

2419

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 8-17-79

STANDARDS
FOR THE
EDUCATION
OF
HANDICAPPED CHILDREN
IN
FACILITIES OPERATED
BY THE
WEST VIRGINIA DEPARTMENT OF HEALTH

AUTHORITY

These standards are issued and in force pursuant to Chapter 18, Article 20, Section 5 of the West Virginia Code, entitled "Education of Exceptional Children," and Section 612(B) of "The Education of All Handicapped Children Act of 1975," Public Law 94-142, and the Cooperative Agreement between the West Virginia Department of Education and the West Virginia Department of Health.

1. Submission to the West Virginia Board of Education - June 8, 1979
2. Promulgation Date - August 10, 1979
3. Filed with Secretary of State's Office - August 17, 1979.
4. Effective Date - November 15, 1979
5. Rule - Section 2419 of Policies, Rules and Regulations of the West Virginia Board of Education.

FOREWORD

The Department of Health has responsibility for the care and treatment of individuals who are mentally ill, mentally retarded or addicted. In addition to care and treatment, educational programs will be provided as an adjunct service to all individuals age 22 and under. The extent of that educational program will depend on the condition of the individual and the treatment priorities.

This agency, by developing and sanctioning the following Standards for the Education of Handicapped Individuals in Facilities Operated by the Department of Health do so in an effort to bring its educational programs into compliance with P.L. 94-142. These standards will be used as a statement of the quantity and quality of educational services to be provided to handicapped individuals age 22 and under who are residents or clients of facilities operated by this agency. They will serve as a yardstick against which to measure the existing programs and as a target for future developments in education and related services.

The Department of Health will continue to work with the West Virginia Department of Education in bringing about positive changes which would enhance all education and related services for handicapped individuals.

AUTHORITY, SCOPE, GENERAL PRINCIPLES, RESPONSIBILITIES, AND EFFECT

AUTHORITY

These standards are issued and in force pursuant to Chapter 18, Article 20 of the West Virginia Code which empowers the State Board of Education with the authority for establishing standards governing programs and services for the education of exceptional individuals; Section 612(B) of the Education for the Handicapped Act which requires that the State educational agency be responsible for the general supervision for all educational program for handicapped children in the state; and the Cooperative Agreement currently functioning between the W. Va. Department of Education and the W. Va. Department of Health, paragraph (3) three, which states: "The West Virginia Department of Education and each agency party to this Agreement will jointly develop the standards and guidelines for the implementation and monitoring of the educational program(s) under the jurisdiction of those Agencies as required by Public Law 94-142".

SCOPE

Adoption of these standards by the State Board of Education will effect a mandate on the Department of Health for the provision of free and appropriate education and related services as outlined by P.L. 94-142 to handicapped individuals age 22 and under who are residents or clients of the facilities operated under the jurisdiction of the W. Va. Department of Health.

GENERAL PRINCIPLES

1. All individuals, age 22 and under, who are residents or clients of any facility operated under the jurisdiction of the W. Va. Department of Health, will have free and appropriate special education and related services available to them which will meet their unique needs.
2. An individual Educational Plan will be prepared for each individual age 22 and under which adheres to the standards set forth in this document.
3. The provision of free and appropriate education and educational related services will occur within the confines of procedural safeguards as outlined by these standards. The rights of all handicapped individuals and/or their parents will be protected in all decisions relating to the educational process.
4. To the maximum extent possible, education and educational related services will be provided in the least restrictive environment.
5. Evaluation materials and procedures used will adhere to the standards set forth within which protect the individual from discriminatory testing devices and practices.
6. The confidentiality of all personally identifiable information related to the educational program will be protected.

RESPONSIBILITIES

W. Va. Department of Education

The W. Va. Department of Education will provide for the general supervision of all educational programs required to provide free appropriate educational opportunity to handicapped individuals age 22 and under by conducting monitoring activities to review compliance with these standards and Public Law 94-142.

The W. Va. Department of Education will continue to provide technical assistance to and engage in cooperative planning with the Department of Health in an effort to strengthen the educational programs for those eligible handicapped individuals residing in institutions owned and/or operated by the Department of Health.

