

**TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION**

**SERIES 16  
REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS (2419)**

**§126-16-1. 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. -- W. Va. Code §18-20-5

1.3. Filing Date. -- October 30, 1986

1.4. Effective Date. -- December 30, 1986

1.5. Repeal of former rule - None - This is a revision of the policy filed on June 30, 1983.

**§126-16-2. 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 provisions 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.

126-16

REGULATIONS FOR THE EDUCATION OF  
EXCEPTIONAL STUDENTS

Policy 2419

West Virginia Department of Education  
Office of Special Education

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## REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS

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

#### 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 program of study requires special education and related services. These apply to 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 students under five years of age 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 five 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. exceptional individuals, ages five to 23, who are out of school and not receiving 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 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 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

Responsibility of Local Education Agencies. It is the responsibility of each local education agency to provide and maintain programs of special education and related services. This responsibility shall be met by one or more of the following: each local education agency acting by itself; action of two or more local education agencies through establishment and maintenance of joint programs; a regional education service agency (RESA); contract for services from suitable public or private agencies having appropriate programs, capacity and competence; or, any combination of the aforementioned. Regardless of the methods chosen, however, each local education agency has the responsibility and is accountable for the provision and appropriateness of educational programs of study and services.

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. Exceptions and consideration for extenuating circumstances may be provided upon full review by the Board for good and just cause.

To accomplish the objectives of serving all eligible exceptional students, it is the responsibility of the State Board, through the Department of Education, 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. provide assistance to local education agencies and participating agencies in implementing and operating education programs for exceptional students;

5. review and approve the implementation and operation of educational programs of study for all eligible exceptional students in the State to assure compliance with State and federal laws;
6. receive, disburse and administer State and federal funds designated for the education of eligible exceptional students;
7. establish regulations to protect student and parent rights, particularly in the areas of due process, protection in assessment and confidentiality of information; and
8. assure that eligible exceptional students in the State, including individuals in residential institutions and private schools, will 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.

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 education 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;
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. review local education agency special education plans and recommend action to the State Superintendent;
11. administer "The Education of the Handicapped Act" funds and monitor programs funded from these monies;
12. develop, provide and participate in programs for the training of educational personnel;
13. maintain reports and summary information on special education in the State;
14. disseminate information concerning educational programs for exceptional students to interested agencies, organizations and individuals;
15. compile and disseminate decisions, opinions and interpretations of the State and federal laws pertaining to education of exceptional students;
16. review and recommend action on certification requests of special education teachers and other agency personnel serving eligible exceptional students;
17. serve as liaison with other State and regional agencies, parent and professional organizations, and private agencies serving exceptional students;
18. serve as liaison with colleges and universities preparing personnel to work with exceptional students; and
19. serve as liaison with federal projects and national agencies which provide services for exceptional students.

NOTE: Parents shall be provided a pamphlet, developed by the State Department of Education that in layman's terms describes these Regulations.

#### GLOSSARY

1. "Adaptive Behavior" - the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group.
2. "Adolescent Education" - the educational program that addresses the intellectual, physical, and social/emotional needs of youth aged 14 through 18 or 23 for special education, 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 are not currently enrolled in a public school.
4. "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.

5. "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.
6. "Destruction" - physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
7. "Due Process: Procedural" - in general terms, procedural due process embodies principles of orderliness, fairness, and respect for the rights of the individual. More specifically, due process requires that an individual faced with state action threatening basic rights has the right to be informed of the imminence of such action (right to notice), to have assistance in defending against such action (right to counsel), to present evidence that questions those presenting evidence regarding such action (right to hearing), and therein to confront and cross-examine adverse witnesses and have impartial review of such action (right to appeal).
8. "Due Process: Substantive" - a system that guarantees each individual equal protection and treatment under the law. (14th amendment).
9. "Early Childhood Education" - the educational program that addresses the intellectual, physical, and social/emotional needs of children aged three through ten, grades K-4.
10. "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.
11. "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. The term "education records" does not include:
  - a. Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:
    - 1) are in the sole possession of the maker thereof; and
    - 2) are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

b. Records relating to an individual who is employed by an educational agency or institution which (1) are made and maintained in the normal course of business; (2) relate exclusively to the individual in that individual's capacity as an employee; and (3) are not available for use for any other purpose. (This does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.)

c. Records relating to an eligible student which are:

- 1) created or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;
- 2) created, maintained or used only in connection with the provision of treatment to the student;
- 3) not disclosed to anyone other than individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution; and
- 4) records of an educational agency or institution which contain only information related to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

12. "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.

13. "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.

14. "Extended Year Programming" - special education programs and related services shall be provided on an extended year basis as determined by State Department of Education Extended Year Programming: Guidelines for Implementation. Students having handicaps which are severe in nature shall be entitled to an education program in excess of 180 days per year 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) (State Board Policy 2441.3):
- o the student must exhibit, or be thought likely to exhibit, regression during an interruption in educational programming; and
  - o the student must also exhibit, or be thought likely to exhibit, a limited ability to recoup or relearn losses once programming has again resumed; and
  - o the student's regression/recoupment problem(s) must interfere with the Armstrong goal of achieving "independence and self-sufficiency from caretakers that the student would otherwise be expected to reach in view of his/her handicapping condition."
15. "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.

Special education and related services shall be made available to all 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 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.

16. "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.

17. "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. The Individualized Education Program is the basis for assuring that the special education programs of study and services a student receives are in accordance with his or her needs, abilities and goals. The concept of an Individualized Education Program also emphasizes the individual differences of each eligible exceptional student, and the need to cooperatively plan each eligible exceptional student's educational program of study.
18. "Learning Outcomes" - a learning outcome is a measurable description of the knowledge, skills, and/or attitudes that a teacher expects a student to acquire as a result of instruction within an area of study, e.g., the student will apply context clues to derive the meaning of a word or phrase used in a sentence (reading), the student will solve equations involving rational expressions (Algebra).
19. "Least Restrictive Alternative" - that to the maximum extent appropriate, eligible exceptional students shall be educated with students in regular programs. Placement in special classes or other removal from the regular educational environment shall occur only when the nature of the exceptionality or the severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Continuum of Alternative Placements:

- a. Each public agency shall assure that a continuum of alternative placements is available to meet the needs of exceptional students for special education and related services.
  - b. The continuum must:
    1. include alternative placements in regular classes, special classes, out-of-school environments, special schools and residential facilities; d
    2. make provision for supplementary services to be provided in conjunction with regular class placement.
20. "Multicategorical Resource Room" - the multicategorical program delivery model is intended to serve only those students who are mildly involved in terms of their exceptionality.
    - a. This combined program delivery model may be used to deliver services to exceptional students in the following categorical areas: Behavior Disorders, Educable Mentally Impaired, and Specific Learning Disabilities until 1987.

- b. When placing exceptional students within a combined program, the academic needs and affective behaviors of the students must be similar.
- c. After the 1987 school year, the West Virginia Board of Education will grant waivers for continued use of multicategorical resource rooms only for extraordinary circumstances.
- d. Effective 1987, the caseload for a teacher in a multicategorical resource room may not exceed 100% of the combined categorical caseload.

21. "Multidisciplinary Assessment Team" -

- a. The multidisciplinary assessment team shall consist of qualified personnel, including a certified school psychologist or approved licensed psychologist, one or more of the student's classroom teacher(s), and a professional with knowledge in the areas of suspected concern. The multidisciplinary team shall determine the appropriate areas to be assessed and instruments to be utilized.
- b. For individuals whose area of suspected concern is solely speech and language, a speech-language pathologist may serve as both a teacher in the area of concern and as an evaluator. Therefore, the multidisciplinary team requirement for the assessment of these students may be fulfilled by a speech and language pathologist and a classroom teacher.
- c. The student will be assessed (individual evaluation) in all areas related to the suspected exceptionality including, where appropriate:
  - o health;
  - o vision;
  - o hearing;
  - o adaptive behavior/behavioral functioning;
  - o general intelligence;
  - o academic performance including achievement relative to learning outcomes when approved by the West Virginia Board of Education;
  - o communicative functioning;
  - o motor abilities; and
  - o career interests and vocational aptitudes.

22. "Out-of-State Placement of Handicapped Students" - Public Law 94-142 indicates that handicapped students shall receive a free appropriate public education. "If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child."

In order to qualify for out-of-state instruction funds, the student must be identified as having two or more of the handicapping conditions defined in the Regulations for the Education of Exceptional Students, and the handicaps must present significant educational problems of such a nature that the public agency cannot provide an appropriate program.

23. "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.
24. "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.
25. "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.
26. "Participating Agency" - any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under the general supervision of the West Virginia Board of Education.
27. "Placement Advisory Committee (PAC)" - a group consisting of the county superintendent of schools or designee, professional personnel who administered the individual educational assessments or professional educator qualified to present and explain the written report of the evaluator(s), additional personnel certified in the suspected area(s) of exceptionality, one or both parents, the student where appropriate, the student's current teacher, and other individuals at the discretion of the parent(s) or agency whose functions are to carefully consider the multidisciplinary assessment data, strengths and weaknesses of the student, and least restrictive environment; determine the educational and related service needs; determine eligibility for special education and related services; develop a written Individualized Education Program; and monitor and evaluate the continuing appropriateness of these decisions.
28. "Private School" - an educational facility operated by a nonpublic agency or organization.

29. "Procedural Safeguards" - the right of all exceptional students and their parents shall be protected in all decisions relating to the provision of special education and related services. Protections shall be afforded by the implementation of due process procedures throughout the West Virginia Search and Serve Process. The implementation of procedural safeguards in each step of the West Virginia Search and Serve Process is intended to produce an environment in which the interested parties understand the nature of the student, his or her needs, the procedures and process used to obtain information, the proposed plans to meet the needs of the student, the review procedures to determine program effectiveness and their rights under the law with respect to all decisions and actions.
30. "Program of Study" - a program of study is 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.
31. "Protection in Assessment" - testing and evaluation materials and procedures used for the purposes of assessment and placement of exceptional students shall be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the student's native language or other mode of communication. No single procedure shall be the sole criterion for determining an appropriate education program for a student.
32. "Public Agency" - state education agency, regional education agency, local education agencies, and any other political subdivisions of the State which are responsible for providing education to exceptional students.
33. "Regulation" - the policies and activities required for compliance with federal and State mandates.
34. "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 audiology, speech 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.
35. "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 functions are to assist in the identification and location of exceptional students; assure that school referrals are reviewed and determined to be valid referrals for special education or recommend short-term educational modification(s); and review effectiveness of short-term educational modification(s) to determine the need for continuation or referral for special education and related services.

36. "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.
37. "Sweep Screening" - the process of administering screening tests, instruments or procedures to designated groups of individuals for the purpose of: (a) locating individuals who manifest, or are likely to manifest attributes or behaviors which require special attention; and (b) referring these individuals to qualified professionals for evaluation to determine the need for special education and related services.
38. "Transportation of Handicapped Students" - 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).
39. "West Virginia Search and Serve Process" - Public Law 94-142, "The Education for All Handicapped Children Act of 1975," charges both the State Department of Education and local education agencies with the responsibility for establishing policies and procedures to assure that: (1) all students who are handicapped, regardless of severity of their handicap, and who are in need of special education programs of study and related services are identified, located and assessed; and (2) a practical method is developed and implemented to determine which students are currently receiving needed special education and related services and which students are not currently receiving needed special education and related services. The federal child identification requirement applies to handicapped children and young adults between birth and 21 years of age.

West Virginia's mandatory special education statute also legislates a child identification effort by local education agencies. 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 students (handicapped and gifted) between five and 23 years of age prior to September 1 of such school year.

In response to the federal and State legislative requirements, the West Virginia Board of Education initiated a statewide child identification and service delivery process, titled THE WEST VIRGINIA SEARCH AND SERVE PROCESS.

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

The SEARCH and SERVE process initiated by the State Department of Education also includes a data collection system that complies with the federal requirements of developing and implementing a practical method of determining which individuals are currently receiving needed special education and which individuals are not currently receiving needed special education services.

This statewide delivery model which is implemented and reviewed at the local education agency level and monitored at the State level, is illustrated in Figure 1.

THE WEST VIRGINIA SEARCH AND SERVE PROCESS

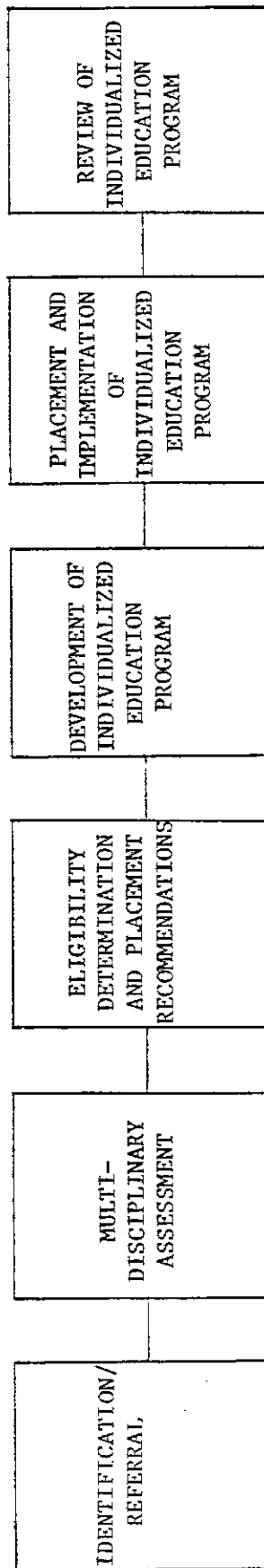


Figure 1

## 1.0 GENERAL REGULATIONS

### 1.1 Identification/Referral

1.1 Each public agency shall establish policies and implement written procedures to maintain a formal ongoing referral system for the identification/referral of exceptional students 0-23 years of age. In meeting the requirements of this regulation, each local education agency shall:

A. Implement procedures which provide for the identification/referral of exceptional students through implementation of child find activities, sweep screening programs, a referral system and School-Based Assistance Teams (SBATs).

1. Include among child find activities:

- a. inservice training/continuing education of 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;
- b. procedures for ongoing communication with other agencies that serve exceptional students;
- c. an 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; and
- d. dissemination of parent information and child find materials as prepared by the West Virginia Department of Education.

2. Conduct annual sweep screening programs in the areas of hearing, vision, and speech and language. The annual sweep screening shall, as a minimum:

- a. sweep screen all students entering school for the first time in West Virginia.
- b. sweep screen with no undue delay students entering kindergarten who did not participate in the pre-enrollment screening programs.
- c. sweep screen individuals considered at high risk for potential problems in hearing, vision and speech and language.
- d. determine at least one other grade level to sweep screen in the areas of hearing and vision.

