional educational agency, local educational agency and any other political subdivisions of the state, which are responsible for providing education to students with exceptionalities.
Public Expense	The public agency either pays for the full cost of the service or ensures that the service is otherwise provided at no cost to the parent.
Recreation	Includes: 1. Assessment of leisure function; 2. Therapeutic recreation services; 3. Recreation programs in schools and community agencies; and 4. Leisure education.
Regression / Recoupment	The loss of acquired skills and the inability to relearn those skills in a specified amount of time.
Rehabilitation Counseling Services	Services provided by a qualified rehabilitation counseling professional, in individual or group sessions, that focus specifically on career development, employment preparation, achieving independence and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
Related Services	Transportation and such developmental, corrective and other supportive services as are required to assist an eligible student with an exceptionality to benefit from special education. The term includes, but is not limited to, assistive technology, audiology, interpreting services, speech and language pathology, psychological services, physical and occupational therapy, clean intermittent catheterization (CIC), recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, social work services in schools, school health services and school nurse services, early identification and evaluation of disabling conditions in students, medical services for diagnostic or evaluative purposes only and parent counseling and training. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device or the replacement of that device.

Removal by a Hearing Officer	Those instances in which an impartial hearing officer orders the removal of a student with a disability from his or her current educational placement to an appropriate alternative educational setting for not more than forty-five school days based on the hearing officer's determination that maintaining the student's current placement is substantially likely to result in injury to the student or others. The IEP Team is responsible for determining the alternative educational setting.
School Day	Any day, including a partial day, in which students are in attendance at school for instructional purposes. A school day is the time inclusive of homeroom, class changes, breaks/recess, lunch and other non-instructional activities from the first designated assembly of the student body in groups (homeroom or first period) to the dismissal of the student body. The term school day has the same meaning for all students in school, including students with and without exceptionalities.
School Health Services	Health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. Services coordinated through the certified school nurse (defined as a Registered Professional Nurse) to provide early identification of educational deficits and communicable disease, daily support and care for students with specialized health care needs during the school day with linkage and follow-up care to services as required in WVBE Policy 2422.7, WVBE Policy 2422.8 and WVBE Policy 2423.
Secondary Education Programs	The educational program that addresses the intellectual, physical, social/emotional and transition needs of learners for special education across all programs and areas of study in grades nine – twelve.
Secondary School	A nonprofit institutional day or residential school that provides secondary education, as determined under State Law, except that it does not include any education beyond grade twelve.
Self-Care	Skills involving eating, dressing, grooming, toileting and hygiene.
Self-Direction	Making choices. Self-direction includes learning and following a schedule; initiating appropriate activities consistent with one's personal interests; completing necessary or required tasks; seeking assistance when needed; resolving problems in familiar and new situations; and demonstrating appropriate assertiveness and self-advocacy.
Serious Bodily Injury	A bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or faculty (18 U.S.C. Section 1365(3)(h))).
Serious Misconduct	Any activity for which suspension or expulsion is a punishment for students unless, for a student with a disability, the behavior is a manifestation of that disability. These activities include: 1. Assault/battery on school employees (West Virginia Code §61-2-15); 2. Possession of a deadly weapon (West Virginia Code §61-7-11a); 3. Selling a narcotic drug on the premises of an educational facility, at a school sponsored function or on a school bus (West Virginia Code §60A-1-101);

4. Committing an act or engaging in conduct that would constitute a felony under the laws of this state if committed by an adult;
5. Unlawfully possessing on the premises of an educational facility or at a school sponsored function, a controlled substance governed by the Uniformed Controlled Substance Act;
6. Threatening to injure, or in any manner injuring, a pupil, teacher, administrator or other school personnel;
7. Willfully disobeying a teacher;
8. Possessing alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function;
9. Using profane language directed at a school employee or pupil;
10. Intentionally defacing any school property;
11. Participating in any physical altercation with another person while under the authority of school personnel; or
12. Habitually violating school rules or policies.

