WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: 18-20-5

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X
CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

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

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS October 11, 1989

Barbara L. Estep

August 29, 1989

11.10

EXECUTIVE SUMMARY
PROPOSED REVISIONS TO REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS
Series 16, Policy 2419

PURPOSE

The goals of these proposed revisions are to: 1) strengthen the multidisciplinary evaluation process; 2) refocus the IEP committee's responsibilities; 3) increase caseloads, where appropriate; and 4) provide consistency with federal and state laws.

BACKGROUND

The Department of Education continually reviews data pertaining to the implementation of the Regulations for the Education of Exceptional Students in the county school districts. The purpose of such reviews is to determine if revisions in the regulations are needed. Recent state and federal legislation and litigation, information from the U.S. Department of Education and other states, current research, and input from parents, educators and other professional personnel are also reviewed and considered in determining what revisions, if any, are needed.

The proposed revisions in Policy 2419: Regulations for the Education of Exceptional Students are based upon information from all of these sources, including the most current research available and state-of-the art practices.

1. STRENGTHEN MULTIDISCIPLINARY EVALUATION PROCESS

The evaluation components for a multidisciplinary evaluation have been broadened to include reports from the student's classroom teacher(s) and parent(s). The additional information will ensure that the Eligibility Committee has all information important for the decision-making process.

The responsibility for the eligibility process (determining an exceptionality and if a student needs or continues to need special education and related services) has been given to the Eligibility Committee. In the past, students who are not handicapped or gifted, but are in need of some modifications of their educational programs, have been determined eligible for special education. This change promotes improved compliance with eligibility determination as required by federal and state law and regulation. Thus, the rights of all students are guaranteed through this change.

2. REFOCUS IEP COMMITTEE RESPONSIBILITIES

The IEP Committee's responsibilities will include the development of the student's IEP and determination of an appropriate placement. Limiting its functions, in this way, will enable the IEP Committee to focus exclusively on the educational needs of the student. This proposed revision is consistent with federal requirements.

Only federal IEP content requirements must be included in a student's IEP. The option exists for including other necessary documentation within the IEP or separately.

3. INCREASE CASELOADS WHERE APPROPRIATE

a. Caseloads for mildly handicapped and gifted students increased across categorical areas in placement options: 1) regular education: full-time (regular education with modification); and 2) regular education: part-time (regular education with resource services and special class services).

b. Caseloads for behavior disordered students served in special education: separate classes have been increased.

c. Caseloads have increased and/or are more flexible by allowing the use of instructional aides in the following categorical areas: 1) communication disorders; 2) blind and partially-sighted; 3) deaf/blind; 4) deaf and hard of hearing; 5) mentally impaired; 6) other health impaired - autistic; 7) physically handicapped; and 8) preschool handicapped.

d. Caseloads for preschool handicapped have been adjusted and clarified as a result of serving all preschool children with handicaps.

4. PROVIDE CONSISTENCY WITH FEDERAL AND STATE LAWS

a. Definitions have been added to the glossary to clarify state and federal requirements.

b. Terminology has been changed to reflect language used in federal laws and regulations.

c. Eligibility criteria, the determination of eligibility for special education and related services, and IEP content have been made consistent with federal requirements.

d. The specified amount of time regarding the transportation of students with handicaps, parental consent for change of placement and serving handicapped students, ages twenty-two and twenty-three have been eliminated. These proposed revisions are consistent with federal requirements.

e. Mildly and moderately handicapped has been added to preschool, beginning school year 1991-92, as required by Public Law 99-457.

f. Changes in gifted education are consistent with the new requirements in West Virginia Code §18-9A-2 and §18-20-1.

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 handicaps, 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 (health and human resources and corrections).

Policy Adopted:
WVDE

WEST VIRGINIA DEPARTMENT OF EDUCATION
IMPACT STATEMENT FOR
POLICY 2419: REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS

INSTRUCTION

Better identification of exceptional students in need of special education services will occur. To guarantee the rights of all students, provisions for alternatives (e.g., teach, reteach) in regular education, to meet the needs of those students who are not exceptional but are in need of some modifications of their educational programs, will be required.

The IEP Committee will be better able to focus on student needs when developing IEPs, which should result in more appropriate IEPs that serve as the basis for exceptional students' instruction. An appropriate decrease in the number of special education teachers required to provide instruction will occur. Such an appropriate decrease should not significantly impact the instructional needs of students.

Transportation of students with handicaps will focus on appropriate educational programs, as determined by student needs, rather than focusing on a specified amount of time in transit. As a result, instruction will be appropriate to meet a student's needs.

LEADERSHIP

The proposed revisions are a direct result of expressed needs to improve the individualized decision-making process regarding an appropriate education for each exceptional student. Simultaneously, the proposed revisions provide needed direction and flexibility to county school districts. The revisions allow a county school district to determine if and when it can provide beyond federal requirements, and at the same time, continue to provide appropriate services to all exceptional students within its jurisdiction.

STAFF DEVELOPMENT

Ongoing statewide staff development will need to include training regarding proposed revisions in these regulations. Teacher preparation programs must also incorporate these amendments into their programs. The department's Office of Special Education staff will need additional training to assist county school districts with revising special education policies and procedures.

ADMINISTRATION

Proposed revisions, that promote consistency with federal requirements, will result in simplified reporting and review procedures for teacher assignments (Second Month Report) and child count data (December 1 Child Count). Although strengthening the multidisciplinary evaluation process will

require county school districts to hold an additional meeting for each student referred, the proposed changes, overall, will result in a more efficient process that better focuses on student needs. County school districts will be required to revise their special education policies and procedures for department approval; however, department staff will provide technical assistance to all districts in this effort.

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IX.

Proposed Revisions to Policy 2419:
Regulations for the Education of Exceptional Students and State Plan

Upon motion by Dr. Groves, second by Mr. Cook, the board approved revisions to Policy 2419 - Regulations for the Education of Exceptional Students and the State Plan under Part B of the Education of the Handicapped Act with the effective date of September 5, 1989. Changes to the revisions are based on: a) continued settlement negotiations in Boles vs. State Board of Education, et al; and b) consideration of written comments and those received at public hearings.

The revisions provide for: a). consistency between state and federal regulatory language; b). clarification of suspension procedures; and c). adherence to timelines and increased efficiency for due process hearings. (Copy appended to Official Minutes. (Copy appended to Official Minutes. Attachment J)

X.

Education Reform Legislation

Upon motion by Mr. Morris, second by Mrs. Horne the board approved language changes in accordance with the Education Reform Legislation in three (3) board policies - Policy 2100, Section 3 - 3.1, seventh line change must to shall; Policy 2422.4, Section 2, second line change to read, shall include AIDS prevention education in the subject area of health and other subject areas such as science, etc.; Policy 5500, Section 7 - 7.1, include language periodic random and unannounced.

XI.

Waiver of 34/1000 and Growth Limitation of School Service Personnel

Upon motion by Mrs. Horne, second by Dr. Wagoner, the board approved the policy to implement the waiver of the 34/1000. The deadline was changed from September 1 to November 1 to allow counties more time to request a waiver, to allow the department time to study the waiver requests and to include the information in the preliminary computations. (Copy appended to Official Minutes. Attachment K)

XII.

Proposed Policy 2700.56 Competitive Grants for Instructional Improvement

Upon motion by Mr. Cook, second by Mrs. Horne, the board approved Policy 2700.56. West Virginia Code 18-2-29 grants authority to the State Board of Education to "establish no later than the school year 1989-90, a competitive grant program whereby schools may be awarded grants to implement exemplary and innovative programs designed to improve instruction." The statute outlines priorities for the approval of competitive grant awards, requires the State Board of Education to promulgate rules for the utilization of grant funds, and encourages the donation of funds from private and other sources to augment state funding for the program. The policy has been on comment following the March meeting of the Board and reflects changes made based on comments received by the State Department of Education. It also reflects recent amendments made to 18-2-29 with

MINUTES

WEST VIRGINIA BOARD OF EDUCATION

July 14, 1989

0523U

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

TITLE: REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS

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 (handicapped and gifted) students.

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

1.3 Filing Date - August 29, 1989

1.4 Effective Date - October 11, 1989

1.5 Repeal of Former Rule - None. This edition incorporates changes to the rules which became effective on July 7, 1987. Unless changed, the 1987 edition remains in effect.

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, Bureau of General, Special and Professional Education, Office of Special Education.

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.

POLICY 2419

REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS

WEST VIRGINIA DEPARTMENT OF EDUCATION
Office of Special Education

Effective
September 5, 1989

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REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS

AUTHORITY, SCOPE, RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION, GENERAL RESPONSIBILITIES

AUTHORITY

These regulations are issued and in force pursuant to Chapter 18, Article 20, Section 5, of the West Virginia Code, entitled "Education of Exceptional Children," and "The Education for All Handicapped Children Act of 1975," Public Law 94-142. Chapter 18, Article 20, charges the State Board of Education with the responsibility for establishing regulations governing programs and services for the education of exceptional students.

SCOPE

These regulations apply to early childhood, middle childhood, adolescent and adult students whose educational programs of study require special education and related services. These apply to severely handicapped three through five year olds and those who are between five and 23 years of age prior to September 1 of such school year, unless the student has met graduation requirements as specified by the Individualized Education Program and within the State policy pertaining to graduation requirements. In addition, they apply to the provision of special education and related services to three through five year old mildly and moderately handicapped children to the extent that programs and services are offered by county boards of education.

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 requirement includes exceptional individuals (handicapped and gifted) between three and 23 years of age.

The net impact of the federal and State legislative child find mandates is to require an aggressive search by the State and local education agencies for:

1. handicapped children, ages birth through four years;

2. three through five year old preschool severely handicapped children and exceptional individuals, ages five to 23, who are out of school and not receiving preschool, early childhood, middle childhood, adolescent, or adult educational programs; and

3. exceptional individuals who are enrolled in early childhood, middle childhood, adolescent, and adult educational programs, but who are receiving programs and services inappropriate to meet their needs.

RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION

Special education and related services shall be made available to all severely handicapped children, ages three and four, and exceptional individuals who are between five and 23 years of age. Chapter 18, Article 20, the State's mandatory special education statute, and "The Education for All Handicapped Children Act of 1975," Public Law 94-142, are reaffirmations that education is a right and not a privilege extended to all exceptional individuals. The intent of the mandates is to assure that all severely handicapped children, ages three through five, and exceptional individuals between the ages of five and 23 have available to them a free appropriate public education which includes special education and related services to meet their unique educational needs. This applies to all public agencies (health, corrections, and human services) that provide special education and related services to handicapped students.

GENERAL RESPONSIBILITIES

Responsibilities of Local Educational Agencies. Each local educational agency has the responsibility for establishing and maintaining the special education programs and related services needed to provide free appropriate public education for eligible exceptional students.

Special education programs and services can be provided by any one or more of the following: a single local educational agency; two or more local educational agencies cooperatively; a regional educational service agency (RESA); or contract(s) for services from other public or private agencies or individuals.

It is the responsibility of the local educational agency to:

1. establish written policy and procedures to implement these regulations and to provide free public education for eligible exceptional students;

2. provide qualified staff who are appropriately trained and adequate in number to implement these regulations;

3. conduct referral, assessment and placement activities within the timelines specified in these regulations;

4. provide the special equipment, materials and supplies required to implement these regulations and provide the services specified in students' Individualized Education Programs;

5. conduct hearing aid monitoring in accordance with established procedures to assure that hearing aids worn by students in schools are functioning properly.

6. make available to exceptional students the variety of educational programs and services available to nonexceptional students served by the public agency, including, but not limited to, art, music, industrial arts, consumer and homemaking education, and vocational education;

7. provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford exceptional students an equal opportunity for participation in those services and activities;

8. make available physical education services, specially designed if necessary, to every exceptional student, including students enrolled in separate facilities;

9. inform other agencies, organizations, or individuals of the State and federal requirements pertaining to the education of exceptional students;

10. monitor the compliance with the regulations of agencies, organizations, or individuals who provide contractual special education and/or related services;

11. collect and maintain current and accurate student data for planning the delivery of free appropriate public education and report data as required;

12. conduct ongoing program evaluation to assess and improve the effectiveness of services provided to eligible exceptional students;

13. provide the opportunity for eligible exceptional students to earn the required credits for graduation;

14. provide eligible exceptional students an instructional day equivalent to that established for nonexceptional students of the same chronological age;

15. provide specially designed vocational education, as needed;

16. provide classrooms for eligible exceptional students that are located in close proximity to classrooms of age equivalent nonexceptional peers;

17. provide classrooms for eligible exceptional students that meet the criteria specified in The Handbook on Planning School Facilities, and that are comparable to the classrooms for nonexceptional students;

18. provide classrooms/facilities for eligible exceptional students with physical and/or sensory impairments that are in compliance, to the extent necessary, with the requirements of the Rehabilitation Act of 1973, Section 504, these and other State regulations, the specifications outlined in West Virginia Code, Chapter 18, Article 10F, and the current Uniform Federal Accessibility Standards;

19. Collect, maintain and disclose personally identifiable student data in accordance with State and federal confidentiality requirements; and

20. provide special education and related services to meet the needs of private school handicapped children in the jurisdiction of the agency.

