

WEST VIRGINIA  
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark in this Box

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2001 APR 13 P 4:27

OFFICE 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. Constitution, Article XII, §2, W.Va. Code §18-20, et seq and the Individuals with Disabilities Education Act (IDEA), as amended, Public Law 105-17.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

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 May 18, 2001 AT 4:45 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Dr. Dee Bodkins, Director

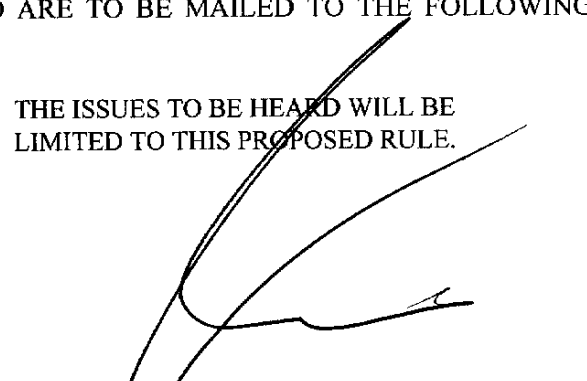
Office of Special Education

West Virginia Department of Education

1900 Kanawha Boulevard East, Bldg. 6, Room 304

Charleston, West Virginia 25305-0330

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



William J. Luff, Jr.  
Associate State Superintendent

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$18.20

## 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**

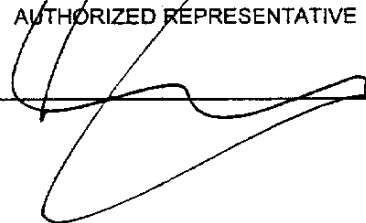
EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER (FY01)
1. ESTIMATED TOTAL COST	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$	\$	\$	\$	\$
2. ESTIMATED TOTAL REVENUES	\$	\$	\$	\$	\$

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

These regulations reflect changes required for the federal statute, the Individuals with Disabilities Education Act Amendments of 1997, the Code of Federal Regulations Parts 300 - 303, and agreement with the Office of Civil Rights. No increase or decrease in total costs is anticipated in order to implement the changes in federal statute and regulations or the stipulations in the OCR agreement.

DATE  
April 13, 2001

AGENCY  
West Virginia Department of Education

AUTHORIZED REPRESENTATIVE  


**EXECUTIVE SUMMARY  
WEST VIRGINIA BOARD OF EDUCATION**

**POLICY NUMBER AND TITLE:** Policy 2419  
Regulations for the Education of Exceptional Students

**PUBLIC COMMENT PERIOD ENDS:** May 18, 2001

**BACKGROUND:**

Policy 2419 is based upon the federal and State laws that are applicable to the education of students with exceptionalities and, therefore, must be revised periodically to reflect changes in legislation at either level. The most recent reauthorization of the federal special education legislation resulted in the Individuals with Disabilities Education Act Amendments of 1997 (IDEA 97). The federal regulations for IDEA 97 were issued by the U.S. Department of Education in March of 1999.

**PURPOSE:**

The proposed revisions to Policy 2419 reflect changes required by the United States Department of Education, Office of Special Education and Rehabilitative Services, to demonstrate that West Virginia meets all of eligibility requirements of section 612 (a) of the IDEA. In addition, changes have also been made in accordance with an agreement required by the Office for Civil Rights specific to the definition and eligibility for gifted. The proposed revisions incorporate new language and additions to existing sections of Policy 2419 and maintain the federal language whenever possible. The proposed revisions in Policy 2419 will provide current and accurate guidance to schools and districts in the implementation of the provisions of IDEA 97.

**PROPOSED CHANGES:**

The proposed changes provide revised general policy requirements emphasizing improved student results, improved instructional services, greater opportunities for students with exceptionalities to access and make progress in the general education curriculum, and increased parent and student involvement in the educational process.

Proposed changes include requirements from IDEA 97 in the following areas: 1) private school placements by parents; 2) mediation; 3) interagency collaboration; and 4) the use of public/private insurance to cover the costs of special education and related services. In addition, changes are proposed in the definition and eligibility criteria for gifted and the calculation of caseloads.

The proposed revisions outline the procedures to determine the expenditures for the provision of special education and related services for students enrolled by their parents in private schools and the specific requirements pertaining to the use of funds, property, equipment and supplies.

Previously, Policy 2419 had incorporated the federal requirements for mediation, including the qualifications of mediators and a description of the mediation process. However, the proposed revisions include an additional federal regulation that provides the public agency the option of conducting a meeting to encourage mediation in the event that a parent does not want to use the mediation process.

In addition, the proposed revisions detail the requirements of all interagency agreements between the West Virginia Department of Education and other state and local agencies that provide or pay for services for students with disabilities. These requirements include, but are not limited to, issues of program and financial responsibility and conflicts for resolving interagency disputes that are the parties to the agreements.

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Page Two

The proposed revisions address the public agency's responsibilities with regard to using and accessing Medicaid or other public benefits programs in which a student participates to provide or pay for services required to provide a free appropriate public education.

The Office of Civil Rights has required changes in the definition and eligibility for the category of gifted that address the needs and characteristics of the historically under-represented gifted student population in West Virginia. Primary changes include revised language in the definition for historically under-represented gifted and additional clarification regarding the evaluation and eligibility determination for gifted students.

Finally, the current regulation for determining caseloads based upon the number of students being served, the student's exceptionality and placement will remain in effect. A new caseload calculation scheduled to become effective July 1, 2001 will be rescinded.

**IMPACT:**

The proposed revisions in Policy 2419 will incorporate all current federal requirements and compliance agreements into State policy and maintain, whenever possible, the language of the federal legislation. Thus, revised Policy 2419 will provide guidance and direction to the local school districts in the implementation of IDEA 97. The proposed revisions to Policy 2419 reflect changes in existing language, will be implemented via interagency agreements and/or are currently addressed in each local education agency's policies and procedures and annual entitlement application. Since the proposed revisions are minimal, the changes in State and local policies and procedures will not require extensive staff development statewide for educators, students and their families, and other agency personnel. However, when revised Policy 2419 is in effect, local school districts will be required to revise their local special education policies and procedures to reflect the current changes.

**Policy 2419: Regulations for the Education of Exceptional Students**

**RESPONSE FORM**

**Directions:** Please use this form to comment on the proposed revisions of Policy 2419: Regulations for the Education of Exceptional Students. Only comments pertinent to the **proposed** revisions will be summarized and presented to the West Virginia State Board of Education at the close of the comment period.

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Individual: \_\_\_\_\_

Organization: \_\_\_\_\_ Title: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

**COMMENTS**

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§126-16-1. General.

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§126-16-2. Identification/Referral.

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§126-16-3. Evaluation and Reevaluation.

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§126-16-4. Eligibility.

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

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

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**§126-16-7. Discipline.**

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**§126-16-8. Procedural Safeguards.**

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**§126-16-9. Accountability.**

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**GLOSSARY:**

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**RETURN BY MAY 18, 2001 TO:**

Dee Bodkins, Ed.D., Director  
Office of Special Education  
West Virginia Department of Education  
Capitol Complex, Building 6, Room 304  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330  
E-mail: [dbodkins@access.k12.wv.us](mailto:dbodkins@access.k12.wv.us)  
FAX: 304-558-3741

126CSR16

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-TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

2001 APR 13 P 4: 27

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

**§126-16-1. General.**

1.1. Purpose: The Individuals with Disabilities Education Act Amendments of 1997 requires that the State set forth policies and procedures to assure that there is a goal of providing full educational opportunity to all students with disabilities birth through 21 years of age. The State of West Virginia reaffirms the goal to provide full educational opportunities for all students with disabilities, aged birth through 21. The State works toward the realization of this goal through the implementation of, and compliance with, the Individuals with Disabilities Education Act Amendments of 1997 (P.L. 105-17).

1.2. Scope: These regulations apply to preschool, 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.

1.2.1. 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 C of the Individuals with Disabilities Education Act (IDEA) requires interagency collaboration in child find activities targeting children from birth through 5 years of age.

1.2.2. 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:

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a. 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

b. 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.

1.3. Authority. W. Va. Const., Article XII, §2, W. Va. Code §18-20 et seq., and the Individuals with Disabilities Act (IDEA), as amended, Public Law 105-17.

1.4. Filing Date.

1.6. Effective Date. **July 1, 2001**

1.7. 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 extended to all exceptional individuals and not a privilege. The intent of the mandates is to assure that all of the aforementioned individuals with exceptionalities, including students with disabilities who have been suspended or expelled from school, 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 that provide special education and related services to exceptional students.

1.8. 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:

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

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1.8.2. 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.

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

1.8.4. 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.

1.8.5. 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 agreed to by the parents and the school.

1.8.6. 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 regardless of the severity of their disability, 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 suspected of having an exceptionality even though they are advancing from grade to grade, students in private/religious schools, highly mobile students, 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.

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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/religious schools; and
- D. any interested person or agency.

### 2.1.3. School Teams.

a. Each public agency shall establish a team in each school to assist in the identification/referral of students whose educational performance is not commensurate with non-exceptional peers.

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 referred 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 8.1.8 of this policy 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.

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c. Each public agency shall complete the initial multidisciplinary evaluation and convene an Eligibility Committee and determine eligibility, as specified in §126-16-4 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 that 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 that age;

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

E. a licensed physician 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.

~~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, by a licensed physician.~~

c. Members of the MDET shall be:

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;

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- C. knowledgeable in the area of concern; and
- D. knowledgeable in the applicable state and federal regulations.

### 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 skills, behavioral performance, general intelligence, academic performance, communicative status, motor abilities, assistive technology services and/or devices, post-secondary interests/preferences and vocational aptitudes.

b. When evaluating a student with an exceptionality, the evaluation shall be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the suspected or identified exceptionality.

c. For reevaluations and initial evaluations, if appropriate, a team which meets the membership requirements of section 5.1.2.a. and other qualified professionals as appropriate:

A. shall review existing evaluation data on the student, including:

- (a) evaluations and information provided by the parents of the student;
- (b) current classroom-based assessments and observations; and
- (c) observations by teachers and related service providers; and

B. shall, on the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

- (a) whether the student has ~~an~~ a particular category of exceptionality as described in 4.1.3. or continues to have a disability;
- (b) the present levels of educational performance and educational needs of the student;
- (c) whether the exceptional student needs or the student with a disability continues to need special education and related services; and

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(d) for reevaluations, whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and to participate as appropriate in the general curriculum;

C. may conduct its review without a meeting;

D. shall administer tests and other evaluation materials as may be needed to produce the data identified as needed; and

E. shall use reevaluation information for gifted students for programmatic purposes and not eligibility.

d. If the determination under paragraph (c) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents:

A. of that determination and the reason for it; and

B. of the right of the parents to request an evaluation to determine whether, for purposes of services under this part, the child continues to be a child with a disability.

e. The public agency is not required to conduct the evaluation described in 3.1.3.d.B. unless requested to do so by the parents.

f. The evaluation described in section 3.1.3. is not required before the termination of a student's eligibility under Part B of the Act due to graduation with a regular high school diploma, or exceeding the age of eligibility for a free appropriate public education under State law.

g. The student's academic, behavioral, motoric and/or communicative performance shall be observed by at least one MDET 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 MDET member shall observe the child in an environment appropriate for a child of that age.

