

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #2

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

AGENCY: West Virginia Department of Education TITLE NUMBER: 126

RULE TYPE: Legislative Rule; CITE AUTHORITY West Virginia Code §18-20-5

AMENDMENT TO AN EXISTING RULE: YES  NO

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

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

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

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 June 4, 1991 AT 8:00 a.m.

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

Laura Craffey Maddox  
Assistant Director  
Office of Special Education  
West Virginia Department of Education  
Capitol Bldg. 6, Room 304  
Charleston, WV 25305

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

*Barbara L. Estep*  
April 22, 1991

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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

TITLE: REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS

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Section 1: General

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

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

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule - None. This edition incorporates changes to the rules which became effective on August 3, 1990. Unless changed, the 1990 edition remains in effect.

Section 2: Additional

2.1 Copy of revisions to the regulations attached.

Copies may be obtained in the Office of the Secretary of State and in the West Virginia Department of Education, Bureau of General, Special and Professional Education, Office of Special Education.

2.2 Summary of revisions to the regulations below.

SUMMARY OF REVISIONS TO THE REGULATIONS

Revisions to the regulations include: the mandate to provide services to all preschool children with disabilities, inclusive of preschool mild and moderate handicapped children, as of their third birthday; clarifications which more clearly define components of the evaluation report and that copies be shared with parents and teachers; the addition of a phrase regarding the use of the due process hearing procedure which was inadvertently deleted when previously printed; and a revision to the timeline for parties aggrieved by the findings of a due process hearing decision to bring civil action in any state court of competent jurisdiction within 120 days of the issuance of the hearing officer's decision.

APPENDIX B

POLICY 2419: REGULATIONS FOR THE  
EDUCATION OF EXCEPTIONAL STUDENT

## REGULATIONS FOR THE EDUCATION OF EXCEPTIONAL STUDENTS

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

#### AUTHORITY

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

#### SCOPE

These regulations apply to preschool, early childhood, middle childhood, adolescent and adult students whose educational programs of study require special education and related services. These apply to severely handicapped three through five year olds as of their third birth date 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 policy pertaining to graduation requirements. Special education programs shall continue to be provided to those students who are at least 21 years of age and receiving special education services prior to September 1, 1991, until the end of the school year in which they become 23 years of age. ~~In--addition,--they--apply--to--the--provision--of--special--education--and--related--services--to--three--through--five--year--old--mildly--and--moderately--handicapped--children--to--the--extent--that--programs--and--services--are--offered--by--county--boards--of--education--~~

West Virginia's mandatory special education statute legislates a child identification effort by county boards of education. Chapter 18, Article 20, Section 2, of the West Virginia Code, states, "The board of education of each county is empowered and is responsible for providing suitable educational facilities, special equipment and such special services as may be necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type..." The mandated target group for the State child find requirements includes handicapped individuals between birth and 21 years of age, gifted students from first through eighth grades, and exceptional gifted in grades 9 through 12.

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

1. handicapped children, ages birth through four years;
2. ~~severely-handicapped-children-ages-three-through-five,-and~~ handicapped individuals ages five three 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

3. handicapped children 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.

#### RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION

Special education and related services shall be made available to all ~~severely-handicapped--children-ages--three-through-five~~ handicapped individuals who are between ~~five~~ three and 21 years of age, all gifted students in grades one through eight, and all exceptional gifted students in grades nine through 12. Chapter 18, Article 20, the state's mandatory special education statute, the The Education of the Handicapped 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 ~~severely--handicapped--children-ages-three-through-five,~~ handicapped individuals between the ages of ~~five~~ three and 21, all gifted students in grades one through eight, and all exceptional gifted students in grades nine through 12 have available to them a free appropriate public education which includes special education and related services to meet their unique educational needs. This applies to all public agencies (health and human resources and corrections) that provide special education and related services to exceptional students.