- e. sweep screen all students transferring for the first time into West Virginia schools in the areas of hearing and vision and speech and language.
  - f. refer directly for assessment those students identified through the sweep screening process.
3. Implement a system which permits any interested person to make a referral and which directs all referrals to the county superintendent of schools or designee.
  4. Conduct meetings of the School-Based Assistance Teams (SBATs) to assist educators in solving the school related problems of students prior to the referral for special education programs and services. The SBAT shall:
    - a. consist of at least three (3) persons, including the school administrator, the current teacher(s), and other appropriate professional staff;
    - b. review the problem area(s) and recommend short-term in-school educational modification(s) or recommend immediate referral for multidisciplinary assessment; and
    - c. review, no later than one grading period, the effectiveness of recommended short-term in-school educational modification(s) to determine the need for continuation of the educational modification(s) or referral for multidisciplinary assessment.
- B. Provide staff who are appropriately trained and who are adequate in number to implement child find activities, sweep screening programs, and to serve on School-Based Assistance Teams.
1. Assure that all referral activities are conducted by staff who have received the training required by the tasks to be performed.
  2. Assure that staff conducting sweep screenings are trained in the use of the specific instruments, techniques and procedures for which they are responsible.
  3. Assure that staff are provided and participate in ongoing training in:
    - a. referral procedures, techniques and instruments;
    - b. the State Regulations for the Education of Exceptional Students;
    - c. procedural safeguards, including State and federal due process, protection in assessment and confidentiality requirements; and
    - d. the reporting procedures to be used.

- C. Implement procedural safeguards to assure that the rights of the parent(s) and the student are protected in the referral process.
  - 1. Inform the public of the right to a free appropriate public education.
  - 2. Provide for the confidentiality of personally identifiable information collected, used or maintained in the referral process.
  - 3. Inform the public of the procedures for assuring confidentiality of any personally identifiable information collected, used or maintained in the referral process.
  - 4. Provide prior public notification of the purpose, types and dates of sweep screenings, and information that specifies procedures for parents to request that their child not participate.
  - 5. Select no student for services solely on the basis of sweep screening results.
- D. Establish written timelines for providing referral activities that assure the consistent and expedient delivery of these services.
  - 1. Conduct ongoing public awareness and child find activities during the school year.
  - 2. Provide public notification of sweep screenings at least 10 calendar days, but not more than 30 calendar days, prior to the initiation of the screening(s).
- E. Provide the special facilities, equipment, or instruments required to conduct child find activities, sweep screenings, referral procedures and School-Based Assistance Teams meetings.
- F. Implement procedures to assure that any agency, organization or individual conducting referral activities for, or in participation with, the local education agency performs these activities in accordance with State, federal and local requirements.
  - 1. Implement procedures for informing other agencies, organizations or individuals of State and federal requirements pertaining to the referral process.
  - 2. Implement procedures for maintaining ongoing communication with other agencies, organizations or individuals regarding the referral of exceptional students.
  - 3. Implement procedures for assuring that other agencies, organizations or individuals conducting educational referral activities for the local education agency are in compliance with State and federal requirements.

- G. Implement a system for collecting, maintaining and reporting current and accurate data on students referred.
  - 1. 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.
  - 2. 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 and the projected date and/or outcome of the review.
  - 3. Report referral data as required by the State Department of Education and other appropriately authorized agencies requesting such data.
  
- H. Implement a system which assures that a student identified through referral shall be individually assessed.
  - 1. Provide written notification and obtain written parental consent prior to beginning the initial multidisciplinary assessment process or implement due process procedures.
  - 2. The content of the written notice must include the requirements in Section 3.1-D.
  - 3. Notify parents of their rights as specified in Section 3.0: Procedural Safeguards.

## 1.2 MULTIDISCIPLINARY ASSESSMENT

1.2 Each public agency shall establish policies and implement written procedures to provide multidisciplinary assessment services. In meeting the requirements of this Regulation, each public agency shall:

A. Implement procedures which provide for the appropriate selection, administration and utilization of individual multidisciplinary assessments.

### 1. Selection -

- a. The multidisciplinary assessment shall be conducted by a team of qualified personnel, including: (1) 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; (2) one or more of the student's classroom teacher(s), and (3) 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.
- b. For individuals whose area of suspected concern is solely speech and language, a speech-language pathologist may serve as both a teacher in the area of concern and as an evaluator. Therefore, the multidisciplinary team requirement for the assessment of these students may be fulfilled by a speech and language pathologist and a classroom teacher.

### 2. Administration

- a. The student will be assessed (individual evaluation) in all areas related to the suspected exceptionality including, where appropriate:
  - o health;
  - o vision;
  - o hearing;
  - o adaptive behavior/behavioral functioning;
  - o general intelligence;
  - o academic performance including achievement relative to learning outcomes when approved by the West Virginia Board of Education;
  - o communicative functioning;
  - o motor abilities; and
  - o career interests and vocational aptitudes.
- b. Each evaluator will submit to the superintendent or designee a signed written report, which shall include:

- 1) the results of the assessment(s);
  - 2) the interpretation of the assessment results, including the student's strengths and weaknesses; and
  - 3) specific recommendations of the student's educational and/or related needs, based upon the assessment results.
- c. When appropriate, the written report shall also include:
- 1) observation of the student's assessment behavior;
  - 2) the relationship of the behavior during assessment to the student's assessment results and educational performance;
  - 3) observations of the student's academic and behavioral performance in the regular classroom setting by at least one assessment team member, other than the student's regular teacher, when the student is suspected of being specific learning disabled or behavior disordered.
  - 4) a statement, when nonstandardized or group assessment techniques or other informal procedures are utilized, of:
    - a) the specific techniques utilized,
    - b) the appropriateness of the techniques for use with the student being assessed, and
    - c) an explanation of the results and their relationship to the recommendations;
  - 5) relevant information from sources other than formal assessment instruments/procedures that has been gathered and considered in formulating the recommendations.
- d. When a student is suspected of being learning disabled, a team report must also be completed. The specific learning disability assessment team report must include:
- 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; and
  - 7) determination concerning the effects of environmental or cultural difference or economic disadvantage.
- e. The gifted assessment report must include the results of:
- 1) an assessment of academic achievement,
  - 2) an inventory of student interests, and
  - 3) an assessment of learning styles.
- f. All assessment reports are to be signed by the evaluator and made available to the Special Education Placement Advisory Committee.

### 3. Utilization

Upon the completion of the multidisciplinary assessment, a Placement Advisory Committee meeting will be scheduled within 20 calendar days. The multidisciplinary assessment will serve as the primary source of information for determining eligibility and placement.

- B. Provide staff who are appropriately trained and adequate in number to administer the necessary assessments.
- 1. Assure that all assessments are administered by certified, licensed, or appropriately qualified personnel.
  - 2. 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.
  - 3. Assure that staff conducting assessments are trained in the use of the specific assessment instruments or techniques for which they are responsible, and are knowledgeable in the area of concern or the suspected area of exceptionality.
  - 4. Assure that staff are provided and participate in ongoing training in:
    - a. assessment procedures, techniques and instruments;
    - b. the State Regulations for the Education of Exceptional Students;
    - c. procedural safeguards, including State and federal due process, protection in evaluation and confidentiality requirements; and
    - d. the reporting procedures to be used.
- C. Implement procedural safeguards to assure that the rights of the student and parent(s) are protected in assessment.

1. Utilize assessment procedures that assure each student protection in the selection, administration and interpretation of assessment procedures and instruments by:
    - a. Administering assessments in the student's native language or other mode of communication;
    - b. Assuring that formal assessment instruments/procedures are utilized for the specific purpose for which they have been validated; and
    - c. Assuring that assessment instruments/procedures are administered by trained personnel in conformance with the instructions provided by the publisher.
  2. Implement record collection, maintenance and disclosure procedures that protect the confidentiality of all personally identifiable information.
- D. Implement timelines for providing assessment activities that assure the consistent and expedient delivery of these services.
1. Assessments shall be completed within 60 calendar days upon receipt of parental permission by the superintendent or designee.
  2. Written assessment reports shall be submitted to the superintendent or designee within 20 calendar days of the completion of the assessment.
- E. Implement procedures to assure that any agency, organization, or individual conducting assessment activities for the public agency performs these activities in compliance with State, federal and local requirements.
1. Implement procedures for informing other agencies, organizations or individuals conducting assessment activities for the local education agency of State and federal requirements pertaining to the assessment process and procedures.
  2. Implement procedures for maintaining ongoing communication with other agencies, organizations or individuals conducting assessment services for the public agency.
  3. Implement procedures for assuring the compliance of other agencies, organizations or individuals conducting assessment services for the public agency with State and federal requirements pertaining to assessment.
- F. Implement a system for collecting, maintaining and reporting current and accurate assessment data.
1. Collect and maintain assessment data necessary for planning the delivery of a free appropriate public education to each eligible exceptional student.

2. Report assessment data as required by the State Department of Education and other appropriately authorized agencies requesting such data.
- G. Assure that, upon completion of the multidisciplinary assessment, the student is considered for placement by an appropriately staffed Placement Advisory Committee.
- H. Implement procedures which assure that a student enrolled in a private school referred for a multidisciplinary assessment shall be evaluated as required in Section 1.2.

### 1.3 ELIGIBILITY DETERMINATION AND PLACEMENT RECOMMENDATIONS

1.3 Each public agency shall establish policies and implement written procedures for the purpose of developing an Individualized Education Program (IEP) and determining an appropriate least restrictive placement. In meeting the requirements of this regulation, each public agency shall:

A. Implement procedures which establish a Placement Advisory Committee, whose purpose is to develop an Individualized Education Program as specified in Section 1.4, and determine an appropriate educational placement.

1. Assure that the Placement Advisory Committee includes:

- a. the superintendent or designee who is qualified to supervise the provision of special education services and who shall serve as the chairperson of the Placement Advisory Committee;
- b. the professional personnel who administered the individual educational assessments or a professional educator qualified to present and explain the written report of the evaluator(s);
- c. additional professional personnel certified in the suspected area(s) of exceptionality;
- d. one or both of the student's parents;
- e. the student, where appropriate;
- f. one or more of the student's current teacher(s); and
- g. other individuals, at the discretion of the parent(s) or agency (i.e., physical therapist, vocational representative).

2. Implement procedures to assure that the Placement Advisory Committee, upon careful consideration of multidisciplinary assessment data and of the least restrictive alternative requirements, performs the following functions:

- a. considers the strengths and weaknesses of the student;
- b. determines the educational and related service needs of the student;
- c. determines eligibility for special education and related services, including extended year programming, in accordance with the eligibility criteria established under these regulations;

- d. develops the Individualized Education Program (IEP);
  - e. identifies and considers least restrictive alternative placements for the student; and
  - f. determines an appropriate least restrictive placement for the student.
- B. Provide staff who are appropriately trained and adequate in number to perform the functions of the Placement Advisory Committee.
- 1. Assure that the Special Education Placement Advisory Committee is appropriately staffed by professionals who are knowledgeable about the student, the meaning of assessment data and the placement options.
  - 2. Assure that staff are provided and participate in ongoing training in:
    - a. the State Regulations for the Education of Exceptional Students;
    - b. procedural safeguards, including State and federal due process, protection in assessment, least restrictive alternative placement and confidentiality requirements.
- C. Implement procedural safeguards to assure that the rights of the student and the parent(s) are protected in the determination of eligibility.
- 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 indicate 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 a student is determined eligible for special education and related services, the Individualized Education Program will be developed at this meeting.
    - d. The public agency shall assure that the parent understands the proceedings at a meeting, including arrangements when requested for an interpreter for parents who are deaf or whose native language is other than English.

2. 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.
3. Assure that placement determinations are made on the basis of carefully considered, documented multidisciplinary assessment data as well as data presented by parents and/or other agencies.
4. Assure that placement determinations are made in consideration of appropriate least restrictive alternative placement procedures, including:
  - a. that to the maximum extent appropriate, exceptional students, including students in public or private institutions or other care facilities, are educated with students who are not identified as exceptional; and
  - b. that special classes, separate schooling or other removal of exceptional students from the regular educational environment occurs only when the nature of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;
  - c. each agency shall assure that each exceptional student's educational program:
    - (1) is reviewed at least annually,
    - (2) is based on his or her Individualized Education Program, and
    - (3) is as close as possible to the student's home;
  - d. the various alternative placements are available to the extent necessary to implement an appropriate Individualized Education Program for each exceptional student; and

- e. unless an exceptional student's Individualized Education Program requires some other arrangement, the student is educated in the school which he or she would attend if not exceptional.
- D. Establish written timelines for providing placement activities that assure the consistent and expedient delivery of these services. Convene the Placement Advisory Committee within 20 days after receipt of the assessment data.
- E. Implement procedures to assure that any organization or other individual conducting educational placement activities for the agency shall do so in compliance with State, federal and local requirements.
- 1. Implement procedures for informing organizations or individuals conducting educational placement activities for the agency of State and federal requirements pertaining to the placement process and procedures.
  - 2. Implement procedures for maintaining ongoing communication with organizations or individuals conducting educational placement activities for the agency.
  - 3. Implement procedures for assuring the compliance of organizations or individuals conducting educational placement activities for the agency with State and federal requirements.
  - 4. Implement procedures for assuring that the Placement Advisory Committee develops an Individualized Education Program prior to referring a student to or placing a student in a private school facility.
    - a. Assure the attendance or participation in the Placement Advisory Committee meeting of a representative of a private school or facility; and
    - b. Initiate and conduct meetings to develop, review, and revise an Individualized Education Program for students enrolled in private schools receiving services from a public agency and assure participation of the private school representative.
- F. Implement a system for collecting, maintaining and reporting current and accurate data on placement activities for the agency.
- 1. Collect and maintain placement data necessary for planning the delivery of a free appropriate public education for exceptional students.
  - 2. Report placement data as required by the State Department of Education.
- G. Implement procedures which assure that a student recommended for special education and related services by the Placement Advisory Committee shall receive special education and related services in accordance with the Individualized Education Program.