Responsibilities of the West Virginia Board of Education. The West Virginia Board of Education has primary responsibility for ensuring that educational services are provided to all eligible exceptional students. The general supervision of programs for exceptional students is vested with the West Virginia Board of Education.

To accomplish the objectives of serving all eligible exceptional students, it is the responsibility of the State Board to:

1. establish standards pertaining to the education of all eligible exceptional students in the state;

2. establish regulations pertaining to the education of all eligible exceptional students in the state;

3. establish certification requirements for personnel providing educational services to eligible exceptional students;

4. approve allocations and disburse state and federal funds designated for the education of eligible exceptional students;

5. establish regulations to protect student and parent rights, particularly in the areas of due process, protection in assessment and confidentiality of information; and

6. assure that eligible exceptional students in the state, including individuals in residential institutions and private schools, receive an education in accordance with state and federal laws.

Responsibilities of the West Virginia Department of Education. The department has a primary leadership role in developing educational programs of study for eligible exceptional students in the state, providing guidance in the implementation of State Board of Education policies, standards and regulations governing the education of eligible exceptional students, and providing direction and assistance for special education in the state. Exceptions and consideration for extenuating circumstances may be provided for good and just cause upon full review by the State Superintendent of Schools.

It is the responsibility of the department to:

1. assist local education agencies in the development and modification/adaptation of educational programs of study to meet the needs of exceptional students in early, middle, adolescent and adult education;

2. serve as the advocate for special education in state government;

3. work closely with, and provide staff support to, the West Virginia Advisory Council for the Education of Exceptional Children;

4. inform local educational agencies, parents and other agencies of the content and implications of standards, regulations, and state and federal laws pertaining to the education of eligible exceptional

students, including the dissemination of a pamphlet developed by the West Virginia Department of Education that explains in layman's terms these regulations;

5. perform statewide planning for educational programs of study and services for eligible exceptional students;

6. annually review and/or revise the State Plan for special education;

7. develop the necessary procedures, guidelines, forms and instruments to implement the State Board of Education policies and state and federal laws governing the education of exceptional students;

8. monitor the implementation of special education programs;

9. monitor special education programs for all eligible exceptional students in the state, including individuals in residential institutions and private schools, to assure compliance with federal laws and regulations, state laws, policies, standards and regulations;

10. initiate enforcement procedures in accordance with the WV EHA-Part B State Plan, when determined that an LEA has violated these Regulations;

11. review local educational agency special education plans and recommend action to the State Superintendent of Schools;

12. administer "The Education of the Handicapped Act" funds and monitor programs funded from these monies;

13. develop, provide and participate in programs for the training of educational personnel;

14. maintain reports and summary information on special education in the state;

15. disseminate information concerning educational programs for exceptional students to interested agencies, organizations and individuals;

16. compile and disseminate decisions, opinions and interpretations of the state and federal laws pertaining to education of exceptional students;

17. review and recommend action on certification requests of special education teachers and other agency personnel serving eligible exceptional students;

18. serve as liaison with other state and regional agencies, parent and professional organizations, and private agencies serving exceptional students;

19. serve as liaison with colleges and universities preparing personnel to work with exceptional students; and

20. serve as liaison with federal projects and national agencies which provide services for exceptional students.

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 age and cultural group.

2. Adolescent Education - the educational program that addresses the intellectual, physical, and social/emotional needs of learners aged 14 through 19 or 23 for special education across all programs and areas of study in grades 9-12.

3. 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.

4. Attention Deficit Disorders (ADD) - a term used to describe a child who may demonstrate symptoms, such as, hyperactivity, hypoactivity, impulsiveness, short attention span, disorganization and distractibility.

5. Caseload - the maximum total number of students for whom a special education teacher is responsible for the provision of instructional services in all assigned schools.

6. 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.

7. 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.

8. Continuum of Alternative Placements - a range of alternative placements for special education and related services from modifications in the regular education program to education in residential facilities.

9. Departmentalized Instruction - an organizational delivery system used in a school in which one teacher is assigned to teach learning outcomes from one program and/or area of study to different groups of students through courses, instructional modules and/or other instructional systems.

10. Destruction - physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

11. Due Process - a system that guarantees each individual equal protection and treatment under the law. (14th Amendment)

12. 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.

13. 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.

14. 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.

15. 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.

16. 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) hearing impaired, mentally impaired, physically handicapped (orthopedic or other health impaired), specific learning disabled, behaviorally disordered, visually impaired, communication disordered, gifted, deaf-blind, or preschool handicapped and (b) in need of special education.

17. Eligible Handicapped Students - those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained within this document have been determined to be: (a) hearing impaired, mentally impaired, physically handicapped (orthopedic or other health impaired), specific learning disabled, behaviorally disordered, visually impaired, communication disordered, deaf-blind or preschool handicapped and (b) in need of special education.

18. 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 recoupment 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 handicapping condition(s).

19. Extenuating Circumstances - conditions that temporarily cause the existence of a regulatory violation.

20. 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, (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.

21. General Intellectual Functioning - acquired learning and learning potential as measured by a systematic assessment with one or more of the individually administered general intelligence tests or procedures.

22. Independent Educational Assessment - an assessment 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 assessment.

23. 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.

24. Instructional Period - a block of time that is generally associated with instruction for a program or area of study.

25. Learning Outcomes - a measurable description of the knowledge, skills, and/or attitudes that a teacher expects the student to acquire as a result of instruction within an area of study.

26. 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 appropriate integration with non-exceptional students.

27. Metacognitive - acquired knowledge at a higher state of development, as through more comprehensive perception, reasoning or intuition.

28. 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.

29. 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.

30. Multidisciplinary Assessment - a comprehensive evaluation conducted by persons from two or more disciplines.

31. Multidisciplinary Assessment Team - a group of qualified personnel which determines the areas to be evaluated and conducts the multidisciplinary assessments.

32. 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 persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.

33. Normal Rate or Level of Development - the average rate or level of developmental functioning as exhibited by children 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.

34. Out-of-State Placement - The placement of a handicapped student in a school/program located outside of the state for special education and related services.

35. 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.

36. 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.

37. 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 his or her 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.

38. Placement Advisory Committee (PAC) - a group consisting of: (a) the county superintendent of schools or designee, (b) professional personnel who administered the individual educational assessments or professional educator qualified to present and explain the written report of the evaluator(s), (c)additional personnel certified in the suspected area(s) of exceptionality, (d) one or both parents, (e) the student where appropriate, (f) the student's current teacher, and (g) other individuals at the discretion of the parent(s) or agency. The PAC's functions are to implement procedural safeguards, determine the educational and related service needs; determine eligibility for special education and related services; develop a written Individualized Education Program; make placement recommendations, and assure implementation of services in the least restrictive environment.

39. Preschool Handicapped Education - the educational program that addresses the intellectual, physical, developmental, and social/emotional needs of handicapped children ages three through five. Provision of preschool handicapped education is permissive, except for the provision of educational services for severely handicapped three and four year olds, which is mandated by Chapter 18, Article 20, Section 1a. of the West Virginia State Code.

40. Private School - an educational facility operated by a nonpublic agency or organization.

41. 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 of which are both measurable and operational.

42. Procedural Safeguards - the due process protections afforded in the implementation of the West Virginia special education Search and Serve Process.

43. 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.

44. 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.

45. 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.

46. Regression Formula - a commonly used statistical procedure, used to compare two measures that are not perfectly correlated, to determine expected achievement.

47. 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.

48. 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), counseling/social services, school health services, early identification and assessment, medical services for diagnostic or evaluative purposes and parent training.

49. 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 assessments, when necessary.

50. 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.

51. Significantly Subaverage Intelligence - a level of ability indicated by an intelligence quotient (IQ) two or more standard deviations below the mean.

52. Special Education - specially designed instruction, at no cost to parents, to meet the educational needs of an eligible exceptional student relative to programs of study approved by the West Virginia Board of

Education, including classroom instruction, out-of-school instruction and instruction in a special school or residential setting. Special education also means physical education, vocational education, or other curricular offerings when modifications are necessary to meet the individual needs of exceptional students.

53. 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.

54. Standard Error of Measurement - a measure indicating how closely an individual's obtained score compares with his/her true score. It provides a range within which the true score lies.

55. 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.

56. 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.

57. Tourette Syndrome - a neurological multiple tic disorder.

58. Transition Plan - a plan written prior to exiting special education which details: a) procedures for monitoring and evaluating student progress; b) support techniques to be used; and c) levels of achievement and performance to be met in a less restrictive environment.

59. 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.

60. West Virginia Search and Serve Process - a statewide child identification and service delivery process for locating and serving exceptional children.

    The SEARCH phase includes identification/referral, multidisciplinary assessment and eligibility determination. The SERVE phase includes development of the Individualized Education Program, placement, implementation of the Individualized Education Program and annual review of the Individualized Education Program.

1.0 PROCESS REGULATIONS

1.1 Identification/Referral

1.1 Each public agency shall establish policy and implement written procedures to maintain a formal ongoing referral system for the identification/referral of exceptional students 0-23 years of age.

A. Child Find Activities

1. Provide inservice training/continuing education for school personnel (e.g., administrators, regular educators, special education personnel and support service personnel) in the characteristics of exceptional students for the purpose of referral.

2. Communicate regularly with other agencies that serve exceptional students.

3. Conduct an ongoing awareness campaign that informs the public of the nature of exceptional students, the availability of special education and related services, and persons to contact for initiating a referral.

4. Disseminate parent information and child find materials as prepared by the West Virginia Department of Education.

B. Sweep Screening Programs

1. Conduct annual sweep screening programs in the areas of hearing, vision, and speech and language. The annual sweep screening shall include, at least:

   a. all students entering school for the first time in West Virginia.

   b. students entering kindergarten who did not participate in the pre-enrollment screening programs, within the first month of the school year.

   c. individuals considered at high risk for potential problems in speech and language, hearing and vision.

   d. students in at least one other grade level for potential hearing and vision problems.

2. Staff who conduct sweep screenings shall be qualified and appropriately trained to use the specific instruments, techniques and procedures for which they are responsible and knowledgeable in the applicable state and federal requirements.

3. Provide prior public notification of sweep screening programs to be conducted. The notices shall:

a. inform parents of the purpose, types and dates of sweep screenings, and information that specifies procedures for parents to request that their child not participate.

b. be disseminated at least 10 calendar days, but not more than 30 calendar days, prior to the initiation of the screening(s).

4. Collect and maintain sweep screening data, including the names of those screened, the date of the screening, the type of screening and the results of the screening.

5. Refer directly for assessment those students identified through the sweep screening process.

C. School-Based Assistance Teams

1. Conduct meetings of the School-Based Assistance Teams (SBATs) to assist educators in meeting the educational needs of students in regular education programs.

The SBAT shall:

a. consist of at least three (3) persons, including the school administrator, who shall serve as the chairperson, the current teacher(s), and other appropriate professional staff;

b. review the problem area(s) and recommend remedial and alternative instructional and/or behavioral strategies for implementation within the regular education program or immediate referral for multidisciplinary assessment;

c. document and evaluate the effectiveness of the implemented remedial and alternative instructional and/or behavioral strategies; and

d. review, no later than one grading period, the effectiveness of the implemented remedial and alternative instructional and/or behavioral strategies to determine the need for continuation, modification and/or addition of educational interventions or the need to refer for multidisciplinary assessment.

2. SBAT members shall be trained in appropriate remedial and alternative instructional and behavioral strategies, referral procedures, and the applicable State and federal requirements.

3. Collect and maintain data on the activities of the School-Based Assistance Team, including the date of the meeting, the members in attendance, the recommendations of the SBAT, the date of the review meeting, the results of the interventions, and the outcome of the review meeting.

D. Other Referrals

1. Implement procedures which permit any interested person to make a referral and which direct all referrals to a designated school official.

2. Implement procedures that permit students enrolled in parochial and other private schools to be referred for assessment and to be evaluated in accordance with these regulations.

E. Assurances

1. Provide written notification to the parents of the student within a reasonable time prior to beginning the initial multidisciplinary assessment process. The written notification shall include:

   a. a full explanation of all of the procedural safeguards available to the parents;

   b. a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

   c. a description of each assessment procedure, test, record or report the agency uses as a basis for the proposal or refusal; and

   d. a description of any other factors which are relevant to the agency's proposal or refusal.

2. The notice must be:

   a. written in language understandable to the general public, and

   b. provided in the native language of the parent or other mode of communication used by the parent, unless it clearly is not feasible to do so.

3. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to assure that:

   a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

   b. the parent understands the content of the notice, and

   c. there is written evidence that the above requirements have been met.

4. Written parental consent must be obtained prior to conducting an initial multidisciplinary assessment or due process procedures initiated to obtain consent for the assessment.

1.2 Multidisciplinary Assessment

1.2 Each public agency shall establish policy and implement written procedures for the selection and administration of appropriate individual assessments, and the documentation and utilization of assessment results.

A. Multidisciplinary Assessment Team

1. The multidisciplinary assessment shall be conducted by a team of qualified personnel, including: (a) when appropriate, as per the eligibility criteria required within these regulations, a certified school psychologist, or licensed psychologist approved by the West Virginia Department of Education; (b) one or more of the student's classroom teacher(s), and (c) a professional with knowledge in the areas of suspected concern. The appropriate areas to be assessed and specific assessment instruments to be used shall be determined in accordance with these regulations and each public agency's policies and procedures.

2. For a student whose area of suspected concern is solely communication, a speech-language pathologist may serve as both a specialist in the area of concern and as an evaluator. Therefore, the multidisciplinary team requirement for the assessment of this student may be fulfilled by a speech -- language pathologist and a classroom teacher.

3. Members of the multidisciplinary assessment team shall be certified, licensed or appropriately qualified.

   a. For purposes of test administration and interpretation, county boards of education may employ or contract with certified school psychologists or licensed psychologists who by virtue of training and experience are determined to be qualified through the approval process administered by the Department of Education.

   b. Multidisciplinary assessment team members are trained in the use of the specific assessment instruments or techniques for which they are responsible, are knowledgeable in the area of concern or suspected area of exceptionality, and are knowledgeable in the applicable State and federal regulations.

B. Assessment Components

1. The student shall be individually assessed in all areas of concern including, where appropriate:

   - health
   - vision
   - hearing
   - adaptive behavior/behavioral functioning
   - general intelligence

- academic performance, including achievement relative to approved learning outcomes when approved by the West Virginia Board of Education
- academic achievement
- communicative functioning
- motor functioning
- career interests and vocational aptitudes
- emotional functioning, and
- developmental/social history.

2. The student's academic, behavioral, motoric, and/or communicative performance shall be observed by at least one multidisciplinary assessment team member other than the student's regular classroom teacher, when appropriate and, at least, as follows:

   a. If the student is suspected of being specific learning disabled, observations shall be made of the student's academic and behavioral performance in the regular classroom setting.

   b. If the student is suspected of being behavior disordered, observations shall be made of the student's academic and behavioral performance in the regular classroom and at least one other setting.

   c. If the student is suspected of being autistic, observations shall be made of the student's academic, social and communicative performance in at least two settings.

   d. If the student is suspected of being communication disordered, observations shall be made of the student's communicative functioning, including structure, context and interaction.

3. The assessment of the student shall be completed within 60 calendar days of receipt by a designated school official of written parental consent.

C. Assessment Reports

1. Each evaluator shall write and sign an individual assessment report within 20 days of completion of the assessment and make the written report available to the P.A.C.

2. Each evaluator's written report shall include:

   a) the results of the assessments, including observations and informal procedures;

   b) the interpretation of the assessment results, including the student's strengths, weaknesses, and educational needs;

   c) an explanation of any nonstandardized procedures or techniques used and of their appropriateness for use with the student;

   d) relevant information, such as developmental/social history, from other sources that has been considered in formulating the evaluator's recommendations; and

e) recommendations of the specific programmatic and supportive services to meet the educational needs of the student.

3. When a student is suspected of being learning disabled, the multidisciplinary assessment team must also complete a team report that includes:

   1) whether the student has a specific learning disability;

   2) the basis for making the determination;

   3) the relevant behavior noted during the classroom observation of the student;

   4) the relationship of that behavior to the student's academic functioning;

   5) the educationally relevant medical findings, if any;

   6) whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services;

   7) determination concerning the effects of environmental or cultural difference or economic disadvantage; and

   8) written certification by each team member as to whether the report reflects his or her conclusion. If the report does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

4. Written reports of educationally relevant health findings, if any; may include, but will not be limited to:

   a) health history;

   b) evaluation of current health status;

   c) additional information from family physician or health care source, if indicated; and

   d) identification of health problems that require:

      - school nurse services,
      - special training of school personnel,
      - changes in school environment,
      - added safety measures,
      - measures to relieve pain,
      - self care assistance,
      - rehabilitation measures,
      - special transportation,
      - medication at school,
      - special diet,
      - additional health education programs, or
      - adaptation of health screening programs; and

   e) a summary of health examination in educational terms.

D. Utilization of Assessment Results

1. The results of the multidisciplinary assessment will serve as the primary source of information for the determination of eligibility and the development of the IEP.

2. Students with attention deficit disorders, tourette syndrome and traumatic brain-injury do not necessarily qualify for special education or any specific area of exceptionality. Results of the multidisciplinary assessment will serve as the primary source of information for determining eligibility and the development of the IEP.

E. Assurances

1. Implement the following additional assessment procedures to protect each student in the selection, administration and interpretation of assessment procedures and instruments:

   a. Select and administer testing and evaluation materials and procedures for the purposes of assessment and placement so as not to be racially or culturally discriminatory,

   b. Administer assessments in the student's native language or other mode of communication unless it clearly is not feasible to do so,

   c. Use formal assessment instruments/procedures for the specific purpose for which they have been validated,

   d. Use no single procedure as the sole criterion for determining an appropriate educational program for a student,

   e. Administer the tests and other assessment materials in conformance with the instructions provided by their publisher,

   f. Tests and other assessment materials will include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient,

   g. Select and administer tests and other materials so as to assure that when 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, except where those skills are the factors which the test purports to measure, and

2. Inform parents of their right to obtain an independent educational assessment for their child; and provide parents, upon request, information about where an independent educational assessment may be obtained; and under what conditions an independent educational assessment is at public expense, as follows:

2. Refer for additional assessments when necessary to make an appropriate placement decision.

3. The PAC shall refer a student who is ineligible for special education and related services to the School-Based Assistance Team.

4. The PAC shall identify the vocational/career needs of the student, when appropriate and shall consider those needs when developing the IEP and determining placement.

C. IEP Development

1. The Placement Advisory Committee shall develop a written Individualized Education Program within thirty (30) calendar days of the determination of eligibility and prior to the initiation of services. The IEP includes:

   a. the student's present levels of educational performance;

   b. annual goals and short-term learning objectives, including mastery criteria necessary to meet learning outcomes;

   c. specially-designed instructional strategies and specialized equipment to be used;

   d. health concerns and relevant intervention strategies, if any;

   e. a description of the specific special education and related services to be provided, including extended year programming and adaptive physical education when appropriate;

   f. extent to which the student will participate in regular education programs, including physical education;

   g. the projected date for the initiation and the anticipated duration of each special education and related service;

   h. appropriate objective criteria, assessment procedures and timelines for determining, on at least an annual basis, whether the goals and learning objectives are being achieved;

   i. a plan for the completion of necessary credits for graduation for students at the adolescent education level; and

   j. signatures and positions of Placement Advisory Committee members, their agreement or disagreement with the recommendation(s), and the date of the meeting.

2. The PAC shall document that the goals, objectives and instructional strategies contained in the IEP are consistent in terms of the educational needs and learning characteristics of the student.

3. The PAC shall document any reduction in the length of the instructional day as specified in State Board of Education Policy 2441.

D. Placement

1. Parents shall be informed of all placement options prior to the determination of placement.

2. The PAC shall use the written IEP as the basis for determining an appropriate placement or change of placement.

3. The Placement Advisory Committee shall determine an appropriate placement in consideration of the following least restrictive requirements:

   a. To the maximum extent appropriate, exceptional students, including students in public or private institutions or other care facilities, are educated with other students and students who are not identified as exceptional.

   b. Special classes, separate schooling or other removal of exceptional students from the regular educational environment occur only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

   c. Eligible students have a right to be educated in the regular setting to the greatest extent possible with non-exceptional peers.

   d. Unless an eligible student's IEP requires some other arrangements, the student is educated in the school which he or she would otherwise attend. In the event the student cannot be educated in the home school, he/she must be provided an educational program as close to home as possible.

   e. Educational programming is based on the student's IEP and reviewed at least annually.

   f. Various alternative placements are available to the extent necessary to implement an appropriate IEP for each exceptional student.

   g. Participation with non-exceptional students in non-academic and extracurricular services and activities is to the maximum extent appropriate to meet the needs of each eligible student.

4. The educational needs of an eligible exceptional student may be met through one or more of the following special education placement options:

   a. Regular Education Program with Modification
      Instruction is delivered in the regular education program with modifications which may include special materials, equipment, seating or adaption of the curriculum and/or instructional program. The implementation of these modifications requires consultative services by special education personnel.

Consultative services include, but are not limited to, the provision of information to the regular classroom teacher(s), demonstration teaching, direct teaching, cooperative planning regarding methods and materials, observation and monitoring of student progress, and cross grade/class placement.

b. Regular Education Program with Resource Services

Developmental and content instruction is delivered in the regular education program and supplemental instruction in specific skill development is delivered in the resource room. Consultation should occur among all personnel involved in the implementation of the IEP.

c. Regular Education Program with Special Class Services

Developmental and content instruction is delivered in the special education program with instruction in the regular education program for some programs/areas of study. Consultation should occur among all personnel involved in the implementation of the IEP.

d. Special Education Program: Self-Contained

Developmental, content and supplemental instruction in specific skill development or instruction in a specialized curriculum is delivered in the special education program. This instruction is supplemented by the student's participation in those parts of the regular school program which are appropriate and by the provision of related and/or supportive services.

Consultation should occur among all personnel involved in the implementation of the IEP. Under this placement option the student receives less than 40% of his or her instructional time in the regular education program with his or her level peers.

e. Special Education Program: Special School

Intensive instruction and related services are delivered within a school that serves only eligible exceptional students. Systematic and ongoing integration with nonexceptional peers and community involvement shall occur. Consultation should occur among all personnel involved in implementation of the Individualized Education Program.

f. Special Education Program: Out-of-School Environment

Instruction is delivered in a non-school environment as specified in the Individualized Education Program. This alternative may include programs such as home-based/hospital instruction, work/study, and mentorships. Student support services may also be provided. To the maximum extent possible, the student shall have the opportunity for integration with nonexceptional peers and for community involvement. Consultation should occur among all personnel involved in the implementation of the Individualized Education Program.

Any eligible exceptional student who is served in an out-of-school environment must receive a free appropriate education which is comparable to the services he/she would be eligible to receive if served by an in-school program. At a

minimum, such program shall be comparable in terms of the certification of the teacher(s), the provision of related services, and the scope of the instructional program.

g. Special Education Program: Residential Facility
Instruction and related services are delivered in a facility which provides twenty-four (24) hour care and supervision necessary for a student to benefit from education. To the maximum extent possible, the student shall have the opportunity for integration with nonexceptional peers and for community involvement. Consultation should occur among all personnel involved in the development, implementation and review of the Individualized Education Program including personnel from the student's home county.

5. When removal from a regular education program (placement options d, e, f or g) is recommended, the PAC shall document the reasons that the regular education program cannot meet the student's needs.

6. The PAC shall, prior to placing a student in a private school or facility outside of West Virginia, document that:

   a. a free appropriate public education cannot be provided 1) within the county, 2) within the region, or 3) within the state, and that those determinations are justified;

   b. more than one private school or facility was investigated in regard to the feasibility of providing services;

   c. 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 Education of the Handicapped Act, as amended.

   d. a current and complete IEP has been developed;

   e. a current signed contract between the local educational agency and the private school or facility exists; and

   f. a written plan, including timelines, for developing an appropriate program within the county or in cooperation with others in the region or state, has been developed, and that the plan has been approved by the county superintendent of schools.

7. In determining the least restrictive environment, the PAC shall consider any potentially harmful effect of the placement on the student or on the quality of services which he or she needs.

8. The PAC shall base placement decisions on student needs rather than any of the following factors used alone or in combination:
   a. category of exceptionality;
   b. availability of special education placement options;
   c. availability of educational or related services;
   d. availability of staff; and
   e. availability of space.

9. The PAC shall only consider school and classroom settings that are appropriate to the student's chronological age when determining placement.

10. In accordance with state guidelines regarding the State-County Testing Program, the PAC shall determine if an eligible handicapped student is to participate in the State-County Testing Program.

E. Assurances

1. Provide written notification to the student's parent(s) of the Placement Advisory Committee meeting and afford the parents the opportunity to participate in the meeting.

   a. Each public agency shall 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:

      1) notifying parents of the meeting early enough to assure that they will have the opportunity to attend; and

      2) scheduling the meeting at a mutually agreed on time and place.

   b. The written notice must include the purpose, time, and location of the meeting, who will be in attendance, and a full explanation of all the procedural safeguards available to the parents.

   c. The written notification must include a statement that if the student is determined eligible for special education and related services, the Individualized Education Program may be developed at this meeting.