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

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h. When verbal communication is not an effective means of communication for the student, the student shall be evaluated to determine the need for an alternative means of communication.

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

j. ~~A reevaluation of a gifted student shall also be conducted to determine eligibility for exceptional gifted during the eighth grade consisting of, at least, an appropriate individual achievement measure and an educational performance review during the eighth grade to determine eligibility for exceptional gifted. A team which meets the membership requirements of section 5.1.2.a. shall conduct a reevaluation in accordance with section 3.1.3. c.~~

k. 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.

l. For students with disabilities age 14 (or younger, if appropriate), the public agency shall obtain information pertaining to the student's post-secondary interests and preferences.

m. 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 whether: 1) the referred student meets the eligibility criteria in one of the designated exceptionalities; and 2) by reason thereof, needs special education and related services. 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 qualified professionals and the parent.

#### 4.1.2. Procedures for Determining Eligibility.

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a. The EC shall ~~carefully consider documented~~ draw upon information from a variety of sources, such as ability and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive skills and ensure that information obtained from all of these sources is documented and carefully considered.

b. The EC shall:

A. utilize the results of the multidisciplinary evaluation as the primary source of information to determine the student's educational needs and if:

(a) the student meets the eligibility criteria in one of the designated exceptionalities; and

(b) needs specially designed instruction; or

(c) the student no longer meets the eligibility criteria or no longer needs specially designed instruction.

B. ensure that the determinant factor for a student's eligibility is not:

(a) lack of instruction in reading or math; or

(b) limited English proficiency.

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

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

(b) the basis for making the determination;

(c) the relevant behavior noted during the classroom observation of the student;

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

(e) the educationally relevant medical findings, if any;

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

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(g) determination concerning the effects of environmental or cultural difference or economic disadvantage;

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

D. compile and submit determination results for eligible students to the IEP team;

E. document the specific exceptionality for state and federal reporting purposes;

F. recommend options for those students deemed ineligible and refer the student to the school team; and

G. provide parents copies of the evaluation reports and documentation of eligibility determination.

### 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. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in (B) of this section are satisfied.

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:

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(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.

(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);

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(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.

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

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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;

(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) Cortical visual impairment - A visual loss caused by a disturbance of the posterior visual pathway and/or cortex.

### d. Deaf-Blindness

A. Deaf-blindness is concomitant hearing and visual impairments the combination of which causes such severe communication and other developmental and educational needs 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.

### 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.

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(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, a full scale score of 2.0 or more standard deviations above the mean on a comprehensive test of intellectual ability, with consideration of 1.0 standard error of measurement at the 68% confidence interval, 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 in one or more of the four (4) core curriculum areas; or

(B) At least one area of classroom performance, as determined during the multidisciplinary evaluation, indicating that the student requires specially designed instruction in one or more of the four (4) core curriculum areas.

C. For exceptional gifted, grades 9 through 12, documentation that a student meets the eligibility criteria for gifted and one or more of the following:

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(a) the eligibility criteria for one or more of the disabilities as defined in this section; and/or

(b) the definition for economically disadvantaged ~~as defined in the public agency's policies and procedures~~; and/or

(c) ~~is underachieving~~ the definition for underachievement, which takes into consideration the student's ability level, educational performance and achievement levels; and/or

(d) ~~is psychological adjustment disordered~~ the definition for psychological adjustment disorder 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 shall 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) If determined that the eligibility criteria and/or assessment instruments discriminate against a student because the student belongs to an historically under-represented gifted population, eligibility for gifted services shall be based upon criteria that complement the definition and eligibility for gifted as described in this policy. To determine whether a student demonstrates the potential for intellectual giftedness, absent a definitive cognitive measurement that meets the traditional eligibility criteria, the eligibility committee must consider all data gathered by the multidisciplinary evaluation team. These data include, but are not limited to, individual achievement, group achievement, classroom performance, teacher input, inventories, scales, checklists, student product(s) and parent information.

(c) 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 team.

(d) If the student is eligible as exceptional gifted, the IEP team shall develop an IEP. If the student is not eligible as exceptional gifted, the IEP team shall write a ~~four-year~~ four-year plan that appropriately addresses the student's ~~need for specially designed instruction~~ educational needs, including honors/advanced education, when

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appropriate. The implementation and annual review of this plan is are required by the public agency. The review team shall include the student, parent, school counselor, and building administrator.

### g. Mentally Impaired

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:

(a) general intellectual functioning level is approximately 70 to 75 or below on scales with a mean of 100 and standard deviation of 15;

(b) related limitations in two or more adaptive skill areas substantially below the average level of functioning; and

(c) 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., osteomyelitis, 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 educational needs as a result of the physical disability or health condition.

### i. Other Health Impaired

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A. Other health impairments are disabilities of limited strength, vitality, or alertness that adversely affect the student's educational performance including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, and that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, cancer, diabetes, epilepsy, heart condition, hemophilia, lead poisoning, nephritis, rheumatic fever or sickle cell anemia.

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) the existence of educational needs 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 that 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 and/or self-help skills.

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) Each public agency will participate in transition planning conferences arranged by the designated lead agency for Part C.

(c) For a child transitioning from a Part C 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) which meets the

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requirements of sections 5.1.3. and 5.1.4. of these regulations has been developed and implemented by the public agency;

(d) For a child who turns three (3) in the spring/summer, the LEA is responsible for implementation of the IEP services for children as of the third birthday, regardless of which agency provides the services;

(e) If appropriate, a child who turns 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; and

(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.

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(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) 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.

#### I. Speech/Language Impairments

A. A speech/language impairment is a communication disorder such as stuttering (fluency), a language impairment, impaired articulation, or voice impairment 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 with a language impairment exhibits;

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

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

(C) a severe deficit in receptive, expressive or pragmatic language which prevents appropriate communication in school and/or social situations as measured by formal and/or informal diagnostic procedures.

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

(A) intelligibility due to speech sound errors is 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 that may not develop without intervention.

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

(A) 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 fluency impairment.

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

(A) impairment(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.

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(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 an impairment in the primary and/or all languages spoken.

### 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 Team Timelines.

a. The Individualized Education Program (IEP) team 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.

b. The IEP team shall be convened periodically, but not less than annually, to review and, if appropriate, revise the IEP for an exceptional student.

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### 5.1.2. Individualized Education Program Team Membership.

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

A. a representative of the public agency, who:

(a) is qualified to provide, or supervise, the provision of specially designed instruction to meet the unique needs of the exceptional student;

(b) is knowledgeable about the general curriculum; and

(c) is knowledgeable about the availability of resources of the public agency.

B. at least one regular education teacher of the student, including the referring and the receiving regular education teachers (if the student is, or may be, participating in the regular education environment);

C. at least one special education teacher of the student, or if appropriate, at least one special education provider of the student;

D. the parent(s) of the student;

E. if appropriate, the student;

F. at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and,

G. an individual who can interpret the instructional implications of evaluation results.

b. Adolescent Transition - When considering transition services for a student with disabilities, at any age, the public agency shall also invite:

A. the student; and,

B. when the student is age 16 or older, a representative of any other agency that is likely to be responsible for providing or paying for the provision of transition services.

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c. Private Schools - Before a public agency places a student with a disability in, or refers a student to a private school or facility, the agency shall invite a representative of the private school or facility.

**5.1.3. Individualized Education Program Content.**

**a. In developing each student's IEP, the IEP team shall consider:**

**A. the strengths of the student and the concerns of the parents for enhancing the education of their child;**

**B. the results of the initial or most recent evaluation of the student; and**

**C. as appropriate, the results of the student's performance on any general State or district-wide assessment programs.**

**b. The IEP for each student shall include:**

**A. a statement of the student's present levels of educational performance, including:**

**(a) how the student's exceptionality affects the student's involvement and progress in the general curriculum; or**

**(b) for preschool children, as appropriate, how the disability affects the student's participation in appropriate activities.**

**B. a statement of measurable annual goals, including benchmarks or short term instructional objectives, which show a direct relationship to the present levels of educational performance and are related to:**

**(a) meeting the student's educational needs that result from the student's exceptionality to enable the student to be involved in and progress in the general curriculum, or for preschool students, as appropriate, to participate in appropriate activities; and**

**(b) meeting each of the student's other educational needs that result from the student's exceptionality.**

**C. a statement of the specific special education and related services, and supplementary aids/services to be provided to the student, or on behalf of the student, and**

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a statement of program modifications or supports for school personnel that will be provided to enable the student:

- (a) to advance appropriately toward attaining the annual goals; and
- (b) to be involved and progress in the general curriculum and to participate in extra-curricular and other non-academic activities; and
- (c) to be educated and participate with other students with and without exceptionalities in the activities described above.

D. an explanation of the extent, if any, to which the student will not participate with non-exceptional students in the regular class and in the activities described in (C) above;

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

F. a statement of any individual accommodations/modifications in the administration of statewide assessment of student achievement that are needed in order for the student to participate in the assessment and, if the IEP team determines that the student will not participate in a particular statewide assessment of student achievement (or part of the assessment), a statement of:

- (a) why that assessment is not appropriate for the student; and
- (b) how the student will be assessed.

G. The projected date for the beginning of the services and modifications and the anticipated frequency, location and duration of those services and modifications and supports for personnel;

H. a statement delineating extended school year services as specified in 5.1.5.j. of this section; and

I. a statement of how the student's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their non-exceptional student's progress, including:

- (a) the student's progress toward the annual goals; and

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(b) the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the academic year.