#### 1.4 DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAM

1.4 Each public agency shall establish policies and implement written procedures to develop Individualized Education Programs (IEPs) for all eligible exceptional students. In meeting the requirements of this regulation, each agency shall:

- A. Implement procedures which assure that the Placement Advisory Committee develops a written Individualized Education Program for a student's initial placement and for change(s) of placement. The Individualized Education Program, which serves as the central educational document for the exceptional student's total education, must be developed prior to the initiation of service but no later than 30 calendar days from the determination of eligibility for placement.
  1. Develop a written Individualized Education Program describing the special education and related services to be provided, including:
    - a. the student's present levels of educational performance;
    - b. annual learning outcomes and short-term learning objectives, including appropriate objective criteria;
    - c. specific educational placement in the least restrictive alternative, including the potential need for extended year programming, if appropriate;
    - d. related services, such as transportation, and specialized equipment to be utilized;
    - e. extent (frequency per week, duration per session of classes or related services) to which the student will participate in regular and special education programs, including physical education and career education;
    - f. the projected date for the initiation and the anticipated duration of each special education service;
    - g. assessment procedures and timelines for determining, on at least an annual basis, whether the learning outcomes and learning objectives are being achieved;
    - h. signatures and positions of Placement Advisory Committee members, (including the parent(s) in attendance), their agreement or disagreement with the recommendation(s), and the date of the meeting; and
    - i. written parental consent for the initial Individualized Education Program or any Individualized Education Program addressing change of placement.

2. The agency shall:

- a. provide the parent with a copy of the Individualized Education Program;
- b. provide the student's teacher(s) and professional support or related service personnel who will have the direct responsibility of implementation with copies of the Individualized Education Program;
- c. submit the Individualized Education Program to the superintendent or designee; and
- d. collect and maintain instructional data for planning the delivery of a free appropriate public education to each exceptional student and report such data as required by the State Department of Education.

## 1.5 PLACEMENT AND IMPLEMENTATION OF INDIVIDUALIZED EDUCATION PROGRAM

1.5 Each public agency shall establish policies and implement written formal procedures to provide the special education and related services needed for the student's educational placement and the implementation of the Individualized Education Program (IEP). In meeting the requirements of this regulation each agency shall:

- A. Establish written timelines to assure that services are initiated as soon as possible but no later than fifteen (15) calendar days following the determination of eligibility/PAC meeting. If any undue delay occurs, the parent has the right to initiate due process procedures .

NOTE: It is expected that an exceptional child's Individualized Education Program will be implemented immediately following the determination of eligibility/PAC meeting. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) a short delay (e.g.), working out transportation arrangements. However, there can be no undue delay in providing special education and related services to the student.

1. Assure that a completed Individualized Education Program for each exceptional student is in effect prior to the provision of special education and related services.
  2. Assure that an Individualized Education Program is in effect at the beginning of each school year for each exceptional student receiving special education and related services.
- B. Provide staff appropriately trained and adequate in number to provide the needed special education and related services.
1. Require that professional special education personnel meet minimum certification standards for the area(s) of exceptionality(ies) in which they are presently teaching, as regulated by the State Board of Education.
  2. Require that paraprofessional personnel are appropriately trained and supervised by qualified professionals.
  3. Assure that professional special education and related service personnel are employed to provide a free appropriate public education to all eligible exceptional students as prescribed in each programmatic area.

- C. Provide suitable educational facilities, equipment, materials and transportation required to implement the special education and related services specified in the written Individualized Education Program.
- D. Implement procedures to assure that any agency, organization or individual specified in the Individualized Education Program to provide instructional services, performs those services in compliance with State, federal and local requirements.
  - 1. Implement procedures for informing other agencies, organizations or individuals providing services to exceptional students of State and federal requirements pertaining to the implementation of the Individualized Education Program.
  - 2. Implement procedures for maintaining ongoing communication with other agencies, organizations or individuals providing services.
  - 3. Implement procedures to assure that any meetings to develop, review or revise the Individualized Education Program which are conducted by other agencies, organizations or individuals providing services to exceptional students are conducted in compliance with State and federal requirements.
- E. Implement a system for maintaining current data on the implementation of the Individualized Education Program.
  - 1. Report Individualized Education Program data as required by the State Department of Education.

## 1.6 REVIEW OF INDIVIDUALIZED EDUCATION PROGRAM

1.6 Each public agency shall establish policies and implement written procedures to annually review the appropriateness of the Individualized Education Program (IEP) and present placement. In meeting the requirements of this regulation each agency shall:

- A. Implement procedures which assure the annual review of the Individualized Education Program and placement.
  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). Revise the Individualized Education Program as required in Section 1.4-A-1.
    - a. Conduct annual review meetings to assure that Individualized Education Programs are in effect at the beginning of the school year.
    - b. Encourage parental participation by providing written notification as required in Section 1.3-C to parents of the date, time and place of the meeting early enough that they will have the opportunity to attend.
    - c. If the parent does not communicate within 10 calendar days their inability or desire to attend, the review meeting will be convened as notified.
    - d. Recommendations for changes in the least restrictive alternative placement, generated by the Individualized Education Program review, shall be submitted for consideration to the Placement Advisory Committee. Any change in placement shall require parental consent.
    - e. Recommendations for extended year programming, generated by the Individualized Education Program review, shall be submitted for consideration to the Placement Advisory Committee.
    - f. Provide the parents with a copy of the Individualized Education Program.
  2. Conduct a multidisciplinary assessment as specified in Section 1.2, triennially, or more frequently if conditions warrant, to determine the appropriateness of the Individualized Education Program and placement.
    - a. Provide written notification to parents of the scheduled triennial reassessment.

- b. The parent must notify the public agency within 10 calendar days of any objection to the scheduled triennial reassessment or the reassessment will be conducted as specified.
  - c. The Special Education Placement Advisory Committee shall convene to consider the information and data of the multidisciplinary assessment to review/revise the student's Individualized Education Program and placement as required in Sections 1.3; 1.4; and 1.5.
  - d. Encourage parental participation by providing written notification to parents of the PAC meeting as required in Section 1.3.C.
  - e. Any change in placement shall require parental consent.
  - f. Provide the parents with a copy of the Individualized Education Program.
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. Provide staff appropriately trained and adequate in number to review the Individualized Education Program.
- Assure that the following individuals participate in the annual review of the Individualized Education Program:
- 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) and professional support personnel who will have the direct responsibility of implementing the Individualized Education Program;
  - c. one or both of the student's parents;
  - d. the student, where appropriate; and
  - e. other individuals, at the discretion of the parent(s) or agency.
- C. Implement a system for collecting, maintaining, and reporting current and accurate review data.
- 1. Collect and maintain review data necessary for planning the delivery of a free appropriate public education to each exceptional student.
  - 2. Report review data as required by the State Department of Education.

## 1.7 PLACEMENT OF EXCEPTIONAL STUDENTS IN VOCATIONAL EDUCATION PROGRAMS

### A. PLACEMENT

Placement decisions for exceptional students are determined at Placement Advisory Committee (PAC) meetings. At these meetings, career development needs must be considered for every exceptional student. Whenever vocational education is considered to be an appropriate placement alternative, the director of vocational education or his/her representative shall serve on that student's Placement Advisory Committee.

### B. DATA FOR PLACEMENT ADVISORY COMMITTEE

1. As with any student, when vocational education is being considered as a placement option the following information shall be considered:
  - a. prevocational class records (if available),
  - b. work evaluation results (if available),
  - c. vocational interest inventory results,
  - d. results of an aptitude test, and
  - e. other pertinent information as requested by the Placement Advisory Committee.
2. Assessment information to be considered at the Placement Advisory Committee meetings is carefully specified in Section II - Multidisciplinary Assessment of these Regulations.
3. Special consideration must be given to the safety factors involved in the vocational program and the potential benefit of the program to the student.

### C. DEVELOPMENT OF THE INDIVIDUALIZED EDUCATION PROGRAM

Vocational education programs vary in degree as to abilities required for semi-skilled, skilled and very technical occupations. Further, the competencies required to obtain employment or perform only certain job tasks may vary in number and technicality. However, all vocational programs have as a common goal the preparation for entry level employment.

1. An Individualized Education Program shall be developed to describe any level of modification and/or less demanding learning activities than those required for regular students, although the planned outcome for each exceptional student referred must be competence for securing employment.
2. The Individualized Education Program is prepared by the Placement Advisory Committee and is the responsibility of special education personnel and will be developed as a team effort on the part of special education and vocational education personnel. Vocational educators are responsible for cooperating with special education personnel in the development of the section of the Individualized Education Program which describes the instruction to be provided by the vocational education program.

3. Special education personnel should design coordinated instructional learning experiences for the nonvocational portion of the student's educational program.

#### D. PLACEMENT OPTIONS

1. The student must be placed in the least restrictive environment. Therefore, the following placement alternatives shall be considered:
  - a. Regular vocational class with no modifications,
  - b. Regular vocational class with modifications,
  - c. Special, self-contained vocational class, or
  - d. Other placement alternative.
2. A continuum of the program delivery models from regular vocational programs to self-contained programs must be considered. For some exceptional students the least restrictive environment may be a self-contained program.

#### E. VOCATIONAL EDUCATION HANDICAPPED FUNDS

The following criteria must be met in order for students to be considered eligible for vocational education handicapped funds:

1. the student must have one or more of the handicapping conditions as listed in the Education for All Handicapped Children Act of 1975 (Public Law 94-142) and Title II of the Education Amendments of 1976 (Public Law 94-482) and meet vocational education state guidelines;
2. the student must require special education and/or related services as a result of his disability (not all students with a disability require special education);
3. vocational education is recommended by the Placement Advisory Committee; and
4. an Individualized Education Program has been written.

Therefore, for the purposes of reporting and funding in vocational education, only handicapped students who require specialized assistance, a special program, or program modifications in vocational education and meet the above criteria are eligible to be reported and funded.

#### F. REFERRAL FORM

The Referral for Vocational Education form should be completed and used to refer exceptional students into vocational education after a placement decision has been made. The use of this form by the Placement Advisory Committee identifies the student who has been referred to vocational education, the exceptional area, the modifications or supportive services, if any, required and the projected date of entry into the program. The information provided on this form should help in planning and delivering services to exceptional students.

Referral for Vocational Education

\_\_\_\_\_ Initial Placement \_\_\_\_\_ Continuing Placement

1. Student Name: \_\_\_\_\_
2. Area of Exceptionality: \_\_\_\_\_
3. Projected Date of Referral: \_\_\_\_\_
4. Projected Date of Entry: \_\_\_\_\_
5. Program(s) determined appropriate for student: \_\_\_\_\_

6. Recommendation of Placement Advisory Committee: \_\_\_\_\_
- \_\_\_\_\_ Prevocational Program
- \_\_\_\_\_ Regular Vocational Program
- \_\_\_\_\_ Special Vocational Program
- \_\_\_\_\_ Sheltered Workshop Program
- \_\_\_\_\_ Vocational Rehabilitation

7. Program Modification Needed:
- \_\_\_\_\_ Scheduling Explain: \_\_\_\_\_
- \_\_\_\_\_ Curriculum Explain: \_\_\_\_\_
- \_\_\_\_\_ Equipment Explain: \_\_\_\_\_
- \_\_\_\_\_ Other Explain: \_\_\_\_\_

8. Supplemental Services:
- \_\_\_\_\_ Remedial \_\_\_\_\_ Guidance
- \_\_\_\_\_ Psychological \_\_\_\_\_ Other

9. \_\_\_\_\_ Construction Explain: \_\_\_\_\_
- \_\_\_\_\_ None Needed

(Building Accessibility, Etc.)

- Original - Student File
- Copy - Vocational Education Director
- Copy - Special Education Director
- Copy - Vocational Rehabilitation
- Copy - Sheltered Workshop

## 1.8 EXTENDED YEAR PROGRAMMING

- 1.8 Special education programs and related services shall be provided on an extended year basis. Students having handicaps which are severe in nature shall be entitled to an education program in excess of 180 days per year 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) (State Board Policy 2441.3).

### A. AUTHORITY

This policy is 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, empowers the State Board of Education with the authority for establishing policy governing programs and services for the education of exceptional students.

### B. INTRODUCTION

The United States District Court for the Eastern District of Pennsylvania in June of 1979 issued a landmark decision in the Armstrong et. al. vs. Secretary of Education Kline et. al. class action suit. The "Standard" developed by the Armstrong Court in Remedial Order #2 consists of three parts, all of which must be met in order for a student to be eligible for an extended year program:

- o the student must exhibit, or be thought likely to exhibit, regression during an interruption in educational programming; and
- o the student must also exhibit, or be thought likely to exhibit, a limited ability to recoup or relearn losses once programming has again resumed; and
- o the student's regression/recoupment problem(s) must interfere with the Armstrong goal of achieving "independence and self-sufficiency from caretakers that the student would otherwise be expected to reach in view of his/her handicapping condition."

### C. IMPLEMENTATION

In West Virginia, the above three criteria established by the Armstrong decision shall be utilized and the following shall be considered in the determination of each student's eligibility for extended year programming.

1. Annually, the county boards of education will inform all parents of handicapped students receiving special education and related services of the availability of extended year programming. The notice will inform parents of the procedures for determining the eligibility/ineligibility of students for extended year programming, the criteria for determining eligibility/ineligibility, and the procedure by which the parent can initiate a request for extended year programming.
2. Eligibility for extended year programming for handicapped students receiving special education services will be determined by a Placement Advisory Committee.
3. The eligibility/ineligibility decision may be determined by information which is not standardized, in that no standard criteria for regression or limited recoupment have been established.
4. In some cases, the determination of eligibility/ineligibility may be based on experience and/or qualified judgment. In this regard, the statements of professionals who have worked with and/or observed the student during the school year are to be considered.
5. If a student is determined to be eligible for extended year programming, 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 in the extended year program.
6. Parents may refuse extended year services for their handicapped students.
7. The decision of eligibility/ineligibility is subject to due process procedures.
8. An extended year program is to be conceptualized as maintaining student skills in the following instructional areas:
  - a. muscular control;
  - b. toileting;
  - c. feeding;
  - d. dressing;
  - e. physical mobility;
  - f. personal hygiene;
  - g. impulse control;
  - h. basic communication;
  - i. interaction/socialization with peers and/or adults.

Therefore, an extended school year program is only to be offered in those areas of the Individualized Education Program related to the student's level of self-sufficiency and independence from caretakers.

## 1.9. PROCEDURES FOR OUT-OF-STATE PLACEMENT OF HANDICAPPED STUDENTS

1.9 Public Law 94-142 indicates that handicapped students shall receive a free appropriate public education. "If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child."

### A. Eligibility Criteria for Out-of-State Placement

In order to qualify for out-of-state instruction, the student must present significant educational problems of such a nature or severity that the public agency cannot provide an appropriate program in the least restrictive environment in the State.