2. Take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

3. Conduct the Placement Advisory Committee meeting without a parent in attendance only when the public agency has documentation that other methods of assuring parent participation, such as correspondence, telephone calls, and visits to the parents' home have been attempted.

   a. If neither parent can attend, the public agency shall use other methods to encourage parent participation, including individual or conference telephone calls.

   b. A meeting may be conducted without a parent in attendance if the agency is unable to convince the parents that they should attend. In this case, the public agency must have a record of its attempts to arrange a mutually agreed on 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 parents and any responses received; and/or

3) detailed records of visits made with the parents and the results of those visits.

4. Use other methods, including individual or conference telephone calls to insure participation of a representative of a private school or facility when it is appropriate for a representative to participate, but one cannot be in attendance.

5. Obtain written parental consent for initial placement in special education, or initiate due process procedures to obtain consent.

6. Provide the parent a copy of the IEP.

1.4 Implementation of Individualized Education Program

1.4 Each public agency shall establish policy and implement written procedures to provide the special education and related services needed for the implementation of students' individualized education programs.

A. Initiation of Services

1. Services are initiated as soon as possible but no later than fifteen (15) calendar days following the completion of the Individualized Education Program.

2. Short delays in the immediate initiation of services can occur when PAC meetings are held during the summer or a vacation period, or when arrangements for services, i.e., transportation, must be made.

3. A completed Individualized Education Program for each exceptional student is in effect prior to the provision of special education and related services.

4. A current Individualized Education Program is in effect at the beginning of each school year for each exceptional student receiving special education and related services.

B. Provision of Staff

1. Professional special education personnel meet minimum certification standards for the area(s) of exceptionality(ies) in which they are presently teaching.

2. Paraprofessional personnel are appropriately trained and supervised by qualified professionals.

C. Administrative Considerations

1. The chronological age span during any one instructional period shall not exceed:

   a) four years in early childhood education (ECE), excluding preschool handicapped,

   b) six years in middle childhood education (MCE), or

   c) eight years in adolescent education (AE).

2. Afford each exceptional student the opportunity to participate in the regular physical education program available to nonexceptional students, unless the child is enrolled full time in a separate facility, or the child needs specially designed physical education services, as prescribed in his or her individualized education program.

a) If specially designed physical education is prescribed in the child's individualized education program, the public agency shall provide the services directly, or through contractual agreements with other public or private programs.

b) If the exceptional student is enrolled full time in a separate facility, the public agency shall provide the student with appropriate physical education services directly, or through contractual agreements with other public or private programs.

3. Caseloads for multicategorical delivery, including per instructional period, shall not exceed the lowest maximum of the exceptionalities served.

4. Caseloads for teachers assigned to more than one placement option shall be determined on a percentage basis.

5. When students from more than one programmatic level are served together in one instructional period, the maximum class size shall be that of the programmatic level of the youngest student(s) served.

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 present placement.

A. IEP Review

1. Review and revise the Individualized Education Program annually or more frequently if conditions warrant, including at the request of the student's parent(s) or teacher(s).

2. Review and revise individualized education programs for students placed in private schools.

   a. After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility 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 individualized education program; and

      2) Agree to any proposed changes in the program before those changes are implemented.

3. Grant a State Board of Education approved high school diploma to all exceptional students who complete the requirements for graduation as stated in their Individualized Education Program. Within an Individualized Education Program annual review, where an exceptional student is being considered for graduation, the parents must be notified and encouraged to participate in the development and final review of the Individualized Education Program. Written parental consent is required for the student's final Individualized Education Program.

B. IEP Review Committee

1. The IEP Review Committee shall include:

   a. the superintendent or designee who is qualified to supervise the provision of special education services (other than the student's teacher(s));

   b. the student's teacher(s), including general and vocational educators when appropriate and professional support personnel who have the direct responsibility for implementing the Individualized Education Program;

c. one or both of the student's parents;

d. the student, where appropriate;

e. a private school or facility representative, if appropriate; and

f. other individuals, at the discretion of the parent(s) or agency.

2. The IEP Review Committee shall be staffed by professionals who are knowledgeable about the student and his or her educational program, assessing and monitoring student progress, and the applicable state and federal regulations.

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:

      1) notifying parents of the meeting early enough to assure that they will have the opportunity to attend; and

      2) scheduling the meeting at a mutually agreed on time and place.

   b. The written notice must include the purpose, time, and location of the meeting, who will be in attendance, and a full explanation of all the procedural safeguards available to the parents.

2. Take whatever steps are necessary to assure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

3. Submit recommendations for changes in placement generated by the Individualized Education Program review, for consideration to the Placement Advisory Committee.

4. Submit recommendations for extended year programming, generated by the Individualized Education Program review, for consideration to the Placement Advisory Committee.

5. Obtain written parental consent for changes in placement; however, lack of consent cannot be used to interrupt or discontinue special education services or any other benefit to the parent or student.

6. Provide the parents with a copy of the IEP.

1.6 Reassessment and Triennial Review

1.6 Each public agency shall establish policy and implement written procedures for reassessment and triennial review of placement.

A. Reassessment

1. A multidisciplinary assessment shall be conducted in accordance with Section 1.2 of these regulations triennially, or more frequently if conditions warrant.

2. Reassessment of gifted students shall include:

   a. evaluation on appropriate individual achievement measures and an educational performance review, or

   b. complete reassessment for those students who exhibit noticeable change in behavioral adjustment and/or academic progress.

3. Hearing impaired students shall receive audiological reassessment and electroacoustical analysis of hearing aids on an annual basis.

4. Visually impaired students shall receive an ophthalmological or optometric evaluation every three (3) years unless otherwise specified by an ophthalmologist or optometrist on the visual examination report.

5. Prior to the scheduled reassessment the parents shall be:

   a. provided with written notification, and

   b. allowed ten (10) calendar days to notify the public agency of any objection to the scheduled triennial reassessment or the reassessment will be conducted as specified.

B. Triennial Review

1. On a triennial basis a review of the IEP shall be conducted by a PAC in accordance with Section 1.3 of these regulations.

2. The triennial review for a gifted student shall not be used to determine eligibility but to make recommendations concerning modifications in the educational program.

3. Written parental consent will be obtained for changes of placement; however lack of consent cannot be used to interrupt or discontinue special education services or any benefit to the parent or student.

1.7 Extended Year Programming

A. PROGRAM DEFINITION

1. Definition of Population to be Served

Students who have handicaps which are severe in nature are entitled to an educational program in excess of 180 days per year if regression caused by interruption in educational programming and the limited recoupment capacity render it unlikely that the students will attain a level of self-sufficiency and independence from caretakers that would be expected in view of the handicapping condition.

2. Program of Study

a. The goal of extended year programming is to maintain the student's level of self-sufficiency and independence from care takers.

b. The extended year programming continues instruction in the following skill areas as needed:

1) muscular control;

2) toileting;

3) feeding;

4) dressing;

5) physical mobility;

6) personal hygiene;

7) impulse control;

8) basic communication;

9) interaction/socialization with peers and/or adults.

3. Eligibility Criteria

Documentation that a student meets the local educational agency's criteria for determining whether the student:

- exhibits, or may exhibit, regression during an interruption in educational programming;
- exhibits, or may exhibit, a limited ability to recoup, or relearn skills, once programming has resumed; and
- regression/recoupment problem(s) interfere with the achievement of "independence and self-sufficiency from caretakers that the student would otherwise be expected to reach in view of his/her handicapping condition."

B. PROGRAM DELIVERY

The Placement Advisory Committee will designate on the Individualized Education Program the duration, number of hours per week, time, and physical location of the special education and related services to be delivered.

C. ASSURANCES

1. Annually inform parents of handicapped students of the availability of extended year programming and the procedures and criteria for determining a student's eligibility.

2. Parents may refuse extended year services for their handicapped students.

3. The eligibility decision is subject to due process procedures.

1.8 Special Transportation of Handicapped Students

1.8 The public agency shall provide free appropriate transportation services to any handicapped student who requires special transportation services. The transportation services shall be provided in accordance with the Individualized Education Program (IEP).

A. AUTHORITY

The authority of the West Virginia Board of Education to promulgate school bus transportation regulations to be followed by the county school districts in West Virginia is found in Chapter 18, Article 2, Section 5, and Chapter 18, Article 5, Section 13.

Section 18-2-5 states that the State Board of Education "shall make rules for carrying into effect the laws and policies of the State relating to education," and Section 18-5-13 states that the county boards "subject to the . . . rules and regulations of the State Board, shall have the authority to provide at public expense adequate means of transportation . . . for all children of school age."

B. RESPONSIBILITY OF PUBLIC AGENCY

1. The public agency shall assure that appropriate safety measures are followed in the transportation of handicapped students.

2. The time in transit for handicapped students shall not exceed the time in transit of non-handicapped students similarly located unless specified in the IEP. In no case shall the time be greater than 30 minutes beyond the times in transit of non-handicapped students similarly located.

3. When transportation of a handicapped student necessitates transfer while en route, appropriate supervision at the point of transfer remains the responsibility of the public agency.

4. The public agency shall determine the type of vehicle used to transport handicapped students on the basis of the handicapping conditions of those students. Such vehicles shall comply with provisions as required by the Minimum Standards for Design and Equipment of School Buses for West Virginia, as adopted by the West Virginia Board of Education.

5. Specially adapted seats, support and/or protective devices shall be provided for all students who require such devices to assure their safe transportation.

6. The public agency may terminate transportation service(s) if parents fail to assume the responsibility of meeting the bus at the designated bus stop. Parents shall be afforded due process procedures.

7. The public agency shall provide an aide to assist in the loading, transporting and unloading of a handicapped student when described in the Individualized Education Program.

8. The description of special transportation services, as outlined in the Individualized Education Program, shall include:

   a. the bus stop location(s);

   b. special devices/equipment required;

   c. special care, i.e., need for health and safety maintenance, assistance of aide, and/or medication in transit, and positioning; and

   d. designee, other than parent, responsible for meeting the student.

C. RESPONSIBILITY OF THE SCHOOL BUS OPERATOR AND AIDE FOR TRANSPORTING HANDICAPPED STUDENTS

1. The operator of a bus transporting handicapped students shall assure that students aboard the bus are supervised at all times.

2. The aide and/or bus operator shall assist such students on and off the bus at the designated bus stop.

3. The bus operator and/or aide shall assure that the protective safety devices are utilized.

4. The bus operator and aide(s) shall receive training regarding the needs of handicapped students. For aides, minimal training shall be successful completion of a recognized first aid training program. For bus operators, minimal training shall be successful completion of a recognized first aid training program, as well as the Special Education Unit of the Advanced Section of the West Virginia School Bus Operator's Training Manual.

5. When the student's Individualized Education Program requires that medication be administered during transit, an adult aide must be provided and the following conditions met:

   a. written direction from the attending physician and school nurse, including verification that medication is needed in transit, specifying frequency and method of administration and a description of anticipated reactions of the student to the medication;

   b. written parental consent;

   c. written authorization from the superintendent or the superintendent's designee; and

   d. properly labeled medicine containers to assure positive identification of the student.

6. The bus operator and aide shall have available to them in the vehicle confidential emergency data including:

   a. student's name and address;

   b. parents' name, address, home and work telephone numbers;

   c. emergency health care information; and

   d. provisions for the student's safety when and if the student is unable to be met at the designated bus stop.

D. RESPONSIBILITIES OF PARENTS

1. Parents shall provide the public agency with written documentation regarding any special care the student may need while on the bus.

2. Parents are responsible for having their student at the designated bus stop at the regularly scheduled time, and providing the necessary supervision until the bus arrives.

3. Parents are responsible for meeting the bus upon its return to the designated bus stop at the scheduled time.

4. If a student is unable to attend school the parents shall make a reasonable and timely effort to notify the bus operator prior to the beginning of the morning bus schedule.

1.9 Suspension of Handicapped Students

1.9 Each public agency shall establish policy and implement written procedures for protecting the rights of an eligible handicapped student whenever suspension is considered as disciplinary action for failure to comply with the standard of conduct established for all students by the public agency.

A. AUTHORITY

This policy is issued and in force pursuant to Chapter 18A, Article 5, Section 1 and Chapter 18A, Article 5, Section 1a of the West Virginia Code and Section X-B of the STUDENTS RIGHTS and RESPONSIBILITIES - A Handbook for Students in the Public Schools of West Virginia.