### 5.1.4. Consideration of Special IEP Factors.

a. The IEP team for a gifted student shall consider acceleration and the effects of acceleration on the student's graduation.

b. The IEP for a blind or partially sighted student shall also provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student.

c. The IEP for a student whose behavior impedes his or her learning or that of others shall also include, if appropriate, strategies, including positive behavioral interventions, strategies and supports to address that behavior.

d. The IEP for a student with limited English proficiency shall include, if appropriate, the language needs of the student as these needs relate to the IEP.

e. The IEP shall include:

A. for each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student that focuses on the student's programs of study (such as participation in advanced-placement courses or a vocational education program); and

B. for each student with a disability beginning at age 16 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

f. At least one year prior to a student's reaching the age of 18, the IEP must include a statement that the student has been informed of his or her rights under this policy, if any, that will transfer to the student when reaching age 18.

g. The IEP team shall consider the communication needs of the student.

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h. 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 team.

i. The IEP team for a student who is deaf or hard of hearing shall consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and a full range of educational needs, including opportunities for direct instruction in the student's language and communication mode.

j. If, in considering the special factors described above, the IEP team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education, the IEP team must include a statement to that effect in the student's IEP.

### 5.1.5. Individualized Education Program Team Responsibilities.

a. The regular education teacher of a student with an exceptionality, as a member of the IEP team, must, to the extent appropriate, participate in the development, review and revision of the student's IEP, including assisting in the determination of:

A. appropriate positive behavioral interventions and strategies for the student;  
and

B. supplementary aids and services, program modifications or supports for school personnel that will be provided for the student, consistent with 5.1.3.b.C.

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

c. The IEP team shall assure that:

A. If the student with disabilities, age 14 or older (or younger, if determined appropriate) does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered and documented;

B. If an agency invited to send a representative to a meeting at which transition services will be discussed does not do so, the public agency shall take other

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steps to obtain the participation of the other agency in the planning of any transition services;

C. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives set out in the student's IEP; and

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.

d. The IEP team shall review the IEP to determine whether the annual goals for the student are being achieved and to revise the IEP as appropriate to address:

A. any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

B. the results of any reevaluation conducted;

C. any information about the student provided to, or by, the parents;

D. the student's anticipated needs; or

E. other matters.

e. In conducting a meeting to review, and, if appropriate, revise a student's IEP, the IEP team shall consider the factors described in ~~paragraph (c)~~ 5.1.5. c. of this section.

f. The IEP team 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 education 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

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

g. For students ages 6 - 21, 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 non-exceptional individuals~~ outside regular education classes or integrated community settings for less than 21% of the school day. This may include students placed in:

(a) regular class with special education/related services provided within regular class;

(b) regular class with instruction within the regular class and with special education/related services provided outside regular class; or

(c) 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 non-exceptional 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:

(a) resource rooms with special education/related services provided within the resource room; or

(b) resource rooms with part-time instruction in a regular class.

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:

(a) separate special classrooms with part-time instruction in a regular class; or

(b) separate special classrooms full-time on a regular school campus.

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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 school day.

E. Special Education: Out-of-School Environment - wherein the student's specially designed instruction and related services are temporarily delivered in:

(a) a non-school environment, such as a public library, group home or mental health center;

(b) a medical treatment facility/hospital; or

(c) the home.

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.

h. For students ages 3-5, placement shall be documented as one of the following placement options:

A. Home - wherein all of the specially designed instruction and related services are delivered in the principal residence of the child's family or care givers;

B. Early Childhood Setting - wherein all of the student's specially designed instruction and related services are delivered in educational programs designed primarily for children without disabilities. This may include, but is not limited to: regular kindergarten classes; public or private preschools; Head Start Centers; child care facilities; preschool classes offered to an eligible pre-kindergarten population by the public agency; home/early childhood combinations; home/Head Start combinations; and other combinations of early childhood settings;

C. Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting - wherein the specially designed instruction and related services are delivered in multiple settings, such that: (a) general and/or special education and related services are provided at home or in educational programs designed primarily for children without disabilities, and (b) special education and related services are provided in programs designed primarily for children with disabilities. This may include, but is not limited to: home/early childhood special education combinations; Head Start, child care, nursery school facilities, hospital facilities on an outpatient basis, or other community-based settings with special education provided outside of the regular class; regular kindergarten

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classes with special education provided outside of the regular class; separate school/early childhood combinations; and residential facility/early childhood combinations;

D. Reverse Mainstream Setting - wherein all of the special education and related services are delivered in educational programs designed primarily for children with disabilities but that include 50 percent or more children without disabilities.

E. Early Childhood Special Education Setting - wherein all of the specially designed instruction and related services are delivered in educational programs designed primarily for children with disabilities housed in regular school buildings or other community-based settings. This may include, but is not limited to: special education classrooms in regular buildings; special education classrooms in child care facilities, hospital facilities on an outpatient basis, or other community-based settings;

F. Itinerant Service Outside the Home - wherein all of the special education and related services are delivered at a school, hospital facility on an outpatient basis, or other location for a short period of time. These services may be provided individually or to a small group of children. This may include, but not limited to: speech instruction up to 3 hours per week in a school, hospital, or other community-based setting.

i. The IEP team shall assure that the educational placement of each exceptional student, including a preschool child with a disability:

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 non-exceptional students in non-academic 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 solely 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; and
- (e) availability of space

H. is in an age-appropriate setting and that the student is not removed from education in an age-appropriate regular classroom solely because of needed modifications in the general curriculum.

j. The IEP team shall annually determine and document a student's need for extended school year (ESY) services in accordance with the following:

A. Students with disabilities entitled to 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 public 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; and/or

(d) other factors that interfere with maintenance of identified critical skills as described in the current IEP, such as likelihood of regression, slow recoupment and predictive data.

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

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

(a) The IEP team 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 services the student requires is determined on an individual basis by the IEP team;

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

E. ESY services may not be limited to a particular category of disability or be unilaterally limited in the type, amount or duration of those services;

F. The public agency shall annually inform parents of students with disabilities of the availability of ESY services and the procedures and criteria for determining a student's need for ESY services, and of their right to refuse ESY 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 team 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.

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### 6.1.2. Provision of IEP Information.

a. The student's IEP shall be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

b. Each teacher and provider described in section 6.1.2(a) shall be informed of:

A. His or her specific responsibilities related to implementing the student's IEP; and

B. The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

### 6.1.3. 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.

### 6.1.4. Provision of Services.

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

### 6.1.5. Caseloads.

a. The following caseloads ~~remain effective until July 1, 2000~~ are in effect July 1, 2001.

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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 school day are specified in section 6.1.5.b of this policy;

(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;

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;

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(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-Blindness**

(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.

### **E. Deaf and Hard of Hearing**

(a) Regular Education: Full-Time - Assign no more than 30 students;

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(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;

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(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;

(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

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(a) 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) Family Consultation - Assign no more than 15 children;

(b) Center-Based Programs;

(A) Regular Education: Full-Time - Assign no more than 20 children;

(B) Regular Education: Part-Time - Assign no more than 15 children;

(C) Special Education Program: Separate Class:

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

2. 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

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

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

### **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**

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(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 WVDE for approval of individual program).

### M. Traumatic Brain Injuries

(a) 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.

~~b. The following process for determining caseloads shall become effective July 1, 2001.~~

~~A. Each public agency shall establish and maintain a system for monitoring the collective caseload of each special educator, speech language pathologist and/or speech language assistant serving students within the public agency's jurisdiction.~~

~~B. Caseloads shall be based upon the number of students being served, the amount of direct and/or indirect instruction needed by each student, the frequency of supplementary aids/services needed by the student and provided by a special educator~~

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~~and the other duties assigned to the special educator (e.g. screening, diagnostic evaluations, itinerant travel time).~~

~~C. Each public agency shall use the following process to determine caseloads:~~

~~(a) Document each student's level of need by aggregating the total amount of services required from a special educator, speech-language pathologist and/or speech-language assistant and assigning a "rating" for the services for each student as follows:~~

~~(A) Rating #1 wherein the IEP documents the student's need for direct or indirect instruction and supplementary aids/services which total up to 360 minutes per week;~~

~~(B) Rating #2 wherein the IEP documents the student's need for direct or indirect instruction and supplementary aids/services which total 361-720 minutes per week;~~

~~(C) Rating #3 wherein the IEP documents the student's need for direct or indirect instruction and supplementary aids/services which total 721 or more minutes per week;~~

~~D. The building level administrator, in collaboration with the public agency's administrator of special education, shall compile the ratings of services for students assigned to a school or area. Compiled ratings shall be used to determine a special educator's weighted caseload. Weighted caseloads shall not exceed a total of 40 per special educator, a total of 50 per speech-language pathologist or speech-language assistant and a total of 50 per teacher of gifted.~~

~~E. When a special educator provides other non-instructional special education services (e.g. itinerant travel time, diagnostic evaluations, screening services) during the week, the weighted caseload shall be lowered by multiplying the allowable weighted caseload by the percentage of the week the special educator has available to provide direct and indirect instruction and/or supplemental aids/services;~~

~~F. Service personnel shall be assigned to schools based upon students' needs for supports (either individually or collectively) as described in their IEPs.~~

### 6.1.6. Private School Placements by the Public Agency.

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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 calls if the representative cannot attend.

b. After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency. If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative:

A. Are involved in any decision about the student's IEP; and

B. Agree to any proposed changes in the IEP before those changes are implemented.

c. Even if a private school or facility implements a student's IEP, responsibility for compliance with this part remains with the public agency and the West Virginia Department of Education (WVDE).

~~d. If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the student.~~

d. The WVDE shall ensure that a student with a disability who is placed in or referred to a private school or facility by a public agency:

A. is provided special education and related services in conformance with an IEP that meets the requirements of §126-16-15 and is at no cost to the parents:

B. is provided an education that meets the standards that apply to education provided by the WVDE and the public agency (including the requirements of this part); and

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C. has all the rights of a student with a disability who is served by a public agency.

e. Out-of-State Placement.

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

(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; and

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

### 6.1.7. Private School Placements by Parents When A Free Appropriate Public Education is at Issue

a. A local education agency is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if that agency made available a free appropriate public education to the student and the parents elected to place the student in a private school or facility. However, the public agency shall include the student in the population whose needs are addressed consistent with sections 6.1.8 and 6.1.9.

