

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

Form #2

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

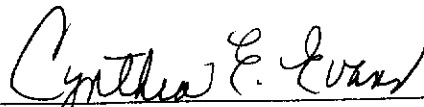
**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Board of Education TITLE NUMBER: 126  
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code 18-2-5; 18-20-1-5;  
AMENDMENT TO AN EXISTING RULE: YES  NO  Public Law 94-142 as amended by  
Public Law 101-476; and W.Va.  
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16 Const. Article XII, §2  
TITLE OF RULE BEING AMENDED: Regulations for the Education of  
Exceptional Students (2419)  
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_  
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 17, 1996 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Michael A. Valentine, Director  
West Virginia Department of Education  
Capitol Complex, Bldg. 6, Room 304  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0330

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

  
Cynthia E. Evans  
Director, Legal Services

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

14.90

## FISCAL NOTE WORKSHEET

(Submit 4 Copies)

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

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

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

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

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

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

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$	\$	\$	\$	\$
2. ESTIMATED TOTAL REVENUES	\$	\$	\$	\$	\$

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

**Assumptions:**

These regulations contain revisions due to changes in state code regarding discipline. Each school district will specify detailed procedures for implementation in the district's policies and procedures. This will require revisions to existing procedures; however, no additional requirements are anticipated.

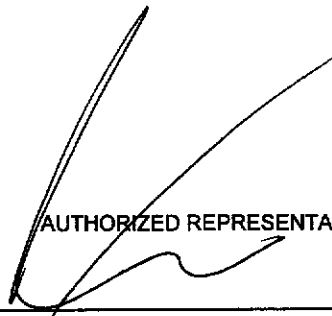
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

JUNE 14, 1996

EDUCATION



**EXECUTIVE SUMMARY**  
**WEST VIRGINIA BOARD OF EDUCATION**  
**Policy Number and Title: Policy 2419: Regulations for**  
**the Education of Exceptional Students**

**PUBLIC COMMENT PERIOD ENDS: July 17, 1996**

**BACKGROUND:**

Policy 2419 was last revised in 1995 to incorporate new requirements and return to the language of federal regulations for the Individuals with Disabilities Education Act (IDEA) and state legislation, whenever possible. Since that time the West Virginia Legislature has amended West Virginia §18A-5-1a regarding suspension/expulsion for students with disabilities.

**PURPOSE:**

The purpose of the proposed revisions to Policy 2419 is to incorporate new requirements from West Virginia Code §18A-5-1a. In addition, revisions reflect some minor editorial corrections in the policy requirements.

**PROPOSED CHANGES:**

The proposed revisions include the following editorial corrections:

- 4.0.C.2 -- The IEP for a gifted student shall also include if appropriate, acceleration and/or the effects of acceleration on the student's graduation. (p. 20)
- 4.0.D.3.d -- Special Education: Special School -- wherein the student's specially designed instruction and related services are delivered in a special school that serves only exceptional students for more than 50% of the student's instructional school day. (p. 22)
- 5.0.D.1.c -- Special Education: Separate Class -- The caseloads for teachers providing instructional services to exceptional students who are served in regular education for 40% or less of the instructional school day are specified in 5.0.D.2 of this policy in the program area sections in these regulations for each exceptionality. (p. 25)
- 7.0.I.9.d -- obtain a written or electronic verbatim record of the hearing; (p. 41) and,
- 8.0.C.4.1 -- provide make available special education and related services to meet the needs of private school children with disabilities in the jurisdiction of the agency; (p. 48)
- Glossary #32--~~Four Year Plan~~ -- a written plan developed prior to the end of the student's eighth grade year, that describes the student's projected adolescent education program. The ~~Four Year Plan~~ for an exceptional student must include the type of diploma the student may receive, the list of courses (including honors/advanced education) per grade level, anticipated credits to be earned, educational goals and objectives that will enable the student to access appropriate adult services or employment, and must be developed by the IEP Committee. (p. 53)

After recent research into appeals processes available for gifted students and their parents, it is recommended that the following changes in Policy 2419 be made:

- 7.0.I.11 -- The public agency shall inform parents that attorney's fees may be awarded to parents of students with disabilities to cover attorneys' fees and related costs when the parent of a student with a disability is the prevailing party, subject to certain constraints, and that such attorneys' fees may be agreed to by the parties or awarded by the court. This is a federal provision of IDEA §1415(e)(4) and does not apply to gifted students unless they also have a disability. (p.41)
- 8.0.B.2.v.3. -- inform parents, if the parent initiates a due process hearing or if the parent requests the information, of any free or low-cost legal and other relevant services available in the area and that new federal legislation allows for the award of attorneys' fees to parents of students with disabilities to cover attorneys' fees and related costs when the parent of a student with a disability is the prevailing party in a due process hearing, subject to certain constraints, and that such attorneys' fees may be agreed to by the parties or awarded by a court; (pgs. 45-46)

Based on West Virginia Code §18A-5-1a as amended by the 1996 legislature, the entire Section 6.0, Discipline has been revised. The proposed revisions are attached. In addition to the required revisions to 6.0 Discipline, it is recommended that the following related definitions be added to the glossary:

- **Deadly Weapon** - An instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "deadly weapon" shall include, but not be limited to, the instruments defined in subdivisions one (1) through eight (8) of Section Two (2), Article Seven (7), Chapter sixty-one [§61-7-2] of the West Virginia Code, or other deadly weapons of like kind or character which may be easily concealed on or about the person.
- **Firearm** - Any weapon which will expel a projectile by action of an explosion.
- **Serious Misconduct** - Any activity for which suspension or expulsion is a punishment for regular education students. These activities include: 1) assault/battery on school employees (West Virginia Code §61-2-15); 2) possession of a deadly weapon (West Virginia Code §61-7-11a); 3) selling a narcotic drug on the premises of an educational facility, at a school sponsored function, or on a school bus (West Virginia Code §60A-1-101); 4) committing an act or engaging in conduct that would constitute a felony under the laws of this state if committed by an adult; 5) unlawfully possessing on the premises of an educational facility or at a school sponsored function, a controlled substance governed by the Uniformed Controlled Substance Act; 6) threatening to injure, or in any manner injuring, a pupil, teacher, administrator, or other school personnel; 7) willfully disobeying a teacher; 8) possessing alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; 9) using profane language directed at a school employee or pupil; 10) intentionally defacing any school property; 11) participating in any physical altercation with another person while under the authority of school personnel; 12) habitually violating school rules or policies.

**IMPACT:**

Changes in Section 6.0, Discipline, to comply with West Virginia Code §18A-5-1a will allow school administrators to implement suspension/expulsion as a disciplinary action to students with disabilities in the same manner as regular education students. The due process rights of students with disabilities are still present when the suspension/expulsion exceeds ten consecutive days.

**FILED**

**TITLE 126  
LEGISLATIVE RULES  
BOARD OF EDUCATION**

**JUN 14 3 32 PM '96**

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

**OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE**

**§126-16-1. General.**

1.1. Scope. These regulations apply to preschool, special needs, early childhood, middle childhood, adolescent and adult students whose educational programs require special education and related services. These apply to three year olds, as of their third birth date, through five year olds with disabilities and those who are between five and 21 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/local policy pertaining to graduation requirements.

West Virginia's mandatory special education statute legislates a child identification effort by county boards of education. Chapter 18, Article 20, Section 2, of the West Virginia Code, states, "The board of education of each county is empowered and is responsible for providing suitable educational facilities, special equipment and such special services as may be necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type..." The mandated target group for the state child find requirements includes individuals with disabilities between birth and 21 years of age, gifted students from first through eighth grades, and exceptional gifted in grades nine through 12. Part H of IDEA requires interagency collaboration in child find activities targeting children from birth through 5 years of age.

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

1.1.1. individuals with disabilities ages birth to 21, gifted individuals from first through eighth grades, and exceptional gifted in grades nine through 12, who are out of school and not receiving preschool, early childhood, middle childhood, adolescent, or adult educational programs; and

1.1.2. children with disabilities who are enrolled in preschool, early childhood, middle childhood, adolescent, and adult educational programs, gifted students who are in grades one through eight, and exceptional gifted students in grades nine through 12, but who are receiving programs and services inappropriate to meet their needs.

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1.2. 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 as amended by the Individuals with Disabilities Education Act of 1990 (IDEA), Public Law 101-476. 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.

1.3. Filing Date. September 21, 1995

1.4. Effective Date. October 21, 1995

1.5. Repeal of former rule. This legislative rule repeals and replaces WV 126CSR16 "Regulations for the Education of Exceptional Students" filed May 15, 1992 and effective June 16, 1992.

1.6. Right to a Free, Appropriate Public Education. Special education and related services shall be made available to all individuals with disabilities who are between three and 21 years of age, all gifted students in grades one through eight, and all exceptional gifted students in grades nine through 12. West Virginia Code Chapter 18, Article 20, the state's mandatory special education statute and the Individuals with Disabilities Education Act 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 of the aforementioned individuals with disabilities have available 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 and human resources and corrections) that provide special education and related services to exceptional students.

1.7. Purpose and Intent of the IEP. Individualized Education Program (IEP) requirements describe two components: a process and a document. This policy emphasizes that the process is fundamental and that the document must reflect the full and complementary involvement of parents and educators. The overall IEP requirement, as described in the Individuals with Disabilities Education Act, has the following purposes and functions:

1.7.1. The IEP meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to jointly decide what the student's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

1.7.2. The IEP process provides an opportunity for resolving any differences between the parents and the public agency concerning the special education needs of an exceptional student; first, through the IEP meeting; and second, through the procedural protections that are available to the student and the student's parents.

1.7.3. The IEP sets forth in writing a commitment of resources necessary to enable an exceptional student to receive needed special education and related services.

1.7.4. The IEP is a management tool that is used to ensure that each exceptional student is provided special education and related services appropriate to the student's special learning needs.

1.7.5. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether an exceptional student is actually receiving the free appropriate public education (FAPE) agreed to by the parents and the school.

1.7.6. The IEP serves as an evaluation device for use in determining the extent of the student's progress toward meeting the projected outcomes.

## **§126-16-2. Identification/Referral.**

2.1. Policy Statement: Each public agency shall conduct child find activities to ensure that all students with disabilities, ages 0-21, gifted students from first through eighth grades and exceptional gifted in grades nine-12, are identified and referred for appropriate evaluation. Specific methods for conducting these activities, including procedures for the referral of students in private/parochial schools or for referral by any interested person or agency, shall be stated in each public agency's policies and procedures.

### 2.1.1. Public Awareness

a. Each public agency shall conduct an on-going awareness campaign that informs the public of the nature of exceptional students, the availability of special education and related services, and the persons to contact for initiating a referral.

### 2.1.2. Referrals

a. Each public agency shall establish a child identification system which includes referrals from at least the following sources:

- A. the screening process;
- B. school teams;
- C. private/parochial schools; and
- D. any interested person or agency.

### 2.1.3. School Teams

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a. Each public agency shall establish a team in each school to assist in the identification/referral of students experiencing difficulties in the educational program.

b. Each public agency shall define the membership of the team and its relationship to the special education process.

**§126-16-3. Evaluation and Reevaluation.**

3.1. Policy Statement: Each public agency shall conduct an initial multidisciplinary evaluation of a student and conduct reevaluations of the student to determine the student's educational needs. Specific methods for providing those activities shall be stated in each public agency's policies and procedures.

3.1.1. General Responsibilities

a. Each public agency shall conduct a full and individual multidisciplinary evaluation of the student's educational needs in accordance with Section 8.1.5 before any action is taken with respect to the initial placement of an exceptional student in a program providing special education and related services.

b. Each public agency shall conduct an appropriate, individual multidisciplinary reevaluation to determine the educational needs of each eligible student every three (3) years, or more frequently if conditions warrant, or if the student's parent or teacher requests an evaluation.

c. Each public agency shall complete the initial multidisciplinary educational evaluation and convene an Eligibility Committee and determine eligibility, as specified in Section 3.0 of this policy, within 80 days of receipt of the written parental consent for evaluation.

