

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

RULE TYPE: Legislative; CITE AUTHORITY WV Code 18-20-5

AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16 (Policy 2419)

TITLE OF RULE BEING AMENDED: Regulations for the Education of  
Exceptional Students

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:                     

TITLE OF RULE BEING PROPOSED:     
  

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON April 30, 1992 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Ms. Nancy J. Thabet, Director  
Office of Special Education Programs  
and Assurances  
WV Dept. of Education  
Room B-304, Bldg. 6, Capitol Complex  
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Barbara L. Estep  
March 23, 1992

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

5,600

## EXECUTIVE SUMMARY

### Proposed Revisions to Regulations for the Education of Exceptional Students Series 16, Policy 2419

#### PURPOSE

The purpose of these proposed revisions is to make the language and requirements of Policy 2419 consistent with the federal Individuals with Disabilities Education Act (IDEA).

#### BACKGROUND

The proposed revisions in Policy 2419 reflect the additional and revised requirements in the federal regulations for the Individuals with Disabilities Education Act (IDEA). Many of the proposed changes are required by the U.S. Department of Education to be in effect by July 1, 1992.

#### 1. Change all references to handicapped children/students.

All references to "handicapped" or related terms have been changed to "disabilities" to reflect the language of IDEA. The rationale for this change in the federal and state regulations is that students are individuals first and their disabilities are secondary considerations. Since these are essentially required editorial changes that occur throughout the document, the pages with only changed terminology are not included in the pages of proposed revisions for public review.

#### 2. Add and revise definitions in the Glossary.

Several minor language revisions, such as the addition of the phrase "and other settings" in the definition of special education were made to reflect the language of new or revised federal definitions.

The definition of "related services" was revised to include the additional terms of "rehabilitation counseling" and "social work services". The proposed revisions also include definitions for these and other additional terms defined in the regulations for IDEA.

#### 3. IEP requirements and transition services for students with disabilities.

The Individuals with Disabilities Education Act includes additional requirements in the individualized education program (IEP) development process to assure that the transition program needs of adolescent-age students with disabilities are addressed. The purpose of these additional federal requirements is to assure that the local educational agency and other agencies collaboratively plan a student's transition program and cooperatively provide the needed services.

The proposed revisions in Section 1.3, Individualized Education Program Process, in the IEP Committee Membership and IEP Content subsections and Section 1.5, Annual Review of the Individualized Education Program, in the IEP Review subsection are reflective of the federal emphasis on interagency transition planning and provision of services.

4. Strengthen program area requirements.

The disabilities of autism and traumatically brain injured are proposed as separate categorical areas, as required by the federal regulations. The proposed revision in the definition of autism is consistent with the language of the federal definition.

The Traumatic Brain Injury section is an additional program area section. The proposed definition of this population is consistent with the federal definition. The other proposed content of this section is based upon the professional experience and judgement of educators who currently are serving students who are traumatically brain injured.

Proposed revisions in the Blind and Partially Sighted program area and corresponding proposed language in Section 1.3, Individualized Education Program Process, will strengthen program planning considerations for individual students.

The proposed separation of the Orthopedically Impaired and Other Health Impaired into two categories will strengthen the eligibility criteria for these two program areas and will enable the local school districts to appropriately address the educational needs of these two difference populations.

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TITLE 126  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF EDUCATION  
CHAPTER 18-20  
POLICY 2419  
SERIES 16

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE: REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS

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Section 1: General

1.1 Scope - This legislative rule established the specific requirements for local school districts and other agencies to initiate and administer educational programs for exceptional (disabled and gifted) students.

1.2 Authority - West Virginia Code §18-20-5.

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule - None.

Section 2: Additional

2.1 Copy of regulations attached.

Copies may be obtained in the Office of the Secretary of State and in the West Virginia Department of Education, Division of Instructional and Students Services, Office of Special Education Programs and Assurances.

2.2 Summary of regulations below.

SUMMARY OF REGULATIONS

Regulations contain: general requirements pertaining to the identification, assessment and placement of identified students; general requirements pertaining to the provision of a free appropriate public education, including special education and related services to eligible exceptional students; specific eligibility criteria for each area of exceptionality; specific requirements pertaining to the administration of special education programs in each area of exceptionality; information explaining the procedural safeguards, or due process rights, afforded to exceptional students and their parents.

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POLICY 2419:  
REGULATIONS FOR THE EDUCATION OF  
EXCEPTIONAL STUDENTS

WEST VIRGINIA DEPARTMENT OF EDUCATION  
Office of Special Education Programs and Assurances

Effective  
\_\_\_\_\_, 1992

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## GLOSSARY

1. Adaptive Behavior - the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his-her the student's age and cultural group.
2. Adaptive P.E. - regular physical education which has been modified, or adapted, so that a handicapped student with a disability can participate in the regular physical education program. Modifications may include, but are not limited to, curricular adaptations and-or modified or specialized equipment.
3. Adolescent Education - the educational program that addresses the intellectual, physical, and social-emotional and transition needs of learners aged 14 through 19 or 21 for special education across all programs and areas of study in grades 9-12.
4. Adolescent Plan - a written plan, developed by the IEP Committee prior to the end of the student's eighth grade year, that describes the student's projected adolescent education program. This plan must include the type of diploma the student may receive, the list of courses (including honors-advanced education) per grade level, anticipated credits to be earned, educational goals and projected career plans. This plan shall include transitional goals and objectives that will enable the student to access appropriate adult services or employment.
5. Adult Education - the educational program that addresses the intellectual, physical, social-emotional and occupational needs of persons 16 years old and older who presently are not enrolled in a public school.
6. Adversely Affects - interferes with the student's educational performance to the extent that the child student is unable to achieve in the regular education program within the range of functioning of her-or his the student's nonhandicappeddisabled chronological age peers.
7. Annual Goal - a comprehensive statement developed from the evaluation data that describes components crucial to the mastery of knowledge, skills, attitudes and behaviors for the individual student.
8. 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.
9. 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: a) the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment; b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities; c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing of assistive technology devices; d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and