#### GENERAL RESPONSIBILITIES

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

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

It is the responsibility of the local educational agency to:

1. establish written policy and procedures to implement these regulations and to provide free public education for eligible exceptional students;
2. provide qualified staff who are appropriately trained and adequate in number to implement these regulations;
3. conduct referral, evaluation and placement activities within the timelines specified in these regulations;
4. provide the special equipment, materials and supplies required to implement these regulations and provide the services specified in students' Individualized Education Programs;
5. conduct hearing aid monitoring in accordance with established procedures to assure that hearing aids worn by students in schools are functioning properly.

- 4) relevant information, such as developmental/social history, from other sources that has been considered in formulating the evaluator's recommendations; and
  - 5) recommendaions of the specific programmatic and supportive services to--meet-the--educational--needs-of--the--student that address, when appropriate, academic/educational performance, basic communication skills, career-vocational development, social interaction and emotional development to meet the educational needs of the student.
- c. When a student is suspected of being learning disabled, the multidisciplinary evaluation team must also complete a team report that includes:
- 1) whether the student has a specific learning disability;
  - 2) the basis for making the determination;
  - 3) the relevant behavior noted during the classroom observation of the student;
  - 4) the relationship of that behavior to the student's academic functioning;
  - 5) the educationally relevant medical findings, if any;
  - 6) whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services;
  - 7) determination concerning the effects of environmental or cultural difference or economic disadvantage; and
  - 8) written certification by each team member as to whether the report reflects 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.
- d. Written reports of educationally relevant health findings, if any, may include, but will not be limited to:
- 1) health history;
  - 2) evaluation of current health status;
  - 3) additional information from family physician or health care source, if indicated;
  - 4) identification of health problems that require:
    - school nurse services,
    - special training of school personnel,
    - changes in school environment,
    - added safety measures,

- a. consider all multidisciplinary evaluation reports, independent evaluations, and other relevant information;
  - b. determine, for an initial evaluation, if the student meets the criteria for one (1) or more areas of exceptionality, as specified in Section 2.0;
  - c. determine if the student needs or continues to need special education and related services, i.e., whether the student's handicapping condition adversely affects educational performance to the extent that specially designed instruction is needed;
  - d. recommend to the IEP Committee the levels of achievement and performance the eligible student should meet before being removed from special education;
  - e. refer the student for further evaluation if necessary to determine exceptionality or eligibility;
  - f. refer a student initially determined eligible to the IEP Committee and provide written information, including a copy of each evaluator's complete written report, concerning the student's evaluation and special education and related services needs;
  - g. provide reevaluation results, including a copy of each evaluator's complete written report, to the student's IEP Committee for review;
  - h. refer an ineligible student to the School-Based Assistance Team and provide information concerning the evaluation and the student's educational needs; and
  - i. inform parents of the determination that a student is ineligible for special education and related services and of their right to request an explanation concerning the evaluation and/or the student's ineligibility.
3. A local educational agency may combine the Eligibility Committee meeting and the Individualized Education Program Committee meeting provided all required personnel are in attendance and all required actions are completed and documented.

#### C. Assurances

##### 1. Evaluation

- a. Implement the following procedures to protect each student in the selection, administration and interpretation of evaluation procedures and instruments:
  - 1) Select and administer testing and evaluation materials and procedures so as not to be racially or culturally discriminatory,
  - 2) Administer evaluations in the student's native language or other mode of communication unless it clearly is not feasible to do so,

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

C. IEP Committee Responsibilities

During the IEP Committee Meeting, the committee shall:

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

D. A local educational agency may combine the Eligibility Committee meeting and the IEP Committee meeting provided all required personnel are in attendance and all required actions are completed and documented.