3.1.2. Multidisciplinary Evaluation Team

a. An evaluation shall be conducted by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected exceptionality.

b. The multidisciplinary evaluation team (MDET) shall also consist of:

- A. the student's regular education teacher, or
- B. if the student does not have a regular education teacher, a regular education teacher qualified to teach a student of her or his age, or
- C. for a child of less than school age enrolled in an early intervention or other preschool special needs program, an individual qualified to teach a child of her or his age,

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D. at least one person qualified to conduct individual diagnostic examinations of students, such as a certified school psychologist, speech-language pathologist or audiologists, and

c. Members of the MDET shall:

- A. be appropriately certified, licensed or otherwise qualified to administer the evaluations for which they are responsible;
- B. trained in the use of the specific assessment instruments or techniques for which they are responsible;
- C. knowledgeable in the area of concern; and
- D. knowledgeable in the applicable state and federal regulations.
- E. for a student suspected of being sensory impaired (deaf, hard-of-hearing, blind, partially-sighted, or deaf-blind), physically disabled (orthopedically impaired, other health impaired, traumatic brain injured), or of having a voice disorder to verify the existence of a structural or functional pathology, a licensed physician.

### 3.1.3. Evaluation Components

a. For an initial evaluation, the student shall be evaluated in all areas related to the suspected exceptionality including, if appropriate, health, vision, hearing, social and emotional status, adaptive behavior, general intelligence, academic performance, communicative status, motor abilities, assistive technology services and/or devices, career interests and vocational aptitudes.

b. For reevaluations, the student shall be evaluated in all areas related to the exceptionality to determine if the exceptionality continues to adversely affect the student's educational performance to the extent that specially designed instruction is required to meet the student's educational needs.

A. Reevaluations of a sensory impaired student shall be conducted more frequently if specified on the certified audiologist's or physician's report.

B. A reevaluation of a gifted student shall be conducted prior to the end of the eighth grade consisting of, at least, an appropriate individual achievement measure and an educational performance review.

c. The student's academic, behavioral, motoric and/or communicative performance shall be observed by at least one multidisciplinary evaluation team member, other than the student's regular classroom teacher, in the regular classroom and, when appropriate, in at least one other setting.

A. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

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B. When the student is suspected of having only speech/language impairments or being gifted, the MDET shall determine if observations are to be conducted.

d. For a nonspeaking student, the student shall be evaluated to determine the need for an alternative means of communication.

e. The public agency shall document information from the parent concerning the student, such as developmental history and behavior in the home and community, and make the written information available to the Eligibility Committee.

f. Each evaluator, including the classroom teacher, shall write, sign and date an individual evaluation report and make the written report available to the Eligibility Committee.

**§126-16-4. Eligibility.**

4.1. Policy Statement: Each public agency shall establish and convene an Eligibility Committee to determine: 1) if the referred student meets the eligibility criteria in one of the designated exceptionalities; 2) if the determined exceptionality adversely affects the student's educational performance; and, 3) if the student needs specially designed instruction. Specific methods for conducting these activities shall be stated in each public agency's policies and procedures.

4.1.1. Eligibility Meetings

a. The public agency shall establish an Eligibility Committee (EC) of at least three (3) members who are knowledgeable about the student, the meaning of the written evaluation results, the eligibility criteria and the process of determining eligibility.

b. Additional individuals with specific expertise in the area(s) of concern may be included in the EC meeting at the discretion of the public agency.

4.1.2. Eligibility Committee Responsibilities

a. The EC shall carefully consider documented information from a variety of sources, such as aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior.

b. The EC shall:

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- A. utilize the results of the multidisciplinary evaluation as the primary source of information to determine if:
  - (a) the student meets the eligibility criteria in one of the designated exceptionalities;
  - (b) the exceptionality adversely affects the student's educational performance; and
  - (c) the student needs specially designed instruction;
- B. compile and submit determination results for eligible students to the IEP Committee;
- C. document the specific exceptionality for state and federal reporting purposes;
- D. recommend options for those students deemed ineligible and refer the student to the school team; and
- E. notify parents in writing of the results of the EC.

### 4.1.3. Definitions and Eligibility Criteria

#### a. Autism

A. Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a student's educational performance. Other characteristics often associated with autism are irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is affected primarily because the student has a behavior disorder, as defined in these regulations.

B. Documentation will assure that the student meets a total of six (or more) items from (a), (b), and (c), with at least two from (a), and one each from (b) and (c):

(a) qualitative impairment in social interaction, as manifested by at least two of the following:

(A) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction

(B) failure to develop peer relationships appropriate to developmental level

(C) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest)

(D) lack of social or emotional reciprocity

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(b) qualitative impairments in communication as manifested by at least one of the following:

(A) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime)

(B) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others

(C) stereotyped and repetitive use of language or idiosyncratic language

(D) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level

(c) restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

(A) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus

(B) apparently inflexible adherence to specific, nonfunctional routines or rituals

(C) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)

(D) persistent preoccupation with parts of objects

b. Behavior Disorders

A. A behavior disorder is a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance:

(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; or

(f) a schizophrenic condition.

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

C. Documentation will assure that a student meets all of the following criteria:

- (a) continues to exhibit a behavior disorder consistent with the definition after interventions have been implemented;
- (b) exhibits the characteristic(s) over an extended period of time and to a marked degree; and
- (c) exhibits behavior(s) that is not primarily the result of physical, sensory, or intellectual deficits.

c. Blind and Partially Sighted

A. Blindness or partial sight is an impairment in vision that even with correction adversely affects the student's educational performance.

B. Documentation will assure that the student meets one or more of the following:

- (a) Visual acuity - A measure of 20/70 or less in the better eye with best correction recorded in either far point or near point;
- (b) Visual field limitation - Angle of vision is 20 degrees or less in the better eye; or
- (c) Progressive eye disease - A deteriorating eye condition which will result in loss of visual efficiency (e. g., glaucoma, retinitis pigmentosa or macular degeneration) as verified by a licensed optometrist or ophthalmologist.

d. Deaf-Blind

A. Deaf-blindness is concomitant hearing and visual impairments the combination of which cause such severe communication and other developmental and educational problems that these impairments cannot be accommodated by special education services solely for the deaf or hard of hearing, or for the blind or partially sighted student.

B. Documentation will assure that a student meets all of the following:

- (a) the eligibility criteria for deaf and hard of hearing; and
- (b) the eligibility criteria for blind and partially sighted.

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e. Deaf and Hard of Hearing

A. Deafness and other hearing impairments are auditory acuity deficits that delay or inhibit the development of speech and/or language skills and adversely affect developmental and educational performance.

(a) A hearing impairment is a deficit in hearing, whether permanent or fluctuating, that adversely affects the student's educational performance but that is not included under the deafness in this section.

(b) Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, to the extent that specially designed instruction is required.

B. Documentation of one or all of the following:

(a) a hearing loss; and/or

(b) auditory pathology impairments resulting in one of the impairments defined above.

f. Gifted

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

B. For gifted students, grades one (1) through eight (8) documentation that a student meets both of the following:

(a) Intellectual Ability

(A) General intellectual ability, 2.0 or more standard deviations above the mean on a full scale comprehensive test of intellectual ability, with consideration of 1.0 standard error of measurement, or

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

(b) Achievement/Performance

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

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(B) At least one area of classroom performance, as determined during the multidisciplinary evaluation, indicating that the student requires specially designed instruction.

C. For exceptional gifted, grades 9 through 12, documentation that a student meets all of the following:

- (a) the eligibility criteria for gifted; and
- (b) the eligibility criteria for one or more of the disabilities as defined in this section, and/or
- (c) the definition for economically disadvantaged in the Glossary of these regulations, and/or
- (d) underachieving which takes into consideration the student's ability level, educational performance and achievement levels, and/or
- (e) psychological adjustment disordered as documented by a comprehensive psychological evaluation.

D. Special Considerations:

(a) When a student is being considered for eligibility based upon an ability score that falls within the minus range of a 1.0 standard error of measurement, at 2.0 standard deviations above the mean, the EC must document that the student has the potential to achieve or perform at a level expected of a student scoring 2.0 standard deviations above the mean:

(b) Before the end of the eighth grade year, the EC shall review the evaluation data for each identified gifted student to determine continued eligibility as an exceptional gifted student in grades 9 - 12. The records for each eighth grade student are then referred to the IEP Committee.

(c) The IEP Committee will review all the records of each identified eighth grade gifted student and write a four year plan that includes honors/advanced education, when appropriate. The implementation of this plan is required.

(d) If the eighth grade student has been determined eligible as an exceptional gifted student, the IEP is revised and the student continues in grades 9 - 12 as a special education student.

(e) If the student is not eligible as an exceptional gifted student, the four year plan is the individualized plan that is implemented and reviewed annually by the school, parent and student. The student is considered a general education student with a required individualized plan.

g. Mentally Impaired

(The following definition and eligibility criteria remain effective until June 30, 1996.)

A. Mental impairments are evidenced by significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior and manifested during the developmental period.

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

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

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

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

B. Documentation will assure that a mildly mentally impaired student meets all of the following criteria:

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

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

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

(d) educational performance is adversely affected.

C. Documentation will assure that a moderately mentally impaired student meets all of the following criteria:

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

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

(c) educational performance is adversely affected.

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(d) documentation will assure that a severely mentally impaired student meets all of the following criteria:

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

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

(C) educational performance is adversely affected.

(e) Documentation will assure that a profoundly mentally impaired student meets all of the following criteria:

(A) developmental functioning at or below 25% of the normal rate or level of development in two (2) or more of the areas of 1) cognition, 2) sensorimotor development, 3) communication, 4) social/emotional functioning and 5) self-help skills; and

(B) educational performance is adversely affected.

(The following definition and eligibility criteria will become effective until July 1, 1996.)

a. Mental impairments are substantial limitations in present functioning characterized by significantly subaverage intellectual functioning existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental impairments manifest before age 18.

b. Documentation that the student meets all of the following:

- 1) general intellectual functioning level is approximately 70 to 75 or below on scales with a mean of 100 and standard deviation of 15;
- 2) related limitations in two or more adaptive skill areas substantially below the average level of functioning; and
- 3) age of onset is 18 or below

h. Orthopedically Impaired

A. Orthopedic impairments are severe physical conditions which adversely affect the student's educational performance. The term includes: disabilities caused by congenital anomaly (e.g., spina bifida, congenital amputation, and osteogenesis imperfecta), disabilities caused by disease (e.g., osseomyelitis, poliomyelitis, arthritis), and disabilities from other causes (e.g., amputation, cerebral palsy, dystrophies and atrophies, and conditions which cause contracture).

B. Documentation of both of the following:  
(a) a physical disability as diagnosed and described by a licensed physician; and  
(b) the existence of learning and/or behavior problems as a result of the physical disability or health condition.

i. Other Health Impaired

A. Other health impairments are disabilities of limited strength, vitality, or alertness due to chronic or acute health problems such as heart condition, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, cancer or diabetes that adversely affect the student's educational performance.

B. Documentation of both of the following:  
(a) a chronic or acute medical or health condition as diagnosed and described by a licensed physician; and  
(b) learning and/or behavior problems existing as a result of the medical or health condition.

j. Preschool Special Needs

A. Preschool special needs are developmental delays in two (2) or more of the following areas: cognition, fine motor, gross motor, communication, social/emotional/affective development, self-help or one or more of the disabilities as defined in this section, except specific learning disabilities, are manifested in children ages 3-5.

B. Documentation of the following:  
(a) is functioning at, or lower than, 75% of the normal rate of development in two (2) or more of the following areas: cognition, fine motor, gross motor, communication, social/emotional/affective development, self-help skills, or  
(b) meets eligibility criteria for one or more of the disabilities as defined in this section, except specific learning disabilities.

C. Special Considerations:

(a) Special education and related services for the eligible preschool child shall be provided as of the child's third birthday.  
(b) For a child transitioning from a Part H early intervention program, an interagency transition plan must be developed to assure that when a child turns three (3) years of age either an IEP or Individual Family Service Plan (IFSP) has been developed and implemented by the local educational agency.

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(c) For a child who turns three (3) in the spring/summer, continuation of IEP services by the Part H program until the beginning of the school year is permissible.

(d) If appropriate, a child who turn three (3) years old in the fall may begin Part B services under the local educational agency at the beginning of the school year preceding the third birthday.

### k. Specific Learning Disabilities

A. Specific learning disabilities are a heterogenous group of disorders manifested by significant deficits in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities. Specific learning disabilities are intrinsic to the individual and may be present across the life span. Although specific learning disabilities may occur with other disabilities (for example, sensory impairments or behavior disorders), or with extrinsic influences (such as cultural differences, insufficient or inappropriate instruction), specific learning disabilities are not the result of these disabilities or influences. Deficits in attention, self-regulatory behaviors, social perception, and social interaction may also exist but do not by themselves constitute a specific learning disability.