### B. Process

1. Students cannot be considered for out-of-state placement until they enter the special education process and are recommended by the Special Education Placement Advisory Committee.
2. Placement of a handicapped student in a school or facility outside the state can only be made after a Placement Advisory Committee determines that an appropriate program in the least restrictive environment cannot be offered within the county school district or the State.
3. A county school district is responsible for costs of (a) special education and related services provided in accordance with an Individualized Education Program; and (b) room and board for students placed for educational reasons in an out-of-state program.
4. A public agency is relieved of the financial responsibility for the education of a handicapped student if the student's parents place the student in a school or facility despite the availability of a free appropriate public education from the public agency.

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the student or the question of financial responsibility are subject to due process procedures.

5. In considering out-of-state placement, the Placement Advisory Committee must:
  - a. be chaired by the county superintendent of schools or designee who is qualified to supervise the provision of county special education programs;
  - b. concur that no appropriate agency program exists, can be established or can be obtained through cooperation or contractual arrangements with other public agencies;

- c. develop an Individualized Education Program; and
- d. include the following documentation:
  - 1. a statement by the out-of-state facility of approved status in the state in which it is located, and assurance that the school meets the requirements of PL 94-142.
  - 2. itemization of all costs associated with the out-of-state placement in a minimum of three schools, where appropriate, determined by the Placement Advisory Committee.
- 6. When out-of-state placement is recommended by the Placement Advisory Committee, the local education agency must investigate the feasibility and efficiency of developing programs in accordance with the intent of least restrictive alternative placement and appropriate education.
- 7. After a handicapped student enters a school or facility, any meetings to review and revise the student's Individualized Education Program may be initiated at the discretion of the public agency. If the school or facility initiates and conducts these meetings, the public agency shall assure that the parents and the public agency representative are involved in any decision about the student's Individualized Education Program and agree to any proposed change in the program before those changes are implemented. Even if a school or facility implements a student's Individualized Education Program, responsibility for compliance with this part remains with the public agency and the state education agency.
- 8. In considering an exceptional student for out-of-state placement, the Placement Advisory Committee shall determine whether the proposed placement is for educational reasons, non-educational reasons, or both.
- 9. County school districts are not responsible for any costs incurred for handicapped students placed in out-of-state programs for non-educational reasons by other public agencies when a free appropriate public education can be made available to the student by the county school district.
- 10. County school districts may enter into cooperative arrangements with other public agencies when placements are determined to be for both educational and non-educational reasons.

C. Program Assurances

Program assurances for out-of-state placements will be included in the special education monitoring of local education agencies.

## 1.10 PRIVATE SCHOOLS

1.10 The West Virginia Department of Education will assure that handicapped students placed in, or referred to, private schools or facilities by a public agency as a means of carrying out the statutory requirements will be provided special education and related services (a) in conformance with an Individualized Education Program (IEP), (b) at no cost to parents, and (c) meet the Regulations for the Education of Exceptional Students. This policy includes the following conditions:

- A. When a handicapped student is offered a free appropriate public education in a public agency that is readily accessible to his/her home community and the parents waive that opportunity in favor of private school placement, the parents shall assume full costs for the student's education.
- B. If a parent contends that he/she has been forced, at the parent's own expense, to seek private schooling for the student because an appropriate program does not exist and the public agency disagrees, that disagreement and the question of who remains financially responsible is a matter to which due process procedures apply.
- C. Whenever handicapped students are placed in private schools or facilities by a public agency, steps shall be taken to assure that the students have all the rights they would have if served by the public agency.
- D. Private schools are to receive a copy of the West Virginia Regulations for the Education of Exceptional Students with regulatory updates as they occur.
- E. The State School Code 18-20-1 and the West Virginia Regulations for the Education of Exceptional Students will be used as the basis for assuring the placement in private schools policy as stated in this section.
- F. Monitoring will be conducted by the Department of Education, to assure that the special education program is in compliance with State and federal requirements.

### 1.10.1. Participation of Handicapped Students in Private Schools

- A. The West Virginia Department of Education will, to the extent consistent with the number and location of handicapped students in West Virginia who are enrolled in private schools, assure that provision is made for participation of those students in the programs assisted or carried out under Part B by providing for those students special education and related services.
1. The West Virginia Search and Serve Process outlined in the West Virginia Regulations for the Education of Exceptional Students will constitute the procedures to be followed when services are to be provided to handicapped students enrolled in a private school system.
  2. Public agency personnel and services will be made available to private schools only to the extent necessary to provide the special education and related services required by handicapped students in private schools when those personnel and services do not exist at the private schools.
  3. Each public agency providing educational and related services to handicapped students enrolled in private schools will maintain administrative control and direction over those services.
  4. Public Law 94-142, EHA VI-B funds utilized to support the education of handicapped students in private schools will not include the payment of salaries of private school personnel except for outside their hours of duty and under public supervision and control nor must the services include the use of equipment purchased with Part B funds, other than mobile or portable equipment, on private school premises, or the construction of private school facilities. Administrative control of equipment must be maintained by the public agency, which will also be responsible for monitoring the use, availability and removal of such equipment.
  5. Programs and projects to be carried out in public facilities, and involving joint participation by handicapped students enrolled in private programs and public schools, will not include classes that are separated on the basis of school enrollment or students' religious affiliation.
- B. The State School Code 18-20-1 and the West Virginia Regulations for the Education of Exceptional Students will be utilized as the basis for assuring the participation.
- C. Monitoring will be conducted by the Department of Education, to assure that the program is appropriate in meeting the needs of the handicapped students.

## 1.11 SPECIAL TRANSPORTATION OF HANDICAPPED STUDENTS

1.11 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 assistance of aide, medication needed in transit, positioning.
  - 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, 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.
- E. Any parent of a handicapped student who believes that transportation services are not in compliance with these regulations may utilize the due process procedures as established in the Regulations for the Education of Exceptional Students.

## 1.12 HEARING AID MONITORING

1.12 Each public agency shall assure that hearing aids worn by deaf and hard-of-hearing students in schools are functioning properly.

A. Procedures for compliance with Public Law 94-142, Section 300.303 shall include:

1. Phase I
  - a. A daily hearing aid check by the teacher (regular or special) or student.
  - b. Problems detected during this check must be reported to the parents for immediate corrective action.
2. Phase II
  - a. A weekly quality/distortion check by the specialist (speech pathologist or teacher of the hearing impaired) providing services to the hearing impaired individual. This comparative check requires that the specialist listen to the hearing aid in order to determine if the quality of output has changed, i.e., increased distortion, presence of white noise, volume (output) change, etc.
  - b. Problems detected during this phase should also be reported to the parents for corrective action.
3. Phase III
  - a. An acoustic analysis of the hearing aid performed by an audiologist. It is recommended that the acoustical analysis be performed every six months, but realizing the limitations of the resources (time, money and audiologists) an acoustic analysis is required at least annually.
  - b. Problems detected during this phase shall be reported to the parents for corrective action.

B. Please note that it is the responsibility of the public agency to locate problems and report them to the parents, but neither the regulations nor the procedures place the responsibility for correcting the nonfunctioning hearing aids on the public agency.

### 1.13 SUSPENSION OF EXCEPTIONAL STUDENTS

1.13 Each public agency shall have written policy and procedures outlining responsibilities of personnel whenever disciplinary action pertaining to suspension of an eligible exceptional student is taken. Such policy must conform to due process provisions protecting the individual rights of the student and the professional. In every instance of disciplinary action taken, the parent shall be notified in writing, prior to enactment of the action whenever possible.

In development of policy, each agency shall recognize the rights to a free and appropriate public education for all exceptional students. In order to assure this right to an appropriate education in an orderly, safe environment, each student shall be required to comply with the recognized written rules and regulations of the local education agency. In accordance with West Virginia School Laws, the school... "shall have the authority to suspend any pupil guilty of disorderly, refractory, indecent or immoral conduct" (School Law 18A-5-1). In addition, if a pupil has been identified or classified as an exceptional child, other than gifted, that child may be suspended if the action was not the proximate result of the condition which has qualified or would qualify the pupil for a special educational program other than gifted (School Law 18A-5-1a).

NOTE: Student Rights and Responsibilities - A Handbook for Students in the Public Schools of West Virginia (Section X-B) will apply to suspension of exceptional students. In all instances, an administrative conference involving school personnel and the parents will be required for exceptional students who are suspended.

## 1.14 HOME/HOSPITAL INSTRUCTION

1.14 The public agency shall include "home-teaching or visiting-teacher services for children who are homebound due to injury or who, for any other reason as certified by a licensed physician, are homebound for a period that has lasted or will last more than three weeks."

### I. PURPOSE

These regulations are developed for the purpose of establishing and maintaining educational programs relative to home/hospital instruction of all children who, due to injury or other reasons, are homebound for a period of three weeks or more (Chapter 18-20-1, as amended March, 1983).

### II. AUTHORITY

This policy is issued, and in force, pursuant to Chapter 18, Article 20, Section I of the West Virginia Code entitled "Education of Exceptional Children." Chapter 18, Article 20, empowers the State Board of Education with the authority for establishing policy governing programs and services for the education of exceptional children.

Chapter 18, Article 20, Section I of the West Virginia Code, which requires "county boards of education to establish and maintain special education programs for all exceptional children," as amended and reenacted in March, 1983, includes in that requirement "all children who, due to injury or other reasons, are homebound for a period of three weeks or more."

Specifically, the additional requirement states that after July 1, 1983, special education programs shall include "home-teaching or visiting-teacher services for children who are homebound due to injury or who, for any other reason as certified by a licensed physician, are homebound for a period that has lasted or will last more than three weeks: Provided, that pupils receiving such homebound or visiting-teacher services shall not be included when computing adjusted enrollment" as defined in Chapter 18, Article 9A, Section 2 of the West Virginia Code.

### III. ELIGIBILITY

There are two groups of students eligible to receive home/hospital instruction:

- A. Students who meet the eligibility criteria for one or more of the program areas defined in the Regulations for the Education of Exceptional Students and who evidence a severe handicapping condition or conditions which prevent them from attending school even with the aid of special transportation.
- B. Students with injuries, noncommunicable illnesses, or health conditions which prevent the student from attending school for more than three weeks.

This group includes regular education students and exceptional students, other than those who are receiving special education and related services in the Special Education Program: Out-of-School Environment placement alternative because of their handicapping condition(s).

#### IV. PLACEMENT

- A. Placement of any identified handicapped student in the Special Education Program: Out-of-School Environment placement alternative for home/hospital instruction must be in accordance with all applicable requirements in the Regulations for the Education of Exceptional Students, including those pertaining to multidisciplinary assessment, determination of eligibility, development and implementation of an Individualized Education Program, and the related procedural safeguards and due process requirements.
  - B. Provision of home/hospital instruction for any regular education student or exceptional student requires documentation/verification by a licensed physician of the confirmation and diagnosis of an injury or health problem/condition that requires that student to be homebound or hospitalized for a period that has lasted or will last more than three weeks.
    - 1. 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:
      - a. The specific reasons why the student must remain at home or in the hospital.
      - b. The criteria conditions under which the student can return to school, and the expected date of such return.
- NOTE: The local school district should establish communication with the physician if it appears that options other than homebound are available to which the physician may be unaware.
- 2. 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.

3. The county school district may request that the parents obtain a second physician's opinion at the expense of the county school district.
- C. Home/hospital instruction shall not be used as a substitute for an appropriate educational placement in a less restrictive environment for an exceptional student.

V. PROGRAM DELIVERY

A. Instruction

1. Temporary Placement

- 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 because of an injury, illness, or health condition, constitutes a change in placement and requires the development of a revised Individualized Education Program.
- c. Personnel utilized in these programs must serve as facilitators of instructional goals determined by the student's regular teacher(s) and therefore must be in regular contact with these teachers.

2. Out-of-School Environment Placement

Home/hospital instruction provided for severely handicapped students who are served in the Special Education Program: Out-of-School Environment placement alternative must be comparable, in terms of the certification of the teacher(s), the provision of related services, and the scope of the instructional program, to the services these students would be eligible to receive if able to attend school.

B. Schedule

1. Home/hospital instruction may be provided at any time within the school calendar year.
2. 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.

3. 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.
4. Home instruction is provided at a time when a responsible adult is in the home.
5. The time that home/hospital instruction is provided, as well as the duration of the instructional sessions and frequency per week, may be specified in the Individualized Education Program for any eligible handicapped student placed in the Special Education Program: Out-of-School Environment.
6. The student's home school shall provide the home instruction teacher with the county adopted textbooks, teacher's editions, materials, equipment and supplies the student requires to complete his/her programs of study, as well as the opportunity to meet with regular teachers.
7. The home school shall provide the home instruction teacher with copies of the teacher's(s') daily lesson plans.

C. Teacher Certification

1. Teachers providing temporary home-teaching or visiting-teacher services, including regular and special education, must hold a valid teaching license, with an endorsement appropriate to the programmatic level of instruction (early, middle, adolescent) as regulated by the State Board of Education.
2. Teachers providing home-teaching or visiting-teacher services to eligible handicapped students in the Special Education Program: Out-of-School Environment placement alternative must hold a valid license with an endorsement for each area of exceptionality being served.

## 2.0 PROGRAM REGULATIONS

### 2.1 Common Program Regulations

The following statements apply to all exceptional student programs

#### A. PROGRAM DEFINITION

1. Introduction (Specific to each program area)
2. Program of Study

Eligible exceptional students have the opportunity to receive the required credits for graduation as stated within the Individualized Education Program.

#### 3. Specific Individualized Education Program Considerations

- a. State and local board approved learning outcomes which apply to eligible exceptional students are specified in their Individualized Education Programs which serve as central educational documents for exceptional students. (Effective 1985-86 or one year after State Board adoption.)
- b. The Individualized Education Program includes the schedule of services, provided through regular education, special education and related services, to assist in the achievement of the specified learning outcomes.
- c. Factors which influence the selection of learning outcomes for each exceptional student are: the ability of the student, the nature and severity of the handicap, and the chronological age of the student.
- d. The essential components of the Individualized Education Program for instructional and related services include: objectives that address the specially designed strategies, approaches or methods necessary to meet the learning outcomes in the content/subject areas; specialized learning outcomes/objectives based upon the current levels of performance derived from the comprehensive assessment; objectives that address the pre-vocational and/or vocational educational needs of the student; a plan for the completion of the necessary credits for graduation; medical concerns and intervention strategies; the anticipated duration of instruction relevant to the objectives; and criteria for measuring the student's mastery of the learning outcomes/objectives.