B. DEFINITIONS

1. Emergency suspension is the immediate removal of a student from school for a period of not more than three (3) days.

2. Short-term suspension is the removal of a student from class or school for less than ten (10) school days.

3. Long-term suspension is the removal of a student from school for more than ten (10) consecutive school days or for more than ten (10) days cumulatively during a given school year.*

C. IMPLEMENTATION

1. General Procedures

a. Each public agency shall protect the right of each handicapped student to a free and appropriate public education.

b. Each public agency shall follow all state requirements including those for notice and hearings regarding the removal of students from school.

2. Specific Procedures

a. Emergency Suspension

1) An emergency suspension is based on a finding by the principal that the continued presence of a student on school premises poses a serious threat to the health and safety of the student and/or other children or school district staff.

2) The principal may remove the student from school during the emergency period despite a causal relationship to the student's handicapping condition.

b. Short-term Suspension

Prior to short-term suspension a school committee must determine whether there is a direct causal relationship between the student's handicap and the misconduct. If such a relationship is found to exist, then the student may not be suspended from school.

c. Long-term Suspension*

1) Long-term suspension is a change in educational placement. Therefore, a PAC must be convened to determine the appropriateness of suspension as a disciplinary action.

2) If the PAC determines that there is a direct causal relationship between the student's handicap and the misconduct, then the student may not be suspended. Alternative disciplinary actions shall be determined at that time.

3) If the PAC determines that the student may be suspended, arrangements must be made for that student to continue to receive the special education and related services described in his or her IEP during the period of suspension. A complete cessation of educational services during this period is not permitted.

*In the case of Honig vs. Doe, the U.S. Supreme Court on January 20, 1988, deferred to the Office of Civil Rights (OCR) interpretation that suspension in excess of ten (10) school days constitutes a "change in placement." OCR states that it "has defined an exclusion of more than an aggregate of ten (10) days during a school year as a 'significant change of placement.'"

1.10 Home/Hospital Instruction

A. PROGRAM DEFINITION

1. Definition of Population to be Served

Students who receive home/hospital instruction are students who, due to injury or for any other reason as certified by a licensed physician, are homebound for a period of three weeks or more.

2. Eligibility Criteria

Documentation that a student meets one of the following criteria:

a. has an injury, noncommunicable illness, or health condition which prevents him or her from attending school for more than three weeks cumulatively as diagnosed and confirmed by a licensed physician; or

b. has an injury or health problem/condition that requires the student to be homebound or hospitalized for a period that has lasted or will last more than three weeks as diagnosed and confirmed by a licensed physician.

3. Special Considerations for Eligibility

a. A licensed physician must provide a written statement to the county school district that the student must remain at home or in the hospital for a period of three weeks or more. The written statement must include:

1) The specific reasons why the student must remain at home or in the hospital.

2) The criteria or conditions under which the student can return to school, and the expected date of such return.

b. Students placed on extended home instruction shall submit a physician's statement of need for continued home instruction when the term of home instruction reaches six months in length.

c. The county school district may request that the parents obtain a second physician's opinion at the expense of the county school district.

B. PROGRAM DELIVERY

1. Instruction

a. Home/hospital instruction, provided for those regular education students who are unable to attend school for a period of time, is an extension of the regular school programs of study. The development of an Individualized Education Program is not required for these students.

b. Home/hospital instruction, provided for an exceptional student who is unable to attend school temporarily because of an injury, illness, or health condition, is an extension of the Individualized Education Program.

c. Home/hospital teachers are responsible for providing instruction on learning outcomes determined by the student's classroom teacher(s) and therefore, must be in regular contact with the classroom teacher(s).

2. Schedule

a. Home/hospital instruction may be provided at any time within the school calendar year.

b. The instructional schedule per week must be based upon the student's physical ability to attend/participate as specified by the physician who confirmed/diagnosed the injury or health problem/condition.

c. The time that instruction will be provided in the home is established by the teacher, the parent(s), and when appropriate, county school district administrator.

d. Home instruction is provided at a time when a responsible adult is in the home.

e. The student's school shall provide the home instruction teacher the opportunity to meet with the student's teacher(s) and shall provide the county adopted textbooks, teacher's editions, materials, equipment and supplies the student requires to complete his/her programs of study.

f. The student's teacher (s) shall provide the home instruction teacher with copies of daily lesson plans, including homework assignments, when requested.

2.0 PROGRAM AREA REGULATIONS

2.1 BEHAVIOR DISORDERS

A. PROGRAM DEFINITION

1. Definition of Population to be Served

Behavior disordered students are those whose behaviors adversely affect educational performance and are manifested by one or more of the following characteristics over a long period of time and to a marked degree:

(a) an inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) inappropriate types of behavior or feelings under normal circumstances;

(d) a general pervasive mood of unhappiness, depression, or an emotional problem manifested by withdrawal;

(e) a tendency to develop physical symptoms or fears associated with personal or school problems; or

(f) a schizophrenic condition.

The term does not include students who are socially maladjusted, unless it is determined that they meet the above definition.

2. Program of Study

a. The major goal of a behavior disorders program is to provide the instruction and assistance necessary to enable the student to progress developmentally through the approved programs of study.

b. The behavior disorders program includes six (6) major curricular components: behavior management, emotional/social education, academics, career education, leisure skills and daily living/survival skills.

c. The program provides an environment that modifies or controls behavior problems, enhances the student's feelings of self-worth and develops the student's self-control so that appropriate learning can occur.

3. Eligibility Criteria

Documentation that a student meets all of the following criteria:

a. continues to exhibit a behavior disorder consistent with the definition after interventions have been implemented;

b. exhibits the characteristic(s) over an extended period of time and to a marked degree;

c. exhibits behavior(s) that adversely affects the student's educational performance (i.e., academic achievement, language development, social/personal/emotional development); and

d. exhibits behavior(s) that is not primarily the result of physical, sensory, or intellectual deficits.

4. Special Considerations for Eligibility:

a. A socially maladjusted student whose values and/or behaviors are in conflict with the school, home or community or who has been adjudicated through the courts, is not automatically eligible for a behavior disorders placement.

b. Social problems, (i.e., drug abuse/chemical dependency) do not automatically qualify a student for placement.

c. Referral in the above instances must follow the same procedures for any regular education students.

5. Exit Criteria

Documentation that the student meets all of the following criteria:

a. performs adequately as measured by achievement test scores and classroom performance;

b. behaves appropriately in the school environment; and

c. no longer needs specially designed instruction as indicated by the completion of a transition plan. The transition plan is developed by the PAC and delineated in the IEP.

B. PROGRAM DELIVERY

Caseload

1. Regular Education with Modification

Assign no more than 30 students.

2. Regular Education Program with Resource Services

a. At the early childhood level, assign no more than 20 students with a limit of six (6) during any one instructional period.

b. At the middle and adolescent levels, assign no more than 20 students with a limit of eight (8) during any one instructional period.

3. Regular Education Program with Special Class Services

   a. At the early childhood level assign no more than 15 students with a limit of six (6) during any one instructional period.

   b. At the middle and adolescent levels, assign no more than 15 students with a limit of eight (8) during any one instructional period.

      For departmentalized programs at the middle and adolescent levels, assign no more than 20 students with a limit of ten (10) during any one instructional period.

4. Special Education Program: Self-Contained

   a. Assign no more than three (3) students without a full-time aide with a limit of three (3) 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.

2.2 COMMUNICATION DISORDERS

A. PROGRAM DEFINITION

1. Definition of Population to be Served

Communication disordered students are those who evidence language, articulation, fluency, or voice disorders which adversely affect educational performance, including communication skills, social interaction and emotional development within the school environment.

a. Language disordered students may exhibit deviant, delayed development, or loss following development. Disorders may include difficulties with the form of language (i.e., phonology, morphology, syntax), the content of language (i.e., semantics) or the function of language (i.e., pragmatics).

Students with hearing impairments, specific learning disabilities, mental impairments, severe emotional disturbances, and neurological impairments often have language disorders. Lack of experience or environmental factors may also result in language disorders.

b. Articulation disordered students may exhibit the abnormal production of phonemes (classes of speech sounds) resulting from factors such as neuromotor impairment, sensory deficits, anatomical deficiencies or developmental delay. Misarticulations may include omissions, substitutions or distortions.

c. Fluency disordered students may exhibit disruptions in the normal flow of speech that occur frequently or are markedly noticeable and are characterized by behaviors such as: repetitions or prolongations of sounds or syllables, blocks, hesitations, revisions, incomplete phrases, avoidance behavior, or ancillary movements indicative of stress or struggle.

d. Voice disordered students may exhibit the abnormal production of voice characterized by inappropriate vocal quality, pitch or loudness resulting from pathological conditions, psychogenic factors, or inappropriate use of the vocal mechanism.

2. Program of Study

a. Communication Disorders Programs include the activities, procedures, materials, services and clinical-instructional management provided by speech-language pathologists for students with language, articulation, fluency and/or voice disorders.

b. Communication disorders programs in the schools are defined as special education program areas for students whose primary handicapping conditions are language, articulation, fluency or

voice disorders. For those students whose primary handicapping conditions are other than communication disorders the provision of communication disorders programs and services are considered related services.

c. Specific goals of communication disorders programs are to:

1) identify children with communication disorders;

2) assess and diagnose specific communication disorders;

3) refer students for medical or other professional attention necessary for the clinical-instructional management of communication disorders;

4) provide clinical-instructional services to students with communication disorders,;

5) provide consultative services to students, parents, teachers, administrators, other professionals and support personnel; and

6) provide consultation to promote the development of communication skills with all students.

3. Eligibility Criteria

Documentation verifies that a student exhibits one or more of the following communication disorders:

a. Language

A student exhibits a language disorder when the following criteria are met:

1) Assessment using comprehensive diagnostic measures verifies that language abilities are significantly below expected language performance for the students' chronological age, cognitive stage of development, sex or cultural/social background.

2) A Language Quotient (LQ) of 85 or less and/or at least one Standard Deviation (SD) below the mean, a percentile rank of 20 or below and/or a Stanine of three or less are obtained on appropriate measures.

3) Language sample results, classroom and teacher observation as well as developmental/social/therapy and academic history verify the existence of a language disorder which adversely affects educational performance.

b. Articulation

A student exhibits an articulation disorder when the following criteria are met:

1.9 Suspension of Handicapped Students

1.9 Each public agency shall establish policy and implement written procedures for protecting the rights of an eligible handicapped student whenever suspension is considered as disciplinary action for failure to comply with the standard of conduct established for all students by the public agency.

A. AUTHORITY

This policy is issued and in force pursuant to Chapter 18A, Article 5, Section 1 and Chapter 18A, Article 5, Section 1a of the West Virginia Code and Section X-B of the STUDENTS RIGHTS and RESPONSIBILITIES - A Handbook for Students in the Public Schools of West Virginia.

B. DEFINITIONS

1. Emergency suspension is the immediate removal of a student from school for a period of not more than three (3) days.

2. Short-term suspension is the removal of a student from class or school for ten (10) school days or less.

3. Long-term suspension is the removal of a student from school for more than ten (10) consecutive school days or for more than ten (10) days cumulatively during a given school year.*

C. IMPLEMENTATION

1. General Procedures

a. Each public agency shall protect the right of each handicapped student to a free and appropriate public education.

b. Each public agency shall follow all state requirements including those for notice and hearings regarding the removal of students from school.

2. Specific Procedures

a. Emergency Suspension

1) An emergency suspension is based on a finding by the principal that the continued presence of a student on school premises poses a serious threat to the health and safety of the student and/or other children or school district staff.

2) The principal may remove the student from school during the emergency period despite a causal relationship to the student's handicapping condition.

3) Lack of discrepancy between cognitive level (i.e. mental age) and communication performance (i.e. language age) shall not be the sole factor to determine a severely communication disordered student's eligibility for services. Other factors which must be considered are informal assessment results, physical ability, educational and therapy history.

4) Eligibility of preschool children shall be based on determination of normal rate or developmental functioning level for communication. Assessment using appropriate developmental measures is required.

f. Exit Criteria

A student is no longer eligible for a communication disorders program when one or more of the following criteria are met:

1) Final IEP goals and objectives have been achieved.

2) The students' communication skills are commensurate with cognitive ability and a communication skills program can be developed in the daily curricula. If the student is unintelligible or nonspeaking, an evaluation for potential use of augmentative communication must be completed and usage developed to maximum potential before an exit decision is made.

3) The communication disorder is no longer educationally handicapping.

B. PROGRAM DELIVERY

Caseload

1. Regular Education Program with Modification

Assign no more than 40 students.

2. Regular Education Program with Resource Services

Assign no more than 40 students for those receiving services less than five hours per week with a limit of five (5) during a session.

3. Regular Education Program with Special Class Services

Assign no more than 25 students for those receiving services five hours or more per week with a limit of five (5) during a session.

4. Special Education Program: Self-Contained

a. Assign no more than ten (10) students without an aide with a limit of ten (10) during any one instructional period.

b. Assign no more than 12 students with a full-time aide with a limit of 12 during any one instructional period.