#### B. Documentation of all of the following:

(a) General intellectual functioning at or above one standard deviation below the mean, in consideration of 1.0 standard error of measurement;

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

(A) The discrepancy shall be determined by a comparison of age-based standard scores of ability and achievement. A regression formula shall be used to determine the severity of the discrepancy. A severe discrepancy is defined as a minimum of 1.75 standard deviations difference, taking regression and 1.0 standard error of measurement into account.

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

(C) A severe discrepancy between ability and achievement that is NOT primarily the result of:

1. a sensory or motor disability,
2. a mental impairment,
3. a behavior disorder,

4. environmental or cultural differences or economic disadvantage as determined by comparing the student to other students in a similar situation (e. g., the same geographical area, similar socio-economic status, etc.); or

5. insufficient or inappropriate instruction.

C. Special Considerations:

(a) When a student is suspected of being learning disabled, the multidisciplinary evaluation team must also complete a team report that includes:

(b) whether a student has a specific learning disability;

(A) the basis for making the determination;

(B) the relevant behavior noted during the

classroom observation of the student;

(C) the relationship of that behavior to the student's

academic functioning;

(D) the educationally relevant medical findings, if

any;

(E) whether there is a severe discrepancy between

achievement and ability which is not correctable without special education and related services;

(F) determination concerning the effects of

environmental or cultural difference or economic disadvantage;

(G) written certification by each team member as to

whether the report reflects her or his conclusions. If the report does not reflect her or his conclusions, the team member must submit a separate statement presenting those conclusions.

(c) The EC, on the basis of all evaluation data, may determine that a student is eligible for special education services when a valid determination of general intellectual functioning and/or a severe discrepancy cannot be obtained due to special considerations. The specific information regarding the criterion in question which supports the decision shall also be documented on the Specific Learning Disabilities Team Report.

1. Speech/Language Impairments

A. A speech/language impairment is a communication disorder such as stuttering (fluency), a language impairment, impaired articulation, or voice disorder that adversely affects a student's educational performance.

B. Documentation will assure that a student exhibits one or more of the following communication disorders:

(a) Language - A student exhibits a language disorder

when:

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(A) language abilities are significantly below expected language performance for the students' chronological age, cognitive stage of development, gender or cultural/social background; and

(B) a language quotient (LQ) of 77 or less and/or at least 1.5 standard deviation (SD) below the mean, or a significant discrepancy between language and nonverbal reasoning.

(b) Articulation - A student exhibits an articulation disorder when:

(A) reduced intelligibility due to speech sound errors are below the expected performance levels for the student's chronological age, cognitive stage of development, gender, or cultural/social background; and

(B) application of developmental norms and severity ratings from diagnostic tests verify speech sounds which may not develop without intervention.

(c) Fluency - A student exhibits a fluency disorder when:

(A) the presence of interruptions or dysfluencies in one or more speaking situations are inconsistent with normal patterns of fluency; and

(B) interpretation of evaluation data verifies the existence of a dysfluency disorder.

(d) Voice - A student exhibits a voice disorder when:

(A) disorder(s) in pitch, loudness or quality exist; and

(B) the existence or absence of a structural or functional pathology is verified by an otolaryngologist.

(C) Special Considerations:

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

(B) A student's eligibility for speech and language services cannot be determined on the basis of having a primary language other than English or a language difference. Appropriate evaluation must verify the presence of a disorder in the primary and/or all languages spoken.

(C) Eligibility of preschool children shall be based on developmental norms for communication.

m. Traumatic Brain Injury

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

B. Documentation of all of the following criteria:

(a) an injury to the brain caused by a physical force or internal occurrence has been diagnosed by a licensed physician or neuropsychologist; and

(b) the existence of cognitive, language, behavior, executive skills and/or motor problems as a result of the injury.

**§126-16-5. Individualized Education Program Process.**

5.1 Policy Statement: Each public agency shall initiate and conduct meetings for the purpose of developing, reviewing and, if appropriate, revising the Individualized Education Program (IEP) for an exceptional student at least once a year. Specific methods for conducting these activities shall be stated in each public agency's policies and procedures.

5.1.1. Individualized Education Program Committee Timelines

a. The Individualized Education Program (IEP) Committee shall be convened to develop a written IEP within thirty (30) calendar days of the determination of eligibility and prior to the initiation of services.

5.1.2. Individualized Education Program Committee Membership

a. General - The public agency shall establish an IEP Committee which shall include the following participants:

A. a representative of the public agency, other than the student's teacher, who is qualified to provide, or supervise the provision of, special education;

B. one or more of the student's current teacher (s), including the referring and, when entitled, the receiving regular education teachers;

C. the student's parent(s);

D. the student, if appropriate; and,

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

b. Initial Evaluation - For an initial evaluation, the IEP Committee shall also include:

- A. a member of the multidisciplinary evaluation team; or
- B. a representative of the public agency, the student's teacher, or some other person who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation.

c. Adolescent Transition - When considering transition services for a student with disabilities, beginning no later than age 14 (or younger, if determined appropriate), the public agency shall also invite:

- A. the student;
- B. person(s) responsible and/or knowledgeable of the vocational education program options and requirements, if the student is being considered for vocational education; and,
- C. a representative of any other agency that is likely to be responsible for providing or paying for the provision of transition services.

D. Private/Parochial Schools - When considering services for a student in a private/parochial school, the public agency shall include on the IEP Committee:

(a) a representative of the private/parochial school, if the student is enrolled in the private/parochial school and receives special education and related services from the public agency; or

(b) a representative of a private school or facility, if placement in the private school or facility for special education and related services is being considered or being utilized.

### 5.1.3. Individualized Education Program Content

a. The IEP for each student shall include:

- A. a statement of the student's present levels of educational performance which show a direct relationship to the other components of the IEP;
- B. a statement of annual goals, including short term instructional objectives, which show a direct relationship to the present levels of educational performance;
- C. a statement of the specific special education and related services to be provided to the student with projected dates for the initiation of services and the duration of the services;

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D. a statement of the extent to which the student will be able to participate in regular educational programs including a description of the modifications (supplementary aids and services) necessary to ensure the student's participation in the regular education program;

E. appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved; and,

F. a statement delineating extended school year services as specified in 5.1.4.e. of this section.

b. The IEP for a gifted student shall also include, if appropriate, acceleration and/or the effects of acceleration on the student's graduation.

c. The IEP for a blind or partially sighted student shall also include ways that the use of braille will be appropriately integrated in the student's classes and school activities, or justification for not recommending the reading and writing of braille.

d. The IEP for a student beginning no later than age 14 (or younger, if determined appropriate) shall also include:

A. a statement of the needed transition services based on the individual student's needs, taking into account the student's preferences and interests, in the following areas:

(a) instruction;  
(b) community experiences;  
(c) the development of employment and other post-school adult living objectives; and  
(d) if appropriate, acquisition of daily living skills and functional vocational evaluation.

B. if appropriate, a statement of each public agency's and each participating agency's responsibilities for linkages or both, before the student leaves the school setting; and/or

C. if the IEP Committee determines that services are not needed in one or more areas specified in A. a-d, the IEP must include a statement to that effect and the basis upon which the determination was made.

D. The IEP for a student requiring assistive technology services and/or devices shall also include a specific statement of such services, including the nature and amount of such services and provision for home use, if determined appropriate by the IEP Committee.

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5.1.4. Individualized Education Program Committee Responsibilities

a. If additional evaluation is necessary, the IEP Committee shall refer the student for additional evaluation and may continue to develop the components of the IEP for which evaluation information is available.

b. The IEP Committee shall assure that:

A. to the maximum extent appropriate exceptional students, including students in public or private institutions or other care facilities, are educated with other students who are non-exceptional;

B. the removal 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 or for gifted students, content pacing and peer group interaction with the use of curriculum and grouping modifications within the regular class cannot be achieved sufficiently; and

C. the reasons for any removal of an exceptional student from the regular educational environment are documented.

c. The student's placement shall be documented as one of the following placement options:

A. Regular Education: Full-Time--wherein the student's specially designed instruction and related services are delivered with nonexceptional individuals outside regular education classes or integrated community settings for less than 21% of the school day. This may include students placed in:

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

B. Regular Education: Part-time-- wherein the student's specially designed instruction and related services are delivered with nonexceptional individuals outside regular education classes or integrated community settings for at least 21% but no more than 60% of the school day. This may include students placed in:

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

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C. Special Education: Separate Class-- wherein the student's specially designed instruction and related services are delivered outside regular classes or integrated community settings for more than 60% of the school day. This may include students placed in:

- separate special classrooms with part-time instruction in a regular class, or
- separate special classrooms full-time on a regular school campus.

D. Special Education: Special School-- wherein the student's specially designed instruction and related services are delivered in a special school that serves only exceptional students for more than 50% of the student's ~~instructional~~ school day.

E. Special Education: Out-of-School Environment-- wherein the student's specially designed instruction and related services are temporarily delivered in a nonschool environment, such as a public library, group home or mental health center.

F. Special Education: Residential Facility --wherein the student's specially designed instruction and related services are delivered in a facility which provides twenty-four (24) hour care and supervision.

d. The IEP Committee shall assure that the educational placement of each exceptional student:

- A. is determined at least annually;
- B. is based on the student's written IEP;
- C. is in the student's home school, unless the student's IEP requires some other arrangements;
- D. is as close as possible to the student's home;
- E. is made in consideration of any potential harmful effect on the student or on the quality of services that the student needs;
- F. provides for participation with nonexceptional students in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the student; and,
- G. is appropriate to meet the individual needs of the student and not based on any of the following:

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- (a) category of exceptionality;
- (b) availability of special education placement options;
- (c) availability of educational or related services;
- (d) availability of staff;
- (e) availability of space; and
- (f) curriculum content or methods of curricular delivery.

e. The IEP Committee shall annually determine and document a student's need for extended school year services in accordance with the following:

A. Students with disabilities entitled to extended school year (ESY) services are those who require special education and related services in excess of the regular school year to maintain identified critical skills as described in the current IEP.

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

- (a) exhibits, or may exhibit, regression during an interruption in educational programming;
- (b) exhibits, or may exhibit, a limited ability to recoup, or relearn skills, once programming has resumed; and,
- (c) exhibits regression/recoupment problem(s) that interfere with the maintenance of identified critical skills as described in the current IEP.

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

D. The ESY services shall consist of activities developed to maintain skills identified on the IEP developed for the academic year.

(a) The IEP Committee shall document the duration, number of hours per week, and physical location of the special education and related services to be delivered.

(b) The type and length of the program which the student requires is determined on an individual basis by the IEP Committee.

(c) ESY services for a student with disabilities do not have to be comparable to the program previously provided during the academic year.

E. Students are not automatically excluded from consideration for ESY services because of the category of disability or the type of special education instruction that they require during the summer to receive a free appropriate public education.

F. Annually inform parents of students with disabilities of the availability of extended year programming and the procedures and criteria for determining a student's need for ESY services, and of their right to refuse extended year services.

**§126-16-6. Administration of Services.**

6.1. Policy Statement: Each public agency shall provide the special education and related services necessary to implement each student's Individualized Education Program (IEP). Specific methods for providing the services, including the accurate collection and reporting of student data, shall be stated in each public agency's policies and procedures.

6.1.1. Initiation of Services

a. A complete IEP shall be in effect prior to the provision of special education and related services.

b. Services shall be implemented as soon as possible following the completion of the IEP.

c. Short delays in the immediate initiation of services can occur when IEP Committee meetings are held during the summer or a vacation period, or when arrangements for services, such as transportation, must be made.

d. A current IEP shall be in effect at the beginning of each school year for each exceptional student receiving special education and related services.

6.1.2. Provision of Staff

a. Each public agency shall provide qualified personnel with the training and skills necessary to implement the IEP of each student assigned to them.

b. Professional special education personnel shall meet minimum certification standards for the area(s) of exceptionality(ies) in which they have primary responsibility for the provision of related and/or instructional services.

c. Service personnel shall be appropriately trained and supervised by qualified professionals.

6.1.3. Provision of Services

a. Students with exceptionalities shall be provided services in settings that serve age-appropriate nonexceptional peers.

b. Appropriate grouping of students with exceptionalities for specially designed instruction must be based upon meeting the students' similar social, functional and/or academic needs, as specified in their IEPs.