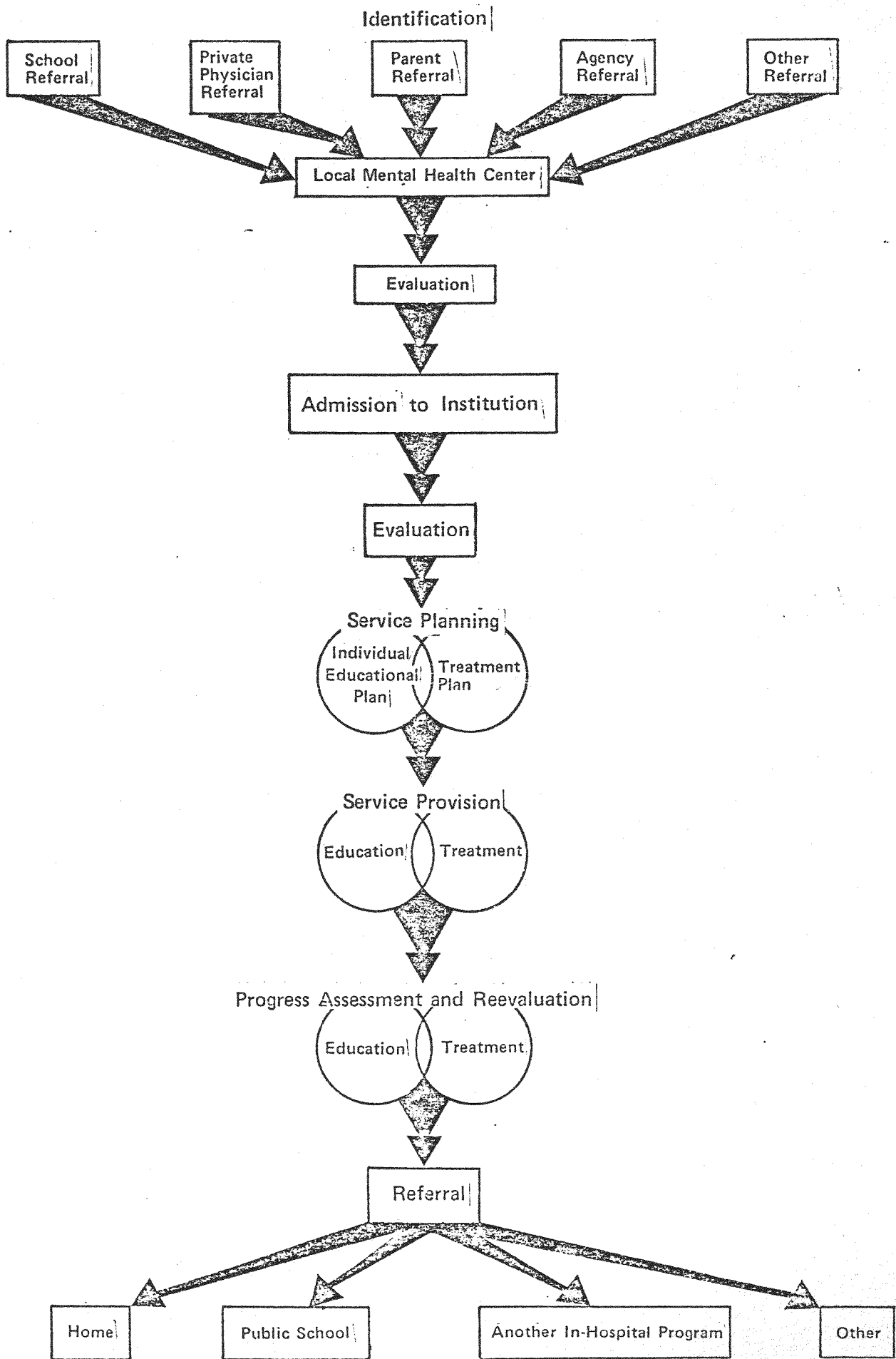
W. Va. Department of Health

The W. Va. Department of Health will make available special education programs and related services to residents age 22 and under of institutions under the agency's jurisdiction. This responsibility will be met by any one or more of the following; each facility acting by itself, cooperative arrangement with one or more local county boards of education, or contracting with another public or private agency for services.

EFFECT

Under the direction of the chief administrative officer, each facility will implement these standards in order to provide a free and appropriate educational program for all handicapped individuals age 22 and under residing in that facility.

West Virginia Department of Health
Admission and Service Delivery Process



DEPARTMENT OF HEALTH ADMISSION AND SERVICE DELIVERY PROCESS

Criteria for admission to a mental health facility are defined in SB #585 in Article 4, Section 27-4-1.

All individuals age 22 and under who are admitted to a residential facility are regarded as handicapped individuals and are, therefore, eligible for special education and related services as outlined by P.L. 94-142.

The process of seeking admission to a mental health facility involves four phases as outlined on the previous page:

1. IDENTIFICATION

The individual is recognized by a physician, a school, a parent, a social worker or any other individual, or agency familiar with the needs of the individual as possibly needing specialized in-residence treatment for mental illness, mental retardation or addiction.

2. REFERRAL TO THE LOCAL MENTAL HEALTH CENTER

The local mental health center is made aware of the needs and condition of the individual; and the desire to seek admission to a residential treatment facility.

3. LOCAL MENTAL HEALTH CENTER EVALUATION

The professional staff at the mental health center review any previous tests and assessments, administer additional tests and assessments as necessary, and interview the appropriate person to determine whether admission to a residential facility is the least restrictive treatment option.