Service Plan	A written statement that describes the special education and related services to be provided by the district to a parentally-placed student with an exceptionality enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with Chapter 8 of this Policy and is developed and implemented in accordance with Chapter 5.
Shared Instructional Models	Include an array of service delivery options provided by general education, Title I and/or special education teachers, related services and support personnel and others that encompass consultative and co-teaching models and are undertaken for the purpose of maximizing results for all students.
Sign Support Specialist	West Virginia Code §18A-4-8(i)(15) defines sign support specialist as a person employed to provide sign supported speech assistance to students. Sign Support Specialists provide signed communication support to a student who is able to access environments through audition (i.e, hearing). The Sign Support Specialist may be assigned to a student who is deaf or hard of hearing, in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and the sign support specialist is executing a professional development plan while actively seeking certification as an educational sign language interpreter I or II. After two years the sign support specialist may remain in the assignment only if an educational sign language interpreter I or II remains unavailable, and with an approved waiver by the West Virginia Department of Education. (HB2470)
Significant Cognitive Disability	Students with the most significant cognitive disabilities (moderate to severe intellectual disability) have general intellectual functioning more than three standard deviations below the mean, in consideration of 1.0 standard error of measurement as determined by a qualified psychologist, using an individually administered intelligence test; and the student exhibits concurrent deficits in adaptive functioning expected for his or her age across multiple environments based on clinical and standardized assessment in at least one of the following domains: conceptual, social or practical.

Social Skills	Social skills refer to appropriate and inappropriate social behavior. Appropriate social behavior includes behaviors such as making friends, showing appreciation, smiling, taking turns, cooperating with others, demonstrating honesty, trustworthiness and appropriate play, showing concern for others, displaying empathy and being fair. Inappropriate behavior includes behaviors such as tantrums, jealousy, fighting others, overstaying a welcome, being overly demanding, constantly needing reassurance and being non-assertive.
Social Work Services in Schools	Services that include: 1. Preparing a social or developmental history on a student with a disability; 2. Group and individual counseling with the student and family; 3. Working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and 4. Mobilizing school and community resources to enable the student learn as effectively as possible in her or his educational program, and assisting in developing positive behavior intervention strategies.
Socially Maladjusted	Students who are socially maladjusted (or more precisely Oppositional Defiant or Conduct Disordered) typically display a persistent pattern of willful refusal to meet even minimum standards of conduct. Their behavior and values are often in conflict with society's standards. They exhibit a consistent pattern of antisocial behavior without genuine signs of guilt, remorse, or concern for the feelings of others. (Montgomery, 2006)
Special Education	Specially designed instruction, at no cost to parents, to meet the unique educational needs of an eligible student with an exceptionality, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes speech-language pathology services, vocational education and travel training if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a student with an exceptionality.
Special Transportation	Modifications made in regular school transportation to assure accessibility of special education and other related services for students with disabilities. Special transportation includes special equipment (such as special or adaptive buses, lifts, and ramps), and special care (such as need for health and safety maintenance, assistance of aide, medication in transit and/or positioning), if required to provide school transportation for a student with a disability.
Specially Designed Instruction	Adapting content, methodology or delivery of instruction: 1. To address the unique needs of an eligible student that result from the student's exceptionality; and 2. To ensure access of the student to the general curriculum, so that he or she can meet the educational standards that apply to all students.
Speech-Language Pathology Assistant	Speech-language pathology assistants are individuals who may provide services to students with communication disorders under the guidance and direction of a certified Speech-Language Pathologist (SLP). The requirements for the issuance of an authorization for speech assistants are defined in West Virginia Board of Education Policy 5202: *Minimum Requirements for the Licensure of Professional/ Paraprofessional Personnel and Advanced Salary Classifications,* which was

approved by the West Virginal Board of Education in July 2003.
A speech-language pathology assistant must hold a minimum of a bachelor's degree in speech pathology or communication disorders from an accredited institution; be employed by a local West Virginia Board of Education; and receive the recommendation of the district superintendent verifying that the applicant is the most qualified candidate for the position and that no fully certified speech-language pathologist has applied for the available position. Authorization must be renewed annually.

Speech-Language Pathology Services

Services provided by a qualified speech-language pathologist include, but are not limited to:

1. Identification of students with speech or language impairments;
2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, students and teachers regarding speech and language impairments.

Standard Deviation

A statistic used to express the distance on the average of scores from the mean of the distribution. The standard deviation shows the variability of a series or group of scores or numbers.

Standard Error of Measurement

An indicator that allows a student's performance to be reported as a range of scores where it is highly probable the true score lies.

Standards-Based Individualized Education Program (SB-IEP)

The Standards-Based Individualized Education Program is an individualized plan reasonably calculated to result in educational benefit (FAPE). A SB-IEP includes grade-level expectations, student's strengths and weaknesses, and how the student's disability affects involvement/progression the general education curriculum (impact statement). The plan's annual goals are developed based on standards-focused content aligned with the Next Generation Content Standards and Objectives for West Virginia Schools, the Next Generation Alternate Academic Achievement Standards, the Early Learning Standards Framework, and/or the Next Generation Learning Skills and Technology Tools.