E. IEP Content

The IEP shall include:

1. a statement of the student's present levels of educational performance;
2. a statement of annual goals, including short-term instructional objectives;
3. a statement of the specific special education and related services to be provided, including extended year programming and adaptive physical education when appropriate, to the student, and the extent to which the student will be able to participate in regular educational programs;

4. the projected dates for the initiation of services and the anticipated duration of the services; and
5. appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

F. Other IEP Committee Documentation

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

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

G. Least Restrictive Environment Requirements

1. The IEP Committee shall determine an appropriate placement in consideration of the following least restrictive requirements:
  - a. To the maximum extent appropriate, exceptional students, including students in public or private institutions or other care facilities, are educated with other students and students who are not identified as exceptional.
  - b. Separate classes, special schools or other removal of exceptional students from the regular educational environment occur only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
  - c. Eligible students have a right to be educated in the regular setting to the greatest extent possible with nonexceptional peers.
  - d. Unless an eligible student's IEP requires some other arrangements, the student is educated in the school which he or she would otherwise attend. In the event the student cannot be educated in the home school, he/she must be provided an educational program as close to home as possible.
  - e. Educational programming is based on the student's IEP and reviewed at least annually.

## 2.10 PRESCHOOL HANDICAPPED

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

### A. PROGRAM DEFINITION

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

Eligible preschool handicapped children are those children ages three through five as of September 1 of each school year who evidence a significant developmental delay in one two (2) or more of the following areas: cognition, fine and/or motor, gross motor, receptive and/or expressive language, communication, and social-emotional-affective or behavioral development, self-help or who have one or more of the following diagnosed handicapping conditions: behavior disorders; blind and partially sighted; communication disorders; deaf-blind; deaf and hard of hearing; mentally impaired; other health impaired including autism; or, physically handicapped.

In accordance with Section 619 of Public Law 99-457, special education and related services for the eligible preschool child shall be provided as of the child's third birthday.

#### 2. Program of Study

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

b. A The comprehensive developmental program of study for the eligible preschool handicapped children shall be defined by the Individualized Education Program (IEP). In developing the IEP, the IEP Committee (IEPC) shall address incorporate the necessary related services, e.g., communication skill development, including but not limited to speech language

pathology, physical therapy, occupational therapy, psychology, student support services, transportation, extended school year, and social services. These services may be provided through interagency collaboration, contracts agreements, consultant services and or direct employment of personnel, the following:

- 1) skill development in gross motor, fine motor, cognition, communication, social-emotional-affective development, self-help skills, and any and all other identified areas of need.
- 2) systematic involvement of the child's family in an active partnership which enhances the child's development and promotes family empowerment, and
- 3) the necessary related services including, but not limited to speech-language therapy, physical therapy, occupational therapy, psychology, student support services, transportation, extended school year services, social services, and school health services.

- e- ~~The Individualized Education Program shall focus on preparing a child for the maximum possible participation in a regular education setting. When a child reaches school age (6A%), appropriate placement will correspond to the continuum of services outlined in this document.~~
- d- ~~A comprehensive program for the preschool handicapped child shall systematically involve families in a manner which promotes an active partnership.~~

### 3. Eligibility Criteria

Documentation that the child meets the following criteria:

- a. is functioning at, or lower than, 75% but greater than 50% of the normal rate of development in one two (2) or more of the following areas: cognition, fine and or motor, gross motor, communication receptive and or expressive language, social-emotional-affective development, self-help skills; or
- b. meets eligibility criteria delineated in program regulations for hearing impaired, visually impaired, physically handicapped, communication disorders, mildly mentally impaired, behavior disorders or autism, physically handicapped, or visually impaired behavior disorders; blind and partially sighted, communication disorders; deaf-blind; deaf and hard of hearing; mentally impaired; other health impaired including autism; or, physically handicapped and that the identified handicap interferes with normal development.

~~For those preschool handicapped children who are functioning at, or lower than 50% of the normal rate of development, refer to program regulations 2.10.1 Preschool Severely Handicapped.~~

## B. PROGRAM DELIVERY

### 1. Placement

Local educational agencies ~~ensuring--to~~ shall serve eligible preschool ~~handicapped~~ children shall ~~make~~ by making available a the continuum of placement options and offering systematic family involvement and training. Services may be provided through interagency collaboration, contracts-agreements, regional educational service agencies, consultation and-or direct employment of personnel. ~~Eligible children shall be served in the least restrictive environment through one or more of the placement options specified in section 1.3 Individualized Education Program Process.~~ The continuum of placement options shall include:

a. Family Consultation - Services provided to the child and family in the home, school and-or other community based location as determined by the IEPC and documented in the child's IEP.