rehabilitation plans and programs; e) training or technical assistance for a student with a disability, or if appropriate, that student's family; and f) 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 individuals with disabilities.

810. Attention Deficit Hyperactive Disorders (ADHD) - a term used to describe a child student who may demonstrate symptoms, such as, hyperactivity, hypoactivity, impulsiveness, short attention span, disorganization and distractibility.
911. Caseload - the maximum number of students for whom a special education teacher has primary responsibility for the provision of special education supportive and-or instructional services in all assigned schools.
1012. Change of Placement - a change in or removal from the setting in which the exceptional student receives instruction.
1113. 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.
1214. Consultation - the procedure through which teachers, parents, principals, and other adults significant in the life of the student communicate. Consultation emphasizes collaboration to develop recommendations which fit the uniqueness of the student, the teacher, and the setting.
1315. Continuum of Alternative Placements - a range of settings in which eligible exceptional students receive special education and related services.
1416. Departmentalized Instruction - an organizational delivery system used in a school in which one teacher is assigned to teach one program and-or area of study to different groups of students through courses, instructional modules and-or other instructional systems.
1517. Destruction - physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
1618. Due Process - a system that guarantees each individual equal protection and treatment under the law. (14th Amendment)
1719. Early Childhood Education - the educational program that addresses the intellectual, physical, and social-emotional needs of learners age three through ten, across all programs and areas of study in grades PreK-4.
1820. Economically Disadvantaged - is defined by one or more of the following criteria: family income is at or below the national poverty level; participant, or parents-guardian of the participant is unemployed; participant, or parent of the participant, is recipient of public assistance; or participant is institutionalized or under state guardianship.

1921. 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.
2022. 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 environment.
2123. Eligible Exceptional Students - those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained in this document, have been determined to be: a) deaf and hard of hearing, mentally impaired, physically-handicapped orthopedically impaired, other health impaired, (~~Autismtic~~), traumatically brain injured, specific learning disabled, behavior disordered, blind and partially sighted, communication disordered, gifted, exceptional gifted (grades 9-12), deaf-blind, or preschool handicapped and b) in need of special education.
2224. Eligible Handicapped Students with Disabilities - those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained within this document have been determined to be: a) deaf and hard of hearing, mentally impaired, physically--handicapped orthopedically impaired, other health impaired, (~~Autismtic~~), traumatically brain injured, specific learning disabled, behavior disordered, blind and partially sighted, communication disordered, deaf-blind or preschool handicapped and b) in need of special education.
2325. Evaluation - procedures used in accordance with the Protection in Evaluation requirements of the Individuals with Disabilities Education of--the--Handicapped Act (EHA) (IDEA) to determine whether a child student is exceptional and the nature and extent of the special education and related services that the child student needs. The term means procedures used selectively with an individual child student and does not include basic tests administered to or procedures used with all children students in a school, grade, or class.
26. Executive Skills - those functions which enable a person to plan, sequence and self-monitor multi-step activities and engage in organized, purposeful behavior.
2427. Extended Year Programming - an education program in excess of 180 days per year provided for a student if regression caused by interruption in educational programming and the student's limited recoument capacity render it unlikely that the student will attain a level of self-sufficiency and independence from caretakers that he-she would be expected to reach in view of his-her the student's handicapping disabling condition(s).
2528. Extenuating Circumstances - conditions that temporarily cause the existence of a regulatory violation.
2629. Free Appropriate Public Education ---1) special education and related services which a) are provided at public expense, under public supervision and direction, and without charge to the parent, b) meet the provision of these regulations, and c) are provided in conformity with

an Individualized Education Program; and 2) the opportunity for eligible exceptional students to participate in all educational programs of study, services and extracurricular activities.

2730. 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.
2831. Independent Educational Evaluation - an evaluation conducted by a qualified evaluator who is not employed by the public agency responsible for the education of the student in question, and who is selected by the party seeking the independent evaluation.
2932. Individualized Education Program (IEP) - a written plan developed by educators, parents and related service personnel which serves as the central educational document for the exceptional student's education.
3033. Instructional Objective - a statement written in measurable terms of what the student is expected to achieve as a result of instruction. Instructional objectives must be established for each annual goal.
3134. Instructional Period - a block of time that is generally associated with instruction for a program or area of study.
3235. Least Restrictive Environment - the educational placement which provides the services-conditions necessary to meet the unique learning and behavioral needs of the student, while providing the student with integration to the maximum extent possible with nonexceptional students.
3336. Metacognitive - acquired knowledge at a higher state of development, as through more comprehensive perception, reasoning or intuition.
3437. Middle Childhood Education - the educational program that addresses the intellectual, physical, and social-emotional needs of learners aged 10 through 14 across all programs in areas of study in grades 5-8.
3538. Modified Diploma - a diploma awarded to a ~~severely-handicapped~~ student with severe disabilities who satisfactorily completes the modified graduation requirements described in ~~her--or--his~~ the student's individualized education program (IEP).
3639. Multicategorical Delivery - a model in which mildly behavior disordered, mildly mentally impaired, and-or mildly specific learning disabled students and who have similar academic and affective needs are instructed together in a special education program.
3740. Multidisciplinary Evaluation - comprehensive procedures used to determine whether a child student is exceptional and the nature and extent of the special education and related services that the child student needs. The term means procedures that are conducted by a team. These procedures are used selectively with an individual child student and do not include basic tests administered to or procedures used with all children students in a school, grade or class.
3841. Multidisciplinary Evaluation Team - a group of qualified personnel which determines the areas to be evaluated and conducts the multidisciplinary evaluation.