6.1.4. Caseloads

a. The maximum caseload for teachers providing special education services for students with behavior disorders, mental impairments, orthopedic impairments, and specific learning disabilities are as follows:

A. Regular Education: Full-time

Assign no more than 40 exceptional students (unduplicated) who are placed in Regular Education: Full-time to a teacher providing consultative services. A teacher providing consultative services may serve additional exceptional students (duplicated), but the maximum number served shall not exceed a total of 45 students.

B. Regular Education: Part-time

Assign no more than 30 students (unduplicated who are placed in Regular Education: Part-time to a teacher providing services. A teacher providing services can serve additional exceptional students (duplicated), but the maximum number served shall not exceed a total of 35 students. The caseload during any one instructional period for a teacher providing services shall not exceed eight (8) students at the early childhood education level (ECE) or ten (10) students at the middle childhood (MCE) and adolescent education (AE) levels.

C. Special Education: Separate Class

The caseloads for teachers providing instructional services to exceptional students who are served in regular education for 40% or less of the ~~instructional~~ school day are specified in 5.0.D.2 of this policy ~~in the program area sections in these regulations~~ for each exceptionality.

D. Caseloads for special education teachers assigned to provide a combination of consultative, supplementary and separate class services shall be determined on a percentage basis.

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

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b. The maximum caseloads for teachers providing special education services for students with autism, blind and partial sight, deafness-blindness, deafness and other hearing impairments, giftedness, other health impairments, preschool special needs, speech/language impairments, and traumatic brain injuries placed in Regular Education: Full-time or Regular Education: Part-time are as follows:

A. Autism

(a) Regular Education: Full-time - Assign no more than 20 students

(b) Regular Education: Part-time - Assign no more than ten (10) students with a limit of six (6) during any one instructional period.

(c) Special Education: Separate Class - Assign no more than four (4) students with autism. An aide shall be assigned on the basis of student needs.

B. Behavior Disorders

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

(B) Assign no more than eight (8) students with a full-time aide with a limit of eight (8) during any one instructional period.

C. Blind and Partially Sighted

(a) Regular Education: Full-time - Assign no more than 30 students.

(b) Regular Education: Part-time -Assign no more than 15 students with a limit of five (5) during any one instructional period.

(c) Special Education: Separate Class  
(A) Assign no more than five (5) students without a full-time aide with a limit of five (5) during any one instructional period.

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

D. Deaf-Blind

(a) Regular Education: Full-time - Assign no more than 20 students.

(b) Regular Education: Part-time - Assign no more than ten (10) students with a limit of five (5) during any one instructional period.

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E. Deaf and Hard of Hearing

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

F. Gifted

- (a) Regular Education: Full-time - Assign no more than 45 students.
- (b) Regular Education: Part-time
  - (A) Assign no more than 40 students.
  - (B) Assign no more than 15 students during any one instructional period.
- (c) Special Education: Separate Class - Assign no more than 15 students with a limit of 15 during any one instructional period.

G. Mentally Impaired

- (a) Special Education: Separate Class
  - (A) Assign no more than eight (8) mildly mentally impaired students without a full-time aide with a limit of eight (8) during any one instructional period.
  - (B) Assign no more than 12 mildly mentally impaired students with a full-time aide with a limit of 12 during any one instructional period.
  - (C) Assign no more than five (5) moderately mentally impaired students without a full-time aide with a limit of five (5) during any one instructional period.
  - (D) Assign no more than 12 moderately mentally impaired students with a full-time aide with a limit of 12 during any one instructional period.
  - (E) Assign no more than six (6) mildly or moderately mentally impaired students to a combination program without a full-time aide with a limit of six (6) during any one instructional period.

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

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

(H) Assign no more than nine (9) severely mentally impaired students with two full-time aides with a limit of nine (9) during any one instructional period.

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

(J) Assign no more than nine (9) profoundly mentally impaired students with two full-time aides with a limit of nine (9) during any one instructional period.

(b) Instructional Assistance - In a severely or profoundly mentally impaired separate class of three (3) or less students, an aide shall be assigned on the basis of student needs.

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

H. Orthopedically Impaired

(a) Special Education: Separate Class

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

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

I. Other Health Impaired

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

J. Preschool Special Needs

(a) Time Allocations - Special education and related services for eligible preschool special needs children shall be provided on a regular basis as follows:

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(A) Family Consultation - a minimum of one hour per week which includes direct instruction with the child and family and/or consultative services with the family.

(B) Center -Based Programs (REFT, REPT, Separate Class) - a minimum of twelve (12) hours per week as follows:

1. Regular Education: Full-time - Regular instruction in community based and/or regular education program(s) occurs with consultation/implementation of modifications to the regular program provided by special education personnel in accordance with the child's IEP.

2. Regular Education: Part-time - Regular instruction in community based and/or regular education program(s) occurs 40% or more of the child's total instructional time with supplemental services provided by special education personnel in accordance with the child's.

3. Special Education Program: Separate Class - Special education and related services are provided by special education personnel in accordance with the child's IEP for 60% or more of the child's total instructional time.

(C) Combination Center-Based/Family Consultation Program - a minimum of twelve (12) hours per week separate class instruction with time allocations for family consultation services as determined by the IEP Committee.

(b) Caseloads

(A) Family Consultation - Assign no more than 15 children.

Assign no more than 20 children.

Assign no more than 15 children.

(A) Family Consultation - Assign no more

(B) Center-Based Programs

1. Regular Education: Full-time -

2. Regular Education: Part-time -

3. Special Education Program: Separate Class

- Assign no more than eight (8) eligible children per session with an aide for a maximum caseload of sixteen (16).

- Assign no more than ten (10) eligible children per session with two (2) aides for a maximum caseload of twenty (20).

(C) Combination Center-Based/Family Consultation Program

1. Assign no more than eight (8) children per session with an aide for a maximum caseload of sixteen (16).

2. Assign no more than ten (10) children per session with two (2) aides for a maximum caseload of twenty (20).

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K. Specific Learning Disabilities

- (a) Special Education: Separate Class
  - (A) Assign no more than eight (8) students without a full-time aide with a limit of eight (8) during any one instructional period.
  - (B) Assign no more than 12 students with a full-time aide with a limit of 12 during any one instructional period.

L. Speech/Language Impairments

- (a) Regular Education: Full-time - Assign no more than 50 students without an aide.
- (b) Regular Education: Part-time -
  - (A) Assign no more than 50 students for those receiving services less than five hours per week with a limit of five (5) during a session.
  - (B) The caseload during any one instructional period for a therapist providing supplementary services shall not exceed eight (8) students at early childhood education level (ECE) or ten (10) students at the middle childhood (MCE) and adolescent education (AE) levels.
- (c) Special Education: Separate Class
  - (A) Assign no more than ten (10) students without an aide with a limit of ten (10) during any one instructional period.
  - (B) Assign no more than 12 students with a full-time aide with a limit of 12 during any one instructional period.

(Special Education: Separate Class is a program delivery option for severely or multiply communicatively impaired students and those who exhibit normal potential in performance areas but severe language deficits. Application shall be made to the State Department of Education for approval of individual programs.)

M. Traumatic Brain Injuries

Students identified as having traumatic brain injuries shall be assigned to and served by personnel who have the training necessary to implement the students' IEPs.

6.1.5. Other Schooling

a. Out-of-State Placement

A. Prior to placing a student in a private school or facility outside of West Virginia, the public agency shall document:

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

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

(c) the selected private school or facility has approved status in the state in which it is located, and assurances were provided that the school or facility meets the requirements of the IDEA, as amended;

(d) a current and complete IEP has been developed;

(e) a current signed contract between the public agency and the private school or facility exists; and

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

b. Private /Parochial School or Facility Placement

A. Before a public agency places a student with a disability in, or refers a student to, a private school or facility the public agency shall:

(a) initiate and conduct a meeting to develop an IEP for the student; and

(b) ensure that a representative of the private school or facility attends the meeting; or

(c) use other methods to ensure participation by the private school or facility, including individual or conference telephone call if the representative cannot attend.

B. If a student with a disability is enrolled in a parochial or other private school and receives special education and related services from a public agency, the public agency shall:

(a) initiate and conduct meetings to develop, review, and revise an IEP for the student; and

(b) ensure that a representative of the parochial or other private school attends the meeting; or

(c) use other methods to ensure participation by the private school, including individual or conference telephone calls if the representative cannot attend.

C. Even if a private school or facility implements a student's IEP, responsibility for compliance with Part B of the IDEA remains with the public agency and the state education agency.

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c. Home/Hospital Instruction

A. Home/hospital instruction shall be provided to exceptional students who, due to injury, noncommunicable illness or a health condition, are unable to attend school for more than three (3) weeks, cumulatively as diagnosed and confirmed by a licensed physician.

B. The public agency shall obtain from a licensed physician a written statement indicating:

(1) the reasons why the student must remain at home or in the hospital, and

(2) the condition under which the student can return to school with the expected date of such return.

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

D. Home/hospital instruction is an extension of the IEP.

E. The schedule of instruction shall be established by the teacher, the parent(s) and, when appropriate, a public agency representative.

F. For exceptional students placed on extended home instruction, the public agency shall obtain a licensed physician's statement of need for continued home/hospital instruction when the term of such instruction reaches six (6) months in length.

**§126-16-7. Discipline.**

7.1 Policy Statement: Each public agency shall: 1) protect the rights of an eligible student with a disability whenever suspension from school is considered as disciplinary action; 2) design and/or use nonaversive behavioral strategies; and 3) provide instruction/interventions to assist the student to function as independently as possible in integrated settings. Specific methods for implementing these requirements shall be stated in each public agency's policies and procedures.

(The following provisions apply if a student is classified as disabled under these regulations prior to performing the actions giving rise to this section.)

7.1.1. Temporary Removal

a. A student with a disability may be temporarily removed or suspended from school, ~~despite a causal relationship between the student's disability and the misconduct, for his or her own protection, the protection of school personnel, or the protection of other pupils~~ regardless of whether or not the misconduct is the proximate result of the disability of a student.

b. ~~Temporary removal or suspension may be administered for up to three (3) (10) ten consecutive school days or ten cumulative school days per year. for each occurrence of misconduct or when it is necessary for the protection of the student, the protection of school personnel, or the protection of other students.~~

7.1.2. Suspension/Expulsion

~~a. A student with a disability may be temporarily removed, suspended or expelled for a period in excess of three consecutive school days or ten cumulative school days; only when such student has committed an act involving the possession of a firearm.~~

~~b. When a firearm is involved an IEP Committee must be convened to determine the alternative educational setting for a period of not more than forty-five school days. If the parent contests the change in placement, the "stay put" process of IDEA is waived and the student remains in the alternative setting for up to forty-five (45) school days.~~

~~c. Prior to or during the forty-five school days, an IEP Committee must convene to determine if there is a causal relationship between the student's disability and the possession of a firearm. If a causal relationship does not exist, then the student may be expelled for twelve (12) consecutive months.~~

~~d. Special education and related services must be provided during the expulsion.~~

a. If an expulsion is being considered as a disciplinary action for serious misconduct, upon the expiration of the period of suspension described in Section A above, an IEP Committee must determine whether or not the misconduct is a proximate result of the disability of the student

A. If the misconduct is found to be the proximate result of the disability of the student, the student with a disability may not be suspended from school for more than ten (10) consecutive school days or expelled from school.

(a) An IEP Committee must determine whether the student is receiving appropriate instructional and related services in the current placement.

(b) Professional educators may use the following procedures to address the student's misconduct:

(A) Provide conflict management and behavior management strategies consistent with the student's IEP;

(B) Initiate student and teacher training consistent with the student's IEP;

(C) Request an IEP Committee meeting to be held within twenty-one days, to review the IEP and consider a change in the student's placement.

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(D) Seek a court order to remove the student from school if it is believed that maintaining the student in the current educational placement is substantially likely to cause injury to the student or others.

b. If the behavior giving rise to the misconduct is found not to be the proximate result of the disability of the student, a student with a disability may be expelled from school for more than the ten (10) consecutive school days suspension period and the procedures for suspension/expulsion of regular education students must be followed.

B. When a firearm is involved, an IEP Committee must be convened to determine the alternative educational setting for a period of not more than forty-five(45) calendar days. If the parent requests a due process hearing to contest the placement, the student shall remain in the alternative education setting during the pendency of the proceeding, unless the parents and the county board agree otherwise.