#### b. Center-Based

1) Regular Education: Full Time (REFT) - Regular instruction with modification is delivered in community based programs such as Head Start, nursery schools or day care centers to the extent available and-or in regular education programs such as kindergarten. The implementation of modifications to the community based and-or regular education program requires consultative services by the special education personnel responsible for the implementation of the child's IEP. Consultation shall occur among all personnel involved in the implementation of the child's IEP and the family.

2) Regular Education: Part Time (REPT) - Regular instruction with supplemental special education services is delivered in community based programs such as Head Start, nursery schools or day care centers to the extent available and-or in regular education programs such as kindergarten. The implementation of supplemental special education services requires instruction in specific skill development by the special education personnel responsible for the implementation of the child's IEP. Consultation shall occur among all personnel involved in the implementation of the child's IEP and the family.

3) Special education Program: Separate Class (SC) - Developmental, content, supplemental instruction in specific skill development and-or instruction in a specialized curriculum, and related services are provided in a separate class. Consultation shall occur among all personnel involved in the implementation of the child's IEP and the family.

c. Combination Center-Based-Family Consultation - Special education and related services are delivered in the separate class as specified in B.1.b.3 above and includes a Family Consultation component as specified in B.1.a. above.

2. Time Allocations

Programs Special education and related services for eligible preschool ~~handicapped~~ children shall be provided on a regular basis as follows:

a. Home-Based Family Consultation Programs - a minimum of one hour, ~~one~~ day per week which including includes direct instruction ~~to~~ with the student child and family and-or consultative services ~~to~~ with the family.

b. Center-Based Programs (REFT, REPT, Separate Class) - a minimum of ~~fifteen-(15)~~ ten (10) 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 for 40% or more of the child's total instructional time with supplemental services provided by special education personnel in accordance with the child's IEP.

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)~~ ten (10) hours per week separate class instruction with time allocations for family consultation services as determined by the IEPC.

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

3. Caseload

a. Family Consultation -

Assign no more than 15 children.

b. Center-Based Programs

1-) Regular Education Program: Full-time -

Assign no more than ~~15~~ 20 children.

2-) Regular Education Program+ Part-time =

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

3-) Special Education Program: Separate Class = ,--Special School,--or-Residential-Facility

Assign no more than six (6) eligible children per session with an full-time aide for a maximum caseload of twelve (12).

Assign no more than eight (8) eligible children per session with a full-time two (2) aides for a maximum caseload of sixteen (16).

b- Home-Based-Program

~~Assign no more than 15 children.~~

c. Combination Center-Based-Family Consultation Program

Assign no more than 15 six (6) children per session with an aide for a maximum caseload of twelve (12). ~~In-a-combination program-that-includes--separate-class--components,--the--maximum caseload-shall--not-exceed--eight-(8)-eligible--children-with-a full-time-aide-for-each-separate-class-component.~~

Assign no more than eight (8) children per session with two (2) aides for a maximum caseload of sixteen (16).

## 2-10-1--PRESCHOOL SEVERELY HANDICAPPED

### A. PROGRAM DEFINITION

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

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

#### 2. Program of Study

- a. The major goals for the preschool severely handicapped child are the same as for his/her non-handicapped peers; the acquisition of skills in all developmental areas in a manner which promotes independence and readiness for learning. The developmental areas include, but are not limited to, communication/language, cognition, motor skills, self-help skills, sensory awareness, and social/emotional growth. To achieve these goals, the program for preschool children with severe handicaps shall provide a curriculum which emphasizes skill development in an integrated manner, rather than skill development in isolation.
- b. A comprehensive developmental program for preschool children with severe handicaps shall include the necessary related services, e.g., communication skill development including, but not limited to speech language pathology, health services, physical therapy, occupational therapy, student support services, transportation, extended school year, and social services. These services may be provided through interagency collaboration, contracts/agreements, consultant services and/or direct employment of personnel.
- c. A comprehensive developmental program for preschool children with severe handicaps shall systematically involve families in a manner which promotes an active partnership.
- d. Education and related services are to be provided for the child and his/her family through direct employment of personnel, interagency collaboration, contracts/agreements, and/or consultative services.
- e. The Individualized Education Program shall focus on preparing each child for maximum possible participation in the home, school, and community settings. The Individualized Education Program may also address those developmental areas in which the child is proficient.