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the student and the question of financial responsibility are subject to the due process procedures of section 8.1.11.

c. If the parents of a student with a disability, who previously received special education and related services under the authority of a public agency enroll the student in a private preschool, elementary or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the

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parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private school placement is appropriate.

d. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State and local education agencies.

e. The cost or reimbursement described in 6.1.7.a. may be reduced or denied if:

A. at the most recent IEP meeting that the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense;

B. the parents did not give written notice to the public agency of the information described in 6.1.7.c.A. of this section, at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public school;

C. if, prior to the parents' removal of the student from the public school, the public agency informed the parents, through the notice requirements described in section 8.1.1., of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

D. upon a judicial finding of unreasonableness with respect to actions taken by the parents.

f. Notwithstanding the notice requirement in 6.1.7.e., the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

A. the parent is illiterate and cannot write in English;

B. compliance with 6.1.7. e.A. of this section would likely result in physical or serious emotional harm to the student;

C. the school prevented the parent from providing the notice; or

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D. the parents had not received the notice, pursuant to §615 of the Act, of the notice requirement in paragraph 6.1.7. e.A. of this section.

### 6.1.8. Private School Placements by Parents

a. Each local education agency shall locate, identify and evaluate all private school students with exceptionalities, including religious-school students residing in the jurisdiction of the local education agency, in accordance with sections 2.1. and 3.1.

b. The activities undertaken to carry out this responsibility for private school students with exceptionalities must be comparable to activities undertaken for students with exceptionalities in public schools.

c. Each local education agency shall consult with appropriate representatives of private school students with exceptionalities on how to carry out the activities described in 6.1.8.a.

d. To meet the requirements of section 6.1.8., each local education agency must spend on providing special education and related services to private school students with disabilities:

A. for students aged 3 through 21 an amount that is the same proportion of the local education agency's total subgrant under section 611 (g) of the Act as the number of private school students with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction aged 3 through 21; and

B. for students aged 3 through 5, an amount that is the same proportion of the local education agency's total subgrant under section 619 (g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

e. Each local education agency shall consult with representatives of private school students in deciding how to conduct the annual count of the number of private school students with disabilities and ensure that the count is conducted on December 1 or the last Friday of October of each year.

f. The child count must be used to determine the amount that the local education agency must spend on providing special education and related services to private school students with disabilities in the next subsequent fiscal year.

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g. Expenditures for child find activities described in 6.1.8.a. may not be considered in determining whether the local education agency has met the requirements of 6.1.8.d.

h. No private school student with an exceptionality has an individual right or entitlement to receive some or all of the special education and related services that the student would receive if enrolled in a public school.

i. Decisions about the services that will be provided to private school students with exceptionalities must be made in accordance with paragraphs j. and r. of this section.

j. Each public agency shall consult, in a timely and meaningful way, with appropriate representatives of private school students with exceptionalities in light of the funding under 6.1.8.d., regarding the number of private school students with exceptionalities, the needs of private school students with exceptionalities, and their location to decide:

- A. Which students will receive services under this section;
- B. What services will be provided;
- C. How and where the services will be provided; and
- D. How the services provided will be evaluated.

k. Each public agency shall give appropriate representatives of private school students with exceptionalities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

l. The consultation required in ~~paragraph e. of this section~~ 6.1.8.j. must occur before the public agency makes any decision that affects the opportunities of private school students with exceptionalities to participate in services under section 6.1.8.

m. The public agency shall make the final decisions with respect to the services to be provided to eligible private school students.

n. If a student with an exceptionality is enrolled in a private school and will receive special education or related services from a public agency, the public agency shall:

- A. Initiate and conduct meetings to develop, review, and revise a services plan for the student, in accordance with section 6.1.8.r.; and

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B. Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the public agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

o. The services provided to private school students with exceptionalities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

p. Private school students with exceptionalities may receive a different amount of services than students with exceptionalities in public schools.

q. State and local education agencies are not prohibited from providing services to private school students with disabilities in excess of those required by this part, consistent with State law or local policy.

r. Each private school student with an exceptionality who has been designated to receive services under this section must have a services plan that describes the specific special education and related services that the public agency will provide to the student.

A. The services plan must, to the extent appropriate:

(a) Meet the requirements of section 5.1.3. with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with §126-16-5 and §126-16-6 of this policy.

s. Services provided to private school students with exceptionalities may be provided on-site at a student's private school, including a religious school, to the extent consistent with law.

A. If necessary for the student to benefit from or participate in the services provided under this part, a private school student with an exceptionality must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home, depending on the timing of the service.

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B. Public agencies are not required to provide transportation from the student's home to the private school;

C. The cost of the transportation described in 6.1.8.s. A. of this section may be included in calculating whether the public agency has met the requirement of ~~6.1.7.e.~~ 6.1.8.d.

### 6.1.9. Requirements That Funds Not Benefit a Private School

a. The local education agency may not use funds provided under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if:

A. the classes are at the same site; and

B. the classes include students enrolled in public schools and students enrolled in private schools.

b. A local education agency may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit a private school.

c. The local education agency shall use funds provided under Part B of the Act to meet the special education and related services needs of students enrolled in private schools but not for:

A. the needs of the private school; or

B. the general needs of the students enrolled in the private school.

d. The local education agency may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities:

A. to the extent necessary to provide services under sections 6.1.8. and 6.1.9. for private school students with disabilities; and

B. if those services are not normally provided by the private school.

e. The local education agency may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under sections 6.1.8. and 6.1.9. if:

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A. the employee performs the services outside of his or her regular work hours of duty; and

B. the employee performs the services under public supervision and control.

f. The public agency must keep title to and exercise continuing administrative control of all property, equipment and supplies that the public agency acquires with funds under section 611 or 619 of the Act for the benefit of private school students with disabilities.

g. The public agency may place equipment and supplies in a private school for the period of time needed for the program.

h. The public agency shall ensure that the equipment and supplies placed in a private school:

A. are used only for Part B purposes; and

B. can be removed from the private school without remodeling the private facility.

i. The public agency shall remove equipment and supplies from a private school if:

A. the equipment and supplies are no longer needed for Part B purposes;

or

B. removal is necessary to avoid unauthorized use of the equipment and supplies other than for Part B purposes.

j. No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

**§126-16-7. Discipline.**

7.1. Policy Statement: Each public agency shall: 1) protect the rights of an eligible student with a disability whenever removal from the educational placement is considered as a disciplinary action; 2) proactively design and implement positive behavioral interventions, strategies and supports to address behaviors that interfere with learning; and

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3) provide instruction to assist the student to access and progress in the general curriculum and meet the goals in the student's IEP. Specific methods for implementing these requirements shall be stated in each public agency's policies and procedures.

7.1.1. Authority of school personnel for removals of not more than 10 school days at a time.

a. School personnel may to the extent removal would be applied to students without disabilities, remove a student with a disability from the current educational placement for not more than 10 school days at a time for violations of school rules; and

b. School personnel may order additional removals from the current educational placement of not more than 10 school days at a time in the same school year for separate incidents of misconduct, as long as the additional removal is:

A. not a change of placement; and

B. administered for the same amount of time as for non-disabled students.

c. School personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP when removals accumulate to more than 10 school days in a school year and are not a change of placement.

d. Within 10 business days of the first time the student is removed from school for more than 10 cumulative school days in a school year or commencing a removal that constitutes a change of placement under section 7.1.2, including the action described in section 7.1.4; the public agency shall:

A. convene an IEP meeting to develop an assessment plan if the student has not previously had a functional behavioral assessment and behavior intervention plan; and

B. reconvene an IEP meeting as soon as practicable after when completing the functional behavior assessments required by the plan described in 7.1.1.d.A. is completed to develop interventions that address the removal behavior and implement those interventions; or

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C. if the student already has a behavior intervention plan, convene an IEP meeting to review the plan and its implementation, and modify the plan and its implementation as necessary to address the removal behavior.

e. If a student who has a behavior intervention plan and who has been removed from school for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under section 7.1.2. ~~When the student receives further suspensions for up to 10 school days at a time,~~ the IEP team members shall individually review the behavior intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

### 7.1.2. Change of Placement.

a. A change of placement from the current educational placement occurs if:

A. the removal is for more than 10 consecutive school days (including removal to an interim alternative educational setting); or

B. the removals are administered in a series that constitutes a pattern because they accumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student has been removed and the proximity of removals to one another.

b. Whenever a change of placement is being considered, the public agency shall:

A. immediately provide the parent with written prior notice as specified in section 8.1.1 of the decision to remove the student and the procedural safeguards notice; and

B. immediately schedule an IEP meeting to be held within 10 ~~business~~ school days of the change of placement removal decision to determine the relationship between the student's disability and the behavior subject to the disciplinary action (manifestation determination) and to conduct the activities listed in section 7.1.1(d).

c. The IEP team, with parent agreement, may determine that a change in placement through the IEP process rather than through these disciplinary procedures is needed. Students may receive a change of placement through the IEP process for any time period determined appropriate by the team, as long as the parent does not object.

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**7.1.3. Manifestation Determination.**

a. In making a manifestation determination, the IEP team and other qualified personnel in a meeting shall:

A. consider all relevant information in terms of the behavior subject to the disciplinary action, including:

(a) evaluation and diagnostic results, including information supplied by the parents;

(b) observations of the student; and

(c) the student's IEP and placement.

B. determine that in relationship to the behavior subject to the disciplinary action:

(a) the IEP and placement were appropriate and the special education services, supplementary aids and services and behavior intervention strategies were provided consistent with the student's IEP and placement;

(b) the student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) the student's disability did not impair the student's ability to control the behavior subject to disciplinary action.

b. If the IEP team and other qualified personnel determines that any of the standards in section 7.1.3(a)(B) were not met, the behavior must be considered to be a manifestation of the student's disability.

c. If the IEP team and other qualified personnel identifies deficiencies in the student's IEP or placement or in their implementation, immediate steps must be taken to remedy those deficiencies.

d. If the IEP team and other qualified personnel determines the behavior was not a manifestation of the student's disability:

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A. the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to other students; and

B. services must be provided to the extent necessary, as determined by the IEP team, to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

e. If the public agency initiates disciplinary procedures applicable to all students, the public agency shall transmit the special education and disciplinary records of the student for consideration by the person or persons making the final determination regarding the removal.

### 7.1.4. Removal for Weapons and Drugs.

a. If a student with a disability carries a dangerous weapon to school or to a school function under the jurisdiction of the State or the public agency or knowingly possesses or uses illegal drugs or sells or solicits a controlled substance while at school or a school function under the jurisdiction of the State or the public agency, an IEP team may change the student's placement to an interim alternative educational setting (IAES) for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 days, as long as such a placement is selected to:

A. enable the student to continue progress in the general curriculum;

B. enable the student to continue to receive those services and modifications including those in the current IEP that will enable the student to meet the goals in the IEP; and

C. include services and modifications to address the behavior for which the student has been removed which are designed to prevent the behavior from recurring.

b. A change of placement to an IAES invokes the procedures set forth in sections 7.1.2 and 7.1.3.