3942. Nonacademic Services - nonacademic 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 public agency, referrals to agencies which provide assistance to handicapped disabled persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.
4043. Normal Rate or Level of Development - the average rate or level of developmental functioning as exhibited by children 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 percentiles and are dependent upon the type of evaluation instrument used.
4144. Objective Criteria - standards established to determine whether a student is learning or has achieved a skill and if instruction is effective.
4245. Out-of-State Placement - the placement of a handicapped student with disabilities in a school-program located outside of the state for special education and related services.
4346. Parent - a parent, a guardian, a person acting as a parent of a child (e.g., grandparent, stepparent with whom a child lives, persons who are legally responsible for a child's welfare) or 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.
4447. 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.
4548. Parental Consent - a) 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; b) 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; and c) the "parent" understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
4649. Physical Education - the development of: a) physical and motor fitness; b) fundamental motor skills and patterns; and c) 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.
4750. Placement - the setting in which the eligible exceptional student receives instruction. These settings are: Regular Education: Full Time, Regular Education: Part-Time, Special Education: Separate Class, Special Education: Special School, Special Education: Out-of-School Environment and Special Education: Residential Facility.

4851. Private School - an educational facility operated by a nonpublic agency or organization.
4952. Procedure - any written course of action set forth to implement federal, state, and local policy, which includes: a) a description of the actions to be undertaken; b) the criteria or standards to be used when decisions are required; c) the person(s) responsible for such actions and d) the timelines for completion. Written procedures shall describe actions in terms which are both measurable and operational.
5053. Procedural Safeguards - the due process protections afforded in the implementation of the West Virginia special education process.
5154. Program of Study - a K-12 curricular sequence which constitutes the subject matter to be offered in the public schools of West Virginia, e.g., reading, mathematics, social studies, industrial arts, business education.
5255. 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 exceptional students.
5356. Qualified - 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.
5457. Regression Formula - a commonly used statistical procedure, used to compare two measures that are not perfectly correlated, to determine expected achievement.
5558. Regular Education Program - an educational program designed to meet the needs of students in preschool, early childhood, middle childhood, adolescent, or adult education. Instruction in a regular education program includes community based, general and-or vocational education.
59. 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.
5660. Related Services - transportation and such developmental, corrective and other supportive services as are required to assist an eligible exceptional student to benefit from special education. The term includes, but is not limited to, audiology, speech and language pathology, psychological services, physical and occupational therapy, clean intermittent catheterization (CIC), recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, - social work services, school health services, early identification and evaluation of disabling conditions in students, medical services for diagnostic or evaluative purposes only and parent training.

5761. School-Based Assistance Team (SBAT) - a team within a school consisting of at least three (3) persons, including the school level administrator, the student's classroom teacher(s), and other appropriate staff whose major functions are to provide assistance to students within the regular classroom, and to identify and refer students for evaluation, when necessary.
5862. School Committee - a committee for addressing suspension of a handicapped student with a disability. A school committee is composed of more than one person, and its membership must be specified in the LEAs policies and procedures. A school committee may be the SBAT, a separate committee for this purpose or the participants in an informal hearing as mandated in WV Code 18A-5-1a.
5963. School Health Services - services provided by certified school nurses and other health care providers to identify health problems that interfere with learning and to promote a level of health which permits maximum utilization of educational opportunities.
6064. Significantly Subaverage Intelligence - a level of ability indicated by an intelligence quotient (IQ) two or more standard deviations below the mean.
65. Social Work Services - services that include: a) preparing a social or developmental history on a student with a disability; b) group and individual counseling with the student and family; c) working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and d) mobilizing school and community resources to enable the student to receive maximum benefit from the student's educational program.
6166. Special Education - specially designed instruction, at no cost to parents, to meet the educational needs of an eligible exceptional student, including classroom instruction, out-of-school instruction, and instruction in a special school or residential setting and instruction in other settings. Special education also means physical education, vocational education, or other curricular offerings when modifications are necessary to meet the individual needs of exceptional students.
6267. Special Transportation - --modifications made in regular school transportation so that accessibility of special education and other related services for exceptional students is assured. Special transportation includes: travel to and from school and between schools, travel in and around school buildings, and special equipment (such as special or adaptive buses, lifts, and ramps), if required to provide school transportation for a handicapped-child student with a disability.
6368. Specially Designed Instruction - a) that part of the regular education curriculum, that must be modified to the extent that it cannot be provided in the regular education classroom without supplementary aids and-or services; b) that part of the regular education curriculum that must be delivered through altered or different strategies or specialized materials to the extent that it cannot be provided in the regular education class even with supplementary aids or services; and-or c) a specialized curriculum that is significantly different than the regular education curriculum.