Student Assistance Team

A trained school-based team which provides a formalized process for the review of student needs and complements the work of instruction and intervention teams.

Supplementary Aids and Services

Aids, services and other supports that are provided in general education classes, other education-related settings and in extracurricular and nonacademic settings, to enable students with exceptionalities to be educated with students without exceptionalities to the maximum extent appropriate. Supplementary aids include any material/curricular resource or assistance, beyond what is normally afforded students without exceptionalities, provided to support a student with an exceptionality's placement, such as large print books, assistive technology devices, auditory trainers, curriculum adaptations and classroom modifications or

	aids, services and other supports. Supplementary services include any human resource or assistance, beyond what is normally afforded students without exceptionalities, provided to support a student with an exceptionality's placement, such as direct instruction, peer tutoring or note taking.
Supported Employment	Paid work in the regular community work environment where persons without disabilities are employed. Individuals with disabilities are included in the work setting and receive initial training and on-going support services in the natural community work environment.
Transition Services	A coordinated set of activities for a student with a disability, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including, but not limited to, post-secondary education, vocational training, integrated employment including supported employment, continuing and adult education, adult services, independent living or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.
Transportation	Includes: 1. Travel to and from school and between schools; 2. Travel in and around school buildings; and 3. Specialized equipment (such as special or adapted buses, lifts and ramps), if required, to provide special transportation for a student with a disability. Providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within that environment (e.g. in school, the home and the community).
Underachievement	Academic achievement and or classroom performance that is significantly discrepant with the student's intellectual ability documented by the student's educational record.
Unilateral Removal	Instances in which school personnel (not the IEP Team) order the removal of students with disabilities from their current educational placement to an appropriate interim alternative educational setting for not more than forty-five school days. The IEP Team is responsible for determining the interim alternative educational setting. Unilateral removals do NOT include decisions by the IEP Team to change a student's placement.
Universal Design for Learning (UDL)	Universal design for learning (UDL) is an education framework based on research in learning sciences, which guides development and management of flexible learning environments that can accommodate individual learning differences, for ALL learners. A UDL environment provides multiple means of representation, action and expression, and engagement.

Ward of the State	A child who, as determined by the state where the child resides is: 1. A foster child; 2. Award of the State; or 3. In the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent.
Work	Holding a part- or full time job (supported or non-supported) or participating in a voluntary activity in the community. Related skills include specific job competencies, appropriate social behavior, appropriate work skills (e.g., completion of tasks, awareness of schedules, ability to seek assistance, take criticism), money management, the application of other functional academic skills, and skills related to going to and from work, preparing for work, managing oneself at work and interacting appropriately.

ACRONYMS AND ABBREVIATIONS

ADHD	Attention Deficit Hyperactivity Disorder
AEM	Accessible Educational Material
APR	Annual Performance Report
BIP	Behavior Intervention Plan
CASE	Council of Administrators of Special Education
CIC	Clean Intermittent Catheterization
DIBELS	Dynamic Indicators of Basic Early Literacy Skills
E/BD	Emotional/Behavioral Disorder
EC	Eligibility Committee
ECPBIS	Early Childhood Positive Behavioral Interventions Support
EDEN	Education Data Exchange Network
ESSA	Every Student Succeeds Act
ESY	Extended School Year
FAPE	Free Appropriate Public Education
FBA	Functional Behavior Assessment
FERPA	Family Educational Rights and Privacy Act
GEE	General Education Environment
HEAP	Health Education Assessment Project
IAES	Interim Alternative Educational Setting
IDEA 2004	Individuals with Disabilities Education Improvement Act of 2004
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IFSP	Individual Family Service Plan
LEA	Local Educational Agency

LRE	Least Restrictive Environment
LQ	Language Quotient
MTSS	Multi-Tiered System of Supports
NAEP	National Assessment of Educational Progress
NCLB	No Child Left Behind Act
NIMAS	National Instructional Materials Accessibility Standard
OFP	Office of Federal Programs
OSEP	Office of Special Education Programs (US)
OSE	Office of Special Education
PALS	Phonological Awareness Literacy Screener
PBIS	Positive Behavioral Interventions and Supports
PWN	Prior Written Notice
RDA	Results-Driven Accountability
RCSP	Results and Compliance System Procedures
SAT	Student Assistance Team
SD	Standard Deviation
SEA	State Education Agency
SEE	Special Education Environment
SLD	Specific Learning Disability
SLP	Speech-Language Pathologist
SLPA	Speech-Language Pathology Assistant
SPP	State Performance Plan
SSIP	State Systemic Improvement Plan
TASC	Test Assessing Secondary Completion
UDL	Universal Design for Learning