B. PROGRAM DELIVERY

1. Placement in Least Restrictive Alternative

- a. Public agencies are responsible for the provision of least restrictive alternative placements to meet the educational needs of students requiring special education programs of study and services. Provision of a least restrictive alternative placement is essential for the implementation of service to each student. This service framework includes a wide variety of service configurations organized on the basis of the degree of assistance provided in each setting. As determined through the results of the multidisciplinary assessment, an exceptional student is eligible for placement in any of the recognized alternative placement models.
- b. Eligible students may be served in the least restrictive of the following alternative placements:

- 1) Regular Education Program (General and/or Vocational Education) with Modification - wherein the eligible exceptional student continues in the regular program and receives specially designed instruction. The specially designed instruction is the responsibility of the special education teacher. Modifications may include special materials, equipment, or adaptation of the curriculum and/or instructional program. Special education or support service personnel may work directly with the student and/or in a consultative role with the regular teacher to determine needs, develop strategies, and implement strategies as specified in the Individualized Education Program.
- 2) Regular Education Program (General and/or Vocational) with Resource Services - wherein the eligible exceptional student continues part-time under the direction of the regular classroom teacher and part-time under the direction of the special education teacher as specified in the Individualized Education Program process. Both teachers have a direct responsibility for some part of the student's education. Student support services may also be provided.

Under this placement alternative, the student must receive at least 40% of his or her instructional time in the regular education program with his or her age level peers.

- 3) Special Education Program: Self-Contained - wherein the eligible exceptional student is placed full-time under the direction of the special education teacher who has complete, direct responsibility for the student's education. Resources of the regular education program, such as art, music, and physical education, may be used to supplement the special education program as specified in the Individualized Education Program process. Student support services may also be provided.

- 4) Special Education Program: Special School - wherein the eligible exceptional student is placed as a day student in a special school which provides instructional programs and/or treatment as specified in the Individualized Education Program.
- 5) Special Education Program: Out-of-School Environment - wherein the eligible exceptional student is served in a non-school environment as specified in the Individualized Education Program. This alternative may include programs such as homebound/hospital services, work/study, mentorships.

Any eligible handicapped student who is served in an out-of-school environment must receive a free appropriate education which is comparable to the services he 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 or teachers, the provision of related services, and the scope of the instructional program.

- 6) Special Education Program: Residential Facility - wherein the eligible exceptional student is placed in a residential facility on a 24-hour basis which provides instructional programs and/or treatment as specified in the Individualized Education Program.

- c. In determining caseloads, consideration shall be given to factors such as:
  - 1) frequency of sessions scheduled;
  - 2) types and severity of students' problems;
  - 3) nature and level of service requirements in Individualized Education Programs;
  - 4) ages, intellectual abilities and social-emotional behavior of students to be served;
  - 5) transportation schedules of students;
  - 6) professional travel time required;
  - 7) number of schools/facilities assigned; and
  - 8) other professional responsibilities such as: sweep screening, assessment, placement meetings, parent/teacher consultations.
- d. The least restrictive alternative placement for each exceptional student shall be determined on the basis of: a) assessment of academic performance, including achievement relative to learning outcomes when approved by the West Virginia Board of Education; b) abilities of the student; c) nature and severity of the handicap and/or level of giftedness; d) instructional strategies and techniques; e) provision of related services, materials, equipment and other resources; and f) associated disabilities, if any.

## 2. Time Allocation

- a. For the eligible exceptional student, the minimum length of the instructional day shall be the same as that established for his/her non-exceptional peers.
- b. Reduction in the minimum length of the instructional day for an eligible exceptional student is determined on an individual basis in accordance with State Board of Education Policy 2441, Length of Instructional Day.
- c. The length of time in which each eligible exceptional student is engaged in academic activities will be dictated by: 1) the objectives delineated within the Individualized Education Program, and 2) the time required to attain the objectives, as determined by the Placement Advisory Committee members.

## 3. Personnel

- a. Each professional teaching staff member providing services to exceptional children must hold a valid license with endorsement for each area of exceptionality being served.
- b. Caseloads should be reduced where instructional time is lost due to travel when services are delivered at two or more schools in the same day.

## 4. Multicategorical Resource Rooms

The multicategorical program delivery model is intended to serve only those students who are mildly involved in terms of their exceptionality.

- 1) This combined program delivery model may be used to deliver services to exceptional students in the following categorical areas: Behavior Disorders, Educable Mentally Impaired, and Specific Learning Disabilities until 1987.
- 2) When placing exceptional students within a combined program, the academic needs and affective behaviors of the students must be similar.
- 3) After the 1987 school year, the West Virginia Board of Education will grant waivers for continued use of multicategorical resource rooms only for extraordinary circumstances.
- 4) Effective 1987, the caseload for a teacher in a multicategorical resource room may not exceed 100% of the combined categorical caseload.

5. Age Spans

- a. The chronological age span within the delivery alternatives of Special Education Program: Self-Contained and Regular Education Program with Resource Services shall not exceed four years during any one instructional period in programs for any area of exceptionality, except for profoundly mentally impaired in which chronological age span shall not exceed six years.
- b. The State Board of Education may grant waivers when age span requirements cannot be met due to extraordinary circumstances .

6. Facilities

- a. Classrooms serving eligible exceptional students are located in close proximity to classrooms of age equivalent non-exceptional peers.
- b. Each classroom where services to eligible exceptional students are provided meets criteria described in the Handbook on Planning School Facilities.
- c. Classrooms/facilities serving eligible exceptional students with physical and sensory impairments are in compliance, as necessary, with the requirements of The Rehabilitation Act of 1973, Section 504, these Regulations, and other West Virginia regulations and specifications as outlined in the West Virginia Code, Chapter 18, Article 10F, and the current standards of The American National Standard Institute (ANSI).

7. Instructional Materials, Equipment and Supplies

Each local education agency provides and makes available for each eligible exceptional student all equipment, materials, and supplies necessary to meet requirements specified in the Individualized Education Program.

C. PROGRAM ASSURANCES

1. Student Evaluation

- a. Each teacher of eligible exceptional students has a comprehensive and continuous system to assess and monitor student progress toward achieving the learning outcomes specified in the students' Individualized Education Programs.
- b. The special education staff utilizes data from both formal and informal assessments to provide feedback to students and their parents relative to student achievement of the learning outcomes and learning objectives specified in the students' Individualized Education Programs.

2. Program Evaluation

- a. The public agency is responsible for the implementation of an ongoing quality assurance program which enables special educators to assess and improve the effectiveness of services provided to eligible exceptional students.
- b. Program evaluation is conducted in accordance with the provisions of Public Law 94-142, West Virginia Regulations for the Education of Exceptional Students, and other appropriate policies approved by the State Board of Education.

## 2.2 BEHAVIOR DISORDERS

All common regulations apply to this program

### A. PROGRAM DEFINITION

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

Behavior disordered students manifest behaviors which have a deleterious effect on personal or educational development and/or the personal or educational development of others. Negative effects may vary considerably in terms of severity and prognosis. These behaviors may appear separately or in combination and may be exhibited in the form of acting out behaviors, withdrawing behaviors, defensive behaviors and/or disorganized behaviors.

#### 2. Program of Study

- a. The 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 three (3) major components: behavior management, affective education, and academic instruction.
- 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 exhibits one or more of the following characteristics, over a long period of time and to a marked degree, which adversely affect educational performances:

- 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 or depression.
- e. a tendency to develop physical symptoms or fears associated with personal or school problems.

- f. behavior that is potentially harmful to the physical and mental well-being of self and others.
- g. emotional problems manifested by truancy, defiance of authority, aggressiveness or withdrawal.
- h. an autistic condition which is manifested by severe communication and educational problems or a schizophrenic condition.

B. PROGRAM DELIVERY

1. Caseload

a. Regular Education with Modification

Assign no more than 12 students.

b. Regular Education Program with Resource Services

Assign no more than 12 students to a resource program with a limit of six students during any one instructional period.

c. Special Education Program: Self-Contained

(1) Assign no more than three students without a full-time aide.

(2) Assign no more than six students with a full-time aide.

(3) In the case of autistic students, assign no more than four (4) autistic students to a self-contained program. A full-time aide must be provided. Teachers providing service to autistic or autistic-like students must have completed a state approved teacher education program related to program objectives that address the education of autistic or autistic-like students.

C. PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.3 COMMUNICATION DISORDERS (Speech-Language Disorders)

All common regulations apply to this program

### A. PROGRAM DEFINITION

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

Communication disordered students have language, voice, fluency, or articulation disorders which adversely affect their communication skills, educational performance, psychosocial adjustment, or vocational/career potential.

- 1) "Language disorder" means the deviant or delayed development, or loss following development, of the ability to comprehend, produce, or use language.

Language disorders are commonly found in students with hearing impairments, specific learning disabilities, mental retardation, severe emotional disturbances, and neurological impairments. Language disorders are also found in the absence of these disabilities, such as when lack of experience or environmental factors result in inadequate linguistic models for pupils.

- 2) "Voice disorder" means the abnormal production of voice characterized by defective vocal quality, pitch or loudness resulting from pathological conditions, psychogenic factors, or inappropriate use of the vocal mechanism.
- 3) "Fluency disorder" means disruptions in the normal flow of speech that occur frequently or are markedly noticeable and are characterized by any of the following: repetitions or prolongations of sounds or syllables, blocks, hesitations, revisions, incomplete phrases, avoidance behavior, or ancillary movements indicative of stress or struggle.
- 4) "Articulation disorder" means the abnormal production of phonemes (classes or speech sounds) resulting from factors such as faulty learning, neuromotor impairment, sensory deficits, anatomical deficiencies or developmental lag.

#### 2. Program of Study

- a. Speech-Language Programs means the activities, procedures, materials, services and clinical-instructional management required by students with communication disorders and provided by speech-language pathologists.

- b. The speech-language program in the schools is defined as a special education program area for students whose primary handicapping condition is a communication disorder. For those students whose primary handicapping condition is other than a communication disorder, and who also evidence disorders in speech and language, the provision of speech and language programs and services is considered a related service.
- c. The specific goals of the speech and language programs are to:
  - 1) identify children with speech-language-hearing disorders,
  - 2) assess and diagnose specific speech and language disorders,
  - 3) refer students for medical or other professional attention necessary for the clinical-instructional management of speech or language disorders,
  - 4) provide clinical-instructional services to students with speech-language disorders,
  - 5) provide indirect and consultative services to parents, teachers, administrators, other professionals, and support personnel, and
  - 6) provide a communication development program in the schools to promote the acquisition of adequate speech and language skills in all students.
- d. Communication abilities occur along a continuum from adequate at one extreme to severely inadequate at the other; from minor development delays through more significant deviations to disorders that demand intensive clinical-instructional management.

### 3. Eligibility Criteria

- a. Diagnosis of one or more of the defined disorders in language, voice, fluency, or articulation by a speech-language pathologist, which is based upon documentation of speech and language behaviors that are inappropriate for the student's chronological age, nonverbal mental age, cognitive stage of development, sex, or cultural/social background.
- b. Verification that the disorders in language, voice, fluency, or articulation adversely affect the student's communication skills, educational performance, psychosocial adjustment, or vocational/career potential by documentation, such as teacher description, parent description, educational assessments, psychological evaluation, observations, etc.
- c. A student with a voice disorder shall not be considered for placement in a speech-language program without an evaluation and written recommendations by a laryngologist.

B. PROGRAM DELIVERY

1. Caseload

- a. Caseloads for speech-language pathologists shall be flexible enough to provide for individualization of services in direct accord with student needs.
- b. In no instance shall the maximum caseload for a speech-language pathologist providing services exceed 40 students.
- c. Caseloads for a self-contained communication disorders program shall be determined on an individual basis upon application to the State Department of Education.
- d. Speech-language pathologists serving students in more than one school shall provide services on a continuous basis (as opposed to block scheduling) to assure no undue delay in students receiving speech and language programs and services.

## 2.4 DEAF/BLIND

All common regulations apply to this program

### A. PROGRAM DEFINITION

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

Deaf/Blind students have auditory and visual handicaps, the combination of which 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.

#### 2. Program of Study

- a. Deaf/blind students are taught to use a communication system effectively, because so many areas of development depend on the ability to send and receive signals about the environment.
- b. The needs of deaf/blind resemble those of other students. Development must be encouraged in cognitive, motor, and self-help areas.

#### 3. Eligibility Criteria

- a. Audiological diagnosis of a hearing loss by a certified audiologist.
- b. Otological diagnosis of a hearing loss by a licensed physician.
- c. Diagnosis of a visual impairment by a licensed optometrist or ophthalmologist. This impairment may be recorded in terms of visual acuity, visual field limitations, progressive eye disease or binocular vision.
- d. Verification through educational and adaptive behavior assessment that the hearing and vision impairments are developmentally and educationally handicapping.

### B. PROGRAM DELIVERY

#### 1. Caseload

##### a. Regular Education Program with Resource Services

Assign no more than six (6) students to a resource program.

##### b. Special Education Program: Self-Contained

Assign no more than three (3) students with a full-time aide.

## 2. Facilities

- a. Locate each classroom for the deaf/blind within easy accessibility to other appropriate facilities.
- b. Locate each self-contained classroom for the deaf/blind on the ground floor, unless an elevator assures accessibility to other floors.
- c. Acoustical Considerations - installation of acoustical plaster and tile (appropriate amount on walls and ceilings), window shades or drapes, and carpeting shall be provided for resource and special class facilities.
- d. Assure that each facility serving the deaf/blind student has:
  - 1) direct or convenient access to out-of-doors for evacuation during an emergency;
  - 2) building entrance at ground level or equipped with an appropriate ramp with gradients (should follow American Standards for slope);
  - 3) loading and unloading locations for buses and other means of transportation situated in a safe area away from hazards;
  - 4) toilet room, drinking fountain, and lavatories appropriately equipped for orthopedically impaired individuals, including necessary safety grab bars and at least one stall designed to accommodate a wheelchair, towel dispensers and other dispensers mounted within the reach of individuals in wheelchairs (toilet room shall be in easy access to the classroom);
  - 5) floors of a non-skid nature and free of excessive wax with carpeted or padded area in the classroom;
  - 6) adequate space and equipment provided, both indoors and outdoors, for physical activities and recreation and appropriate therapy and related services;
  - 7) lunchroom facilities including furniture, eating utensils and equipment suitable to the individual needs of the students;
  - 8) all doorways clear thirty-two (32) inches when open and operable by a single effort (doors should be durable and equipped with kick-plates; long grasping bars, rather than doorknobs, are preferred). Thresholds to outside and inside doors should be kept at a minimum--eliminated completely, if possible;
  - 9) adequate space for storage and handling of special materials and equipment;

- 10) switches and controls for lights, heat, ventilation, windows, draperies, door locks, fire alarms and all similar controls shall be placed within the reach of individuals in wheelchairs and adapted for the population served; and
- 11) other West Virginia regulations and specifications as outlined in the West Virginia Code, Chapter 18, Article 10F, and the current standards of the American National Standard Institute (ANSI).