6469. Standard Deviation - a statistic used to express the distance on the average of scores from the mean of the distribution. The standard deviation shows how variable a series or group of scores or numbers are.
6570. Standard Error of Measurement --- a measure indicating how closely an individual's obtained score compares with her-his true score. It provides a range within which the true score lies.
6671. Supplementary Aids - any material-curricular resource or assistance, beyond what is normally afforded nonhandicappeddisabled students, provided to support an exceptional student's placement. Supplementary aids may include, but are not limited to, large print books, auditory trainers, curriculum adaptations and classroom modifications.
6772. Supplementary Services - any human resource or assistance, beyond what is normally afforded nonhandicappeddisabled students, provided to support an exceptional student's placement, such as resource instruction, peer tutoring, interpreting, and notetaking.
6873. Sweep Screening - the utilization of screening tests, instruments or procedures with designated groups of students to locate individuals who manifest, or are likely to manifest, attributes or behaviors which require special attention.
6974. Tourette Syndrome - a neurological multiple tic disorder.
75. Transition Services - a coordinated set of activities for a student, 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 must include instruction, 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.
78. Traumatic--Brain--Injury--(TBI)-----an--insult--to--the--brain,--not--of-a degenerative--or--congenital--nature--but--caused--by--an--external--physical force,--that--may--produce--a--diminished--or--altered--state--of--consciousness, which--results--in--impairment--of--cognitive--abilities--or--physical functioning--and--or--in--the--disturbance--of--behavioral--or--emotional functioning.

### 1.3 Individualized Education Program Process

1.3 Each public agency shall establish policy and implement written procedures for conducting an Individualized Education Program (IEP) Committee meeting to develop an Individualized Education Program (IEP) and determine placement in the least restrictive environment.

#### A. IEP Committee Timelines

1. The IEP Committee shall be convened to develop a written IEP within thirty (30) calendar days of the determination of eligibility and prior to the initiation of services.
2. If the results of a student's reevaluation indicate that the IEP needs to be revised prior to the annual review, the IEP Committee shall be convened within thirty (30) calendar days of this determination.

#### B. IEP Committee Membership

The local educational agency shall establish an IEP Committee which shall include:

1. a representative of the public agency, other than the student's teacher, who is qualified to supervise the provision of special education, and who shall serve as the chairperson.
2. the student's current teacher(s);
3. professional personnel qualified in the area(s) of concern;
4. one or both of the student's parents;
5. the student, where appropriate;
6. a member of the multidisciplinary evaluation team who is knowledgeable about the student and the evaluation procedures used with the student, familiar with the results of the evaluation, and qualified to present and explain the written report(s) of the evaluator(s) if the student is being evaluated for the first time or reevaluated;
7. the vocational education director or designee, if the student is being considered for vocational education;
8. the professional support personnel who have the direct responsibility for implementing the IEP, if the student's IEP is being annually reviewed;
9. a representative of the parochial or other private school if the student is enrolled in the parochial or other private school;
10. a representative of a private school or facility, if placement in the private school or facility is an option to be considered or being utilized;

11. a representative of the public agency responsible for providing or supervising the provision of transition services, for students with disabilities aged 16 years and older, and for students below age 16 whose need for transition services is being considered;
12. if appropriate, a representative of each other participating agency providing transition services, for students with disabilities aged 16 years and older, and for students below age 16 whose need for transition services is being considered; and
13. other individuals, at the discretion of the parent(s) or agency.

C. IEP Committee Responsibilities

During the IEP Committee Meeting, the committee shall:

1. utilize the written information, including each evaluator's complete written report, provided by the Eligibility Committee concerning the student's special education and related service needs and information presented orally in developing the student's IEP.
  2. develop an IEP for each student which includes all components as specified in Section 1.3.E.
  3. document all other appropriate information as specified in Section 1.3.F.
  4. inform parents of all placement options prior to the determination of placement.
  5. determine the levels of achievement and performance the student must meet before being removed from special education.
  6. utilize the written IEP as the basis for determining appropriate placement.
  7. determine an appropriate placement in consideration of the least restrictive requirements as specified in Section 1.3.G.
  8. document the student's placement as specified in Section 1.3.H.
  9. obtain signatures and positions of IEP Committee members and their agreement or disagreement with the IEP.
  10. obtain parental consent for initial placement or change of placement; and
  11. document the date of the meeting.
- D. A local educational agency may combine the Eligibility Committee meeting and the IEP Committee meeting provided all required personnel are in attendance and all required actions are completed and documented.