WVDE	West Virginia Department of Education
WV-DHHR	West Virginia Department of Health and Human Resources
WVEIS	West Virginia Education Information System
WVMAP	West Virginia Measures of Academic Progress

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Documentation of Adverse Effects on Educational Performance
Students with Speech-Language Impairments

IDEA requires that the EC determine how the speech-language impairment affects the progress and involvement of the student in the general curriculum. The EC must consider each student individually to determine how the student's disability adversely affects educational performance. Documentation of adverse effects on educational performance can be gathered from a thorough assessment of communication skills including input from the student, parent, and teacher. Information must be recorded by the speech-language pathologist (SLP) on the Eligibility Report form.

An assessment of a student's ability to communicate, rather than isolated skill assessment, will provide information on how the impairment affects the student. The following examples may be considered when determining how the student's ability to communicate may adversely impact educational performance:

1. Sound errors, voice quality, or fluency disorders inhibit the student from reading orally in class, speaking in front of the class, or being understood by teachers, peers, or family members.
2. Sound errors, voice quality, or fluency disorders embarrass the student. Peer relationships suffer as a result, or peers may make fun of the student.
3. Sound errors cause the student to make phonetic errors in spelling or have difficulty in phonics.
4. Grammatical errors create problems with a student's orientation in time.
5. Morphological errors inhibit the student from using or making complete sentences.
6. Semantic problems slow the student's ability to follow directions, give directions, make wants and needs known, make oneself understood, relate information to others, or fully participate in daily living.

Elimination of Phonological Processes in Typical Development
Phonological processes are typically gone by theses ages (in year; months)

PHONOLOGICAL PROCESS	EXAMPLE	GONE BY APPROXIMATELY	CONSIDERED DELAYED
Pre-vocalic voicing	pig = big	3	3.6-4.0
Word-final de-voicing	pig = pick	3	3.6-4.0
Final consonant deletion	comb = coe	3.3	3.9-4.3
Fronting	car = tar ship = sip	3.6	4.0-4.6
Consonant harmony	mine = mime kittycat = tittytat	3.9	4.3-4.9
Weak syllable deletion	elephant = efant potato = tato television =tevision banana = nana	4	4.6-5.0
Cluster reduction	spoon = poon train = chain	4	4.6-5.0
Gliding of liquids	run = one leg = weg leg = yeg	5	5.6-6.0
Stopping /f/	fish = tish	3	3.6-4.0
Stopping /s/	soap = dope	3	3.6-4.0
Stopping /v/	very = berry	3.6	4.0-4.6
Stopping /z/	zoo = doo	3.6	4.0-4.6
Stopping 'sh'	shop = dop	4.6	5.0-5.6
Stopping 'j'	jump = dump	4.6	5.0-5.6
Stopping 'ch'	chair = tare	4.6	5.0-5.6
Stopping voiceless 'th'	thing = ting	5	5.5-6.0
Stopping voiced 'th'	them = dem	5	5.5-6.0

Developmental Articulation Norms

Iowa-Nebraska Articulation Norms*

Sound	Age at which 90% of children acquire the sound		Age at which considered delayed	
	Females	**Males**	**Females**	**Males**
p b m	3 years	3 years	3 yrs-6 mos.	3 yrs-6 mos.
n	3 yrs-6 mos.	3 years	4 yrs.	3 yrs-6 mos.
h-	3 years	3 years	3 yrs.-6 mos.	3 yrs.-6 mos.
w-	3 years	3 years	3 yrs-6 mos.	3 yrs.-6 mos.
d	3 years	3 yrs.-6 mos.	3 yrs.-6 mos.	4 years
k	3 yrs.-6 mos.	3 yrs.-6 mos.	4 yrs.-6 mos.	4 yrs.-6 mos.
g	3 yrs.-6 mos.	4 years	4 yrs.-6 mos.	5 years
f- (as in *f*an)	3 yrs.-6 mos.	3 yrs.-6 mos.	4 yrs.-6 mos.	4 yrs.-6 mos.
y (as in *y*es)	4 years	5 years	4 yrs-6 mos.	5 yrs-6 mos.
t	4 years	3 yrs.-6 mos.	4 yrs.-6 mos.	4 years
th (voiced as in *th*is)	4 yrs.-6 mos.	7 years	5 yrs.-6 mos.	8 years
l- (as in *l*emon)	5 years	6 years	6 years	7 years
-f (as in *l*eaf)	5 yrs.-6 mos.	5 yrs.-6 mos.	6 years	6 years
v	5 yrs.-6 mos.	5 yrs.-6 mos.	6 yrs.-6 mos.	6 yrs.-6 mos.
th (voiceless as in *th*umb)	6 years	8 years	7 years	8 yrs.-6 mos.
sh ch j (as in *j*ump)	6 years	7 years	7 years	8 years
-l (as in ba*ll*)	6 years	7 years	7 years	8 years
s z	7 years	7 years	8 years	8 years
ng	7 years	7 years	7 yrs.-6 mos.	7 yrs-6 mos.
r- (as in *r*un)	8 years	8 years	8 yrs-6 mos.	8 yrs.-6 mos.
-er (as in wate*r*)	8 years	8 years	8 yrs-6 mos.	8 yrs.-6 mos.
Initial Clusters				
tw kw	4 years	5 yrs-6 mos.	5 yrs.	6 yrs-6 mos.
pl bl kl gl fl	5 yrs-6 mos.	6 years	6 yrs.-6 mos.	7 years
sp st sk sm sn sw sl skw spl	7 years	7 years	8 years	8 years
pr br tr dr kr gr fr	8 years	8 years	8 yrs.-6 mos.	8 yrs.-6 mos.
thr (as in *thr*ow) spr str skr	9 years	9 years	9 yrs.-6 mos.	9 yrs.-6 mos.