3. Instructional Materials, Equipment and Supplies

Specialized equipment such as handrails, adjustable seats and desks, tables of varying sizes to accommodate body clearance for wheelchairs, chairs on rollers, cots, portable reading racks, electric or manual typewriters, low chalkboards, standing table, relaxation chair, changing table, wheelchairs, walkers, parallel bars, posture mirror, floor mat, prone stander, ambulatory devices, rolls, wedges, therapy ball, eating, dressing, grooming aids, positioning aids, pressure relief devices, bolsters, corner chairs and standing bars provided when necessary and as recommended by the physician and/or physical therapist and/or occupational therapist and/or classroom teacher shall be provided as specified in the Individualized Education Program.

C. PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.5 GIFTED

All common regulations apply to this program

### A. PROGRAM DEFINITION

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

Gifted students have exceptional intellectual abilities that are evidence of outstanding performance capability, and who, by reason thereof, require differentiated educational programs and/or services beyond those normally provided by the regular school program.

#### 2. Program of Study

- a. The program places emphasis on the expansion of areas of study and learning outcomes through specially designed educational experiences that move or increase the student's functioning within higher levels of the cognitive domain.
- b. The Individualized Education Program should address the provision of intellectually challenging educational experiences within the program of studies.

#### 3. Eligibility Criteria

- a. Documentation that after administration of a comprehensive individual test of intellectual ability, a student scores two or more standard deviations above the mean, in consideration of one standard error of measurement, or
- b. When the multidisciplinary assessment team finds evidence that the student may be handicapped, economically disadvantaged, or have English as a second language, additional assessment data shall be collected. If the student is subsequently found to be handicapped, economically disadvantaged, or to have English as a second language, this student shall be eligible for placement upon documentation that the student has scored two or more standard deviations above the mean on a verbal or a nonverbal scale on an individual comprehensive test of intellectual ability, in consideration of one standard error of measurement.

B. PROGRAM DELIVERY

1. Caseload

a. Regular Education Program with Modification

Assign no more than 30 students.

b. Regular Education Program with Resource Services

1) Assign no more than 30 students to a resource program.

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

c. Special Education Program: Self-Contained

Assign no more than 12 students to a self-contained program.

2. Instructional Materials, Equipment and Supplies

Individuals identified as gifted have access to classrooms, materials, and equipment appropriate to their level of performance and needs as identified by the Individualized Education Program, rather than their chronological age or grade placement.

3. Reassessment of Gifted Students

a. Students placed in programs for the gifted on the basis of an individual comprehensive test of intelligence which was administered by a qualified examiner, and who scored a minimum full-scale intelligence quotient two or more standard deviations above the norm, may be reevaluated by appropriate group intelligence and achievement measures.

b. Students placed in programs for the gifted on the basis of an assessment other than that of an individual comprehensive test of intelligence which was administered by a qualified examiner are to be reassessed according to the procedures specified in these Regulations.

c. To ensure optimal placement of a student, those who exhibit noticeable change in behavioral adjustment and/or instructional progress should be given a complete reassessment, including appropriate tests of achievement and individual comprehensive tests of intelligence administered by a qualified examiner, and other tests as deemed appropriate.

C. PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.6 HEARING IMPAIRED

All common regulations apply to this program

### A. PROGRAM DEFINITION

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

Hearing impaired students are those whose auditory acuity delays prohibit 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 defective 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. The number of students, the degree of hearing impairment, the etiology of the hearing loss, the extent that the hearing

impairment affects each student's academic achievement, the current level of oral and written communication and the major methods of communication are considered in developing a program to meet individual needs. Methods of communication are emphasized because as children differ in academic achievement and interest rate, so do they differ in their preferred methods of communication.

- b. One goal of programs for the hearing impaired is that hearing impaired children receive their educational opportunities in the method of communication which they have the inclination to pursue.
- c. Special curricula are developed in language/speech, activities for daily living, communication skills, auditory perception/discrimination, adaptive behavior skills and training in the use of residual hearing.
- d. Curricula for all academic areas include coordination with regular programs and adaptations to include the special information which hearing impaired students are taught because of their handicap.
- 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; and (2) notetakers and/or interpreter/tutors provided to hearing impaired students integrated into regular classes.

### 3. Eligibility Criteria

- a. Audiological diagnosis of hearing loss by a certified audiologist;
- b. Otological examination and diagnosis by a licensed physician; and
- c. Verification through educational assessment that the hearing loss is developmentally and educationally handicapping.
- d. Provide on an annual basis:
  - 1) An annual audiological evaluation.
  - 2) An annual electroacoustical analysis of the hearing aid.

## B. PROGRAM DELIVERY

1. Caseload
  - a. Regular Education Program with Modification

Assign no more than 20 students.

- b. Regular Education Program with Resource Services
  - 1) Assign no more than 10 students to a resource program.
  - 2) Assign no more than five students during any one instructional period.
- c. Special Education Program: Self-Contained
  - 1) Assign no more than four students without a full-time aide.
  - 2) Assign no more than eight students with a full-time aide.

## 2. Facilities

- a. Any facility serving the hearing impaired shall be equipped with life safety standards (including visual warning systems, such as red flasher firelights).
- b. Classrooms used for the hearing impaired have sound levels of 30 to 35 dB on the A scale of a sound level meter in an empty classroom which has normal activity in adjacent areas.
- c. Acoustical Considerations - installation of acoustical plaster and tile (appropriate amount on walls and ceilings), window shades or drapes, and carpeting shall be provided for resource and special class facilities.

## 3. Instructional Materials, Equipment and Supplies

As specified in the Individualized Education Program, hearing impaired students have access to: a curriculum resource center; captioned decoders; captioned film materials; film rentals not available through captioned films; listings of high-interest low-reading level books; computers and computer training; camera, film and processing; telephone typewriter devices (TTD); and video tape recorders with all related equipment (camera, audio, etc.).

## 4. Interpreter Services

Interpreter or tutor services for a hearing impaired student must be provided if specified in the Individualized Education Program.

## C. PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.7 MENTALLY IMPAIRED

### 2.71 Educable Mentally Impaired

All common regulations apply to this program

#### A. PROGRAM DEFINITION

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

Mentally impaired students have significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

GENERAL INTELLECTUAL FUNCTIONING is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose.

SIGNIFICANTLY SUBAVERAGE is defined as intelligence quotient (IQ) more than two standard deviations below the mean for the test.

ADAPTIVE BEHAVIOR is defined as the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for his/her age and cultural group.

DEVELOPMENTAL PERIOD is defined as the period of time between birth and the 18th birthday.

Functionally, the term "educable mentally impaired" refers to those persons characterized by a level of mental development which is impaired to the extent that the student requires special education services, but is able to function independently in society.

##### 2. Program of Study

- a. The program places emphasis on the teaching of skills and concepts that are functional, age appropriate and considered to be necessary for performance in out-of-school environments.
- b. Programs for the mentally impaired include learning outcomes encompassing skills which enhance their ability to effectively interact with objects, events, and people across environments.

##### 3. Eligibility Criteria

- a. Determination of the general intellectual functioning of the student. The intelligence range for consideration shall be fifty to seventy (50-70), in consideration of one standard error of measurement.

b. Determination of the student's level of adaptive behavior, which includes the consideration of all items listed below:

- 1) The student's level of adaptive behavior in areas such as motor development, self-help, social/affective, vocational, etc., is not commensurate with his/her chronological age peers.
- 2) Current achievement levels in such areas as basic reading skills, reading comprehension, math computation and spelling, etc., are:
  - (a) at least two (2) or more standard deviations below the means on standardized measures or;
  - (b) a consensus from the multidisciplinary team that the student's adaptive behavior on a non-standardized measure is not commensurate with chronological age.

c. Verification that subaverage intellectual functioning exists concurrently with deficits in adaptive behavior.

B. PROGRAM DELIVERY

1. Caseload

a. Regular Education Program with Resource Services

Assign no more than 20 students to a resource program with a limit of 15 during any one instructional period.

b. Special Education Program: Self-Contained

- 1) Assign no more than eight students without a full-time aide.
- 2) Assign no more than 15 students with a full-time aide.

2. Instructional Materials, Equipment and Supplies

The classroom is furnished with equipment allowing for multi-sensory instruction that is age appropriate.

C. PROGRAM ASSURANCES (Refer to Common Regulations)

## MENTALLY IMPAIRED

### 2.72 Trainable Mentally Impaired

All common regulations apply to this program

#### A. PROGRAM DEFINITION

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

Mentally impaired students have significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

GENERAL INTELLECTUAL FUNCTIONING is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose.

SIGNIFICANTLY SUBAVERAGE is defined as intelligence quotient (IQ) more than two standard deviations below the mean for the test.

ADAPTIVE BEHAVIOR is defined as the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for his/her age and cultural group.

DEVELOPMENTAL PERIOD is defined as the period of time between birth and the 18th birthday.

Functionally, the term "trainable mentally impaired" refers to those students characterized by a level of mental development which is impaired to the extent that the student is unable to benefit from the standard school program, requires special services, and may function semi-independently in society.

##### 2. Program of Study

a. The program places emphasis on the teaching of skills and concepts that are functional, age appropriate, and considered to be necessary for performance in out-of-school environments. To accomplish this, a full continuum of programs is to be available at all instructional levels.

b. Programs for the mentally impaired include learning outcomes encompassing skills which enhance their ability to effectively interact with objects, events, and people across environments.

##### 3. Eligibility Criteria

a. Determination of the general intellectual functioning of the student. The intelligence range for consideration shall be twenty-five to fifty (25-50), in consideration of one standard error of measurement.

- b. Adaptive behavior - verification of the individual's level of adaptive behavior which includes the consideration of the following:

The student's level of adaptive behavior in areas such as motor development, self-help, social/affective, language development, vocational, etc., is not commensurate with his/her chronological age peers.

- c. Verification that subaverage intellectual functioning exists concurrently with deficits in adaptive behavior.

## B. PROGRAM DELIVERY

### 1. Caseload

Special Education Program: Self-Contained

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

### 2. Facilities

- a. Locate each self-contained classroom for the trainable mentally impaired handicapped on the ground floor, unless an elevator assures accessibility to other floors and there is a ground level egress on the floor where the classroom is located.
- b. Assure that each facility serving the trainable mentally impaired student has:
  - 1) direct or convenient access to out-of-doors for evacuation during an emergency;
  - 2) building entrance at ground level or equipped with an appropriate ramp with gradients should follow American National Standards Institute (ANSI);
  - 3) loading and unloading locations for buses and other means of transportation situated in a safe area away from hazards;
  - 4) toilet room, drinking fountain, and lavatories appropriately equipped for orthopedically impaired individuals, including necessary safety grab bars and at least one stall designed to accommodate a wheelchair, towel dispensers and other dispensers mounted within the reach of students in wheelchairs (toilet room shall be in easy access to the classroom);
  - 5) floors of a non-skid nature and free of excessive wax with carpeted or padded area in the classroom;
  - 6) adequate space and equipment provided, both indoors and outdoors, for physical activities and recreation and appropriate therapy and related services;

- 7) lunchroom facilities including furniture, eating utensils and equipment suitable to the individual needs of the student;
- 8) all doorways clear thirty-two (32) inches when open and be operable by a single effort (doors should be durable and equipped with kick-plates; long grasping bars, rather than doorknobs, are preferred). Thresholds to outside and inside doors should be kept at a minimum -- eliminated completely, if possible;
- 9) adequate space for storage and handling of special materials and equipment;
- 10) switches and controls for lights, heat, ventilation, windows, draperies, door locks, fire alarms and all similar controls shall be placed within the reach of students in wheelchairs and adapted for the population served;
- 11) other West Virginia regulations and specifications as outlined in the West Virginia Code, Chapter 18, Article 10F, and current standards of the American National Standard Institute (ANSI).

### 3. Instructional Materials, Equipment and Supplies

- a. The classroom is furnished with equipment for multi-sensory instruction that is age appropriate and any special equipment needed to meet the specific educational goals and objectives listed on the Individualized Education Program.
- b. Specialized equipment (such as handrails, adjustable seats and desks, tables of varying size to accommodate body clearance for wheelchairs, chairs on rollers, cots, portable reading racks, electric or manual typewriters, low chalkboards, standing table, relaxation chair, changing table, wheelchairs, walkers, parallel bars, posture mirror, floor mat, prone stander, ambulatory devices, rolls, wedges, therapy ball, eating, dressing, grooming aids, positioning aids, pressure relief devices, bolsters, corner chairs and standing bars as recommended by the physician and/or occupational therapist and/or classroom teacher) shall be provided as specified in the Individualized Education Program.

### C. PROGRAM ASSURANCES (Refer to Common Regulations)

## MENTALLY IMPAIRED

### 2.73 Profoundly Mentally Impaired

All common regulations apply to this program

#### A. Program Definition

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

Mentally impaired students have significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

GENERAL INTELLECTUAL FUNCTIONING is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose.

SIGNIFICANTLY SUBAVERAGE is defined as intelligence quotient (IQ) more than two standard deviations below the mean for the test.

ADAPTIVE BEHAVIOR is defined as the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for his/her age and cultural group.

DEVELOPMENTAL PERIOD is defined as the period of time between birth and the 18th birthday.

Functionally, the term "profoundly mentally impaired" refers to those students characterized by a level of mental development which is impaired to the extent that the student is unable to benefit from the standard school program, requires special services, and functions dependently in society.

##### 2. Program of Study

a. The program places emphasis on the teaching of skills and concepts that are functional, age appropriate and considered to be necessary for performance in out-of-school environments. To accomplish this a full continuum of programs is to be available at all instructional levels.

b. Programs for the mentally impaired include learning outcomes encompassing skills which enhance their ability to effectively interact with objects, events, and people across environments.

##### 3. Eligibility Criteria

a. Determination of the general intellectual functioning of the student. The intelligence range for consideration shall be below twenty-five (25), in consideration of one standard error of measurement.

- b. Adaptive behavior - verification of the individual's level of adaptive behavior which includes the consideration of the student's level of adaptive behavior in areas such as motor development, self-help, social/affective, language development, vocational, etc., is not commensurate with his/her chronological age peers.
- c. Verification that subaverage intellectual functioning exists concurrently with deficits in adaptive behavior.

B. PROGRAM DELIVERY

1. Caseload

Special Education Program: Self-Contained

Assign no more than six students with a full-time aide.