E. IEP Content

The IEP shall include:

1. a statement of the student's present levels of educational performance;
2. a statement of annual goals, including short-term instructional objectives;
3. a statement of the specific special education and related services to be provided, including extended year programming and adaptive physical education when appropriate, to the student, and the extent to which the student will be able to participate in regular educational programs;
4. a statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, if determined appropriate for an individual student, beginning at age 14 or younger) including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting;
45. the projected dates for the initiation of services and the anticipated duration of the services; and
56. appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

F. Other IEP Committee Documentation

The IEP Committee shall document the following information, if appropriate:

1. specialized equipment to be used;
2. health concerns and relevant intervention strategies;
3. an adolescent plan;
4. acceleration and the effects of acceleration on the student's graduation;
5. the justification for extended transportation time as specified in Section 1.8;
6. any reduction in the length of instructional day as specified in Section 1.3.J;
7. a description of modifications, i.e. supplemental aids and-or services, to the regular education program necessary to ensure the student's participation in that program;
8. reasons why the student's needs cannot be met in the regular education program, if placement warrants removal;
9. whether or not the student shall participate in State-County Testing Program and other state required testing programs; and
10. placement in a private school or facility as required by Section 1.3.I; and
11. ways that the use of braille will be appropriately integrated in a blind or partially sighted student's other classes and school activities, or justification for not recommending the reading and writing of braille.

G. Least Restrictive Environment Requirements

1. The IEP Committee shall determine an appropriate placement in consideration of the following least restrictive requirements:

## 1.5 Annual Review of Individualized Education Program

1.5 Each public agency shall establish policy and implement written procedures to annually review the appropriateness of the Individualized Education Program (IEP) and, if appropriate, revise its provisions.

### A. IEP Review

1. A meeting must be held at least once a year to review each student's IEP and, if appropriate, revise its provisions.
2. The annual review for a student placed in a private school by a local educational agency shall be initiated and conducted as follows:
  - a. After a handicapped-child student with a disability enters a private school or facility, any meetings to review and revise the child's student's IEP may be initiated and conducted by the private school-facility or the local educational agency at the discretion of the local educational agency.
  - b. If the private school or facility initiates and conducts these meetings, the local educational agency shall insure that the parents and a local educational agency representative:
    - 1) Are involved in any decision about the child's student's IEP; and
    - 2) Agree to any proposed changes in the program before those changes are implemented.
3.
  - a. An IEP review meeting shall be convened to identify alternative strategies to meet the transition objectives, if a participating agency, other than the public agency responsible for the student's education, has failed to provide agreed upon transition services.
  - b. This does not relieve any participating agency, including a state vocational rehabilitation agency, of responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of the agency.

### B. IEP Review Committee

The IEP review shall be conducted by an IEP Committee as specified under Section 1.3.B.

### C. Assurances

1. Provide written notification to the student's parent(s) of the IEP review meeting and afford the parents the opportunity to participate in the meeting.
  - a. Take steps to assure that one or both of the parents of the exceptional student are present at each meeting or are afforded the opportunity to participate, including:

## 2.0 PROGRAM AREA REGULATIONS

2.1 (AUTISM)

## A. PROGRAM DEFINITION

## 1. Definition of Population to be Served

~~Autistic--students--are--those--who--exhibit--a--condition--manifested--by--~~  
~~qualitative--impairments--in--reciprocal--social--interaction,--verbal--and~~  
~~nonverbal--communication--and--imaginative--activity,--and--a--severely~~  
~~limited--repertoire--of--activities--and--interests.---The--onset--occurs~~  
~~during--infancy--and--or--childhood.~~

Students with autism are those who exhibit a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects educational performance. Characteristics of autism include: irregularities and impairments in communication; engagement in repetitive activities and stereotyped movement; resistance to environmental change or change in daily routines; and unusual responses to sensory experiences.

## 2. Program of Study

- a. The major goal of an autism program is to enable the student to achieve annual goals and instructional objectives that are functional, age appropriate and necessary for participation in society.
- b. The autism program includes six (6) major curricular components: behavior management, language and communication training, academics, career education, leisure skills and daily living skills.
- c. The autism program shall be structured so that the student develops appropriate--internal--controls--and communication and social skills that allow the student to generalize and maintains skills appropriate to life situations.

## 3. Eligibility Criteria

Documentation that the student's educational performance is adversely affected and that the student meets all of the following criteria by exhibiting eight (8) or more of the characteristics:

- a. Qualitative impairment in reciprocal social interaction (must exhibit at least two):
  - 1) marked lack of awareness of the existence or feelings of others;
  - 2) no or abnormal seeking of comfort at times of distress;
  - 3) no or impaired imitation;
  - 4) no or abnormal social play; or
  - 5) gross impairment in ability to make peer friendships.

- b. Qualitative impairment in verbal and nonverbal communication, and in imaginative activity (must exhibit at least one):
- 1) no mode of communication, such as communicative babbling, facial expression, gesture, mime, or spoken language;
  - 2) markedly abnormal nonverbal communication, as in the use of eye-to-eye gaze, facial expression, body posture, or gestures to initiate or modulate social interaction;
  - 3) absence of imaginative activity, such as play-acting of adult roles, fantasy characters, or animals; lack of interest in stories about imaginary events;
  - 4) marked abnormalities in the production of speech, including volume, pitch, stress, rate, rhythm, and intonation;
  - 5) marked abnormalities in the form or content of speech, including stereotyped and repetitive use of speech; use of "you" when "I" is meant; idiosyncratic use of words or phrases; or frequent irrelevant remarks; or
  - 6) marked impairment in the ability to initiate or sustain a conversation with others, despite adequate speech.
- c. Severely limited repertoire of activities and interests (must exhibit at least one):
- 1) stereotyped body movements;
  - 2) persistent preoccupation with parts of objects or attachment to unusual objects;
  - 3) marked distress over changes in trivial aspects of environment;
  - 4) unreasonable insistence on following routines in precise detail; or
  - 5) markedly restricted range of interests and a preoccupation with one narrow interest.