*Adapted from Smit, Hand, Freilinger, Bernthal, & Bird (1990). *Journal of Speech and Hearing Disorders, 55, 779-798*.

Note regarding sound positions: example- m refers to beginning, middle and ending words positions; h- refers to initial word positions; and –f refers to middle and final word positions.

Suggested Guidelines for Stuttering Services

I. Impairment/Observable Features

a. Disfluency Rate: Assessed in *percent total words* stuttered in various communication contexts (e.g., conversational speech, reading, picture description, multiple communication partners)

b. Types of Disfluencies: Stuttering disfluencies (word repetitions, sound/syllable repetitions, prolongations, blocks); Non-stuttering disfluencies (interjections, revisions, phrase repetitions).

c. Physical Tension

d. Secondary Behaviors

II. Child's Reactions

a. Assessing the feelings, emotions and thoughts related to stuttering

III. Others' Reactions

a. Assessing the reactions of parents, peers, teachers and others in the child's communication network.

IV. Life Impact

a. Educational Impact: Assessing the child's willingness to participate in classroom activities related to verbal communication.

b. Social Impact: Assessing the child's verbal communication with others in non-academic contexts.

	No Impact	**Mild Impact**	**Moderate Impact**	**Severe Impact**
Impairment	Child never exhibits physical tension or secondary behaviors. Child only exhibits non-stuttering like disfluencies that are <5% of total stuttered words	Child exhibits mild physical tension and rarely to sometimes exhibits secondary behaviors. Child exhibits a disfluency rate between 5-10%	Child exhibits moderate physical tension and frequently exhibits secondary behaviors. Child exhibits a disfluency rate between 10-15%	Child exhibits severe physical tension and almost always exhibits secondary behaviors. Child exhibits a disfluency rate >15%
Child's Reactions	Child never exhibits stuttering-related negative thoughts, feelings and emotions	Child rarely to sometimes exhibits stuttering-related negative thoughts, feelings and emotions	Child frequently exhibits stuttering-related negative thoughts, feelings and emotions	Child almost always exhibits stuttering-related negative thoughts, feelings and emotions
Others' Reactions	Others never react negatively toward the child's stuttering	Others rarely to sometimes react negatively toward the child's stuttering	Others frequently react negatively toward the child's stuttering	Others almost always react negatively toward the child's stuttering
Life impact	Stuttering never impacts the child's social or educational participation or life choices	Stuttering rarely to sometimes impacts the child's social or educational participation or life choices	Stuttering frequently impacts the child's social or educational participation or life choices	Stuttering almost always impacts the child's social or educational participation or life choices

Suggested Guidelines for Stuttering Services for Preschool

I. Impairment/Observable Features

a. Disfluency Rate: Assessed in *percent total words* stuttered in various communication contexts (e.g., conversational speech, picture description, multiple communication partners)

b. Types of Disfluencies: Stuttering disfluencies (word repetitions, sound/syllable repetitions, prolongations, blocks); Non-stuttering disfluencies (interjections, revisions, phrase repetitions).

c. Physical Tension

d. Secondary Behaviors

V. Child's Reactions

a. Assessing the feelings, emotions and thoughts related to stuttering

VI. Others' Reactions

a. Assessing the reactions of parents, peers, teachers and others in the child's communication network.