These classes are options for program delivery to severely or multiply communicatively impaired students and those who exhibit normal potential in performance areas but severe language deficits. Application shall be made to the State Department of Education for approval of individual programs.

2.3 DEAF/BLIND

A. PROGRAM DEFINITION

1. Definition of Population to be Served

   Deaf/Blind students are those whose combination of auditory and visual handicaps cause such severe communication and other developmental and educational problems that they cannot properly be accommodated in special education programs solely for the hearing handicapped or for the visually handicapped student. Although these students frequently have associated mental and physical impairments, placement in programs for the mentally impaired or physically handicapped is inappropriate.

2. Program of Study

   a. Approved learning outcomes specify development of independent and vocational skills at all programmatic levels (i.e., early, middle, adolescent education) for a wide range of intellectual capabilities.

   b. The program of study also includes the acquisition of learning outcomes relative to general and vocational education as appropriate for functioning levels.

   c. Communication/language and orientation mobility skills should be taught in conjunction with other learning outcomes. Students shall be exposed to a variety of communication means and experiences during preschool/early childhood education in order to assure development of functioning in least restrictive environments.

3. Eligibility Criteria

   Documentation that the student meets all of the following criteria:

   a. A hearing loss diagnosed by a certified audiologist;

   b. a hearing loss verified on an otological examination by a licensed physician;

   c. a visual impairment diagnosed by a licensed optometrist or ophthalmologist and recorded in terms of visual acuity, visual field limitations, progressive eye disease or binocular vision; and that

   d. development and educational performance is adversely affected to the extent that specially designed instruction is required.

B. PROGRAM DELIVERY

Caseload

1. Regular Education Program with Modification

   Assign no more than 20 students.

2. Regular Education Program with Resource Services

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

3. Regular Education Program with Special Class Services

   Assign no more than six (6) students with a limit of three (3) during any one instructional period.

4. Special Education Program: Self-Contained

   Assign no more than three (3) students with a full-time aide with a limit of three (3) during any one instructional period.

2.4 GIFTED

A. PROGRAM DEFINITION

1. Definition of Population to be Served

   Gifted students have exceptional intellectual abilities that are evidence of outstanding capability, and who require specially designed instruction and/or services beyond those normally provided by the regular school program.

2. Program of Study

   a. The major goal of a gifted program is to provide the instruction and assistance necessary to increase the student's cognitive and affective functioning toward higher academic achievement and educational performance.

   b. The gifted program includes four (4) major curricular components: basic learning outcomes, extended learning outcomes, process skills and skills in understanding self and society.

   c. Programmatic focus, as addressed in the Individualized Education Program, is on task commitment, metacognitive skills, content complexity, content enrichment, and integration into appropriate instructional settings.

   d. In the student's identified areas of academic strengths, acceleration shall be a primary programmatic consideration.

   e. When acceleration is the primary focus of a gifted student's program, the PAC shall specify in the IEP how and when the student will complete the necessary credits for high school graduation.

   f. In accordance with policies and procedures developed by the county school district, a student who does not meet the gifted eligibility criteria may participate in the gifted program. However, this student cannot be considered an eligible exceptional student for purposes of reimbursement.

   g. Counties are encouraged to provide talented programs if local resources are available. However, this student cannot be considered an eligible exceptional student for purposes of reimbursement.

3. Eligibility Criteria

   Documentation that a student meets a and b:

   A. Intellectual Ability

   1. General intellectual ability, 2.0 or more standard deviations above the mean on a full scale comprehensive test of intellectual ability, with consideration of 1.0 standard error of measurement at the 68% confidence interval, or

2. Intellectual functioning 2.0 or more standard deviations above the mean, with consideration of 1.0 standard error of measurement at the 68% confidence interval on a verbal or nonverbal scale of a comprehensive test of intellectual ability, if the student is handicapped or economically disadvantaged, or if the student's primary language is other than English, and

B. Achievement/Performance

1. At least one area of academic achievement as measured by an individual standardized achievement test, indicating that the student requires specially designed instruction (see note), or

2. At least one area of educational performance, as determined during the multidisciplinary assessment, indicating that the student requires specially designed instruction (see note).

NOTE: When a student is being considered for eligibility based on an ability score that falls within 1.0 standard error of measurement, the PAC must document that the student has the potential to achieve or perform at a level expected of a student scoring 2.0 standard deviations above the mean by meeting the following standard:

The student's academic achievement or educational performance is commensurate with achievement/performance expected for a student scoring 2.0 standard deviations above the mean.

B. PROGRAM DELIVERY

Caseload

1. Regular Education Program with Modification

Assign no more than 40 students.

2. Regular Education Program with Resource Services

a. Assign no more than 35 students.

b. Assign no more than 15 students during any one instructional period.

3. Regular Education Program with Special Class Services

a. At the early childhood level, assign no more than 30 students.

b. At the middle and adolescent levels, assign no more than 35 students.

c. Assign no more than 15 students during any one instructional period.

4. Special Education Program: Self-Contained

Assign no more than 15 students with a limit of 15 during any one instructional period.

2.5 HEARING IMPAIRED

A. PROGRAM DEFINITION

1. Definition of Population to be Served

Hearing impaired students are those whose auditory acuity delays inhibit the development of speech, language and academic achievement and are classified as deaf or hard of hearing. The generic term hearing impaired is to include every student with a hearing loss whether permanent or fluctuating that is developmentally and educationally handicapping.

a. The hard-of-hearing student is:

1) Educational Interpretation

a. A hearing impaired student in whom the sense of hearing although impaired is functional with or without a hearing aid, but whose hearing loss causes a language deficit rendering him unable to make full use of the regular school experience without special services.

b. A hearing impaired student characteristically speaks defectively, misunderstands others, learns vocabulary and sentence structure more slowly or to a lesser extent than does the normal hearing student.

2) Audiological Interpretation - A hearing impaired student who has a hearing loss in his better ear that averages 26 dB to 92 dB in the speech range without a hearing aid.

b. The deaf student is:

1) Educational Interpretation - A hearing impaired student with profound or total loss of auditory sensitivity, which under the most ideal listening and hearing-aid conditions, does not allow him to hear the speech signal or perceive so little of it that hearing cannot serve as a modality for acquisition of spoken language, or for the monitoring of speech, without special education.

2) Audiological Interpretation - A hearing impaired student who has a hearing loss approaching an average of 93 dB or greater across the speech range in the better ear without a hearing aid.

2. Program of Study

a. Development of a program to meet individual needs is dependent upon the degree of hearing impairment, etiology of the hearing loss, the extent that academic achievement is affected, the current level of oral and written communication and the primary means of communication.

b. A major objective is to provide educational opportunities in the hearing impaired student's preferred method of communication. Methods of communication are emphasized because of differences which occur in acquisition and preferences. Students shall be exposed to a variety of communication methods during preschool/ early childhood education in order to assure development of functioning.

c. Approved learning outcomes specify development of living, and communication skills at all programmatic levels (i.e., early, middle, adolescent education).

d. Curricula for all academic areas include coordination with regular programs and adaptations to include the special information which hearing impaired students are taught.

e. Related services are to be provided for each hearing impaired student based upon identified and clearly stated individual needs such as: (1) amplification electroacoustically monitored by the school audiologist on an annual basis, (2) notetakers and/or interpreter/tutors provided to hearing impaired students integrated into regular classes, (3) annual audiological evaluation, (4) daily and weekly hearing aid monitoring for proper functioning, and (5) auditory training equipment.

3. Eligibility Criteria

Documentation that the student meets all of the following criteria:

a. a hearing loss diagnosed by a certified audiologist;

b. auditory pathology verified on an otological examination by a licensed otologist or otolaryngologist; and that

c. developmental and educational performance is adversely affected to the extent that specially designed instruction is required.

B. PROGRAM DELIVERY

Caseload

1. Regular Education Program with Modification

Assign no more than 30 students.

2. Regular Education Program with Resource Services

Assign no more than 15 students with a limit of five (5) during any one instructional period.

3. Regular Education Program with Special Class Services

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

4. Special Education Program: Self-Contained

   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 eight (8) students with a full-time aide with a limit of eight (8) during any one instructional period.

2.6 MENTALLY IMPAIRED

A. PROGRAM DEFINITION

1. Definition of Population to be Served

Mentally impaired students are those who evidence significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior and manifested during the developmental period.

The term "mildly mentally impaired" refers to those students who require specially designed instruction in basic academic and practical skills in order to develop adequate social, personal and vocational competence sufficient for self-maintenance.

The term "moderately mentally impaired" refers to those students who require special instruction in basic communication, sensorimotor, self-help, and independent-living skills and vocational training in order to function in employment/supported employment and community living/supervised community living.

The term "severely mentally impaired" refers to those students who require systematic instruction in self-help skills and routines in order to function in society with assistance in all areas, including the possibility of functioning in specially-designed work settings. Medical, health and dysfunctional behaviors are prevalent with these students.

The term "profoundly mentally impaired" refers to those students who have extremely limited capabilities in all areas of development and who are totally dependent on society.

2. Program of Study

The program for mentally impaired students places emphasis on the teaching of learning outcomes that are functional, age appropriate, and necessary for participation in society.

a. Programs for the mildly mentally impaired include academic, communication, vocational, social/emotional, and community living skills.

b. Programs for moderately mentally impaired include functional academic, basic communication, sensorimotor, community living, self-help, independent-living, recreation/leisure, and vocational skills.

c. Programs for the severely mentally impaired include self-help, leisure, behavior management, communication/augmentative communication, social and vocational skills, daily routines, and special sensorimotor training.

d. Programs for the profoundly mentally impaired include basic developmental and self-help skills, sensorimotor training, communication/augmentative communication, and social responsiveness. Programs may include adjustments and/or accommodations for special health/medical needs.

3. Eligibility Criteria

a. A mildly mentally impaired student meets all of the following criteria:

1) general intellectual functioning between minus two (2) and minus three (3) standard deviations with consideration of 1.0 standard error of measurement at the 68% confidence interval;

2) levels of adaptive behavior between minus two (2) and minus three (3) standard deviations in one or more of the following areas: motor development, self-help skills, social/emotional functioning or communication; and

3) levels of achievement at or below minus two (2) standard deviations in one or more of the following academic areas: reading recognition, reading comprehension, math computation, math reasoning, spelling or written expression.

b. A moderately mentally impaired student meets all of the following criteria:

1) general intellectual functioning between minus three (3) and minus four (4) standard deviations with consideration of 1.0 standard error of measurement at the 68% confidence interval; and

2) levels of adaptive behavior at or below minus three (3) standard deviations in one or more of the following areas: motor development, self-help skills, social/emotional functioning or communication.

c. A severely mentally impaired student meets all of the following criteria:

1) general intellectual functioning between minus four (4) and minus five (5) standard deviations with consideration of 1.0 standard error of measurement at the 68% confidence interval; and

2) developmental functioning at or below 50% of the normal rate or level of development in two (2) or more of the following areas: sensorimotor development, communication, social/emotional functioning or self-help skills.

d. A profoundly mentally impaired student meets the following criteria: developmental functioning at or below 25% of the normal rate or level of development in two (2) or more of the areas of 1) cognition, 2) sensorimotor development, 3) communication, 4) social/emotional functioning and 5) self-help skills.

4. Exit Criteria

Documentation that the student meets all of the following criteria:

1. performs adequately based on achievement test scores and classroom performance;

2. exhibits adaptive behavior that is age appropriate; and

3. no longer needs specially designed instruction as indicated by the completion of a transition plan. This transition plan is developed by the PAC and delineated in the IEP.

B. PROGRAM DELIVERY

Caseload

1. Regular Education Program with Modification

   Assign no more than 30 students.

2. Regular Education Program with Resource Services

   a. At the early childhood levels, assign no more than 25 students with a limit of eight (8) during any one instructional period.

   b. At the middle and adolescent levels, assign no more than 25 students with a limit of ten (10) during any one instructional period.

3. Regular Education Program with Special Class Services

   a. At the early childhood level, assign no more than 20 students with a limit of eight (8) during any one instructional period.

   b. At the middle and adolescent levels, assign no more than 20 students with a limit of ten (10) during any one instructional period.

      For departmentalized programs, at the middle and adolescent levels, assign no more than 25 students with a limit of 12 during any one instructional period.

4. Special Education Program: Self-Contained

   a. Assign no more than eight (8) mildly mentally impaired students without a full-time aide with a limit of eight (8) during any one instructional period.

   b. Assign no more than 12 mildly mentally impaired students with a full-time aide with a limit of 12 during any one instructional period.

   c. Assign no more than three (3) moderately mentally impaired students without a full-time aide with a limit of three (3) during any one instructional period.

d. Assign no more than 12 moderately mentally impaired students with a full-time aide with a limit of 12 during any one instructional period.

e. Assign no more than five (5) mildly or moderately mentally impaired students to a combination program without a full-time aide with a limit of five (5) during any one instructional period.

f. Assign no more than eight (8) moderately or severely mentally impaired students to a combination program with a full-time aide with a limit of eight (8) during any one instructional period.