C. Special education and related services must be provided if the suspension/expulsion exceeds ten (10) consecutive school days.

**§126-16-8. Procedural Safeguards.**

8.1. Policy Statement: Each public agency shall protect the rights of each exceptional student and her or his parents, with respect to the provision of a free appropriate public education. Specific methods for addressing these requirements shall be stated in each agency's policies and procedures.

8.1.1. Prior Notice; Content of Notice.

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

A. proposes to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student; or

B. refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student.

b. 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 public agency considered and the reasons why those options were rejected;

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

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

c. 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.

d. 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 the parent's native language or other mode of communication;

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

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

#### 8.1.2. Parental Consent

a. Parental consent must be obtained before:

A. conducting a preplacement evaluation; and

B. initial placement of an exceptional student in a program providing special education and related services.

b. Except for preplacement evaluation and initial placement, consent shall not be required as a condition of any benefit to the parent or student.

c. 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 public agency, the public agency may evaluate or initially provide special education and related services subject to the parent's rights to appeal the hearing decision through civil action

#### 8.1.3. Surrogate Parents

a. Each public agency shall assure that the rights of a student are protected when:

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parent; or

- A. no parent can be identified;
- B. the public agency cannot determine the whereabouts of a
- C. the student is a ward of the state under the West Virginia Statutes.

b. The duty of a public agency includes the assignment of an individual to act as a surrogate for the student.

c. Public agencies shall assure that a person selected as a surrogate has no interest that conflicts with the interests of the student represented and has knowledge and skills that assure adequate representation of the student.

d. 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 public agency solely because he or she is paid by the public agency to serve as a surrogate parent.

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

- A. the identification, evaluation and educational placement of the student; and,
- B. the provision of a free appropriate public education to the student through the development and implementation of the IEP.

8.1.4. Parental Participation - To assure parental participation in the special education process, the public agency shall:

a. provide written notification to the student's parent(s) of the EC meeting and afford the parents the opportunity to participate in the meeting. The written notice must include the purpose, time and location of the meeting, and a full explanation of all the procedural safeguards available to the parents;

b. provide written notification to the student's parent(s) of the IEP 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 and are afforded the opportunity to participate, including:

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

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

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

C. If a purpose of the meeting is also the consideration of adolescent transition services for the student, the written notice must also:

(a) indicate this purpose;  
(b) indicate that the agency will invite the student; and,  
(c) identify any other agency that will be invited to send a representative.

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

d. conduct the IEP 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 insure parent participation, including individual or conference telephone calls.

B. A meeting may be conducted without a parent in attendance if the public 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:

(a) detailed records of telephone calls made or attempted and the results of those calls;  
(b) copies of correspondence sent to the parents and any responses received; and/or  
(c) detailed records of visits made with the parents and the results of those visits.

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

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f. obtain written parental consent for initial placement in special education or implement the due process hearing procedures to obtain consent; and

g. provide the parent a copy of the IEP, upon request.

### 8.1.5. Evaluation

a. Implement the following procedures to protect each student in the selection, administration and interpretation of evaluation procedures and instruments:

A. select and administer testing and evaluation materials and procedures so as not to be racially or culturally discriminatory;

B. administer evaluations in the student's native language or other mode of communication unless it clearly is not feasible to do so;

C. use formal evaluation instruments/procedures for the specific purpose for which they have been validated;

D. use no single procedure as the sole criterion for determining an appropriate educational program for a student;

E. administer the tests and other evaluation materials in conformance with the instructions provided by their publisher;

F. include tests and other evaluation materials tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

G. select and administer tests and other materials so as to assure that when a test is administered to a student with impaired sensory, manual or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual or speaking skills except where those skills are the factors which the test purports to measure.

b. Conduct a full and individual evaluation of a student's educational needs according to 8.1.5.a.A-G (above) prior to any action regarding initial placement of an exceptional student in a special education program.

### 8.1.6. Independent Education Evaluation

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

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

c. If the parent obtains an independent educational evaluation at private expense the results of the evaluation:

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.

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

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

### 8.1.7. Agency Responsibilities for Transition Services

a. If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

b. If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

c. If a participating agency fails to provide agreed upon transition services contained in the IEP, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

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d. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

8.1.8. Opportunity to Examine Records -

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

A. the identification, evaluation and educational placement of the student; and

B. the provision of a free appropriate public education to the student through the development and implementation of an IEP.

b. The public agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation or educational placement of the student, or the provision of FAPE to the student, and in no case more than 45 calendar days after the request has been made.

c. The public agency shall inform parents when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student. The information must be destroyed at the request of the parents. However, a permanent record of a 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 limitations.

8.1.9. Impartial Due Process Hearings

a. A parent or a public agency may initiate a hearing relevant to the proposal or refusal to initiate or change the identification, evaluation or educational placement of the student or the provision of a free appropriate public education by submitting a written request for a due process hearing to the West Virginia Department of Education and/or the superintendent of the public agency.

b. Public agencies shall:

A. provide information to parents relevant to submitting written requests for due process hearings; or

B. forward any written requests received for due process hearings to the West Virginia Department of Education within five (5) days of the date of receipt.

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c. A hearing officer may grant specific extensions of time beyond the timelines at the request of either party or on stipulations made by the parties.

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

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

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

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

h. 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.

i. 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;

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

E. obtain written findings of fact and decisions.

j. 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.

k. The public agency shall inform parents that attorney's fees may be awarded to parents of students with disabilities to cover attorneys' fees and related costs when the parent of a student with disability is the prevailing party, subject to certain constraints, and that such attorney's fees may be agreed to by the parties or awarded by a court.

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

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

n. Student Status During Proceedings:

A. During the pendency of any administrative or judicial proceedings, unless the public agency and the parents of the student agree otherwise, the student must remain in the student's present educational placement.

B. If the issue subject to any administrative or judicial proceeding 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.

**§126-16-9. Accountability.**

9.1 Policy Statement: Each public agency shall implement federal and state laws, regulations and policies that affect the provision of quality educational opportunities. The State Board of Education promulgates regulations to implement this policy and commits the Department of Education to work with public agencies to provide educational services that are student focused, successful and accountable.

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### 9.1.1. Responsibilities of the West Virginia Board of Education

a. 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.

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

- A. establish regulations pertaining to the education of all eligible exceptional students in the state;
- B. establish standards pertaining to the education of all eligible students in the state;
- C. establish regulations to protect student and parent rights as they pertain to the education of all eligible exceptional students in the state;
- D. assure that eligible exceptional students in the state, including individuals in residential institutions and private schools, receive an education in accordance with state and federal laws;
- E. establish certification requirements for personnel providing educational services to eligible exceptional students;
- F. approve allocations and disburse state and federal funds designated for the education of eligible exceptional students; and
- G. administer education programs, including programs providing special education and related services for exceptional students, in the state's correctional institutions in accordance with applicable state and federal laws and regulations.

### 9.1.2. Responsibilities of the West Virginia Department of Education.

a. The department has a primary leadership role in developing quality educational services for eligible exceptional students in the state, providing guidance in the implementation of State Board of Education policies and regulations governing the education of eligible exceptional students, and providing direction and assistance for special education in the state.

b. It is the responsibility of the department to:

- A. assist local educational 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;
- B. serve as the advocate for special education in state government;
- C. work closely with, and provide staff support to, the West Virginia Advisory Council for the Education of Exceptional Children;

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- D. perform statewide planning for educational services for eligible exceptional students;
- E. develop, provide and participate in programs for the training of educational personnel;
- F. disseminate information concerning educational services for exceptional students to interested agencies, organizations and individuals;
- G. serve as liaison with other state and regional agencies, parent and professional organizations, and private agencies serving exceptional students;
- H. serve as liaison with colleges and universities preparing personnel to work with exceptional students;
- I. serve as liaison with federal projects and national agencies which provide services for exceptional students;
- J. inform local educational agencies, parents and other agencies of the content and implications of regulations and state and federal laws pertaining to the education of eligible exceptional students;
- K. review and/or revise the State Plan for special education, as required by the U.S. Department of Education;
- L. 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;
- M. monitor the implementation of 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;
- N. administer a process for investigating and resolving complaints;
- O. initiate enforcement procedures in accordance with the State Plan, when determined that a public agency has violated these regulations;
- P. review public agency special education plans and recommend action to the State Superintendent of Schools;
- Q. administer the Individuals with Disabilities Education Act funds and monitor programs funded from these monies;
- R. maintain reports and summary information on special education in the state;
- S. compile and disseminate decisions, opinions and interpretations of the state and federal laws pertaining to education of exceptional students;
- T. review and recommend action on certification requests of special education teachers and other agency personnel serving eligible exceptional students;
- U. provide direct educational services, including special education and related services for exceptional students, in the state's correctional institutions in accordance with written procedures developed to implement applicable state and federal laws and regulations; and

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V. administer the due process hearing system which shall:

(a) provide assistance in alternative means for submitting due process hearing requests in instances where parents are unable to submit written requests;

(b) maintain a list of attorneys trained to serve as hearing officers. The listing shall include a statement of the qualifications of each person. This information shall be provided to each public agency and to any party who requests the information in writing;

(c) inform parents, if the parent initiates a due process hearing or if the parent requests the information, of any free or low-cost legal and other relevant services available in the area and that new federal legislation allows for the award of attorneys' fees to parents of students with disabilities to cover attorneys' fees and related costs when the parent of a student with a disability is the prevailing party in a due process hearing, subject to certain constraints, and that such attorney's fees may be agreed to by the parties or awarded by a court;

(d) assure that not later than 45 days after the department receives a written request for a due process hearing:

(A) a final decision is reached in the hearing; and

(B) a copy of the decision is mailed to each of the parties.

(e) transmit findings and decisions from due process hearings, after deleting any personally identifiable information, to the West Virginia Advisory Council for the Education of Exceptional Children and make those findings and decisions available to the public;

(f) provide impartial due process hearing officers who:

(A) meet the following criteria:

1. a law degree,
2. admission to the West Virginia Bar,
3. demonstrated competencies in due

process, special education law, effective writing and speaking, decision-making, and related areas, as evidenced through application, interview and competency-based training.

(B) shall not be:

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

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

3. a school board official; or

4. a lawyer who represent boards of education or parents in actions against boards of education.

(C) shall be ineligible to begin hearing officer training or to serve as hearing officers during the pendency of any action in which they are involved and for one year following the conclusion of said representation;

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(D) 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.

(E) upon receipt of a written request for a due process hearing, select a hearing officer by:

1. using a programmed selection process based upon rotation to select the hearing officer from the roster of qualified hearing officers;
2. making an initial determination whether the selected hearing officer has a personal or professional interest which would conflict with objectivity in the hearing;
3. selecting a new hearing officer if a conflict is determined; and
4. allowing either party to submit a challenge for cause to remove a biased hearing officer. Should a challenge for cause be filed, the state superintendent shall investigate the challenge and determine if cause for removal exists. The decision by the superintendent shall be final and not subject to appeal.

9.1.3. Responsibilities of Local Educational Agencies.

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

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

c. Each public agency must provide special education and related services to a child with a disability in accordance with an individualized education program. However, Part B of the IDEA does not require any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives. These regulations do not relieve agencies and teachers from making good faith efforts to assist the student in achieving the goals and objectives listed in the IEP, or limit the parents' right to complain and ask for revisions in the student's program, or to invoke due process procedures, if a parent feels these efforts are not being made.

d. It is the responsibility of each public agency to:

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

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

C. conduct referral, evaluation, IEP development and placement activities within the timelines specified in these regulation

D. conduct sweep screening in accordance with WV Code §18-5-17;

E. provide the special equipment, materials and supplies required to implement these regulations and provide the services specified in students' IEP;

F. provide the assistive technology devices or assistive technology services or both, if specified in students' IEPs as a part of the students' special education, related services or supplementary aids and services;

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

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

I. provide specially designed vocational education, as needed;

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

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

L. ~~provide~~ make available special education and related services to meet the needs of private school children with disabilities in the jurisdiction of the agency;

M. make available a continuum of alternative placements to meet the needs of students with exceptionalities for special education and related services. The continuum must include instruction in regular classes, special classes, special schools, the home, hospitals and institutions, and make provisions for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;

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

O. provide eligible exceptional students an instructional day and school calendar at least equivalent to that established for nonexceptional students of the same chronological age in the same setting;

P. provide classrooms to eligible school age exceptional students in close proximity to classrooms for age appropriate nonexceptional peers.