## B. PROGRAM DELIVERY

### Caseload

1. Regular Education: Full-Time  
Assign no more than 20 students.
2. Regular Education: Part-time  
Assign no more than ten (10) students with a limit of six (6) during any one instructional period.
3. Special Education: Separate Class  
Assign no more than four (4) autistic students with autism. An aide shall be assigned on the basis of student needs.

## 2.23 BLIND AND PARTIALLY SIGHTED

### A. PROGRAM DEFINITION

#### 1. Definition of Population to be Served

- a. Students who are blind and partially sighted have a physical disability in a visual acuity or a visual field limitation where, even with use of lenses or corrective devices, the child requires modification of instructional methods and materials or supplementary assistance in order to function and learn. Pupils identified as blind and partially sighted include those with organic impairments such that there is no vision, or visual limitations, which after best correction result in educational handicaps disabilities requiring special services and-or materials.
- b. Blind students have central visual acuity of 20-200 or less in the better eye with correction or a visual field that subtends an angle of 20° or less.
- c. Partially sighted students have visual acuity greater than 20-200 with correction but less than 20-70 with correction.

#### 2. Program of Study

- a. The curriculum of an effective program for the visually--impaired blind and partially sighted students is adapted from the general and vocational education programs, and includes social-emotional components, to meet the individual needs of the blind or partially sighted student. The required adaptations are to be based upon the student's developmental functioning level and readiness for learning.
- b. Approved-annual-goals-and-instructional-objectives The program of study may include, but are is not limited to, development of--braille--and--related--tactual--skills, orientation and mobility, effective use of remaining vision and techniques of daily living skills at all programmatic levels (i.e., early, middle, adolescent education), and proficiency in braille reading and writing to enable the student to communicate with the same level of proficiency expected of the student's peers of comparable ability and grade level.
- c. The IEP Committee shall document ways that the use of braille will be appropriately integrated into the student's other classes and school activities. Braille instruction and use are not required if, in the course of developing the student's IEP, the IEP Committee concurs that the student's visual impairment does not affect reading and writing performance commensurate with ability. The justification for not recommending that the student receive instruction in the reading and writing of braille shall be documented by the IEP Committee.

### 3. Eligibility Criteria

Documentation of all of the following:

- a. A visual impairment diagnosed by a licensed optometrist or ophthalmologist and recorded in terms of one or more of the following organic visual impairments:
  - 1) Visual acuity - A measure of 20-70 or less in the better eye with best correction recorded in either far point or near point.
  - 2) Visual field limitation - Angle of vision is 20 degrees or less in the better eye.
  - 3) Progressive eye disease - A deteriorating eye condition which will result in loss of visual efficiency, i.e., glaucoma, macular degeneration.
  - 4) Binocular Vision Problem (in conjunction with 20-70) - The inability of the two eyes to focus on one object and to fuse the two images into one, i.e., strabismus, diplopia.
- b. Educational performance which is adversely affected to the extent that specially designed instruction is required to meet the educational needs of the student.

### B. PROGRAM DELIVERY

Caseload

1. Regular Education: Full-time  
Assign no more than 30 students.
2. Regular Education: Part-time  
Assign no more than 15 students with a limit of five (5) during any one instructional period.
3. Special Education: Separate Class
  - a. Assign no more than five (5) students without a full-time aide with a limit of five (5) during any one instructional period.
  - b. Assign no more than ten (10) students with a full-time aide with a limit of ten (10) during any one instructional period.

## 2.9 PHYSICALLY-HANDICAPPED ORTHOPEDICALLY IMPAIRED

### A. PROGRAM DEFINITION

#### 1. Definition of Population to be Served

Physically-handicapped Students with orthopedic impairments have a severe orthopedic impairment physical--disabilities which may be congenital or caused by accident or disease, resulting in permanent, temporary, or intermittent medical disabilities. ~~These--disabilities require modification in curriculum,--instructional strategies,--and--or--a need for--related--services.---The--type,--extent--and--or--duration--of services are determined--by the nature of--the individual's disability.~~ The term physically--handicapped--in--these--regulations shall include: Orthopedically--impaired--disabilities caused by congenital anomaly (e.g., spina bifida, congenital amputation, and osteogenesis imperfecta, etc.), disabilities caused by disease (e.g., osteomyelitis, poliomyelitis, arthritis, etc.), and disabilities from other causes (e.g., amputation, cerebral palsy, dystrophies and atrophies, and conditions which cause contractures, etc.), and

~~Other--health--impaired--excluding--autism----disabilities--of--limited strength,--vitality,--or--alertness--due to--chronic--or--acute--health problems--such as--heart condition,--rheumatic fever,--nephritis,--asthma, sickle cell anemia,--hemophilia,--epilepsy,--cystic fibrosis,--cancer--or diabetes.~~

#### 2. Program of Study

- a. Because of the uniqueness of each physically--handicapped student with orthopedic impairments student, the curriculum involves a variety of philosophies, instructional strategies or procedures, environmental arrangements, equipment, materials, learning activities, skill sequences, and-or criteria for successful educational performance.
- b. Specialized curricular areas individually considered for a student with \_physically--handicapped orthopedic impairments student include, but are not limited to: physical, psychological, and emotional adjustment to a physical disability, including treatment, care, and maintenance; death and dying; use of prosthetic and orthotic devices; eating, dressing, toileting, physical mobility, and personal hygiene; basic communication (e.g. use of communication devices, Bliss symbols, and signing, etc.); and specialized curricular areas utilized with associated disabilities.