VII. Life Impact

a. Educational Impact: Assessing the child's willingness to participate in classroom activities related to verbal communication.

b. Social Impact: Assessing the child's verbal communication with others in non-academic contexts.

VII. Other Risk Factors

These risk factors are in addition to I through IV

a. Positive family history

b. Male

c. Stuttering for more than 6 months

d. Presence of other speech and language disorders

	No Impact	Mild Impact	Moderate Impact	Severe Impact
Impairment	Child never exhibits physical tension or secondary behaviors. Child only exhibits non-stuttering like disfluencies that are <5% of total stuttered words	Child exhibits mild physical tension and rarely to sometimes exhibits secondary behaviors. Child exhibits a disfluency rate between 5-10%	Child exhibits moderate physical tension and frequently exhibits secondary behaviors. Child exhibits a disfluency rate between 10-15%	Child exhibits severe physical tension and almost always exhibits secondary behaviors. Child exhibits a disfluency rate >15%
Child's Reactions	Child never exhibits stuttering-related negative thoughts, feelings and emotions	Child rarely to sometimes exhibits stuttering-related negative thoughts, feelings and emotions	Child frequently exhibits stuttering-related negative thoughts, feelings and emotions	Child almost always exhibits stuttering-related negative thoughts, feelings and emotions
Others' Reactions	Others never react negatively toward the child's	Others rarely to sometimes react negatively toward	Others frequently react negatively	Others almost always react negatively toward

	stuttering	the child's stuttering	toward the child's stuttering	the child's stuttering
Life impact	Stuttering never impacts the child's social or educational participation or life choices	Stuttering rarely to sometimes impacts the child's social or educational participation or life choices	Stuttering frequently impacts the child's social or educational participation or life choices	Stuttering almost always impacts the child's social or educational participation or life choices

Risk Factor Scale

Family History (1 point for every family member who stutters)
Male Gender (2 points)
Stuttering that begins after age 4 (1 point for every 6 months after 4)
Stuttering for more than 6 months (1 point for every 6 months since onset)
Other speech/language concerns (2 point for each)
Awareness (1 point)
Frustration (2 points)
Parent Concern (2 points)
Initial Behavioral Domain (1 point-mild; 2 points-moderate; 3 points-Severe) (this would include disfluency rate, physical tension and secondary behaviors).
Temperament (0-2 points based on perfectionism, sensitivity, etc)
Environment (0-2 pts based on competition, interruptions, speaking demand, etc)

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Voice Rating Scale

Student School Date

	Nondisabling Condition	**Mild Descriptive**	**Moderate Descriptive**	**Severe Wilson Voice Profile Scale**
Pitch	Pitch is within normal limits.	There is a noticeable difference in pitch that may be intermittent.	There is a persistent, noticeable inappropriate raising or lowering of pitch for age and gender, or evidence of dysphonia.	+3 Pitch -3 Pitch -2 Pitch +2 Pitch
Intensity	Intensity is within normal limits.	There is a noticeable difference in intensity that may be intermittent.	There is a persistent, noticeable inappropriate increase or decrease in the intensity of speech, or the presence of aphonia.	-3 Intensity +2 Intensity -2 Intensity
Quality	Quality is within normal limits.	There is a noticeable difference in quality that may be intermittent.	There is a persistent, noticeable breathiness, glottal fry, harshness, hoarseness, tenseness, strident, or other abnormal vocal quality.	-2 Laryngeal +3 Laryngeal +2 Laryngeal - 3 Laryngeal
Resonance	Nasality is within normal limits.	There is a noticeable difference in nasality that may be intermittent.	There is a persistent noticeable cul-de-sac, hyper- or hypo-nasality, or mixed nasality.	-2 Resonance +3 Resonance +4 Resonance
Description of Current Physical Condition	No consistent laryngeal pathology; physical factors influencing quality, resonance, or pitch, if present at all, are temporary and may include allergies, colds, or abnormal tonsils and adenoids.	Laryngeal pathology may be present. Physical factors indicated in moderate and/or severe levels may be present.	Probable presence of laryngeal pathology. Physical factors may include nodules, polyps, ulcers, edema, partial paralysis of vocal folds, palatal insufficiency, enlarged/insufficient tonsils and/or adenoids, neuromotor involvement, or hearing impairment.	Physical factors may include: - unilateral or bilateral paralysis of vocal folds - laryngectomy psychosomatic disorders - neuromotor involvement of larynx muscles, i.e., cerebral palsy
Comments:				

West Virginia Department of Education

A Step by Step Guide to the Discipline Process for Students with Disabilities under the IDEA