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

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

Combination Program

A combination program for students with different levels of severity (e.g. severe-profound, moderate-severe) may be used. Academic, self-care, affective, communication and sensorimotor needs of these students must be similar.

2.7 OTHER HEALTH IMPAIRED
(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.

2. Program of Study

   a. The major goal of an autism program is to enable the student to achieve learning outcomes 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 generalizes and maintains skills appropriate to life situations.

3. Eligibility Criteria

   Documentation 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.

4. Exit Criteria

Documentation that the student meets all of the following criteria:

1. exhibits appropriate behavior in other environments;

2. has ability to communicate in a functional manner; and

3. no longer needs specially designed instruction as indicated by the completion of a transition plan.

B. PROGRAM DELIVERY

Caseload

1. Regular Education with Modification

Assign no more than 20 students.

2. Regular Education Program with Resource Services

   Assign no more than ten (10) students with a limit of six (6) during any one instructional period.

3. Regular Education Program with Special Class Services

   Assign no more than six (6) students with a limit of four (4) during any one instructional period.

4. Special Education Program: Self-Contained

   Assign no more than four (4) autistic students with a full-time aide with a limit of four (4) during any one instructional period.

2.8 PHYSICALLY HANDICAPPED

A. PROGRAM DEFINITION

1. Definition of Population to be Served

Physically handicapped students have physical impairments which may be congenital or caused by accident or disease, resulting in permanent, temporary, or intermittent medical disabilities. These impairments 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. For purposes of further clarification and delineation, the term physically handicapped in these regulations shall include:

Orthopedically impaired - impairments caused by congenital anomaly (e.g., spina bifida, congenital amputation, osteogenesis imperfecta, etc.), impairments caused by disease (e.g., osteomyelitis, poliomyelitis, arthritis, etc.), and impairments from other causes (e.g., amputation, cerebral palsy, dystrophies and atrophies, and conditions which cause contractures, etc.); and

Other health impaired excluding autism - impairments 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. The major goal of a physically handicapped program is to provide the instruction and assistance necessary for successful performance of daily activities in the classroom.

b. The physically handicapped program includes individually considered specialized curricular areas which are: 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, signing, etc.); and specialized curricular areas utilized with associated disabilities.

3. Eligibility Criteria

Documentation that a student meets all of the following criteria:

a. A physical impairment as diagnosed and confirmed by a licensed physician.

b. Educational performance is adversely affected to the extent that specially designed instruction is required.

B. PROGRAM DELIVERY

Caseload

1. Regular Education Program with Modification

   Assign no more than 30 students.

2. Regular Education Program with Resource Services

   Assign no more than 20 students with a limit of ten (10) during any one instructional period.

3. Regular Education Program with Special Class Services

   Assign no more than 15 students with a full-time aide with a limit of ten (10) during any one instructional period.

4. Special Education Program: Self-Contained

   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 PRESCHOOL HANDICAPPED

NOTE: Chapter 18, Article 20, of the West Virginia Code, entitled "Education of Exceptional Children," provides permissive legislation for the provision of special education and related services to handicapped children ages three through five. The purpose for the inclusion of the Preschool Handicapped regulations is not to require the provision of special education and related services to the preschool handicapped population, but is to provide minimal requirements for those county boards of education electing to provide services to this population. Policies and procedures contained within this document shall be followed in providing services to the preschool handicapped population.

A. PROGRAM DEFINITION

1. Definition of Population to be Served

   Preschool handicapped children are those children ages three through five who evidence a significant developmental delay in one or more of the following areas: cognition, fine and/or gross motor, receptive and/or expressive language, and social/emotional development.

2. Program of Study

   a. The major goal for the preschool handicapped child is the same as for his/her non-handicapped peers: the acquisition of skills in all developmental areas in a manner which promotes independence and readiness for academic learning. The developmental areas include, but are not limited to, communication/language, cognition, motor skills, self-help skills, sensory awareness, and social/emotional growth. To achieve this goal, the preschool handicapped curriculum should provide for a program of instruction which emphasizes skill development in an integrated manner, rather than skill development in isolation.

   b. A comprehensive developmental program for preschool handicapped children shall incorporate the necessary related services, e.g., communication skill development, including but not limited to speech-language pathology, physical therapy, occupational therapy, psychology, student support services, transportation, extended school year, and social services. These services may be provided through interagency collaboration, contracts/agreements, consultant services and/or direct employment of personnel.

   c. The Individualized Education Program shall focus on preparing a child for the maximum possible participation in a regular educational setting. When a child reaches school age (CA-5), appropriate placement will correspond to the continuum of services outlined in this document.

   d. A comprehensive program for the preschool handicapped child shall systematically involve families in a manner which promotes an active partnership.

3. Eligibility Criteria

Documentation that the child meets the following criteria::

a. is functioning at, or lower than, 75%, but greater than 50% of the normal rate of development in one or more of the following areas: cognition, fine and/or gross motor, receptive and/or expressive language, social/emotional development; or

b. meets eligibility criteria delineated in program regulations for hearing impaired, visually impaired, physically handicapped, communication disorders, mildly mentally impaired, behavior disorders or autism and that the identified handicap interferes with normal development.

For those preschool handicapped children who are functioning at, or lower than 50% of the normal rate of development, refer to program regulations 2.9.1 for Preschool Severely Handicapped.

B. PROGRAM DELIVERY

1. Placement

Local educational agencies choosing to serve eligible preschool handicapped children shall make available a continuum of placement options and systematic family involvement and training. Services may be provided through interagency collaboration, contracts/agreements, regional educational service agencies, consultation and/or direct employment of personnel. Eligible children shall be served in the least restrictive environment through one or more of the placement options specified in section 1.3 Placement.

2. Time Allocations

Programs for eligible preschool handicapped children shall be provided on a regular basis as follows:

a. Home-Based Programs - a minimum of one hour, one day per week including instruction to the student and consultative services to the family.

b. Center-Based Programs - a minimum of fifteen (15) hours per week.

c. Combination Program -

- center-based instruction - a minimum of twelve (12) hours per week.

- home-based instruction/consultative services with the family - a minimum of one (1) hour per week.

3. Caseload

a. Center-Based Programs

1. Regular Education Program with Modification

Assign no more than 15 children.

2. Regular Education Program with Resource Services

Assign no more than 15 children with a full-time aide.

3. Regular Education Program with Special Class Services

Assign no more than 15 children with a full-time aide.

4. Special Education Program: Self-Contained

Assign no more than eight (8) children with a full-time aide.

b. Home-Based Program

Assign no more than 15 children.

c. Combination Program

Assign no more than 15 children. In a combination program that includes center-based self-contained components, the maximum caseload shall not exceed eight (8) eligible children with a full-time aide for each self-contained component.

2.9.1 PRESCHOOL SEVERELY HANDICAPPED

A. PROGRAM DEFINITION

1. Definition of Population to be Served

   Preschool severely handicapped children are those children who are three through five years of age who evidence severe developmental delays in one or more of the following areas: cognition, fine and/or gross motor, receptive and/or expressive language, social/emotional development, or who are identified as having severe behavioral disorders, severe communication disorders, hearing impairments, autism, physical handicaps, moderate, severe, or profound mental impairments, visual impairments, or who are deaf-blind.

2. Program of Study

   a. The major goals for the preschool severely handicapped child are the same as for his/her non-handicapped peers: the acquisition of skills in all developmental areas in a manner which promotes independence and readiness for learning. The developmental areas include, but are not limited to: communication/language, cognition, motor skills, self-help skills, sensory awareness, and social/emotional growth. To achieve these goals, the program for preschool children with severe handicaps shall provide a curriculum which emphasizes skill development in an integrated manner, rather than skill development in isolation.

   b. A comprehensive developmental program for preschool children with severe handicaps shall include the necessary related services, e.g., communication skill development including, but not limited to speech-language pathology, health services, physical therapy, occupational therapy, student support services, transportation, extended school year, and social services. These services may be provided through interagency collaboration, contracts/agreements, consultant services and/or direct employment of personnel.

   c. A comprehensive developmental program for preschool children with severe handicaps shall systematically involve families in a manner which promotes an active partnership.

   d. Education and related services are to be provided for the child and his/her family through direct employment of personnel, interagency collaboration, contracts/agreements, and/or consultative services.

   e. The Individualized Education Program shall focus on preparing each child for maximum possible participation in the home, school, and community settings. The Individualized Education Program may also address those developmental areas in which the child is proficient.

3. Eligibility Criteria

Documentation that the child:

a. is functioning at, or lower than, 50% of the normal rate or level of development in one or more of the following areas: cognition, fine and/or gross motor, receptive and/or expressive language, social/emotional, or

b. meets eligibility criteria delineated in program regulations for communication disorders, deaf-blind, hearing impaired, visually impaired, behavior disorders, autism, moderately, severely, or profoundly mentally impaired, or physically handicapped and whose handicaps are of such a nature and severity that they would present significant educational problems.

B. PROGRAM DELIVERY

1. Placement

Local education agencies shall serve eligible preschool severely handicapped children by making available a continuum of placement options and offering systematic family involvement and training. Services may be provided by county boards of education, regional educational service agencies, the West Virginia School for the Deaf and Blind and through contracted services. Eligible children shall be served in the least restrictive environment through one or more of the special education placement options specified in section 1.3 Placement.

2. Time Allocations

Programs for eligible preschool severely handicapped children shall be provided on a regular basis as follows:

a. Home-Based Programs - a minimum of two (2) hours, per week, each session must be at least one (1) hour in duration, including instruction to the student and consultative services to the family.

b. Center-Based Programs - a minimum of fifteen (15) hours per week.

c. Combination Program -

- center-based instruction - a minimum of twelve (12) hours per week.
- home-based instruction/consultative services with the family - a minimum of one (1) hour per week.

3. Caseloads

a. Center-Based Programs

1. Regular Education Program with Modification

Assign no more than 15 children.

2. Regular Education Program with Resource Services

   Assign no more than 12 children with a full-time aide.

3. Regular Education Program with Special Class Services

   Assign no more than 12 children with a full-time aide.

4. Special Education Program: Self-Contained, Special School, or Residential Facility

   Assign no more than six (6) children with a full-time aide.

b. Home-Based Program

   Assign no more than ten (10) children.

c. Combination Program

   Assign no more than 15 children.

   If the combination program includes center-based self-contained components, the maximum caseload shall not exceed six (6) children with a full-time aide for each self-contained component.

2.10 SPECIFIC LEARNING DISABILITIES

A. PROGRAM DEFINITION

1. Definition of Population to be Served

Specific learning disabled students have a disorder of one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term does not include a learning problem which is primarily the result of a visual, hearing, or motor handicap, of mental retardation, of emotional disturbance, or of environmental or cultural differences or economic disadvantage.

2. Program of Study

a. The major goal of a specific learning disabilities program is to enable the student to achieve the learning outcomes in an integrated, sequential and developmental manner.

b. The specific learning disabilities program includes four (4) major curricular components: academic instruction, social/emotional skills, organizational/study skills and career education.

3. Eligibility Criteria

Documentation that the student meets all of the following criteria:

a. demonstrates general intellectual functioning at or above one standard deviation below the mean, in consideration of 1.65 standard errors of measurement;

b. has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, or mathematics reasoning;

1) The discrepancy shall be determined by a comparison of age-based standard scores of ability and achievement. A regression formula shall be used to determine the severity of the discrepancy. A severe discrepancy is defined as a minimum of 1.75 standard deviations difference, taking regression and 1.65 standard errors of measurement into account.

2) A method utilizing the standard error of the difference scores shall be used only if the technical data (i.e., test correlations) necessary to account for the effects of regression are not available.

c. has a severe discrepancy between ability and achievement that is NOT primarily the result of:

1) a visual, hearing, or motor handicap,

2) mental retardation,

3) emotional disturbance, or

4) environmental or cultural differences or economic disadvantage. (This shall be determined by a comparison of the student to other students in a similar situation, e.g., the same geographical area, similar socio-economic status, etc.).

d. exhibits deficits in one or more of the basic learning processes of perception, memory and conceptualization; and that

e. educational performance is adversely affected to the extent that specially designed instruction is required.

f. In the event that the PAC, on the basis of all the assessment data, determines that a student is eligible for services in a specific learning disabilities program when he/she meets four (4) of the five (5) eligibility criteria, the specific information regarding the criterion in question which supports that decision shall be stated in writing.

4. Exit Criteria

Documentation that the student meets all of the following criteria:

a) performs adequately as measured by achievement test scores;

b) performs adequately based on classroom performance; and

c) no longer needs specially designed instruction as indicated by the completion of a transition plan. The transition plan is developed by the PAC and delineated in the IEP.