### 7.1.5. Expedited Due Process Hearings and Student Status During Appeals.

a. Expedited due process hearings under section 7.1. must:

A. meet the requirements of 8.1.11, except that the WVDE may provide that the time periods identified in sections 8.1.11. for the purposes of due process hearings

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under 7.1. are not less than two business days; and

B. be conducted by a due process hearing officer who satisfies the requirements of section 9.1.2.b.AA(f).

b. A parent may request an expedited due process hearing if he or she disagrees with the manifestation determination made in section 7.1.3. or any decisions regarding placement in this section.

A. if a parent challenges an IAES placement decision, the student remains in the IAES pending the hearing decision or until the expiration of the time period for the placement (up to 45 days), whichever comes first, unless the parent and public agency agree otherwise.

B. if the parent challenges a manifestation determination or change of placement decision (other than an IAES) in a case in which the student has been removed for more than 10 school days at a time, the student returns at the end of the 10 school day removal to the prior to removal placement, pending the hearing decision, unless the parent and public agency agree otherwise.

C. if a student is placed in an IAES pursuant to section 7.1.4.a. or 7.1.6.a. and school personnel propose to change the student's placement after the expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the student must remain in the current placement (the student's placement prior to the IAES), except as provided in section 7.1.5.

c. The public agency may request an expedited due process hearing, if, during the pendency of the expedited due process hearing to challenge a manifestation determination, school personnel maintain it is dangerous for the student to be in or return to the placement prior to removal placement.

A. the hearing officer shall determine whether the student may be placed in an IAES or in another setting for up to 45 days.

B. the public agency may repeat the process of requesting an expedited due process hearing to remove the student from school for up to 45 days, as necessary.

d. An expedited due process hearing request may be submitted in writing to the public agency or the WVDE. Requests submitted to the public agency shall be submitted to the WVDE by the next business day.

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e. Expedited hearings requested by public agencies or parents shall be conducted and a written decision issued within 45 days of receipt of the hearing request by the WVDE, without exceptions or extensions.

f. Each party shall disclose to all other parties, at least two (2) business days prior to an expedited hearing, all evidence that party intends to use at the hearing.

g. The decisions rendered through the expedited hearing process may be appealed through civil action.

### 7.1.6. Authority of the Due Process Hearing Officer.

a. A hearing officer may order a change of placement to an IAES for not more than 45 days, if the hearing officer in an expedited due process hearing:

A. determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;

B. considers the appropriateness of the student's current placement;

C. considers whether the public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

D. determines that the IAES that is proposed by school personnel who have consulted with the student's special education teacher:

(a) Is selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in the IEP; and

(b) Includes services and modifications to address the behavior subject to the disciplinary action that are designed to prevent the behavior from recurring.

b. In reviewing a manifestation determination decision, the hearing officer shall determine whether the public agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of section 7.1.3.

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c. In reviewing an IAES decision, the hearing officer shall apply the standards described in section 7.1.6. (a).

### 7.1.7. Referral To and Action By Law Enforcement and Judicial Authorities.

a. A public agency may report a crime committed by a student with a disability to appropriate law enforcement and judicial authorities.

b. Law enforcement and judicial authorities may exercise their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

c. Copies of the special education and disciplinary records shall be transmitted for consideration by the appropriate authorities to whom it reports the crime to the extent permitted by the Family Educational Rights and Privacy Act (FERPA) and Policy 4350: *Procedures for the Collection, Maintenance and Disclosure of Student Records*.

### 7.1.8. Protections for Students Not Yet Determined Eligible.

a. A student may assert protections of this part if the public agency had knowledge as defined in A of this part that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

A. a public agency shall be deemed to have knowledge if:

(a) the parent expressed concern in writing (or orally if parent does not write or has a disability preventing a written statement) to personnel of the appropriate public agency that the student is in need of special education and related services;

(b) the behavior or performance of the student demonstrates the need for special education and related services in accordance with section 4.1;

(c) the parent has requested an evaluation of the student for special education and related services; or

(d) the teacher of the student or other personnel of the public agency expressed concern about the behavior or performance of the student to the director of special education or to other personnel in accordance with the public agency's child find or referral process.

B. a public agency would not be deemed to have knowledge if, as a result

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of receiving the information specified above, the public agency either:

(a) conducted an evaluation and determined the student was not a student with a disability; or

(b) determined that an evaluation was not necessary; and

(c) provided notice which meets the requirements of section 8.1.1 to the parent of its determination.

b. If a public agency does not have knowledge prior to taking disciplinary measures, the student may be subjected to the same disciplinary measures as applied to non-disabled students who engaged in comparable behaviors.

c. If a request is made for a multidisciplinary evaluation during the time period in which the student is subjected to disciplinary measures:

A. the evaluation must be conducted in an expedited manner; and

B. until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

d. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the public agency and information provided by the parents, the public agency shall provide special education and related services in accordance with the provisions of ~~this section~~ §126-16-7 and section 6.1 of these regulations 612(a)(1)(A) of the Act.

### **§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:

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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. If the notice relates to an action proposed by the public agency that also requires parental consent, the agency may give notice at the same time it requests parent consent.

c. The notice must include:

A. 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;

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

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

D. a statement that the parents of a student with an exceptionality have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

E. sources for parents to contact to obtain assistance in understanding the provisions of the procedural safeguards.

### 8.1.2. Procedural Safeguards Notice.

a. A copy of the procedural safeguards available to the parents must be given to the parents, at a minimum:

A. upon initial referral for evaluation;

B. upon each notification of an IEP team meeting;

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- C. upon reevaluation of the student;
- D. upon receipt of a request for due process hearing; and
- E. with notification of a disciplinary change of placement.

b. The procedural safeguards notice must include a full explanation of all the procedural safeguards relating to:

- A. independent educational evaluation;
- B. prior written notice;
- C. parental consent;
- D. access to educational records;
- E. opportunity to initiate due process hearings;
- F. the student's placement during pendency of due process proceedings;
- G. procedures for students who are subject to placement in an interim alternative educational setting;
- H. requirements for unilateral placement by parents of students in private schools at public expense;
- I. mediation;
- J. due process hearings, including requirements for disclosure of evaluation results and recommendations;
- K. civil actions;
- L. attorneys' fees; and
- M. the State complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

### 8.1.3. Notice in Understandable Language.

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- a. Both prior notice and the notice of procedural safeguards 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.
- b. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure:
  - 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 the content of the notice; and
  - C. that there is written evidence that the above requirements have been met.

### 8.1.4. Parental Consent.

- a. Granting of consent by the parent is voluntary and may be revoked at any time. If the parent revokes consent, the revocation is not retroactive; that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked.
- b. Parental consent must be obtained before:
  - A. conducting an initial evaluation or reevaluation; and
  - B. initial provision of special education and related services to an exceptional student.
- c. When a student with a disability transitions from Part C to Part B, the public agency shall:
  - A. provide the student's parents a detailed explanation of the differences between an IFSP and an IEP; and
  - B. if the parents choose an IFSP, obtain written informed consent from the parents.

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d. Except for pre-placement evaluation, initial placement, and reevaluation, refusal to consent shall not be used to deny the parent or student any other service, benefit or activity of the public agency;

e. Parental consent is not required:

A. before reviewing existing data as part of an evaluation or a reevaluation;

B. before administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students; and/or

C. for reevaluation, if the public agency can demonstrate that it has taken reasonable measures to obtain that consent and the student's parent has failed to respond. A public agency must have a record of its attempts to obtain parental consent 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 to the parent's home or place of employment and the results of those visits.

f. If the parents of a student with an exceptionality refuse consent for initial evaluation or a reevaluation, the public agency may continue to pursue those evaluations by using the due process hearing procedures, or the mediation procedures if appropriate.

g. The public agency may use mediation or the impartial due process hearing procedures, if appropriate, to determine if the student may be evaluated, initially provided special education and related services or reevaluated without parental consent.

### 8.1.5. Surrogate Parents.

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

A. no parent can be identified;

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B. the public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

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 parents. This must include a method:

A. for determining whether a student needs a surrogate parent; and

B. for assigning a surrogate parent to the student.

c. Public agencies shall ensure 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 ensure adequate representation of the student;

d. A person assigned as a surrogate may not be an employee of the WVDE, the local educational agency or any other agency, that 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. A public agency may select as a surrogate a person who is an employee of a non-public agency that only provides non-educational care for the student and who meets the standards in c. and d. above;

f. 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.

### 8.1.6. Transfer of Parental Rights at Age of Majority.

a. When an exceptional student reaches the age of majority (18) under State law that applies to all students (except for a student with an exceptionality who has been determined to be incompetent under State law);

A. the public agency shall provide any notice required to both the individual and the parents; and all other rights accorded to parents under this policy transfer to the student, and

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B. all rights accorded to parents under this policy transfer to students who are incarcerated in an adult or juvenile state or local correctional institution;.

b. Whenever rights are transferred to a student, the public agency shall notify the individual and the parents of the transfer of rights.

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

a. Afford the parents of an exceptional student an opportunity to:

A. inspect and review all education records with respect to the identification, evaluation and educational placement of the student, and the provision of a free appropriate public education to the student; and

B. participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

b. Provide written notice to ensure that parents have the opportunity to participate in meetings, including EC and IEP meetings, with respect to the identification, evaluation and educational placement of the student, and the provision of a free, appropriate public education to the student:

A. Each public agency shall take steps to ensure 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 ensure that they will have the opportunity to attend; and

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

B. The written notice must include:

(a) the purpose, time, and location of the meeting;

(b) who will be in attendance;

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(c) an explanation that at the discretion of the public agency or parent other individuals who have knowledge or special expertise regarding the student, as determined by the public agency or the parent inviting the individual, can attend the meeting; and

(d) 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 service needs for the student, at age 14, or younger if appropriate, the written notice must also:

(a) indicate this purpose; and

(b) indicate that the agency will invite the student.

D. If a purpose of the meeting is also the consideration of needed adolescent transition services for the student, at age 16 or younger if appropriate, 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 ensure 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 EC and/or IEP team meeting without a parent in attendance only when the public agency has documentation that other methods of ensuring 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 ensure parent participation, including individual or conference telephone calls.