2. Facilities

- a. Locate each self-contained classroom for the profoundly mentally impaired on the ground floor, unless an elevator assures accessibility to other floors and there is ground level egress on the floor where the classroom is located.
- b. Assure that each facility serving the profoundly mentally impaired student has:
  - 1) direct or convenient access to out-of-doors for evacuation during an emergency;
  - 2) building entrance at ground level or equipped with an appropriate ramp with gradients should follow American National Standards Institute (ANSI);
  - 3) loading and unloading locations for buses and other means of transportation situated in a safe area away from hazards;
  - 4) toilet room, drinking fountain, and lavatories appropriately equipped for orthopedically impaired individuals, including necessary safety grab bars and at least one stall designed to accommodate a wheelchair, towel dispensers and other dispensers mounted within the reach of individuals in wheelchairs (toilet room shall be in easy access to the classroom);
  - 5) floors of a non-skid nature and free of excessive wax with carpeted or padded area in the classroom;
  - 6) adequate space and equipment provided, both indoors and outdoors, for physical activities and recreation and appropriate therapy and related services;

- 7) lunchroom facilities including furniture, eating utensils and equipment suitable to the individual needs of the student;
- 8) all doorways clear thirty-two (32) inches when open and be operable by a single effort (doors should be durable and equipped with kick-plates; long grasping bars, rather than doorknobs, are preferred). Thresholds to outside and inside doors should be kept at a minimum -- eliminated completely, if possible;
- 9) adequate space for storage and handling of special materials and equipment;
- 10) switches and controls for lights, heat, ventilation, windows, draperies, door locks, fire alarms and all similar controls shall be placed within the reach of students in wheelchairs and adapted for the population served;
- 11) other West Virginia regulations and specifications as outlined in the West Virginia Code, Chapter 18, Article 10F, and the American National Standard Institute (ANSI), A117.1961 (r. 1971).

### 3. Instructional Materials, Equipment and Supplies

Specialized equipment (such as handrails, adjustable seats and desks, tables of varying size to accommodate body clearance for wheelchairs, chairs on rollers, cots, portable reading racks, electric or manual typewriters, low chalkboards, standing table, relaxation chair, changing table, wheelchairs, walkers, parallel bars, posture mirror, floor mat, prone stander, ambulatory devices, rolls, wedges, therapy ball, eating, dressing, grooming aids, positioning aids, pressure relief devices, bolsters, corner chairs and standing bars recommended by the physician and/or occupational therapist and/or classroom teacher) shall be provided as specified in the Individualized Education Program.

### C. PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.8 PHYSICALLY HANDICAPPED

All common regulations apply to this program

### 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 - 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. Because of the uniqueness of each physically handicapped student, the philosophy of the curriculum evolves from a broad base of varying philosophies, instructional strategies or procedures, environmental arrangements, equipment, materials, learning activities, skill sequences, and/or criteria for successful performance which are specified for daily activities in the classroom.
- b. Specialized curricular areas individually considered for a physically handicapped student 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

- a. Documentation/verification of confirmation and diagnosis of a physical impairment by a licensed physician.

- b. Verification through psycho-educational assessment(s) that the physical impairment affects normal learning processes.
- c. Documentation of physical assessment which includes gross motor skills, fine motor skills and self-help skills.

B. PROGRAM DELIVERY

1. Caseload

- a. Regular Education Program with Modification

Assign no more than 20 students.

- b. Special Education Program with Resource Services

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

- c. Special Education Program: Self-Contained

Assign no more than 10 students with a full-time aide.

2. Facilities

- a. Each self-contained or resource classroom for the physically handicapped shall be located on the ground floor, unless an elevator assures accessibility to other floors and there is a ground level egress on the floor where the classroom is located. Additionally, there must be:

- 1) a building entrance at ground level or equipped with an appropriate ramp with gradients (must follow American National Standard Institute (ANSI) codes);
- 2) toilet room, drinking fountain, and lavatories appropriately equipped for students, including necessary safety grab bars and at least one stall designed to accommodate a wheelchair, towel dispensers and other dispensers mounted within the reach of students in wheelchairs (toilet room shall be in easy access to the classroom);
- 3) all doorways clear thirty-two (32) inches when open and be operable by a single effort (doors should be durable and equipped with kick-plates; long grasping bars, rather than doorknobs, are preferred). Thresholds to outside and inside doors should be kept at a minimum - eliminated completely, if possible;
- 4) floors of a non-kid nature and free of excessive wax with carpeted or padded area in the classroom;
- 5) access to any hazardous areas should be eliminated (e.g., electrical boxes, etc.);

- 6) switches and controls for lights, heat, ventilation, windows, draperies, door locks, fire alarms, and all similar controls shall be placed within the reach of students in wheelchairs and adapted for the population served;
  - 7) compliance with other West Virginia regulations and specifications as outlined in the West Virginia Code, Chapter 18, Article 10F and the American National Standard Institute (ANSI) is required.
- b. In considering program accessibility and fire safety regulations, the Placement Advisory Committee must determine buildings and classrooms which will provide protection for the physically handicapped student (particularly the student in a wheelchair or mobility involved) in case of emergency evacuations.
  - c. Loading and unloading locations for buses and other means of transportation are situated in safe areas and away from hazards.

3. Instructional Materials, Equipment and Supplies

Specialized equipment (such as handrails, adjustable seats and desks, tables of varying sizes to accommodate body clearance for wheelchairs, chairs on rollers, cots, portable reading racks, electric or manual typewriters, communication devices, low chalkboards, standing table, relaxation chair, changing table, wheelchairs, walkers, special toileting chairs, lap trays, adapted writing devices, parallel bars, posture mirror, floor mat, prone stander, ambulatory devices, rolls, wedges, therapy ball, eating, dressing, grooming aids, positioning aids, pressure relief devices, bolsters, corner chairs and standing bars when recommended by the physician and/or physical therapist, and/or occupational therapist and/or classroom teacher) shall be provided as specified in the Individualized Education Program.

C. PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.9 PRESCHOOL HANDICAPPED

All common regulations apply to this program

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 exceptional children under the age of 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. The policies and procedures contained within this document shall also 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 under the age of 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.

#### 2. Program of Study

- a. The goal for the preschool handicapped child is the same as for his non-handicapped peers: the acquisition of skills in all developmental areas, i.e., language, cognition, motor, social-emotional, and in a manner which promotes independence and readiness for academic learning. 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, i.e., speech-language pathology, physical therapy, occupational therapy, psychology and social services. These services may be provided through interagency contracts/agreements, consultant services and/or direct employment of support personnel.
- c. The service delivery system focuses 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.

### 3. Eligibility Criteria

- a. Documentation that the child exhibits a delay of one (1) year below chronological age in one (1) or more of the designated developmental areas; or, documentation that the child is functioning at, or lower than, 75% of the normal rate of development; or
- b. Verification that the child possesses a sensory impairment. Verification will be in accordance with Eligibility Criteria delineated in the Deaf-Blind, Hearing Impaired or Visually Impaired program regulations.

### B. PROGRAM DELIVERY

#### 1. Placement

- a. Local education agencies may choose to serve the identified preschool handicapped population through either categorical placement options or through preschool handicapped models.
- b. There are three models appropriate for providing services to the young child with special needs: home based services, center based program, or a combination of home based services and a center based program. Other service delivery options may be employed (such as indirect support within a regular classroom setting) according to the identified needs of the child, and as specified within the Individualized Education Program.

#### 2. Time Allotments

- a. Home based programs will provide training and assistance to parents of the child, within the home setting on a regular basis - minimum of one hour, one day per week.
- b. Center/School based programs will provide instructional programming for preschool handicapped children ages three through five, with a minimum of three instructional days per week.

#### 3. Caseload

##### a. Home Based

Assign no more than 15 preschool children to a home based teacher.

##### b. Center/School Based

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

### C. PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.9.1 PRESCHOOL SEVERELY HANDICAPPED

All common regulations apply to this program.

### Note:

Chapter 18, Article 20, 1a, of the West Virginia Code, entitled "Education of Exceptional Children," provides amended legislation for the provision of special education and related services to exceptional children three and four years of age who are severely handicapped. The purpose of the preschool severely handicapped regulations is to specify minimum requirements for county boards of education in provision of special education and related services to the preschool severely handicapped population.

### A. PROGRAM DEFINITION

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

Preschool severely handicapped students are those children who are three and four years of age who evidence severe developmental delays in one or more of the following: 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, profound mental impairments, trainable mental impairments, visual impairments or who are deaf-blind.

#### 2. Program of Study

- a. The goals for the preschool severely handicapped student 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 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., speech-language pathology, 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 students 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 student and his/her family through direct employment of personnel, interagency collaboration, contracts/agreements, and/or consultative services.
- e. The individualized education shall focus on preparing each student 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

- a. Documentation that the student is functioning at, or lower 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, or
- b. Verification that the student is severely handicapped and meets eligibility criteria delineated in program regulations for communication disorders, deaf-blind, hearing impaired, visually impaired, behavior disorders, autism, profoundly mentally impaired, trainable mentally impaired or physically handicapped.

## B. PROGRAM DELIVERY

### 1. Placement

- a. Local education agencies shall serve the identified preschool severely handicapped population in the least restrictive environment, while offering systematic family involvement and training. Such services may be provided by county boards of education, regional service agencies, Schools for Deaf and Blind and through contracted services. Eligible students shall be served in the following placement models:

- 1. Community or School Based Age Appropriate Program with Modification - wherein the eligible exceptional student continues in the community based age appropriate program and receives specially designed instruction. The specially designed instruction is the responsibility of the preschool handicapped teacher and/or program specialists.

Modifications may include special materials, equipment, or adaptation of the curriculum and/or instructional program. Special education or support service personnel may work directly with the student in a consultative role with the community based age appropriate program to determine needs, develop and implement strategies as specified in the Individualized Education Program.

2. Community or School Based Age Appropriate Program with Resource Services - wherein the eligible exceptional student continues part-time under the direction of the community based program and part-time under the direction of the preschool handicapped teacher and/or program specialists as specified in the Individualized Education Program. Each educator has the direct responsibility for a specified part of the child's program.
3. Special Education Program: Self-Contained - wherein the eligible exceptional student is placed full-time under the direction of the preschool handicapped teacher in the community or school based age appropriate program as specified in the Individualized Education Program.
4. Special Education Program: Special School - wherein the eligible exceptional student is placed in a day program in a special school which provides education and related services as specified in the Individualized Education Program.
5. Special Education Program: Home Based Program - wherein the eligible exceptional student receives education and related services in a home environment as specified in the Individualized Education Program. The preschool handicapped teacher and/or program specialist may work directly with the child and/or in a consultative role with the family.
6. Special Education Program: Residential Facility - wherein the eligible exceptional student is placed in a residential facility on a 24-hour basis which provides instructional programs as specified in the Individualized Education Program.
7. Combination Program - wherein the eligible exceptional student is served in two or more of the above placement models as specified in the Individualized Education Program.

2. Time Allotments

- a. Home based programs will be provided on a regular basis - minimum of one hour, one day per week.
- b. Center based programs will be provided on a regular basis - minimum of fifteen instructional hours per week.

3. Caseloads

- a. Community or School Based Age Appropriate Program with Modification.

Assign no more than fifteen (15) preschool severely handicapped students.

- b. Community or School Based Age Appropriate Program with Resource Services.

Assign no more than twelve (12) preschool severely handicapped students with a full time aide.

- c. Special Education Program: Self-Contained.

Assign no more than six (6) preschool severely handicapped students with a full time aide.

- d. Special Education Program: Special School.

Assign no more than six (6) preschool severely handicapped students with a full time aide.

- e. Special Education Program: Home Based Program.

Assign no more than ten (10) preschool severely handicapped students.

- f. Special Education Program: Residential Facility.

Assign no more than six (6) preschool severely handicapped students with a full time aide.

- g. Combination Program:

Assign no more than fifteen (15) preschool severely handicapped students.

PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.10 SPECIFIC LEARNING DISABILITIES

All common regulations apply to this program

### A. PROGRAM DEFINITION

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

Specific learning disability 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, or of environmental or cultural differences or economic disadvantage.

#### 2. Program of Study

- a. The specific learning disabilities program provides instruction that enables the learning disabled student to achieve the learning outcomes in an integrated, sequential and developmental manner to the maximum extent.
- b. The instructional program addresses the manner in which a child learns, as well as developmental levels.

#### 3. Eligibility Criteria

- a. Documentation through comprehensive evaluation that the individual:
  - 1) does not achieve commensurate with his/her age and ability levels in one or more of the areas listed in item 2 below when provided with learning experiences appropriate for the individual's age and ability levels;
  - 2) has a severe discrepancy between achievement and intellectual ability in one or more of the following areas;
    - a) oral expression,
    - b) listening comprehension,
    - c) written expression,
    - d) basic reading skill,
    - e) reading comprehension,
    - f) mathematics calculation, or
    - g) mathematics reasoning;

- 3) exhibits deficits in one or more of the basic learning processes of perception, memory and conceptualization; and that
- 4) the severe discrepancy between ability and achievement is NOT primarily the result of;
  - a) a visual, hearing, or motor handicap,
  - b) mental retardation,
  - c) emotional disturbance, or
  - d) environmental, cultural or economic disadvantage.

b. Documentation that the comprehensive evaluation includes:

- 1) information obtained from observation of the individual's academic performance in the regular classroom setting by at least one assessment team member other than the individual's regular teacher; or
- 2) for an individual of less than school age or out of school, observation of the individual in an environment appropriate for a child of that age.

B. PROGRAM DELIVERY

1. Caseload

a. Regular Education Program with Modification

Assign no more than 20 students.

b. Regular Education Program with Resource Services

Assign no more than 20 students with a limit of six (6) during any one instructional period to a resource program. For purposes of departmentalized resource programs, assign no more than 20 students with a limit of eight (8) during any one instructional period.

c. Special Education Program: Self-Contained

- 1) Assign no more than eight students without a full-time aide.
- 2) Assign no more than 12 students with a full-time aide.

C. PROGRAM ASSURANCES (Refer to Common Regulations)

## 2.11 VISUALLY IMPAIRED

All common regulations apply to this program

### 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:

A person is legally blind if he has 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. The term partially sighted will refer to any student who has a 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 educational program 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.

#### 3. Eligibility Criteria

a. To be eligible for placement in a program for the visually impaired, a student must have an organic visual impairment verified by a licensed ophthalmologist or optometrist. This impairment must include one or more of the following criteria:

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. In addition, these visual conditions must affect academic performance and require special services and/or materials.
  - c. Students placed in programs for the visually impaired shall receive an ophthalmological or optometric evaluation every three years unless otherwise specified by an ophthalmologist or optometrist on the eye report.