#### 3. Eligibility Criteria

Documentation of all of the following:

- a. A physical disability as diagnosed and described, including effects on functioning, by a licensed physician.

- b. Physical assessment which includes gross motor skills, fine motor skills, and self-help skills and, if appropriate, an evaluation of health.
- c. Educational performance which is adversely affected to the extent that specially designed instruction is required to meet the educational needs of the student.

B. PROGRAM DELIVERY

Caseload

The maximum caseloads for teachers providing services for students in this area of exceptionality placed in Regular Education: Full-time or Regular Education: Part-time are specified in section 1.4., Implementation of Individualized Education Program (p. 31).

Special Education: Separate Class

Assign no more than ten (10) students with a full-time aide with a limit of ten (10) during any one instructional period.

Instructional Assistance

In a ~~physically-handicapped~~ separate class of three (3) or less students with orthopedic impairments students, an aide shall be assigned on the basis of student needs.

## 2.10 OTHER HEALTH IMPAIRED

### A. PROGRAM DEFINITION

#### 1. Definition of Population to be Served

Students with other health impairments have disabilities of limited strength, vitality, or alertness due to chronic or acute health problems such as heart condition, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, cystic fibrosis, cancer or diabetes.

#### 2. Program of Study

- a. Because of the uniqueness of each student with other health impairments, the curriculum involves a variety of philosophies, instructional strategies or procedures, environmental arrangements, equipment, materials, learning activities, skill sequences, and/or criteria for successful educational performance.
- b. Specialized curricular areas individually considered for a student with an other health impairment include, but are not limited to: physical, psychological, and emotional adjustment to a medical or health condition, including treatment, care, and maintenance; death and dying; eating, dressing, toileting, physical mobility, and personal hygiene; basic communication (e.g. use of communication devices, bliss symbols, and signing); and specialized curricular areas utilized with associated disabilities.

#### 3. Eligibility Criteria

Documentation of all of the following:

- a. A medical or health condition as diagnosed and described, including effects on functioning, by a licensed physician.
- b. Learning and/or behavior problems existing as a result of the medical or health condition.
- c. Educational performance which is adversely affected to the extent that specially designed instruction is required to meet the educational needs of the student.

### B. PROGRAM DELIVERY

Students identified as other health impaired shall be assigned to and served by personnel who have the training necessary to implement the student's IEP.

## 2.12 TRAUMATIC BRAIN INJURY

### A. PROGRAM DEFINITION

#### 1. Definition of Population to be Served

Students with traumatic brain injury are those who have received an injury to the brain caused by an external physical force or by an internal occurrence such as stroke or aneurysm, resulting in total or partial functional disability or psychosocial maladjustment that adversely affects educational performance. Traumatic brain injury includes open or closed head injuries resulting in mild, moderate or severe impairments in one or more areas, including 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 include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

#### 2. Program of Study

- a. The major goal of the traumatic brain injury program is retraining of skills lost and-or providing compensatory strategies to allow the student to achieve reasonable school progress.
- b. The program includes six (6) curricular components: academics, behavior management, career education, communication, executive skills and mobility.
- c. The program focuses on self awareness of post injury changes related to self-concept, and enhances daily living, survival and leisure skills.

#### 3. Eligibility Criteria

Documentation that the student meets all of the following criteria:

- a. An injury to the brain caused by a physical force or internal occurrence has been diagnosed by a licensed physician or neuropsychologist;
- b. Cognitive, language, behavior, executive skills and-or motor problems exist as a result of the injury; and
- c. Educational performance is adversely affected to the extent that specially designed instruction is required to meet the educational needs of the student.

### B. PROGRAM DELIVERY

#### Caseload

##### 1. Regular Education: Full-time

Assign no more than 30 students.

2. Regular Education: Part-time

Assign no more than ten (10) students with a limit of five (5) during any one instructional period.

3. Special Education: Separate Class

a. Assign no more than four (4) students without a full-time aide with a limit of four (4) during any one instructional period.

b. Assign no more than six (6) students with a full-time aide with a limit of six (6) during any one instructional period.

appropriately serve the individual's educational needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the school personnel recommending the matter in contention.

2. At all stages of due process procedures, interpreters for the deaf or interpreters fluent in the primary language of the home shall be provided as needed at public expense.
3. Any party to a hearing has the right to:
  - a. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of exceptional students;
  - b. present evidence and confront, cross-examine and compel the attendance of witnesses;
  - c. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;
  - d. obtain a written or electronic verbatim record of the hearing; and
  - e. obtain written findings of fact and decisions.
4. Parents involved in hearings must be given the right to:
  - a. have the student who is the subject of the hearing present; and
  - b. open the hearing to the public.

H. Due process hearing decision; appeal.

A decision made in a hearing is final, unless a party to the hearing appeals the decision through civil action.

I. Civil action.

Any party aggrieved by the findings and decision made in a hearing has the right to bring a civil action in any state court of competent jurisdiction within 120 days of the date of the issuance of the hearing officer's written decision or in a district court of the United States.

J. Timelines and convenience of hearings.

1. The West Virginia Department of Education shall assure that not later than 45 days after the department receives a written request for a due process hearing:
  - a. a final decision is reached in the hearing; and
  - b. a copy of the decision is mailed to each of the parties.