Student protected under the IDEA violates a school code of conduct

Disciplinary removal for current misconduct is for **less than 10 consecutive** school days ***and*** removals **total less than 10 cumulative** school days in the school year. 34CFR 300.530(b)

District may discipline and exclude the student from the current placement without obligation to provide FAPE services (unless district provides services to students without disabilities who are similarly removed). 34CFR §300.530(d)(3)

Disciplinary removal for current misconduct is for **less than 10 *consecutive*** school days; however, removals **total more than 10 *cumulative* school days** in the school year. 34CFR §300.530(b)

District must determine if the current removal is a ***pattern*** constituting a ***change of placement (COP)*** based on the similarity, length and proximity of behaviors. 34CFR §300.536

No, not a COP

School personnel, in consultation with at least one of the student's teachers must determine the extent to which FAPE services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the IEP goals. CFR34 §300.530(d)(4)

Yes, a COP

Disciplinary removal for current misconduct is proposed for ***more than 10 consecutive*** school days.

Removal is a **change of placement (COP)**. 34CFR §300.536(a)(1)

Notify parents on the date on which the decision is made **to change the student's placement** for disciplinary reasons (same day) and provide procedural safeguards and prior written notice (PWN). (34CFR §300.530(h)

Within 10 school days of the decision to remove the student for disciplinary reasons, the district, parents and relevant members of the IEP Team must conduct a ***manifestation determination.*** 34CFR §300.530(e)(1)

See Page 2 – Manifestation

West Virginia Department of Education

A Step by Step Guide to the Discipline Process for Students with Disabilities under the IDEA

Manifestation Determination Review

1. Is the conduct a direct result of the district's failure to implement the IEP?
2. Is the conduct caused by, or does the conduct have a direct and substantial relationship to the student's disability? 34CFR §300.530(e)

Yes to Either

Student's conduct ***is*** a manifestation of his/her disability. 34CFR §300.530(e)

If the conduct was a direct result of failure to implement the IEP, the district must take immediate steps to remedy those deficiencies. 34CFR §300.530(e)(3)

The IEP Team must conduct a FBA and develop a BIP, or review and modify an existing BIP, to address the behavior. 34CFR §300.530(f)(1)(i-ii)

AND return the student to the placement from which he/she was removed, ***unless*** 1) the parent and district agree to a change of placement; 2) a hearing officer orders a new placement; or 3) the removal is for special circumstances (i.e., weapons, drugs or serious bodily injury). 34CFR §300.530(f)(2)

No to Both

Student's conduct ***is not*** a manifestation of his/her disability. 34CFR §300.530(c)

School personnel may apply the relevant disciplinary procedures in the same manner and for the same duration as for students without disabilities. 34CFR §300.530(c)
The IEP Team determines extent to which FAPE services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and progress toward meeting the IEP goals. 34CFR §300.530(d)(i)

Provide, as appropriate, a FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34CFR 300.530(d)(ii)

Special Circumstances (Weapons, Drugs, Serious Bodily Injury)

School personnel may remove a student to an Interim Alternative Educational Setting (IAES) for not more than 45 school days without regard to whether the behavior is a manifestation of the student's disability, if the student:

1. Carries a weapon to or possesses a weapon at school, on school premises or to or at a school function;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises or at a school function; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises or at a school function. 34CFR §300.530(g)

1. Notify parents on the same day of decision to change the student's placement & provide procedural safeguards, including PWN 34CFR §300.530(h), and
2. Within 10 school days of the decision, conduct a manifestation determination. 34CFR §300.530(e)
3. The student's IEP Team determines the appropriate IAES for the student. 34CFR §300.530(d)(2)

*Taken from the Diagnostic and Statistical Manual of Mental Disorders 5th Edition (DSM-5) **Severity Levels for Adaptive Functioning**