## B. PROGRAM DELIVERY

### 1. Caseload

#### a. Regular Education Program with Modification

Assign no more than 20 students.

#### b. Regular Education Program with Resource Services

1) Assign no more than 10 students.

2) Assign no more than five students during any one instructional period.

#### c. Special Education Program: Self-Contained

1) Assign no more than four students without a full-time aide.

2) Assign no more than eight students with a full-time aide.

### 2. Facilities

a. Physical mobility of pupils is considered in providing an environment which is barrier-free.

### 3. Instructional Materials, Equipment and Supplies

a. The materials and equipment necessary for pupil diagnosis, habilitation and evaluation include: consumable special instructional materials and supplies, special test kits and equipment, writing aids, braille and large print books, bold line paper, braille paper, educational games and workbooks, large print and recorded encyclopedias and dictionaries, tape recorders and tapes, talking book machines and aids for the totally blind;

adjustable desks, book stands and low vision aids, or other mechanical and/or electronic aids shall be provided as specified in the Individualized Education Program.

C. PROGRAM ASSURANCES (Refer to Common Regulations)

### 3.0 PROCEDURAL SAFEGUARDS

3.0 The West Virginia Department of Education shall assure that each public agency providing special education and related services establishes and implements procedural safeguards for exceptional students and their parents, with respect to the provision of a free appropriate public education.

#### 3.1 DUE PROCESS PROCEDURES FOR PARENTS AND STUDENTS

##### A. Opportunity to examine records.

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.

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 obtained at public expense, the criteria under which the assessment is obtained, including the location of the assessment and the qualifications of the evaluator, 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 a reasonable time before the public agency:
  - a. proposes to initiate or change the referral/identification, assessment or 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 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 before conducting an initial assessment and before 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 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.

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 placement of the student for 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 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 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 leads to resolution of differences between parents and agencies without the development of an adversarial relationship. However, mediation may not be used to deny or delay a right to a due process hearing.

F. Impartial hearing officer. (300.507)

1. 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 a panel of three impartial hearing officers. Each party shall strike one name from the panel selected by the West Virginia Department of Education. The party initiating the due process hearing will be given the first option of striking one name. The remaining person shall serve as the impartial hearing officer, provided that they meet the following criteria:
    - a. a college degree and a certification from the West Virginia Department of Education in an area of special education,
    - b. professional experience within the last two years in an area of special education,
    - c. completion of hearing officer training conducted annually by the West Virginia Department of Education.
  2. 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 and reviews will be conducted and completed as quickly as possible.
  3. The assigned hearing officer shall not be:
    - a. a person who is an employee of the local education agency, the RESA of which the county is a member, a contiguous county, or public agency which is involved in the education or care of the student; or
    - b. any person having a personal or professional interest which would conflict with objectivity in the hearing; or
    - c. a school board official.
  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. The West Virginia Department of Education shall maintain a list of persons trained to serve as hearing officers. The listing shall include a statement of qualifications of each person, the local education agency or agency of employment and the RESA of which the local education agency is a member. This information shall be provided to each public agency.
- G. Impartial due process hearing rights. (300.508)
1. The hearing shall be closed to the public unless the parents request it be open.

2. The student shall have the right to attend the hearing if:
  - a. he/she has reached the age of majority; or
  - b. the parent(s) determines that the individual is to attend.
3. 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 placement.
4. 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.
5. Any party to a hearing has the right to:
  - a. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of exceptional students;
  - b. present evidence and confront, cross-examine and compel the attendance of witnesses;
  - c. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;
  - d. obtain a written or electronic verbatim record of the hearing;
  - e. 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.)
6. 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.

I. Administrative appeal; impartial review. (300.510)

1. Any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

2. If there is an appeal, the State Board of Education shall contract for an impartial review by a hearing official who is not an employee of the Department of Education. The official conducting the review shall:
  - a. examine the entire hearing record;
  - b. assure that the procedures at the hearing were consistent with the requirements of due process;
  - c. seek additional evidence, if necessary;
  - d. afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
  - e. make an independent decision on completion of the review;
  - f. submit as a matter of information the decision to the State Board of Education; and
  - g. give a copy of written findings and the decision to the parties.
3. The decision made by the reviewing official is final, unless a party brings civil action.

J. Civil action. (300.511)

Any party aggrieved by the findings and decision made in an administrative appeal by a reviewing officer has the right to bring a civil action.

K. Timelines and convenience of hearings and reviews. (300.512)

1. The public agency 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, to the West Virginia Advisory Council for the Education of Exceptional Children, and to the State Superintendent of Schools.
2. The West Virginia Board of Education shall assure that not later than 30 days after the receipt of a request for a review:
  - a. a final decision is reached in the review; and
  - b. a copy of the decision is mailed to each of the parties.
3. A hearing or reviewing officer may grant specific extensions of time beyond the timelines at the request of either party.

4. Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and student involved.

L. 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.

M. 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.

### 3.2 PROTECTION IN ASSESSMENT PROCEDURES

#### A. Assessment assurance. (300.530)

1. Testing and evaluation materials and procedures used for the purposes of assessment and placement of exceptional students must be selected and administered so as not to be racially or culturally discriminatory.
2. Before any action is taken with respect to the initial placement of an exceptional student in a special education program, a full and individual assessment of the student's educational needs must be conducted by a multidisciplinary assessment team. (300.531)

#### B. Assessment procedures. (300.532)

1. Public agencies shall assure that:
  - a. tests and other assessment materials:
    - 1) are provided and administered in the student's native language or other mode of communication, unless it clearly is not feasible to do so;
    - 2) have been validated for the specific purpose for which they are used; and
    - 3) are administered by trained personnel in conformance with the instructions provided by their publisher.
  - b. 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.
  - c. Tests and other materials are selected and administered so as best 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);
  - d. No single procedure is used as the sole criterion for determining an appropriate educational program for a student;
  - e. The assessment is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected exceptionality; and

- f. The student is assessed in all areas related to the suspected exceptionality including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance relative to learning outcomes, communicative status and motor abilities.
2. Students who have a speech disorder as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired student using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.
- C. Placement procedures. (300.533)
1. In interpreting assessment data and in making placement decisions, each public agency shall:
    - a. draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
    - b. assure that information obtained from all of these sources is documented and carefully considered;
    - c. assure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the assessment data and the placement options; and
    - d. assure that the placement decision is made in conformity with the least restrictive alternative requirements.
  2. If a determination is made that a student is exceptional and needs special education and related services, an Individualized Education Program must be developed for the student.
- D. Review. (300.534)
1. Each public agency shall assure:
    - a. that each exceptional student's Individualized Education Program is reviewed annually. (300.340-349)
    - b. that a multidisciplinary assessment of the student is conducted every three years or more frequently if conditions warrant or if the student's parent or teacher requests an assessment. (300.532)

### 3.3 LEAST RESTRICTIVE ALTERNATIVE PLACEMENT

#### A. Exclusion of exceptional students. (300.550)

##### 1. Each public agency shall assure:

- a. that to the maximum extent appropriate, exceptional students, including students in public or private institutions or other care facilities, are educated with students who are not exceptional; and
- b. that special classes, separate schooling or other removal of exceptional students from the regular educational environment occurs 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.

#### B. Continuum of alternative placements. (300.551)

##### 1. Each public agency shall assure that a continuum of alternative placements is available to meet the needs of exceptional students for special education and related services.

##### 2. The continuum must:

- a. include alternative placements in regular classes, special classes, out-of-school environments, special schools and residential facilities; and
- b. make provision for supplementary services to be provided in conjunction with regular class placement.

#### C. Placements. (300.552)

##### 1. Each public agency shall assure that:

##### a. each exceptional student's educational placement:

- 1) is determined at least annually,
- 2) is based on his or her Individualized Education Program, and
- 3) is as close as possible to the student's home;

##### b. Various alternative placements are available to the extent necessary to implement the Individualized Education Program for each exceptional student;

##### c. Unless an exceptional student's Individualized Education Program requires some other arrangement, the student is educated in the school which he or she would attend if not exceptional; and

- d. In selecting the least restrictive placement, consideration is given to any potential harmful effect on the student or on the quality of services which he or she needs.
2. In determining the extent to which an exceptional student can be educated with students who are not exceptional, the overriding rule is that placement decisions must be made on an individual basis.
3. Each agency will have various alternative placements available in order to assure that each exceptional student receives an education which is appropriate to his or her individual needs.
4. It should be stressed that where an exceptional student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the exceptional student cannot be met in that environment. Therefore regular placement may not be appropriate to his or her needs and should be referred to the Placement Advisory Committee.
5. Special classes, separate schooling or other removal from regular educational environment occurs only when the nature or severity of a handicap is such that education in regular classes with supplementary aid and services cannot be achieved satisfactorily (300.550(b) (2)).

D. Nonacademic settings. (300.553)

1. In providing or arranging for the provision of nonacademic and extracurricular services and activities, each public agency shall assure that each exceptional student participates with nonexceptional students in those services and activities to the maximum extent appropriate to the needs of the student.
2. To the maximum extent appropriate, students in residential settings are also to be provided opportunities for participation with other students.

E. Technical assistance and training activities. (300.555)

The West Virginia Department of Education shall carry out activities to assure that teachers and administrators in all public agencies are fully informed about their responsibilities and are provided with technical assistance and training necessary to assist them in this effort.

F. Monitoring of activities. (300.556)

The West Virginia Department of Education shall carry out activities to assure implementation by each public agency. If there is evidence that a public agency makes incorrect placements, the West Virginia Department of Education:

1. shall review the public agency's justification for its actions, and

2. shall assist in planning and implementing any necessary corrective action.

### 3.4 CONFIDENTIALITY OF INFORMATION

#### A. Annual Notification of Rights (see W. Va. Policy #4350)

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 by such means as are reasonably likely to inform them of the following:
  - a. their rights under Section 438 of the Family 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.

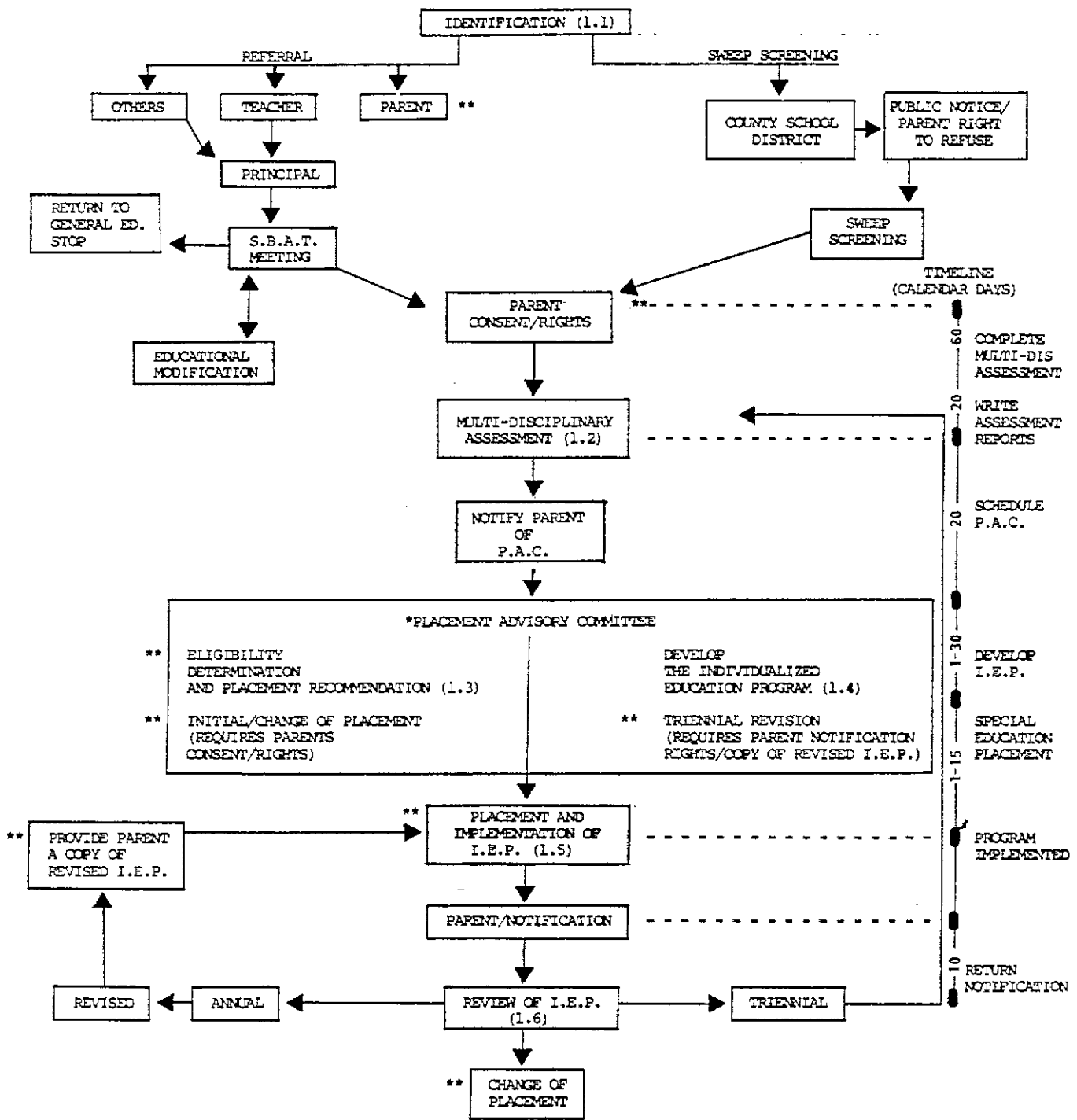
N. Exceptional student's rights. (300.574)

The West Virginia Department of Education shall have written policies and procedures regarding the extent to which exceptional students are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the exceptional student and type or severity of the exceptionality.

O. Monitoring. (300.575)

The West Virginia Department of Education shall describe in its annual program plan the policies and procedures, including sanctions, which the West Virginia Department of Education uses to assure that its policies and procedures are followed.

4.0 SPECIAL EDUCATION SEARCH AND SERVE PROCESS



\* AFTER P.A.C. HAS ACTED, AND A PARENT/TEACHER DISAGREES WITH SERVICE EITHER MAY REQUEST THAT THE P.A.C. BE RECONVENED.  
 \*\* RIGHT TO IMPARTIAL DUE PROCESS HEARING IF PARENT/L.E.A. DISAGREES