2. The West Virginia Department of Education shall transmit those findings and decisions, 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.
3. A hearing officer may grant specific extensions of time beyond the timelines at the request of either party or on stipulations made by the parties.
4. Each hearing involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and student involved.

K. Student status during proceedings.

1. During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the student agree otherwise, the student involved in the complaint must remain in ~~his-or-her~~ the student's present educational placement.
2. If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

L. Surrogate parents.

1. Each public agency shall assure that the rights of a student are protected when:
  - a. no parent can be identified;
  - b. the public agency cannot determine the whereabouts of a parent; or
  - c. the student is a ward of the state under the West Virginia Statutes.
2. The duty of a public agency includes the assignment of an individual to act as a surrogate for the parents. The method for determining whether a student needs a surrogate parent and for assigning a surrogate parent to the student is outlined in the procedural document, West Virginia Surrogate Parent Manual.
3. Public agencies shall assure that a person selected as a surrogate has no interest that conflicts with the interests of the student he or she represents, and has knowledge and skills that assure adequate representation of the student.
4. A person assigned as a surrogate may not be an employee of a public agency which 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 agency solely because he or she is paid by the agency to serve as a surrogate parent.

FISCAL NOTE WORKSHEET

HB NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policy 2419: Regulations for the Education of Exceptional Students FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

COST ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

INCOME ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 AND ITEM 3 GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$	\$	\$	\$	\$
PERSONAL SERVICES	\$	\$	\$	\$	\$
CURRENT EXPENSES					
REPAIRS AND ALTERATIONS					
EQUIPMENT					
OTHER					
2. ESTIMATED TOTAL REVENUES	\$	\$	\$	\$	\$

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

IMPACTS  
FISCAL:

NO FISCIAL IMPACT ANTICIPATED

STATE STAFF:

DATE \_\_\_\_\_ AGENCY \_\_\_\_\_ AUTHORIZED REPRESENTATIVE \_\_\_\_\_

RESPONSE FORM

Policy 2419: Regulations for the Education of Exceptional Students

Directions: Please use this form in commenting on the proposed revisions to Policy 2419: Regulations for the Education of Exceptional Students.

Individual/Organization: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section	Page Number(s), Comments and Suggested Revisions
GLOSSARY	
1.3 Individualized Education Program Process	
1.5 Annual Review of Individualized Education Program	
2.1 Autism	
2.3 Blind and Partially Sighted	

Section	Page Number(s), Comments and Suggested Revisions
2.9 Orthopedically Impaired	
2.10 Other Health Impaired	
2.12 Traumatic Brain Injury	
3.0 Procedural Safeguards	

Additional comments may be attached on separate page(s).

Please submit comments by **April 30, 1992** to:

Nancy J. Thabet  
Director  
Office of Special Education Programs and Assurances  
West Virginia Department of Education  
Capitol Bldg. 6, Room 304  
Charleston, West Virginia 25305

59i/4577i

WEST VIRGINIA DEPARTMENT OF EDUCATION  
IMPACT STATEMENT FOR  
Policy 2419: Regulations for the Education of Exceptional Students

INSTRUCTION

Interagency transition planning and provision of services will improve training opportunities that enable students with disabilities to achieve their potential and become productive adults. Interagency planning of services also facilitates the smooth transition of students from school to adult agencies that can meet their needs. The emphasis on transition goals and objectives will focus educators and other agency personnel on individual student outcomes rather than program objectives.

The proposed revisions in the program area regulations will enable local school districts to more accurately identify and appropriately serve certain populations of students with disabilities. Knowledge about the characteristics and instructional needs of these populations has increased in recent years. The proposed revisions in these areas will provide the basis for individualized programs to meet those instructional needs.

LEADERSHIP

The proposed revisions will provide direction to local school districts in meeting the requirements of the Individuals with Disabilities Education Act, identifying students with specific disabilities and providing appropriate services to meet the educational needs of those students.

STAFF DEVELOPMENT

Ongoing personnel development activities will need to include training on the proposed revisions in these regulations. All training conducted by the department pertaining to the development and implementation of Individualized Education Programs (IEPs) will need to incorporate the proposed revisions in the IEP process. Interagency training will need to be conducted related to agencies' responsibilities for transition planning and provision of services.

ADMINISTRATION

Proposed revisions that promote consistency with the federal requirements pertaining to specific disabilities will result in simplified reporting and review procedures for child count data (December 1 Child Count). The focus on specific programmatic considerations, such as transition services, will result in an IEP process that better focuses on individual student needs and outcomes. County school districts will have to revise their policies and procedures for department approval; however, department staff will provide technical assistance to all districts to complete this task.

Regulations for the Education of Exceptional Students  
Proposed Revisions to Policy 2419

The State Board of Education is charged with the responsibility for the establishment of implementing regulations governing programs and services for the education of exceptional students. The State Board reaffirms that education is a right and not a privilege extended to all exceptional students.

Therefore, the State Board charges each local educational agency with the responsibility for establishing and maintaining the special education programs and related services, in accordance with these regulations, needed to provide free appropriate public education for eligible exceptional students. These regulations apply to individuals with disabilities, three to twenty-one years of age, all gifted students in grades one through eight, and all exceptional gifted students in grades nine through twelve. These regulations apply to all public agencies.

59i/4577i

Policy Adopted:  
WVDE