3. Eligibility Criteria

Documentation that the child:

- a. is functioning at, or lower than, 50% of the normal rate or level of development in one or more of the following areas: cognition, fine and/or gross motor, receptive and/or expressive language, social/emotional, or
- b. meets eligibility criteria delineated in program regulations for communication disorders, deaf-blind, hearing impaired, visually impaired, behavior disorders, autism, moderately, severely, or profoundly mentally impaired, or physically handicapped and whose handicaps are of such a nature and severity that they would present significant educational problems.

B. PROGRAM DELIVERY

1. Placement

Local education agencies shall serve eligible preschool severely handicapped children by making available a continuum of placement options and offering systematic family involvement and training. Services may be provided by county boards of education, regional educational service agencies, the West Virginia School for the Deaf and Blind and through contracted services. Eligible children shall be served in the least restrictive environment through one or more of the special education placement options specified in section 1-3 Individualized Education Program Process.

2. Time Allocations

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

- a. Home-Based Programs -- a minimum of two (2) hours, per week, each session must be at least one (1) hour in duration, including instruction to the student and consultative services to the family.
- b. Center-Based Programs -- a minimum of fifteen (15) hours per week.
- c. Combination Program --
  - center-based instruction -- a minimum of twelve (12) hours per week.
  - home-based instruction/consultative services with the family -- a minimum of one (1) hour per week.

3. Caseloads

a. Center-Based Programs

1. Regular Education Program: Full-time

Assign no more than 15 children.

2. Regular Education Program: Part-time

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

3. Special Education Program: Separate Class, Special School, or Residential Facility

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

b. Home-Based Program

Assign no more than ten (10) children.

c. Combination Program

Assign no more than 15 children.

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

C. Prior notice; parent consent.

1. Written notice must be given to the parents of an exceptional student within a reasonable time before the public agency:
  - a. proposes to initiate or change the 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.
2. Parental consent must be obtained before;
  - a. conducting a preplacement evaluation; and
  - b. initial placement or change of placement of an exceptional student in a program providing special education and related services.
3. Except for preplacement evaluation and initial placement, consent shall not be required as a condition of any benefit to the parent or student.
4. If a parent revokes consent for initial evaluation, prior to the completion of the evaluation, the public agency shall confer with the parent to discuss the reasons for revocation, and:
  - a. if the public agency agrees with the parent, the proposal to evaluate shall be withdrawn; or
  - b. if the public agency disagrees with the parent, it shall use the impartial due process hearing procedures to determine if the student may be evaluated without parental consent.
5. If a parent refuses consent for initial placement, revokes consent for placement, or refuses consent for change of placement, the Individualized Educational Program Committee shall consider the reasons for refusal and reexamine the placement, and:
  - a. if an agreement is reached, the Individualized Educational Program Committee shall document the decision in accordance with Section 1.3.; or
  - b. if an agreement is not reached, the public agency shall use the impartial due process hearing procedures to determine if initial placement, continued placement or change of placement may occur without parental consent.
6. The public agency shall use the impartial due process hearing procedures to determine if the student may be assessed or initially provided special education and related services without parental consent. If the hearing officer upholds the agency, the agency may evaluate, initially provide special education and related services or change the student's placement without parental consent, subject to

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

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

H. Due process hearing decision; appeal.

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

I. Civil action.

Any party aggrieved by the findings and decision made in a hearing has the right to bring a civil action in any state court of competent jurisdiction within ~~four-(4)-months~~ 120 days of the date of the issuance of the hearing officer's written decision or in a district court of the United States.

J. Timelines and convenience of hearings.

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