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

f. Provide the parent a copy of the IEP, at no cost to the parent.

### 8.1.8. Evaluation.

a. Each public agency shall ensure, at a minimum, that the following requirements are met:

A. Tests and other evaluation materials used to evaluate a student:

(a) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(b) Are provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.

B. Materials and procedures used to evaluate a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has an exceptionality and needs special education, rather than measuring the student's English language skills;

C. A variety of evaluation tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent, and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool student, to participate in appropriate

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activities), that may assist in determining:

(a) Whether the student is a student with an exceptionality under section 4.1.3; and

(b) The content of the student's IEP.

D. Any standardized tests that are given to a student:

(a) Have been validated for the specific purpose for which they are used; and

(b) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests;

(c) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

E. Tests and other evaluation materials include those tailored to evaluate specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

F. Tests are selected and administered so as best to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's ability or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

G. No single procedure is used as the sole criterion for determining whether a student is a student with an exceptionality and for determining an appropriate educational program for the student;

H. The student is evaluated in all areas related to the suspected exceptionality, including, if appropriate, health, vision, hearing, social and emotional status, adaptive skills, general intelligence, academic performance, communicative status, and motor abilities.

I. In evaluating each student with an exceptionality under as defined in 4.1.3, the evaluation is sufficiently comprehensive to identify all of the student's special

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education and related services needs, whether or not commonly linked to the category of exceptionality in which the student has been classified;

J. The public agency uses technically sound instruments that may evaluate the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;

K. The public agency uses evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

### 8.1.9. Independent Education Evaluation.

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 for an independent education evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable set forth in (f) of this section.

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. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a due process hearing to show that its evaluation is appropriate, or ensure an independent educational evaluation is provided at public expense, unless the agency demonstrates in a due process hearing that the evaluation obtained by the parent did not meet agency criteria. If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent education evaluation but not at public expense.

c. If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

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

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

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

e. 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.

f. Whenever an independent evaluation is at public expense:

A. 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 that the public agency uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation; and

B. except for criteria in above paragraph of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

### 8.1.10. Mediation.

a. Mediation is encouraged and available to parties who have a dispute relating to the identification, evaluation, or educational placement of an exceptional student, or the provision of a free appropriate public education. Mediation is available independent of or subsequent to a due process hearing request, including expedited hearings regarding a disciplinary change of placement including removal to an IAES.

b. The WVDE shall administer a system of mediation which ensures:

A. mediation is voluntary on the part of the parties;

B. mediation may not be used to deny or delay a parent's right to a due process hearing or to any other rights under this policy;

C. mediation is conducted by a qualified and impartial mediator;

D. the WVDE bears the cost of the mediation process;

E. parties may be assisted in the mediation process by persons with special knowledge or training with respect to the student, the needs of exceptional students, mediation procedures or special education law and regulations;

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F. each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute;

G. an agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement; and

H. discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be asked to sign a confidentiality pledge prior to the commencement of mediation.

c. Qualifications of mediators:

A. a mediator may not be:

(a) an employee of any local educational agency or any State agency receiving IDEA, Part B sub-grants; or

(b) an employee of a state education agency that is providing direct services to a student who is the subject of the mediation process; or

(c) an attorney or advocate who represents boards of education or parents against boards of education; or

(d) a person having a personal or professional conflict of interest.

B. a person who otherwise qualifies as a mediator is not an employee of a local educational agency or State agency solely because he or she is paid by the agency to serve as a mediator;

C. a mediator must be trained in effective mediation techniques and in the requirements of the IDEA and these regulations; and

D. mediators are verified by the WVDE as having met the requirements for qualified mediators. The WVDE maintains a list of the individuals who are qualified mediators.

d. Meeting to encourage mediation:

A. a public agency may establish procedures to require parents who elect

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not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(a) who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(b) who would explain the benefits of the mediation process, and encourage the parents to use the process.

B. a public agency may not deny or delay a parent's right to a due process hearing under section 8.1.11, if the parent fails to participate in the meeting described in 8.1.10. d.

e. Process for initiating mediation:

A. a request for mediation may be filed independent of or subsequent to filing a due process hearing;

B. parents are informed of mediation:

(a) through the procedural safeguards notice;

(b) upon requesting information from the public agency or WVDE; and

(c) upon filing a request for a due process hearing;

C. a party may request mediation in a dispute relating to the identification, evaluation, or educational placement of an exceptional student, or the provision of a free appropriate public education by submitting a written request to the public agency or the WVDE;

D. a public agency receiving a mediation request shall forward the request to the WVDE within three (3) calendar days of receipt of the request, except when mediation is requested regarding issues in an expedited due process hearing, which shall be forwarded to the WVDE by the next business day;

E. if both parties agree to participate in mediation, the WVDE shall assign a mediator from the list of qualified mediators on a rotational basis;

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F. the mediation session must be completed within 20 calendar days of receipt by the WVDE of a request for mediation unless the timeline is extended by agreement of the parties. Any written mediation agreement shall be signed by both parties and shall be submitted to both parties and the WVDE; and

G. if mediation fails to produce an agreement, or if either party requests termination of the mediation process, the mediator shall issue a statement to the parties and the WVDE that the process has been terminated.

### 8.1.11. 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 WVDE and/or the superintendent of the public agency.

b. The procedures relevant to due process hearings do not apply to students with exceptionalities placed in private schools by the parent for issues regarding the provision of services or the student's services plan. Due process procedures apply to child find, including evaluation and reevaluation.

c. The burden of proof as to the appropriateness of any proposed action, as to why more normalized placement could/could not adequately and appropriately service 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.

d. Public agencies shall:

A. provide information to parents, upon request, relevant to submitting written requests for due process hearings and mediation, including the model form for filing due process hearings;

B. inform parents of any free and low-cost legal and other relevant services available in the area if the parent requests the information or the parent or agency initiates a hearing under this section; and

C. forward any written requests received for due process hearings to the WVDE within five (5) days of the date of receipt.

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e. The party requesting a hearing, or the attorney representing the party, shall provide notice (which must remain confidential) to the public agency, or to WVDE, in a request for a hearing. The notice must include:

A. The name of the student;

B. The address of the residence of the student;

C. The name of the school the student is attending;

D. A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and

E. A proposed resolution of the problem to the extent known and available to the parents at the time.

f. The party's right to a due process hearing may not be denied or delayed for failure to provide the notice required in paragraph (e) of this section;

g. Not later than 45 calendar days after the Department receives a written request for a due process hearing, the hearing officer will issue a final decision, mailing a copy of the decision to each of the parties. A hearing officer may grant specific extensions of time beyond the timelines at the request of either party;

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

i. 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;

j. 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

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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;

k. 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;

l. 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 needs 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 business days before the hearing;

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

E. obtain written, or at the option of parents, electronic findings of fact and decisions.

m. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this paragraph from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

n. Parents involved in hearings must be given the right to:

A. have the student who is the subject of the hearing present;

B. open the hearing to the public; and

C. obtain the record of the hearing and the findings of fact and decisions at no cost.

o. The public agency shall inform parents that reasonable attorney's fees may be awarded to parents of students with disabilities to cover attorneys' fees when the parent

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of a student with a 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. IDEA, Part B funds may not be used to pay attorney's fees;

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

q. 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.

A. In any action brought under 8.1.11. q. of this section, the court shall:

(a) receive the records of the administrative proceedings;

(b) hear additional evidence at the request of a party, and

(c) grant the relief that the court determines to be appropriate based on the preponderance of the evidence.

r. Student Status During Proceedings:

A. Except as provided in procedures for placement in an interim alternative education setting for up to 45 days, 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.

C. If the decision of a hearing officer in a due process hearing agrees with the parents that a change of placement is appropriate, that placement must be treated as an agreement between the public agency and the parents for purposes of determining the student's current placement during the pendency of subsequent appeals.

### **§126-16-9. Accountability.**

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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.

### 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 exceptional 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. ensure 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 WVDE.

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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 services in the State.

b. It is the responsibility of the Department to:

A. ensure that the requirements of this part are carried out and that each educational program for students with exceptionalities administered within the State including each program administered by any other State or local agency:

(a) is under the general supervision of the persons responsible for educational programs for students with exceptionalities in the State;

(b) meets the education standards of the WVDE (including the requirements of this part); and

(c) comply with 9.1.2.b.A. through state statute, state regulation, signed agreement between respective agency officials or other documents.

B. 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;

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

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

E. perform statewide planning for educational services for eligible exceptional students;

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

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

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

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

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

K. 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;

L. review and/or revise the State Improvement Plan for special education, as required by the U.S. Department of Education;

M. 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;

N. ensure that least restrictive environment is effectively implemented for students in private or public institutions, including, if necessary, making arrangements with public and private institutions such as a memorandum of agreement or special implementation procedures;

O. provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them in the implementation of section 6.1.6.d.

P. monitor the implementation of all special education programs for all eligible exceptional students in the State, including students in residential institutions and private schools, and incarcerated youth, and students with disabilities who are convicted as adults under State law and incarcerated in adult prisons, to assure compliance with federal laws and regulations, state laws, policies, standards and regulations;

Q. inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the students with exceptionalities served by that public agency.

R. review the public agency's justifications for its actions and assist in planning and implementing any necessary corrective action if there is evidence that a public agency makes placements that are inconsistent with section 5.1.5.i.

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S. initiate enforcement procedures in accordance with the State Improvement Plan, when determined that a public agency has violated these regulations;

T. review public agencies' special education plans and recommend action to the State Superintendent of Schools;

U. administer the Individuals with Disabilities Education Act funds and monitor programs funded from these monies;

V. maintain reports and summary information on special education in the State;

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

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

Y. 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

Z. prescribe methods for the provision of services that:

(a) ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in 9.1.2.b.Z.(b) that are needed to ensure a free appropriate public education are provided including the provision of these services during the pendency of any dispute under 9.1.2.b.Z.(a)(C). The agreement or mechanism must include the following:

(A) an identification of, or a method for defining the financial responsibility of each agency for providing the services described in 9.1.2.b.Z.(b) of this section, including the State Medicaid agency and other public insurers of students with exceptionalities must precede the financial responsibility of the local education agency (or the State agency responsible for developing the student's IEP);

(B) the conditions, terms, and procedures under which a local education agency must be reimbursed by other agencies;

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(C) procedures for resolving interagency disputes from other agencies or otherwise implement the provisions of the agreement or mechanism; and

(D) policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and time and appropriate delivery of services described in 9.1.2.b.Z.(b) of this section.