Q. provide services for eligible exceptional students in school and/or community settings that serve age appropriate nonexceptional peers;

R. provide classrooms for eligible exceptional students that are adequate, and that are comparable to the classrooms for nonexceptional students;

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

T. provide transportation, specially designed if necessary, for all students with exceptionalities in accordance with West Virginia Code 18-5-13 and State Board of Education policies governing transportation;

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

V. collect, maintain and disclose personally identifiable student data in accordance with state and federal confidentiality requirements;

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

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

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

Z. establish policies and procedures which include a practical method for determining which children are receiving needed special education and related services and which children are not currently receiving special education and related services.

### **§126-16-10. Glossary.**

10.1. Acceleration - Progressive movement along a sequential, hierarchical, academic continuum (instructional goals and objectives) at a faster rate than the norm. Acceleration includes, but is not limited to: compacted classes/schedules, testing out, advanced placement (if college credit is earned), fast-paced curriculum and high school credit for college classes.

10.2. Adaptive P.E. - regular physical education which has been modified, or adapted, so that a student with a disability can participate in the regular physical education program. Modifications may include, but are not limited to, curricular adaptations and/or modified or specialized equipment.

10.3. Adaptive Skills - those skills necessary to function adequately within a person's present environment. These skill areas are: communication, self-care, homeliving, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

10.4. Adolescent Education - the educational program that addresses the intellectual, physical, social/emotional and transition needs of learners aged 14 through 21 for special education across all programs and areas of study in grades 9-12.

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10.5. Adult Education - the educational program that addresses the intellectual, physical, social/emotional and occupational needs of persons 16 years old and older who presently are not enrolled in a public school.

10.6. Adversely Affects - interferes with the student's educational performance to the extent that the student is unable to achieve in the regular education program within the range of functioning of the student's nonexceptional chronological age peers.

10.7. Age-Appropriate - the term applies to peers of similar chronological ages or settings in which nonexceptional peers of similar chronological ages are served.

10.8. Annual Goal - a comprehensive statement developed from the present levels of performance that describes components crucial to the mastery of knowledge, skills, attitudes and behaviors for the individual student and indicates the direction of desired change. The annual goal describes what an exceptional student can be reasonably expected to accomplish within a twelve month period in the student's special education program.

10.9. Assistive Technology Device - any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of students with disabilities.

10.10. Assistive Technology Service - any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: a) the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment; b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities; c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing of assistive technology devices; d) coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; e) training or technical assistance for a student with a disability, or if appropriate, that student's family; and f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

10.11. Caseload - the maximum number of students for whom a special education teacher has primary responsibility for the provision of special education consultative and/or direct instructional services.

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10.12. Communication - includes the ability to comprehend and express information through symbolic behaviors (e.g., facial expression, body movement, touch, gesture). Specific examples include the ability to comprehend and/or receive a request, an emotion, a greeting, a comment, a protest, or rejection. Higher level skills of communication (e.g., writing a letter) would also relate to functional academics.

10.13. Community-Settings - community environment(s) in which the student will be expected to use/apply the skills or behaviors that are being learned.

10.14. Community Use - refers to the appropriate use of community resources. This includes traveling in the community, shopping for groceries and other items, purchasing or obtaining services from community businesses (e.g., gas stations, repair shops, doctor's offices), attending places of worship, using public transportation, and using public facilities (e.g., schools, parks, libraries, recreational centers, streets, sidewalks, theaters). Related skills include appropriate behavior in the community, indicating choices and needs, social interaction, and the application of functional academics.

10.15. 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.

10.16. Consent - a) the "parent" has been fully informed of information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; b) the "parent" understands and agrees in writing to the carrying out of the activity for which her or his consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and c) the "parent" understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

10.17. Consultative Services - assistance provided to a student's teacher(s) or other service providers for the benefit of an eligible exceptional student. Consultative services include, but are not limited to, selecting/designing/modifying materials, instructional strategies, management plans and evaluation procedures, and monitoring/evaluating student progress on short-term instructional objectives.

10.18. Continuum of Alternative Placements - a range of settings in which eligible exceptional students receive special education and related services.

10.19. Critical Skills - the cognitive, physical, communication, and/or social/emotional abilities needed for the student to maintain current levels of performance.

10.20. Deadly Weapon - An instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "deadly weapon" shall include, but not be limited to the instruments defined in subdivisions (1) through (8) of section two, article seven, chapter sixty-one [§61-7-2] of the West Virginia Code, or other deadly weapons of this kind or character which may be easily concealed on or about the person.

~~10.2021.~~ Destruction - physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

~~10.2122.~~ Direct Services - instruction, therapy or interventions provided one-on-one or in groups to an eligible exceptional student in school, home or community settings.

~~10.2223.~~ Due Process - a system that guarantees each individual equal protection and treatment under the 14th Amendment of the Constitution.

~~10.2324.~~ Early Childhood Education - the educational program that addresses the intellectual, physical, and social/emotional needs of learners age three through ten, across all programs and areas of study in grades PreK-4.

~~10.2425.~~ 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/guardians of the participant are unemployed; participant, or parent of the participant, is recipient of public assistance; or participant is institutionalized or under state guardianship.

~~10.2526.~~ 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.

~~10.2627.~~ Educational Performance - a student's functioning (or performance) relative to age/grade performance in programs of study, basic communication skills, social interaction and emotional development within the school and/or community environments.

~~10.2728.~~ 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) autistic, behavior disordered, blind and partially sighted, speech/language disordered, deaf-blind, deaf and hard of hearing, gifted, exceptional gifted (grades 9-12) mentally impaired, orthopedically impaired, other health impaired, preschool special needs, specific learning disabled, traumatically brain injured, and b) in need of special education.

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10.2829. Eligible Students with Disabilities - those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained within this document have been determined to be: a) autistic, behavior disordered, blind and partially sighted, speech/language disordered, deaf-blind, deaf and hard of hearing, mentally impaired, orthopedically impaired, other health impaired, preschool special needs, specific learning disabled, traumatically brain injured, and b) in need of special education.

10.29 30. Evaluation - procedures used in accordance with the protection in evaluation requirements of the Individuals with Disabilities Education Act (IDEA) to determine whether a student is exceptional and the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

10.3031. Executive Skills - those functions which enable a person to plan, sequence and self-monitor multi-step activities and engage in organized, purposeful behavior.

10.3132. Extended School Year Services - special education and related services needed to maintain identified critical skills as described on the current IEP and which are provided in excess of the regular school year for a student with disabilities.

10.33. Firearm - Any weapon which will expel a projectile by action of an explosion..

~~10.32. Four Year Plan - a written plan developed prior to the end of the student's eighth grade year, that describes the student's projected adolescent education program. The Four Year Plan for an exceptional student must include the type of diploma the student may receive, the list of courses (including honors/advanced education) per grade level, anticipated credits to be earned, educational goals and objectives that will enable the student to access appropriate adult services or employment, and must be developed by the IEP Committee.~~

10.3334. Free Appropriate Public Education - 1) special education and related services which a) are provided at public expense, under public supervision and direction, and without charge to the parent, b) meet the provision of these regulations, and c) are provided in conformity with an Individualized Education Program; and 2) the opportunity for eligible exceptional students to participate in all educational programs of study, services and extracurricular activities.

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10.3435. Functional Academics - functional academics refer to cognitive abilities and skills related to learning at school. Writing, reading, basic practical math concepts, basic science as it relates to the awareness of the physical environment and one's health and sexuality, geography, and social studies are included. The focus is not on grade-level academic achievement but on the acquisition of academic skills that are functional in terms of independent living.

10.3536. General Intellectual Functioning - acquired learning and learning potential as measured by a systematic evaluation with one or more of the individually administered general intelligence tests or procedures.

10.3637. Health and Safety - maintaining one's own well being; appropriate diet; illness identification, treatment, and prevention; basic first aid; sexuality; physical fitness; basic safety (e.g., following rules and laws, using seat belts, crossing streets, interacting with strangers; seeking assistance), regular physical and dental check-ups, and daily habits. Related skills include protecting oneself from criminal behavior, indicating choices and needs, interacting socially, and applying functional academics.

10.3738. Home Living - daily functioning within a home; housekeeping, clothing care, property maintenance, food preparation, planning and budgeting for shopping, home safety, and daily scheduling. Related skills include orientation, behavior in the home and neighborhood, communication of choices and needs, social interaction, and application of functional academics in the home.

10.38 39. Independent Educational Evaluation - an evaluation conducted by a qualified evaluator who is not employed by the public agency responsible for the education of the student in question, and who is selected by the party seeking the independent evaluation.

10.39 40. 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.

10.40: 41 Least Restrictive Environment - the educational placement which provides the services/conditions necessary to meet the unique learning and behavioral needs of the student, while providing the student with integration to the maximum extent possible with nonexceptional students.

10.4142. Leisure - a variety of leisure and recreational interests that reflect personal preferences and choices. Public activities should reflect age and cultural norms. Skills include choosing and initiating activities, using and enjoying home and community leisure and recreational activities along and with others, playing socially with others, taking turns, choosing not to participate in leisure activities, participating longer, and expanding one's awareness and repertoire of interests and skills. Related skills include behavior in the leisure and recreation setting, indicating choices and needs, social interaction, application of functional academics and mobility.

10.4243. Middle Childhood Education - the educational program that addresses the intellectual, physical, and social/emotional needs of learners aged 10 through 14 across all programs in areas of study in grades 5-8.

10.4344. Multidisciplinary Evaluation - comprehensive procedures used to determine whether a student is exceptional and the nature and extent of the special education and related services that the student needs. The term means procedures that are conducted by a team of individuals representing a variety of disciplines. These procedures are used selectively with an individual student and do not include basic tests administered to or procedures used with all students in a school, grade or class.

10.4445. Multidisciplinary Evaluation Team - a group of qualified personnel representing a variety of disciplines which determines the areas to be evaluated and conducts the multidisciplinary evaluation.

10.4546. Nonacademic Services - nonacademic and extracurricular services and activities are those provided by the local educational agency in addition to the required and elective programs of study. The term includes counseling, athletics, transportation, health services, recreational activities, special interest clubs or groups sponsored by the public agency, referrals to agencies which provide assistance to disabled persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.

10.4647. Nonaversive Behavioral Strategies - strategies that are employed to change or maintain behavior without the application of a noxious or painful stimulus or the use of a strategy that results in severe physical/ emotional stress/discomfort or the prolonged deprivation of movement or basic biological needs.

10.4748. Normal Rate or Level of Development - the average rate or level of developmental functioning as exhibited by students of the same chronological age. Rates or levels of development are indicated by age-equivalency measures such as developmental age, mental age, developmental quotient, intelligence quotient, standard scores and percentile and are dependent upon the type of evaluation instrument used.

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10.4849. Objective Criteria - standards established to determine whether a student is learning or has achieved a skill and if instruction is effective.

10.4950. Out-of-State Placement - the placement of a student with disabilities in a school/facility located outside of the state for special education and related services.

10.5051. 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.

10.5152. Parental Consent - see Consent.

10.5253. 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.

10.5354. Physical Education - the development of: a) physical and motor fitness; b) fundamental motor skills and patterns; and c) skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

10.5455. Placement - the setting in which the eligible exceptional student receives special education and related services. These settings are: Regular Education: Full-time, Regular Education: Part-time, Special Education: Separate Class, Special Education: Special School, Special Education: Out-of-School Environment and Special Education: Residential Facility.

10.5556. Present Levels of Educational Performance - describe the effect of the student's exceptionality on the student's performance in any area of education that is affected, including 1) academic areas (reading, math or communication) and 2) nonacademic areas (daily life activities or mobility) and are written in objective measurable terms, to the extent possible, using data from the evaluation.

10.5657. Private/Parochial School - an educational facility operated by a nonpublic agency or organization.

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10.5758. Procedure - any written course of action set forth to implement federal, state, and local policy which includes: a) a description of the actions to be undertaken; b) the criteria or standards to be used when decisions are required; c) the person(s) responsible for such actions, and d) the timelines for completion. Written procedures shall describe actions in terms which are both measurable and operational.

10.5859. Procedural Safeguards - the due process protections afforded in the implementation of the West Virginia special education process.

10.5960. Program of Study - a K-12 curricular sequence which constitutes the subject matter to be offered in the public schools of West Virginia, e.g., reading, mathematics, social studies, industrial arts, business education.