B. PROGRAM DELIVERY

Caseload

1. Regular Education Program with Modification

Assign no more than 30 students.

2. Regular Education Program with Resource Services

a. At the early childhood level, assign no more than 25 students with a limit of eight (8) during any one instructional period.

b. At the middle and adolescent levels, assign no more than 25 students with a limit of ten (10) during any one instructional period.

3. Regular Education Program with Special Class Services

   a. At the early childhood level, assign no more than 20 students with a limit of eight (8) during any one instructional period.

   b. At the middle and adolescent levels, assign no more than 20 students with a limit of ten (10) during any one instructional period.

      For departmentalized programs at the middle and adolescent levels, assign no more than 25 students with a limit of 12 during any one instructional period.

4. Special Education Program: Self-Contained

   a. Assign no more than eight (8) students without a full-time aide with a limit of eight (8) during any one instructional period.

   b. Assign no more than 12 students with a full-time aide with a limit of 12 during any one instructional period.

2.11 VISUALLY IMPAIRED

A. PROGRAM DEFINITION

1. Definition of Population to be Served

   a. Visually impaired students have a physical deficiency 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 visually impaired include those with organic impairments such that there is no vision, or visual limitations, which after best correction result in educational handicaps requiring special services and/or materials.

   b. The term legally blind is defined for the purpose of these regulations as:

      Legally 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 is adapted from the general and vocational educational programs, and includes social/emotional components, to meet the individual needs of the visually impaired student. The required adaptations are to be based upon the student's developmental functioning level and readiness for learning.

   b. Approved learning outcomes specify 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).

3. Eligibility Criteria

   Documentation that the student meets all of the following criteria:

   a. A visual impairment diagnosed by a licensed optometrist or opthalmologist 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 is adversely affected to the extent that specially designed instruction is required.

B. PROGRAM DELIVERY

Caseload

1. Regular Education Program with Modification

   Assign no more than 30 students.

2. Regular Education Program with Resource Services

   Assign no more than 15 students with a limit of five (5) during any one instructional period.

3. Regular Education Program with Special Class Services

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

4. Special Education Program: Self-Contained

   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 eight (8) students with a full-time aide with a limit of eight (8) during any one instructional period.

3.0 PROCEDURAL SAFEGUARDS

3.0 Each public agency shall establish and implement procedural safeguards for exceptional students and their parents, with respect to the provision of a free appropriate public education.

A. Opportunity to examine records. (300.502)

The parents of an exceptional student shall be afforded an opportunity to inspect and review all education records with respect to:

1. the referral/identification, assessment and placement of the student; and

2. the provision of a free appropriate public education to the student through the development and implementation of an Individualized Education Program.

B. Independent educational assessment. (300.503)

1. The parents of an exceptional student have the right to obtain an independent educational assessment of the student. Each public agency shall provide to parents, on request, information about where an independent educational assessment may be obtained.

2. A parent has the right to an independent educational assessment at public expense if the parent disagrees with an assessment obtained by the public agency. However, the public agency may initiate an impartial due process hearing to show that its assessment is appropriate. If the final decision is that the assessment is appropriate, the parent still has the right to an independent educational assessment but not at public expense.

3. If the parent obtains an independent educational assessment at private expense, the results of the assessment:

   a. must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the student; and

   b. may be presented as evidence at a due process hearing regarding that student.

4. If a hearing officer requests an independent educational assessment as part of a due process hearing, the cost of the assessment must be at public expense.

5. Whenever an independent assessment is at public expense, the criteria under which the assessment is obtained, including the location of the assessment and the qualifications of the evaluator(s), must be the same as the criteria which the public agency uses when it initiates an assessment.

C. Prior notice; parent consent. (300.504)

1. Written notice must be given to the parents of an exceptional student within a reasonable time before the public agency:

   a. proposes to initiate or change the referral/identification, assessment or educational placement of the student or the provision of a free appropriate public education to the student through the development and implementation of the Individualized Education Program; or

   b. refuses to initiate or change the referral/identification, assessment or educational placement of the student or the provision of a free appropriate public education to the student through the development and implementation of the Individualized Education Program.

2. "Parental consent must be obtained for initial assessment and initial placement/change of placement of an exceptional student in a program providing special education and related services. Except for initial assessment and initial placement/change of placement, consent shall not be required as a condition of <u>any</u> benefit to the parent or student."

3. The public agency shall use the impartial due process hearing procedures to determine if the student may be assessed or initially provided special education and related services without parental consent. If the hearing officer upholds the agency, the agency shall assess or initially provide special education and related services to the student without the parent's consent, subject to the parent's rights to appeal the hearing decision or bring civil action.

D. Content of notice. (300.505)

1. The notice must include:

   a. a full explanation of all of the procedural safeguards available to the parents;

   b. a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

   c. a description of each assessment procedure, test, record or report the agency uses as a basis for the proposal or refusal; and

   d. a description of any other factors which are relevant to the agency's proposal or refusal.

2. The notice must be:

   a. written in language understandable to the general public; and

   b. provided in the native language of the parent or other mode of communication used by the parent, unless it clearly is not feasible to do so.

3. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to assure:

   a. that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

   b. that the parent understands the content of the notice; and

   c. that there is written evidence that the above requirements have been met.

E. Impartial due process hearing. (300.506)

1. A parent or a public agency may initiate a hearing relevant to the proposal or refusal to initiate or change the referral/identification, assessment or educational placement of the student or the provision of a free appropriate education. The hearing must be conducted by the public agency directly responsible for the education of the student.

2. The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area and that new Federal legislation allows for the award of attorneys' fees to parents to cover the cost of attorneys' fees and related costs when the parent is the prevailing party subject to certain constraints if:

   a. the parent requests the information; or

   b. the parent or the agency initiates a hearing.

3. Although the process of mediation is not a regulation, a public agency may suggest mediation in disputes concerning the referral/identification, assessment and/or educational placement of exceptional students and the provision of a free appropriate public education to students through the development and implementation of an Individualized Education Program. Mediation can lead to resolution of differences between parents and agencies without the development of an adversarial relationship. However, mediation must not be used to deny or delay a right to a due process hearing.

F. Impartial hearing officer. (300.507)

1. Persons qualified to serve as impartial hearing officers must meet the following criteria:

   a. a law degree,

   b. admission to the West Virginia Bar,

   c. demonstrated 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.

2. The assigned hearing officer shall not be:

   a. a person who is an employee of a public agency which is involved in the education or care of the child; or

   b. any person having a personal or professional interest which would conflict with objectivity in the hearing; or

   c. a school board official; or

   d. a lawyer who represents boards of education or parents in actions against boards of education.

3. Lawyers referred to in subsection (2.d) shall be ineligible to begin hearing officer training or to serve as hearing officers during the pendency of any action in which they are involved and for one year following the conclusion of said representation.

4. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. Hearing officers shall be paid by the public agency involved in the hearing solely for the purpose of compensating the hearing officer for time expended in travel, the hearing proceedings and preparing the report.

5. Upon receipt of a request for a due process hearing, the public agency shall immediately notify the West Virginia Department of Education and request the selection of an impartial hearing officer. The hearing officer shall be selected at the West Virginia Department of Education by:

   a. using a programmed selection process based upon rotation to select the hearing officer from the roster of qualified hearing officers;

   b. making an initial determination whether the selected hearing officer has a personal or professional interest which would conflict with objectivity in the hearing;

   c. selecting a new hearing officer if a conflict is determined; and

   d. allowing either party to submit a challenge for cause to remove a biased hearing officer. Should a challenge for cause be filed, the state superintendent shall investigate the challenge and determine if cause for removal exists. The decision by the superintendent shall be final and not subject to appeal.

6. The impartial hearing officer shall preside at the hearing, shall conduct the proceedings in a fair and impartial manner and shall take steps to assure that all hearings will be conducted and completed as quickly as possible.

7. The West Virginia Department of Education shall maintain a list of attorneys trained to serve as hearing officers. The listing shall include a statement of the qualifications of each person. This information shall be provided to each public agency and to any party to a due process hearing who requests the information in writing from the State Department of Education.

G. Impartial due process hearing rights. (300.508)

1. The burden of proof as to the appropriateness of any proposed action, as to why more normalized placement could/could not adequately and 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. Hearing officers shall have the power to issue subpoenas requiring testimony 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 shall immediately issue a decision on the validity of the subpoena. Any person served with a subpoena pursuant to this section shall 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 shall 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;

   d. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

   e. obtain a written or electronic verbatim record of the hearing; and

   f. obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the state advisory panel.)

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. (300.509)

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

I. Civil action. (300.511)

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 or in a district court of the United States within four (4) months of the date of the issuance of the hearing officer's written decision.

J. Timelines and convenience of hearings. (300.512)

1. The West Virginia Department of Education shall assure that not later than 45 days after the receipt of a request for a 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.

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

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. (300.513)

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 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. (300.514)

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.

5. The surrogate parent may represent the student in all matters related to:

   a. the identification/referral, assessment and placement of the student; and

   b. the provision of a free appropriate public education to the student through the development and implementation of the Individualized Education Program.

4.0 CONFIDENTIALITY OF INFORMATION

The following confidentiality rights and requirements as provided under the regulations for the Education of the Handicapped Act apply specifically to handicapped students.

The Family Educational Rights and Privacy Act and West Virginia's Procedures for the Collection, Maintenance, and Disclosure of Student Data, Policy 4350, include the confidentiality rights and requirements that apply to all students, including handicapped children.

A. Annual Notification of Rights

1. Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice, in accordance with State Board of Education Policy 4350, by such means as are reasonably likely to inform them of the following:

   a. their rights under Section 438 of the Family Educational Rights and Privacy Act; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

   b. the right to file complaints concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.

2. Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

B. Access rights. (300.562)

1. Each participating agency shall permit parents to inspect and review any education records relating to their exceptional students which are collected, maintained or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an Individualized Education Program or hearing relating to the referral, assessment or placement for the exceptional student, and in no case more than 45 days after the request has been made.

2. The right to inspect and review education records under this section includes:

   a. the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

b. the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. the right to have a representative of the parent inspect and review the records.

3. An agency may presume that either parent has authority to inspect and review records relating to his or her exceptional child unless the agency has been provided with evidence that the parent does not have the authority under applicable State law governing such matters as guardianship, separation and divorce.

C. Record of access. (300.563)

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part, including the name of the party, the date access was given and the purpose for which the party is authorized to use the records.

D. Records on more than one exceptional student. (300.564)

If any education record includes information on more than one exceptional student, the parents of an exceptional student shall have the right to inspect and review only the information relating to their exceptional student or to be informed of that specific information.

E. List of types and locations of information. (300.565)

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained or used by the agency.

F. Fees. (300.566)

1. A participating education agency may charge a fee for copies of records which are made for parents. The fee may not prevent the parents from exercising their right to inspect and review those records.

2. A participating agency may not charge a fee to search for or to retrieve information under this part.

G. Amendment of records at parent's request. (300.567)

1. A parent who believes that information in education records collected, maintained or used is inaccurate or misleading or violates the privacy or other rights of the exceptional student, may request the participating agency which maintains the information to amend the information.

2. The agency shall decide whether to amend the information, in accordance with the request, within a reasonable period of time of receipt of the request.

3. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

H. Opportunity for a hearing. (300.568)

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to assure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the exceptional student.

I. Result of hearing. (300.569)

1. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the exceptional student, it shall amend the information accordingly and so inform the parent in writing.

2. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other right of the exceptional student, it shall inform the parent of the right to place in the records it maintains on the exceptional student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

3. Any explanation placed in the records of the exceptional student under this section must:

   a. be maintained by the agency as part of the records of the exceptional student as long as the record or contested portion is maintained by the agency; and

   b. if the records of the exceptional student or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

J. Hearing procedures. (300.570)

A hearing must be conducted according to the due process hearing procedures under State Policy 4350.

K. Consent. (300.571)

1. Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information.

2. An educational agency or institution may not release information from education records to participating agencies without parental consent unless authorized to do so under State Board Policy 4350, Section 17.

L. Safeguards. (300.572)

1. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

2. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

3. All persons collecting or using personally identifiable information must receive training or instruction regarding the West Virginia Department of Education's policies as specified in the Procedures for the Collection, Maintenance and Disclosure of Student Data. (State Board Policy 4350)

4. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

M. Destruction of information. (300.573)

1. The public agency shall inform parents when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the exceptional student.

2. The "no longer needed" information must be destroyed at the request of the parents.

3. However, a permanent record of an exceptional student's name, address and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

4. The personally identifiable information on an exceptional student may be retained permanently unless the parents request that it be destroyed. In informing the parents about their rights under this section, the agency should remind them that the records may be needed by the exceptional student or the parents for social security benefits or other purposes.