Severity Level	Conceptual domain	Social domain	Practical domain
Mild	For preschool children, there may be no obvious conceptual differences. For school-age children and adults, there are difficulties in learning academic skills involving reading, writing, arithmetic, time or money, with support needed in one or more areas to meet age-related expectations. In adults, abstract thinking, executive function (i.e., planning, strategizing, priority setting and cognitive flexibility) and short-term memory, as well as functional use of academic skills (e.g., reading, money management), are impaired. There is somewhat concrete approach to problems and solutions compared with age-mates.	Compared with typically developing age-mates, the individual is immature in social interactions. For example, there may be difficulty in accurately perceiving peers' social cues. Communication, conversation and language are more concrete or immature than expected for age. There may be difficulties regulating emotion and behavior in age-appropriate fashion; these difficult are noticed by peers in social situations. There is limited understanding of risk in social situations; social judgement is immature for age and the person is at risk of being manipulated by others (gullibility).	The individual may function age-appropriately in personal care. Individuals need some support with complex daily living tasks in comparison to peers. In adulthood, supports typically involve grocery shopping, transportation, home and child-care organizing, nutritious food preparation and banking and money management. Recreational skills resemble those of age-mates, although judgement related to well-being and organization around recreation requires support. In adulthood, competitive employment is often seen in jobs that do not emphasize conceptual skills. Individuals generally need support to make health care decisions and legal decisions and to learn to perform a skilled vocation competently. Support is typically needed to raise a family.
Moderate	All through development, the individual's conceptual skills lag markedly behind those of peers. For preschoolers, language and pre-academic skills develop slowly. For school-age children, progress in reading, writing, mathematics and understanding of time and money occurs slowly across the school years and is markedly limited compared with that of peers. For adults, academic skill development is typically at an elementary level, and support is required for all use of academic skills in work and personal life. Ongoing assistance on a	The individual shows marked differences from peers in social and communicative behavior across development. Spoken language is typically a primary tool for social communication but is much less complex than that of peers. Capacity for relationships is evident in ties to family and friends, and the individual may have successful friendships across life and sometimes romantic relations in adulthood. However, individuals may not perceive or interpret social cues accurately. Social judgment and decision-making abilities are limited, and caretakers must assist the person with	The individual can care for personal needs involving eating, dressing, elimination and hygiene as an adult, although an extended period of teaching and time is needed for the individual to become independent in these areas and reminders may be needed., Similarly, participation in all household tasks can be achieved by adulthood, although an extended period of teaching is needed, and ongoing supports will typically occur for adult-level performance. Independent employment in jobs that require limited conceptual and communication skills can be achieved, but considerable support from co-workers, supervisors and others is needed to manage social expectations, job complexities and ancillary responsibilities such as

Continue Moderate	daily basis is needed to complete conceptual tasks of day-to-day life, and other may take over these responsibilities fully for the individual.	life decisions. Friendships with typically developing peers are often affected by communication or social limitations. Significant social and communicative support is needed in work settings for success.	scheduling, transportation, health benefits and money management. A variety of recreational skills can be developed. These typically require additional supports and learning opportunities over an extended period of time. Maladaptive behavior is present in a significant minority and causes social problems.
Severe	Attainment pf conceptual skills is limited. The individual generally has little understanding of written language or of concepts involving numbers, quantity, time and money. Caretakers provide extensive supports for problem solving throughout life.	Spoken language is quite limited in terms of vocabulary and grammar, Speech may be single words or phrases and may be supplemented though augmentative means, Speech and communication are focused on the here and now within everyday events. Language is used for social communication more than for explication. Individuals understand simple speech and gestural communication. Relationships with family members and familiar others are a source of pleasure and help.	The individual requires support for all activities of daily living, including meals, dressing, bathing and elimination. The individual requires supervision at all times. The individual cannot make responsible decisions regarding well-being of self or others, In adulthood, participation in tasks at home, recreation and work requires ongoing support and assistance. Skill acquisition in all domains involves long-term teaching and ongoing support. Maladaptive behavior, including self-injury, is present in a significant minority.
Profound	Conceptual skills generally involve the physical world rather than symbolic processes. The individual may use objects in goal-directed fashion for self-care, work and recreation. Certain visuospatial skills, such as matching and sorting based on physical characteristics, may be acquired. However, co-occurring motor and sensory impairments may prevent functional use of objects.	The individual has very limited understanding of symbolic communication in speech or gesture. He or she may understand some simple instructions or gestures. The individual expresses his or her own desires and emotions largely through nonverbal, nonsymbolic communication. The individual enjoys relationships with well-known family members, caretakers and familiar others, and initiates and responds to social interactions through gestural and emotional cues. Co-occurring sensory and physical impairment may prevent many social activities.	The individual is dependent on others for all aspects of daily physical care health and safety, although he or she may be able to participate in some of these activities as well. Individuals without severe physical impairment may assist with some daily work tasks at home, like carrying dishes to the table. Simple actions with objects may be the basis of participation in some vocational activities with high levels of ongoing support. Recreational activities may involve, for example, enjoyment in listening to music, watching movies, going out for walks or participating in water activities, all with the support of others. Co-occurring physical and sensory impairments are frequent barriers to participation (beyond watching) in home, recreational, and vocational activities. Maladaptive behavior is present in a significant minority.