10.6061. Public Agency - state educational agency, regional educational agency, local educational agency, and any other political subdivisions of the state which are responsible for providing education to exceptional students.

10.6162. Qualified Personnel - a person who has met state educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

10.6263. Regression/Recoupment - the loss of acquired skills and the inability to relearn those skills in a specified amount of time.

10.6364. Regression Formula - a commonly used statistical procedure that provides an achievement range for a specific intelligence quotient. This method adjusts for the phenomenon of regression toward the mean, a statistical tendency for scores that are especially high or low to move toward the mean when measured a second time.

10.6465. Regular Education Program - an educational program designed to meet the needs of all students in preschool, early childhood, middle childhood, adolescent, or adult education. Instruction in a regular education program includes community based, general and/or vocational education.

10.6566. Rehabilitation Counseling Services - services provided by a qualified rehabilitation counseling professional, in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

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~~10.6667~~. Related Services - transportation and such developmental, corrective and other supportive services as are required to assist an eligible exceptional student to benefit from special education. The term includes, but is not limited to, assistive technology, audiology, speech and language pathology, psychological services, physical and occupational therapy, clean intermittent catheterization (CIC), recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, social work services, school health services, early identification and evaluation of disabling conditions in students, medical services for diagnostic or evaluative purposes only, and parent training.

~~10.6768~~. School Team - a team within a school whose major functions are to provide necessary assistance to any students within the regular classroom, and to identify and refer students for evaluation, when necessary.

~~10.6869~~. School Health Services - services provided by licensed school nurses and other health care providers to identify health problems that interfere with learning and to promote a level of health which permits maximum utilization of educational opportunities.

~~10.6970~~. Self-Care - skills involving eating, dressing, grooming, toileting, and hygiene.

~~10.7071~~. Self-Direction - making choices. Self-direction includes learning and following a schedule; initiating appropriate activities consistent with one's personal interests; completing necessary or required tasks; seeking assistance when needed; resolving problems in familiar and new situations; and demonstrating appropriate assertiveness and self-advocacy.

10.72. Serious Misconduct - Any activity for which suspension or expulsion is a punishment for regular education students. These activities include: 1) assault/battery on school employees (West Virginia Code §61-2-15); 2) possession of a deadly weapon (West Virginia Code §61-7-11a); 3) selling a narcotic drug on the premises of an educational facility, at a school sponsored function, or on a school bus (West Virginia Code §60A-1-101); 4) committing an act or engaging in conduct that would constitute a felony under the laws of this state if committed by an adult; 5) unlawfully possessing on the premises of an educational facility or at a school sponsored function, a controlled substance governed by the Uniformed Controlled Substance Act; 6) threatening to injure, or in any manner injuring, a pupil, teacher, administrator, or other school personnel; 7) willfully disobeying a teacher; 8) possessing alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; 9) using profane language directed at a school employee or pupil; 10) intentionally defacing any school property; 11) participating in any physical altercation with another person while under the authority of school personnel; 12) habitually violating school rules or policies.

~~10.7173~~. Short Term Instructional Objectives - measurable, intermediate steps between a student's present levels of educational performance and the annual goals. Objectives are based on a logical breakdown of the major components of the annual goals.

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10.7274. Significantly Subaverage Intelligence - is an IQ standard score of approximately 70 to 75 on scales with a mean of 100 and standard deviation of 15 based on assessment that includes one or more individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

10.7375. Social Skills - social skills refer to appropriate and inappropriate social behavior. Appropriate social behavior includes behaviors such as making friends; showing appreciation; smiling; taking turns; cooperating with others; demonstrating honesty; trustworthiness; and appropriate play; showing concern for others; displaying empathy; and being fair. Inappropriate behavior includes behaviors such as tantrums, jealousy, fighting others, overstaying a welcome, being overly demanding, constantly needing reassurance; and being nonassertive.

10.7476. Social Work Services - services that include: a) preparing a social or developmental history on a student with a disability; b) group and individual counseling with the student and family; c) working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and d) mobilizing school and community resources to enable the student to receive maximum benefit from the student's educational program.

10.7577. Special Education - specially designed instruction, at no cost to parents, to meet the educational needs of an eligible exceptional student, including classroom instruction, out-of-school instruction, instruction in a special school or residential setting and instruction in other settings, including the workplace and training center. Special education also includes assistive technology devices and services, physical education, vocational education, or other curricular offerings when modifications are necessary to meet the individual needs of exceptional students.

10.7678. Special Transportation - modifications made in regular school transportation to assure accessibility of special education and other related services for exceptional students. Special transportation includes special equipment (such as special or adaptive buses, lifts, and ramps), and special care (such as need for health and safety maintenance, assistance of aide, medication in transit and/or positioning), if required to provide school transportation for a student with a disability.

10.7779. Specially Designed Instruction - a) that part of the regular education curriculum, that must be modified to the extent that it cannot be provided in the regular education classroom without supplementary aids and/or services; b) that part of the regular education curriculum that must be delivered through altered or different strategies or specialized materials to the extent that it cannot be provided in the regular education class even with supplementary aids or services; and/or c) a specialized curriculum that is significantly different than the regular education curriculum.

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10.7880. Standard Deviation - a statistic used to express the distance on the average of scores from the mean of the distribution. The standard deviation shows how variable a series or group of scores or numbers are.

10.7981. Standard Error of Measurement - a measure indicating how closely an individual's obtained score compares with her/his true score. It provides a range within which the true score lies.

10.8082. Supplementary Aids - any material/curricular resource or assistance, beyond what is normally afforded nondisabled students, provided to support an exceptional student's placement. Supplementary aids may include, but are not limited to, large print books, assistive technology devices, auditory trainers, curriculum adaptations and classroom modifications.

10.8183. Supplementary Services - any human resource or assistance, beyond what is normally afforded nondisabled students, provided to support an exceptional student's placement, such as direct instruction, peer tutoring, interpreting, and notetaking.

10.8284. Supported Employment - paid work in the regular community work environment where persons without disabilities are employed. Individuals with disabilities are included in the work setting and receive initial training and on-going support services in the natural community work environment.

10.8385. Suspension - removal of a student from school as a disciplinary action for misconduct.

10.8486. Sweep Screening - the utilization of screening tests, instruments or procedures with designated groups of students to locate individuals who manifest, or are likely to manifest, attributes or behaviors which require special education.

10.8587. Transition Services - a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including, but not limited to, post-secondary education, vocational training, integrated employment including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

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10.8688. Work - holding a part- or full time job (supported or nonsupported) or participating in a voluntary activity in the community. Related skills include specific job competencies, appropriate social behavior, appropriate work skills (e.g., completion of tasks, awareness of schedules, ability to seek assistance, take criticism), money management, the application of other functional academic skills, and skills related to going to and from work, preparing for work, managing oneself at work, and interacting appropriately with co-workers.

**OTHER RESOURCES**

**SELECTED FEDERAL STATUTES AFFECTING THE EDUCATION AND  
CIVIL RIGHTS OF CHILDREN AND YOUTH WITH DISABILITIES**

**P.L. 93-112, The Rehabilitation Act of 1973**

This law addresses discrimination against persons with disabilities. Section 504 of this act provides individuals with disabilities with basic civil rights and protection against discrimination in federal programs. CONTACT: Office for Civil Rights, Region III, Philadelphia, PA.

**P.L. 94-142, The Education for All Handicapped Children Act of 1975 (EHA)**

This law mandates a free appropriate public education for all children with disabilities, education in the least restrictive environment, Individualized Education Programs, and ensures due process rights. It is the core of federal funding for special education. CONTACT: WVDE, Office of Special Education.

**P.L. 98-380, Family Educational Rights and Privacy Act of 1974 (FERPA)**

This law gives parents of students under the age of 18, and students age 18 and over, the right to examine records kept in the student's personal file, the right to have records explained and interpreted by school officials, as well as specifies the destruction and/or amendment of records process. CONTACT: WVDE, Office of Special Education.

**P.L. 98-524, The Carl D. Perkins Vocational Education Act of 1984**

This law authorized funds to support vocational education programs to include youths with disabilities. The law stated that individuals who are members of special populations must be provided with equal access to recruitment, enrollment, and placement activities in vocational education. CONTACT: WVDE, Division of Technical and Adult Education Services.

**P.L. 99-486, Fair Labor Standards Act (FLSA)**

This act, as amended in 1986, sets minimum wage, overtime pay, equal pay, recordkeeping, and child labor standards for employees who are covered by the Act and are not exempt from specific provisions. Provisions of the FLSA set forth requirements pertaining to supported employment and other on-the-job training opportunities for students with disabilities. CONTACT: West Virginia Department of Labor.

**P.L. 100-407, The Technology-Related Assistance for Individuals with Disabilities Act of 1988**

The primary purpose of this law is to assist states in developing comprehensive, consumer-responsive programs of technology-related assistance and to extend the availability of technology to individuals with disabilities and their families. Assistive technology device is broadly defined in the law to give the states flexibility in the programs to be developed. Assistive technology services under this law include eight (8) activities related to developing consumer-responsive services with federal funds. CONTACT: University Affiliated Center for Developmental Disabilities at West Virginia University.

**P.L. 101-336, The Americans with Disabilities Act of 1990 (ADA)**

This law, based on the concepts of the Rehabilitation Act of 1973, guarantees equal opportunity for individuals with disabilities in employment, public accommodation, transportation, State and local government services, and telecommunications. The ADA is the most significant federal law assuring the full civil rights of all individuals with disabilities. CONTACT: West Virginia Division of Rehabilitation.

**P.L. 101-392, The Carl D. Perkins Vocational and Applied Technology Education Act of 1990**

This law amended P.L. 98-524 for the purpose of making the United States more competitive in the world economy. This law is closely interwoven with the Education of the Handicapped Act (P.L. 94-142) toward guaranteeing full vocational education opportunity for youth with disabilities. CONTACT: WVDE, Division of Technical and Adult Education Services.

**P.L. 101-476, The Education of the Handicapped Act Amendments of 1990 (EHA)**

This law changed the name of EHA to the Individuals with Disabilities Education Act (IDEA). This law reauthorized and expanded the discretionary programs, mandated transition services and assistive technology services to be included in a child's or youth's IEP, and added autism and traumatic brain injury to the list of categories of children and youth eligible for special education and related services. CONTACT: WVDE, Office of Special Education.

**P. L. 102-367, Job Training Partnership Act of 1982 (JTPA)**

The JTPA replaced the Comprehensive Employment and Training Act (CETA). The goal of the JTPA is to train and place individuals who are economically disadvantaged in the labor market. The Job Training Reform Amendments were signed into law in September 1992. The amendments provide youth and adults with disabilities expanded opportunities to participate in a variety of training and employment programs. CONTACT: West Virginia Division of Employment Security.

**P. L. 103-227, The Goals 2000: Educate America Act**

This act seeks is to "improve learning and teaching by providing a framework for education reform..." based upon the eight National Education Goals. The school restructuring efforts required by this law focus on high standards and expectations for all students, including students with disabilities, with an emphasis on measurable and high levels of educational achievement. CONTACT: WVDE, Office of State Superintendent of Schools.

**P. L. 103-239, School-to-Work Opportunities Act**

The newest federal employment initiative was signed into law in 1994. The School-to-Work Opportunities Act promotes a system containing three core elements known as School-Based Learning, Work-Based Learning, and Connecting Activities. The purpose of this act is to strengthen transition services for all youth, including those with disabilities. CONTACT: WVDE, Division of Technical and Adult Education Services.

**SELECTED STATE STATUTES ADDRESSING THE EDUCATION OF  
CHILDREN AND YOUTH WITH DISABILITIES**

**Education of Exceptional Children, West Virginia Code, Chapter 18, Article 20**

This statute sets forth the provisions for the establishment and maintenance of special education programs by the county school districts for all exceptional (disabled and gifted) children between the ages of three and 21 years of age. This statute includes recent provisions pertaining to regular education teacher entitlements in the IEP development and implementation process. CONTACT: WVDE, Office of Special Education.

**Compulsory Preenrollment Hearing, Vision and Speech and Language Testing: Developmental Screening for Children Under Compulsory School Age, West Virginia Code, 18-5-17**

This statute requires that specific screening tests be conducted for all children entering public school in West Virginia for the first time prior to their enrollments and for interagency cooperation in the conduct of the screening of children under compulsory school age. CONTACT: WVDE, Office of Special Education.