(b) ensure if any public agency other than an educational agency is otherwise obligated under Federal or State law, or is assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 10.9. relating to assistive technology devices, 10.10. relating to assistive technology services, 10.119. relating to supplementary aids, 10.120. relating to supplementary services, 10.99. relating to related services and 10.123. relating to transition services) that are necessary for ensuring a free appropriate public education to students with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(c) ensure that a noneducational public agency described in (b) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(d) ensure that if a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b) of this section, the local education agency (or State agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The local education agency or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the local education agency or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.

(e) ensure that the requirements of 9.1.2. b.Z. may be met through:

(A) State statute or regulation;

(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer.

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(f) document that the State has on file with the Secretary information that demonstrates the requirements of 9.1.2.b.Z.(a)-(e) are met.

AA. 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, when a due process hearing is initiated or if the parent requests the information of the availability of mediation, 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) ensure 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;

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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) A due process hearing may not be conducted by

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

2. any person having a personal or professional interest that 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) An otherwise qualified individual:

1. shall be ineligible to begin hearing officer training or to serve as hearing officer during the pendency of any action in which he or she represents boards of education or parents in actions against boards of education and for one year following the conclusion of said representation; and

2. is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(D). Upon receipt of a written request for a due process hearing, WVDE shall 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

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the superintendent shall be final and not subject to appeal.

BB. administer a state complaint system for investigating and resolving complaints which shall:

(a) allow for an organization or individual, including from another State, to file a signed written complaint. The complaint must include:

(A) a statement that a public agency has violated a requirement of state or federal law or regulation that applies to Part B of the Individuals with Disabilities Education Act Amendments of 1997 and implementing regulations or West Virginia Code 18-20 and implementing regulations (Policy 2419: *Regulations for the Education of Exceptional Students* and/or Policy 4350: *Procedures for the Collection, Maintenance and Disclosure of Student Data*); and

(B) the facts on which the statement is based.

(b) require the complaint to allege a violation that occurred not more than one year prior to the date that the complaint is received, unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received;

(c) require, upon receipt of the complaint, the WVDE to determine if it is sufficient, that is, meets the requirements of paragraph (a) and shall initiate investigation procedures, or shall notify the complainant in writing that the statement is not sufficient to merit investigation;

(d) require within 60 calendar days of receipt of the complaint, the WVDE to:

(A) conduct an independent on-site investigation, if the WVDE determines such an investigation is necessary. Such determination will be made by the WVDE based on the nature of the allegations, review of information submitted by the public agency and information obtained through telephone interviews;

(B) give the complainant the opportunity to submit additional information, either orally or in writing about the allegations in the complaint;

(C) review all relevant information and make an independent

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determination as to whether the public agency is violating state or federal special education law or regulations; and

(D) issue a written decision to the complainant and public agency that addresses each allegation in the complaint and contains findings of facts and conclusions and the reasons for the WVDE's final decision. If determined that the public agency violated a federal or State law or regulation, the letter shall include the actions to be taken to correct each identified deficiency including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student and appropriate future provision of services for all students with exceptionalities.

(e) allow for the extension of timelines in 9.1.2.b. BB.(d) only if exceptional circumstances exist with respect to a particular complaint;

(f) include in the final decision technical assistance activities and negotiations, as appropriate and specific timelines for completing any corrective orders. Timelines will only be extended if requested by the public agency based on exceptional circumstances; and

(g) require, upon receipt of documentation of implementation of corrective orders, the WVDE to determine if the decision has been appropriately implemented. Enforcement sanctions shall be recommended if corrective actions are not appropriately implemented and documented to WVDE within specified timelines;

~~(h) if a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing; allow for the WVDE to set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. allow for the WVDE to set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing if a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved using the timeline and procedures described in 9.1.2.b.BB (a) - (g) of this section;~~

~~(i) if an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties, allow for the hearing decision to be binding and inform the complainant to that effect;~~

(i) allow for the hearing decision to be binding and inform the complainant to that effect if an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties;

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(j) require that a complaint alleging a public agency's failure to implement a due process hearing decision to be resolved by the WVDE;

(k) require that a complaint alleging that the WVDE or public agency has failed to meet the requirements of section ~~6.1.7~~ 6.1.8, to be filed under this section.

CC. provide for the participation of private school students with exceptionalities in the program assisted or carried out in accordance with this policy, to the extent consistent with their number and location in the State, by providing them with special education and related services and ensure that a services plan is developed and implemented for each private school student with an exceptionality who has been designated to receive special education and related services.

### 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 student with an exceptionality 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 student 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. Each public agency may use the Medicaid or other public benefits programs in which a student participates to provide for or pay for services required to provide a free and appropriate public education, as permitted under the public insurance program, except as provided by section 9.1.3.e.A-(C).

e. Each public agency, with regard to services required for the provision of a free appropriate public education to an eligible student under this part may not:

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A. require parents to sign up for or enroll in public insurance program in order for their child to receive a free appropriate public education under these regulations:

B. require parents to incur out-of-pocket expense such as the payment of a deductible or co-pay the amount incurred in filing a claim for services provided pursuant to his part, but pursuant to 9.1.3.i., may pay the cost that the parent would otherwise be required to pay; and

C. may not use a student's benefits under a public insurance program if that use would:

(a) decrease available lifetime coverage or any other insured benefit;

(b) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;

(c) increase premiums or lead to the discontinuation of insurance; or

(d) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

f. Each public agency with regard to services required to provide a free appropriate public education to an eligible student under this part may access a parent's private insurance proceeds only if the parent provides informed consent consistent with section 8.1.4.

g. Each time the public agency proposes to access the parent's private insurance proceeds, it must:

A. obtain parent consent in accordance with paragraph f. of this section; and

B. inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

h. If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service under this part, to ensure a free appropriate public education, the public agency may use its Part B funds to pay for the service.

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i. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

j. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

k. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for the purpose of the maintenance of efforts provisions in §§300.154 and 300.231.

~~d. Each public agency shall have a system for accessing a parent's public or private insurance to provide or pay for services required to provide a free appropriate public education to an eligible student.~~

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

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

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 regulations;

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' IEPs;

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 non-exceptional students served by the public agency, including, but not limited to, art, music, industrial arts, consumer and homemaking education, and vocational education;

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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 non-academic 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. make available special education and related services to meet the needs of private school students with exceptionalities in the jurisdiction of the agency, including consulting with appropriate private school representatives on how to locate, identify and evaluate all private school students with exceptionalities;

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, a school day, and school calendar at least equivalent to that established for non-exceptional 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 non-exceptional peers;

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

R. provide classrooms for eligible exceptional students that are adequate, and that are comparable to the classrooms for non-exceptional 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 a 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 evaluate 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 students are receiving needed special education and related services and which students are not currently receiving special education and related services.

### **126-16-10. Glossary.**

10.1. Acceleration - Moving through a prescribed course of study at a faster or earlier rate. 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, instructional adaptations and/or modified or specialized equipment.

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10.3. **Adaptive Skills** - those skills necessary to function adequately within a person's present environment. These skill areas are: communication, self-care, home living, 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.

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 non-exceptional chronological age peers.

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

10.8. **Annual Goal** - are measurable statements developed from the present levels of educational performance that project what an exceptional student can reasonably be expected to accomplish within a 12 month period. For students with exceptionalities, annual goals must relate to helping students be involved in and progress in the general curriculum. For students with disabilities, annual goals will also address other educational needs that arise due to the student's disability and help them participate in extracurricular and nonacademic activities.

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, maintaining, 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

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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 the student with a disability.

10.11. Audiology - includes: a) identification of students with hearing loss; b) determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; c) provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; d) creation and administration of programs for prevention of hearing loss; e) counseling and guidance of pupils, parents, and teachers regarding hearing loss; and f) an appropriate aid, and evaluating the effectiveness of amplification.

10.12. Behavior Intervention Plan (BIP)- written, purposeful and individualized plan based upon a student's functional behavioral assessment. The BIP describes the positive behavioral interventions, strategies and supports required to implement the student's IEP goals and objectives in the areas of social, emotional and/or behavioral development. The BIP may include, but is not limited to: 1) environmental modifications that reduce the likelihood of the problem behavior; 2) guidance, structured opportunities and/or instruction in the use of new skills as a replacement for problem behaviors; 3) consequences to promote positive change and diminish problem behavior; 4) a crisis management plan (if appropriate); and 5) procedures for monitoring, evaluating and reassessing the plan as necessary.

10.13. Business day - means Monday through Friday, except for Federal and State holidays, (unless holidays are specifically included in the designation of business day).

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

10.15. 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.

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

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10.17. 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.

10.18. 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.

10.19. 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; and (d) if a parent revokes consent, that revocation is not retroactive (i.e. it does not negate an action that has occurred after the consent was given and before the consent was revoked).

~~10.19. 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.~~

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

10.21. Controlled Substance - a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812 (c)).

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

10.23. Counseling Services - services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

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10.24. Day - means calendar day unless otherwise indicated as school day or business day.

10.25. 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 §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. The federal term "dangerous weapon" is the same as this term.

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

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

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

10.29. 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.

10.30. Early Identification and Assessment - the implementation of a formal plan for identifying a disability as early as possible in a child's life.

10.31 Economically Disadvantaged - a student whose family income meets the federal guidelines for reduced or free school lunch.

10.32. 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.

10.33. 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.

10.34. Educational Service Agency - means a regional public multi-service agency: a) authorized by State law to develop, manage and provide services or programs to local educational agencies; b) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and

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secondary schools of the State; and c) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

10.35. 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 impaired, 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 specially designed instruction.

10.36. 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 impaired, 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 specially designed instruction.

10.37. Equipment - means a) machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and b) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

10.38. 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.

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

10.40. Extended School Year Services - special education and related services that are provided to a student with a disability beyond the normal school year of the public agency, in accordance with the student's IEP, and at no cost to the parents of the student; and that meet the standards of the state educational agency.

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

10.42. Free Appropriate Public Education (FAPE) - 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 standards of the state education agency, including the requirements of these regulations; c) include preschool, elementary school or secondary school education in the State, and d) are provided in conformity with an Individualized Education Program.

10.43. 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.

10.44. Functional Behavioral Assessment - ~~a process in which informed hypothesis statements are developed about the relationships between events in the environment and the occurrence of a student's behavior.~~ a sequential, multi-step, team evaluation process that helps to determine the purpose and the effect of the problem behavior(s) so that IEP goals and objectives can identified and interventions and modifications can be developed and implemented, specifically through a student's Behavioral Intervention Plan. A FBA requires that both school personnel and the parents evaluate the behaviors of concern within the broader perspective of the student's home and school environments.

10.45. General Curriculum - the curriculum adopted by a local educational agency, schools within the local educational agency, or where applicable, the state education agency for all students from preschool through secondary school. In these regulations, the term means the Instructional Goals and Objectives for West Virginia Schools.

10.46. 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.

10.47. 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.

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10.48. ~~Historically Under-represented Gifted Population - Those students who have a disability in accordance with this policy, economically disadvantaged, African American and/or are Hispanic~~ whose giftedness may not be apparent due to low socioeconomic status, a disability in accordance with this policy, or a background that is linguistically or culturally different.

10.49. 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.

10.50. Illegal Drug - is a controlled substance; but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal Law.

10.51. 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.

10.52. Indirect Services - consultative services provided by a special education teacher or service provider to the individuals responsible for the provision of services described in the IEP to directly benefit the student. Indirect services include, but are not limited to, selecting or designing materials and/or activities, monitoring behavior management plans or evaluating progress on short term objectives.

10.53. Individualized Education Program (IEP) - a written plan for an eligible exceptional student that is developed, reviewed and revised in a meeting by educators, parents and related service personnel.

10.54. Individualized Education Program Team or IEP Team - a group of individuals described in regulations that is responsible for developing, reviewing or revising an IEP for an eligible exceptional student.

10.55. Individualized Family Service Plan or IFSP - a written plan for providing early intervention services to a child and the child's family.

10.56. Instructional Day - minimum number of instructional minutes per program level as specified in Policy 2510.

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10.57. Least Restrictive Environment - the educational placement which provides the services/conditions necessary to meet the unique educational and behavioral needs of the student, while providing the student with integration to the maximum extent appropriate with non-exceptional peers.

10.58. 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.

10.59. Local Educational Agency (LEA) - a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. The term includes: a) an educational service agency, as defined in these regulations; and b) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

10.60. Mediation - an informal, non-adversarial and voluntary process in which the parties involved in a dispute are given an opportunity through an impartial third party, called a mediator, to resolve their differences and find a solution satisfactory to the parties involved.

10.61. Medical Services - services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

10.62. Meeting - a meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if these issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

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**10.63. 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.

**10.64. 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.

**10.65. 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.

**10.66. Native Language** - a) if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student; b) in all direct contact with a student (including evaluation of the child), the language normally used by the student in the home or learning environment; or c) for an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the student (such as sign language, braille or oral communication).

**10.67. Non-academic Services** - non-academic 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, and employment of students, including both employment by the public agency and assistance in making outside employment available.

**10.68. Non-aversive 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.

**10.69. 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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**10.70. Objective Criteria** - standards established to determine whether a student is learning or has achieved a skill and if instruction is effective.

**10.71. Occupational Therapy** - services provided by a qualified occupational therapist, which include: a) improving, developing or restoring functions impaired or lost through illness, injury or deprivation; b) improving ability to perform tasks for independent functioning if functions are impaired or lost; and c) preventing, through early intervention, initial or further impairment or loss of function.

**10.72. Orientation and Mobility** - services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, including: a) teaching students spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street); b) teaching students to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; c) teaching students to understand and use remaining vision and distance low vision aids, as appropriate; and d) other concepts, techniques, and tools, as determined appropriate.

**10.73. 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.

**10.74. 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 and, at the direction of the State, a foster parent who meets the requirements in this definition) 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. State law may provide that a foster parent qualifies as a parent under IDEA 97 and this policy if: a) the natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; b) the foster parent has an ongoing, long-term parental relationship with the child; c) the foster parent is willing to participate in making educational decisions on the child's behalf; and d) the foster parent has no interest that would conflict with the interests of the child.

**10.75. Parental Consent** - see Consent.

**10.76. Parent Counseling and Training** - assisting parents in understanding the special needs of their child, providing parents with information about child development and

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helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

10.77 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.

10.78. Participating Agency - a state or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing services to the student.

10.79. Personally Identifiable- information that includes: a) the name of the student, the student's parent, or other family member; b) the address of the student; c) a personal identifier, such as the student's social security number or student number; or d) a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

10.80. 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.

10.81. Physical Therapy - services provided by a qualified physical therapist.

10.82. Placement - the setting in which the eligible exceptional student receives special education and related services. For students ages 6-12, 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. For students ages 3-5, these settings are: Home, Early Childhood Setting, Part-Time Early Childhood/Part-Time Early Childhood Special Education Setting, Reverse Mainstreaming, Early Childhood Special Education Setting, and Itinerant Services Outside the Home.

10.83. Positive Behavioral Interventions, Strategies and Supports - (PBS) PBS is a broad term that describes a comprehensive, research-based, proactive approach to behavioral support aimed at producing comprehensive change for students with challenging behavior. PBS encompasses multiple approaches: changing systems, altering environments, teaching skills and appreciating positive behavior. The goal of PBS is not to eliminate the behavior but to understand the behavior's purpose (based upon information from the student's functional behavioral assessment) so that the student can

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replace it with new, prosocial behaviors that achieve the same purpose. PBS strategies may include, but are not limited to: 1) altering the classroom environment; 2) increasing predictability and scheduling; 3) increasing choice making; 4) making curricular adaptations; 5) appreciating positive behaviors; and/or 6) teaching replacement skills.

10.84 Present Levels of Educational Performance - are specific statements that describe the effect of the student's exceptionality on his/her educational performance, including how the student's exceptionality affects the student's involvement and progress in the general education curriculum; or for preschool children, how the exceptionality affects the child's participation in age- relevant developmental activities. Present levels of educational performance statements are written in objective measurable terms, to the extent possible, using relevant information such as recent evaluation reports, statewide testing results, current progress data and parent information.

10.85. Private/Religious School - an educational facility operated by a non-public agency or organization.

10.86. 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.

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

10.88. Psychological Adjustment Disorder- significant emotional or behavioral symptoms that adversely affect a student's educational performance documented by a comprehensive psychological evaluation.

10.89. Psychological Services - includes: a) administering psychological and educational tests, and other assessment procedures; b) interpreting assessment results; c) obtaining, integrating and interpreting information about child behavior and conditions relating to learning; d) consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests; e) planning and managing a program of psychological counseling for students and parents; and f) assisting in developing positive behavioral intervention strategies.

10.90. 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, vocational education, business education.

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**10.91. 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.

**10.92. Public Expense** - the public agency either pays for the full cost of the service or ensures that the service is otherwise provided at no cost to the parent.

**10.93. 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.

**10.94. Recreation** - includes: a) assessment of leisure function; b) therapeutic recreation services; c) recreation programs in schools and community agencies; and d) leisure education.

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

**10.96. 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.

**10.97. 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.

**10.98. 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 exceptionalities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

**10.99. 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, orientation and mobility

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services, social work services in schools, school health services, early identification and evaluation of disabling conditions in students, medical services for diagnostic or evaluative purposes only, and parent counseling and training.

10.100. Removal - exclusion of the student from school as a disciplinary action for a specified period of time.

10.101. School day - means any day, including a partial day, that children students are in attendance at school for instructional purposes. A school day is the time inclusive of homeroom, class changes, breaks/recess, lunch and other noninstructional activities from the first designated assembly of the student body in groups (homeroom or first period) to the dismissal of the student body. The term school day has the same meaning for all children students in school, including children students with and without exceptionalities.

10.102. 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.

10.103. 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.

10.104. Secondary School - a nonprofit institutional day or residential school that provides secondary education, as determined under State Law, except that it does not include any education beyond grade 12.

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

10.106. 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.

10.107. 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

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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.

10.108. **Services Plan** - a written statement of the special education and related services to be provided by the public agency to a private school student with an exceptionality placed by a parent.

10.109. **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.

10.110. **Significantly Sub-average 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.

10.111. **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 non-assertive.

10.112. **Social Work Services in Schools** - 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 learn as effectively as possible in her or his educational program, and assisting in developing positive behavior intervention strategies.

10.113. **Special Education** - specially designed instruction, at no cost to parents, to meet the unique educational needs of an eligible exceptional student, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings;

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and instruction in physical education. The term includes speech-language pathology services, or any other related service, if the service consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a student with an exceptionality, and is considered special education rather than a related service under State standards. The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a student with an exceptionality.

10.114. **Special Transportation** - modifications made in regular school transportation to assure accessibility of special education and other related services for students with disabilities. 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.

10.115. **Specially Designed Instruction** - is adapting content, methodology or delivery of instruction; a) to address the unique needs of an eligible student under this part that result from the student's exceptionality; and b) to ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all students.

10.116. **Speech-Language Pathology Services** - include: a) identification of students with speech or language impairments; b) diagnosis and appraisal of specific speech or language impairments; c) referral for medical or other professional attention necessary for the habilitation of speech or language impairments; d) provision of speech and language services for the habilitation or prevention of communicative impairments; and e) counseling and guidance of parents, students and teachers regarding speech and language impairments.

10.117. **Standard Deviation** - a statistic used to express the distance on the average of scores from the mean of the distribution. The standard deviation shows the variability of a series or group of scores or numbers.

10.118. **Standard Error of Measurement** - an indicator that allows a student's performance to be reported as a range of scores where it is highly probable the true score lies.

10.119. **Supplementary Aids** - any material/curricular resource or assistance, beyond what is normally afforded non- exceptional 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

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classroom modifications or aids, services and other supports that are provided in regular education classes or other education related settings to enable students with exceptionalities to be educated with non-exceptional students to the maximum extent appropriate.

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

10.121. 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.

~~10.121. Suspension - removal of a student from school as a disciplinary action for misconduct.~~

10.122. 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.

10.123. Transition Services - a coordinated set of activities for a student with a disability, 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 includes instruction, related services, 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.

10.124. Transportation - the term includes: a) travel to and from school and between schools; b) travel in and around school buildings; and c) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

10.125. Travel Training - means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within that

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environment (e.g. in school, the home and the community).

10.126. Underachievement - academic achievement and or classroom performance that is significantly discrepant with the student's intellectual ability documented by the student's educational record.

10.127. Vocational Education - organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

10.128. Work - holding a part- or full time job (supported or non-supported) 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.