**Public School Faculty Senates Established; Election of Officers; Powers and Duties, West Virginia Code, 18-5A-5**

Provisions of this statute require the faculty senate at each school to develop a strategic plan, in accordance with specific requirements and timelines, for the appropriate integration of exceptional needs students into regular classrooms. CONTACT: WVDE, Office of Special Education.

**Assaults by Pupils Upon Teachers or Other School Personnel; Temporary Suspension, Hearing Procedure, Notice and Formal Hearing; Extended Suspension; Expulsion; Exception, West Virginia Code, 18A-5-1a.**

This statute incorporates the provisions of the Safe Schools Bill (H.B.2073) of 1995, including requirements regarding the suspension and expulsion of students with disabilities. CONTACT: WVDE, Office of Special Education.

**SELECTED STATE BOARD OF EDUCATION POLICIES AFFECTING THE  
EDUCATION OF CHILDREN AND YOUTH WITH DISABILITIES**

**POLICY 2100: Educational Goals of West Virginia**

This policy defines a thorough and efficient system of education, identifies capacities to be developed in students and provides governing principles for high quality educational improvements. CONTACT: WVDE, Office of State Superintendent of Schools.

**POLICY 2320: Performance Based Accreditation System**

This policy provides the framework to enhance quality education, primarily through improvements based upon educational standards. Using the accreditation process described in this policy, local educational agencies will determine its compliance with these high quality standards. CONTACT: WVDE, Office of Accreditation.

**POLICY 2442.7: School Nurses and Specialized Health Procedures**

This policy establishes standards for certified school nurses to assess children's health needs and to decide who is best skilled to respond to them. CONTACT: WVDE, Office of Healthy Schools.

**POLICY 2436.11: Non-discriminatory Participation in Extracurricular Activities**

This legislative rule requires public school programs to include minority and ethnic group students as active participants in all extra-curricular activities. CONTACT: WVDE, Office of Student Services and Assessment.

**POLICY 2444.01: Graduation Requirements for West Virginia Public Schools**

This legislative rule establishes the requirements that students must meet before exiting from West Virginia high schools. CONTACT: WVDE, Office of Instructional Services or Office of Professional Development and Recognition.

**POLICY 2444.2: Certificate of Proficiency and Warranty**

This policy implements West Virginia Code 18-2-6 and issues to employers and post-secondary educational institutions a guarantee of the student's proficiency level. CONTACT: WVDE, Office of Professional Development and Recognition, Office of Student Support Services or Office of Special Education.

**POLICY 2510: Assuring the Quality of Education: Regulations for General, Vocational and Special Education Programs**

This policy establishes regulations for general, vocational and special education programs that ensure quality teaching and learning in the public schools and to assure that equal educational opportunities are provided to all public school students. CONTACT: WVDE, Office of Professional Development and Recognition, Office of Student Support Services or Office of Special Education.

**POLICY 4336: West Virginia School Transportation Regulations**

This policy establishes qualifications and responsibilities of school bus drivers, operations and maintenance of school buses, and recommended practices. Policy 4336 includes special transportation regulations that apply to the transporting of students with disabilities. CONTACT: WVDE, Office of School Transportation and Facilities.

**POLICY 4350: Procedures for the Collection, Maintenance and Disclosure of Student Data**

This policy sets forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by agencies and institutions under the general supervision of the West Virginia Board of Education as required by P.L. 93-380 and P.L. 101-476. CONTACT: WVDE, Office of Special Education.

**POLICY 4371: Student Rights and Responsibilities: A Handbook for Students in the Public Schools of WV**

This policy establishes a guide for students concerning their rights and responsibilities and the rights and responsibilities of the school. CONTACT: WVDE, Division of Instructional and Student Services.

**POLICY 5202: Minimum Requirements for the Licensure of Educational Personnel and Advanced Salary Classifications**

This policy specifies the minimum requirements that must be met to license an individual to work in the public schools. CONTACT: WVDE, Office of Professional Development.

**POLICY 7211: Appeals Procedure for Citizens**

This policy provides a way for citizens to work with county boards of education and administrative officials in seeking solutions to problems when there appears to be a failure to provide elements of a high quality education that resources permit the school district to provide or for violation of any other legal duty. CONTACT: WVDE, Office of Legal Services.

**ADDITIONAL DOCUMENTS AFFECTING THE EDUCATION OF CHILDREN AND YOUTH WITH DISABILITIES**

**HANDBOOK ON PLANNING SCHOOL FACILITIES**

This handbook provides guidelines which address the details of evaluating and renovating existing public education facilities and the construction of new school facilities. CONTACT: WVDE, Office of School Transportation and Facilities.

**HARRIS V. MAROCKIE**

This court settlement agreement specifies that special education classrooms may not be situated outside the principal education facility and may not be segregated by virtue of not being located contiguous to, or in close proximity with, age-appropriate nondisabled children. CONTACT: WVDE, Office of Special Education.

## **WEST VIRGINIA STATE PLAN UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

This document contains a description of the state's policies, procedures, proposed activities and projected use of funds for the education of students with disabilities. The state plan is prepared for a three-year period. CONTACT: WVDE, Office of Special Education.

## **WEST VIRGINIA'S MONITORING PROCEDURES FOR THE EDUCATION OF EXCEPTIONAL STUDENTS**

This document establishes compliance standards and sets forth a process for collecting data, correcting deficiencies and enforcing legal obligations concerning all state and federal special education requirements. This document describes the six (6) components of the comprehensive monitoring system used to verify the established compliance standards. CONTACT: WVDE, Office of Special Education.

## **PROCEDURES FOR THE INVESTIGATION AND RESOLUTION OF COMPLAINTS**

These procedures set forth the process used by the OSEPA to investigate and resolve a complaint by an individual or organization relevant to the special education process. CONTACT: WVDE, Office of Special Education.

## **HAND IN HAND**

This document is designed to provide parents with the information and resources to become full participating members of their child's special education team. It provides a description of the special education process and the roles of parents and schools districts during each step of the process. CONTACT: WVDE, Office of Special Education.

## **DEVELOPING QUALITY INDIVIDUALIZED EDUCATION PROGRAMS**

This resource guide articulates the requirements and best practices for developing IEPs for exceptional students. All required components of the IEP are addressed. CONTACT: WVDE, Office of Special Education.

## **THE COMPLAINT PROCESS FOR SPECIAL EDUCATION**

This brochure explains to parents what constitutes a formal complaint and how to file a complaint. Explanations are also provided regarding the procedures and timelines for investigating and resolving a formal complaint. CONTACT: WVDE, Office of Special Education.

**EXECUTIVE SUMMARY**  
**WEST VIRGINIA BOARD OF EDUCATION**  
**Policy Number and Title: Policy 2419: Regulations for**  
**the Education of Exceptional Students**

**PUBLIC COMMENT PERIOD ENDS: July 17, 1996**

**BACKGROUND:**

Policy 2419 was last revised in 1995 to incorporate new requirements and return to the language of federal regulations for the Individuals with Disabilities Education Act (IDEA) and state legislation, whenever possible. Since that time the West Virginia Legislature has amended West Virginia §18A-5-1a regarding suspension/expulsion for students with disabilities.

**PURPOSE:**

The purpose of the proposed revisions to Policy 2419 is to incorporate new requirements from West Virginia Code §18A-5-1a. In addition, revisions reflect some minor editorial corrections in the policy requirements.

**PROPOSED CHANGES:**

The proposed revisions include the following editorial corrections:

- 4.0.C.2 -- The IEP for a gifted student shall also include if appropriate, acceleration and/or the effects of acceleration on the student's graduation. (p. 20)
- 4.0.D.3.d -- Special Education: Special School -- wherein the student's specially designed instruction and related services are delivered in a special school that serves only exceptional students for more than 50% of the student's instructional school day. (p. 22)
- 5.0.D.1.c -- Special Education: Separate Class -- The caseloads for teachers providing instructional services to exceptional students who are served in regular education for 40% or less of the instructional school day are specified in 5.0.D.2 of this policy in the program area sections in these regulations for each exceptionality. (p. 25)
- 7.0.I.9.d -- obtain a written or electronic verbatim record of the hearing; (p. 41) and,
- 8.0.C.4.1 -- provide make available special education and related services to meet the needs of private school children with disabilities in the jurisdiction of the agency; (p. 48)
- Glossary #32--~~Four Year Plan~~ -- a written plan developed prior to the end of the student's eighth grade year, that describes the student's projected adolescent education program. ~~The Four Year Plan for an exceptional student must include the type of diploma the student may receive, the list of courses (including honors/advanced education) per grade level, anticipated credits to be earned, educational goals and objectives that will enable the student to access appropriate adult services or employment, and must be developed by the IEP Committee.~~ (p. 53)

After recent research into appeals processes available for gifted students and their parents, it is recommended that the following changes in Policy 2419 be made:

- 7.0.I.11 -- The public agency shall inform parents that attorney's fees may be awarded to parents of students with disabilities to cover attorneys' fees and related costs when the parent of a student with a disability is the prevailing party, subject to certain constraints, and that such attorneys' fees may be agreed to by the parties or awarded by the court. This is a federal provision of IDEA §1415(e)(4) and does not apply to gifted students unless they also have a disability. (p.41)
- 8.0.B.2.v.3. -- inform parents, if the parent initiates a due process hearing or if the parent requests the information, of any free or low-cost legal and other relevant services available in the area and that ~~new~~ federal legislation allows for the award of attorneys' fees to parents of students with disabilities to cover attorneys' fees and related costs when the parent of a student with a disability is the prevailing party in a due process hearing, subject to certain constraints, and that such attorneys' fees may be agreed to by the parties or awarded by a court; (pgs. 45-46)

Based on West Virginia Code §18A-5-1a as amended by the 1996 legislature, the entire Section 6.0, Discipline has been revised. The proposed revisions are attached. In addition to the required revisions to 6.0 Discipline, it is recommended that the following related definitions be added to the glossary:

- **Deadly Weapon** - An instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "deadly weapon" shall include, but not be limited to, the instruments defined in subdivisions one (1) through eight (8) of Section Two (2), Article Seven (7), Chapter sixty-one [§61-7-2] of the West Virginia Code, or other deadly weapons of like kind or character which may be easily concealed on or about the person.
- **Firearm** - Any weapon which will expel a projectile by action of an explosion.
- **Serious Misconduct** - Any activity for which suspension or expulsion is a punishment for regular education students. These activities include: 1) assault/battery on school employees (West Virginia Code §61-2-15); 2) possession of a deadly weapon (West Virginia Code §61-7-11a); 3) selling a narcotic drug on the premises of an educational facility, at a school sponsored function, or on a school bus (West Virginia Code §60A-1-101); 4) committing an act or engaging in conduct that would constitute a felony under the laws of this state if committed by an adult; 5) unlawfully possessing on the premises of an educational facility or at a school sponsored function, a controlled substance governed by the Uniformed Controlled Substance Act; 6) threatening to injure, or in any manner injuring, a pupil, teacher, administrator, or other school personnel; 7) willfully disobeying a teacher; 8) possessing alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; 9) using profane language directed at a school employee or pupil; 10) intentionally defacing any school property; 11) participating in any physical altercation with another person while under the authority of school personnel; 12) habitually violating school rules or policies.

**IMPACT:**

Changes in Section 6.0, Discipline, to comply with West Virginia Code §18A-5-1a will allow school administrators to implement suspension/expulsion as a disciplinary action to students with disabilities in the same manner as regular education students. The due process rights of students with disabilities are still present when the suspension/expulsion exceeds ten consecutive days.

**RESPONSE FORM**

Policy 2419: Regulations for the Education of Exceptional Students

Directions: Please use this form to comment on proposed revision of Policy 2419: Regulations for the Education of Exceptional Students.

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

Address:

\_\_\_\_\_  
\_\_\_\_\_

Comments on Policy 2419: Regulations for the Education of Exceptional Students:

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4.0.C.2:

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4.0.D.3.d:

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5.0.D.1.c:

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7.0.I.9.d:

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8.0.C.4.1:

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7.0.I.11:

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8.0.B.2.v.3:

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GLOSSARY:

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Section 6.0 Discipline

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**RETURN BY JULY 17, 1996 TO:**  
Michael A. Valentine, Director  
West Virginia Department of Education  
Capitol Complex, Building 6, Room 304  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330