4. REFERRAL FOR ADMISSION TO A RESIDENTIAL FACILITY

The recommendation is made by the mental health center to the appropriate facility for acceptance of the individual for treatment.

It is important to note that, the evaluation process is initiated prior to the admission of the individual to a residential facility. Therefore, the consent of the parent or individual for initiation of evaluation will be obtained by the local mental health center, a copy of which will be forwarded to the facility. Upon admission into the facility, the parents or individual will be notified of the evaluation to be administered by the facility and the use to be made of the results of those evaluations.

Consent by the parents or individual for placement in the facility is required by law S.B. 585, Article 4.

Upon admission into a residential facility, the following steps are followed to ensure the provision of appropriate education and related services to all individuals age 22 and under:

1. EVALUATION

Previous tests and assessments are reviewed; and additional appropriate educational diagnostic assessments are administered to obtain information about the individual's educational needs.

2. SERVICE PLANNING

A committee develops an individualized education plan.

3. SERVICE PROVISION

A program of appropriate special education is initiated and implemented.

4. PROGRESS ASSESSMENT AND RE-EVALUATION

The educational progress of the individual is reviewed and/or educational assessments are re-administered to determine the effectiveness of the services being provided.

5. REFERRAL

A recommendation for a different placement is made.

The components contained in the Admission and Service Delivery System are designed in an attempt to complement those similar components in the "West Virginia Special Education Delivery Process: Search and Serve" initiated by the State Department of Education.

ADMISSION

EVALUATION

SERVICE PLANNING

SERVICE DELIVERY

PROGRESS ASSESSMENT
AND REEVALUATION

REFERRAL

100

200

300

400

500

600

Administration
100

Staff
200

Safeguards
300

Time
400

Resources
500

Compliance
600

Data Reporting
700

Process Reporting
800

Evaluation
900

MATRIX FOR STANDARDS WITH COMPLIANCE COMPONENTS

ADMISSION

100.000 Written criteria and procedures will be established and maintained for the voluntary admission of individuals age 22 and under into the residential treatment program of the various Department of Health facilities.

In meeting the requirements of these standards, the chief administrative officer of the facility will ensure that:

100.100 Admission criteria and procedures will be consistent with relevant laws and the functions of that facility.

A. Criteria for admission will be written to include the following items:

1. Age range
2. Functioning level
3. Geographical area involved
4. Evaluation materials required
5. Specific conditions under which one could seek admission.

B. Procedures related to admission will be written to include:

1. Evaluations needed
2. Referrals needed
3. Specific steps for seeking admission
4. Time considerations
5. To whom referrals should be made.

C. If an Admission Committee is used, written procedures of that committee will be developed.

100.200 Appropriately trained staff will be used throughout the admission procedure.

100.300 Procedural safeguards will be employed to ensure that the rights of this individual and the family are protected in the admission procedure.

A. The individual, if 12 years old or over, must agree to the admission.

B. Parents and/or individual will be fully informed as to possible treatment procedures and their availability at that facility.

C. Parents and/or individual will be informed of the rights of that individual as a resident in the facility.

D. Parents and/or individual will be informed of any alternative programs available to them outside the facility.

E. Parents and/or individuals will be informed of processes involved in involuntary admissions procedures.

- 100.400 Each facility will establish a time frame within which the admission procedure will occur which will include:
- A. Length of time between initial referral and interview.
 - B. Length of time between interview and response.
- 100.500 Resources needed for the admission process will be made available through both the local community mental health center and the facility.
- 100.600 Any agency, organization, or individual seeking a voluntary admission will adhere to these criteria and procedures.
- 100.700 The facility will collect, maintain, and report current and accurate data related to the admission procedure.
- 100.800 Admission evaluation and records will be used to determine appropriate services and placement.
- 100.900 The quality and appropriateness of admission procedure will be evaluated as follows:
- A. The chief administrative officer of the facility will review the voluntary admission policies and procedures annually.
 - B. Any conflict arising related to the voluntary admission process may be referred to the Office of Children's Mental Health Services of the Department of Health.
 - C. An annual on-site review will be conducted by a monitoring team which will review all procedures related to the standards. The results of this monitoring will be reported in writing to:
 - 1. The chief administrative officer of the facility.
 - 2. Office of Children's Mental Health Services in the Department of Health.

EVALUATION

200.000 A comprehensive evaluation will be provided for all individuals age 22 and under prior to or upon entry into the institution.

In meeting the requirements of this standard, the chief administrative officer of the facility will ensure that:

200.100 Procedures will be implemented to provide a comprehensive evaluation.

A. A comprehensive evaluation will include but is not limited to:

1. Complete medical and dental examination.
2. Vision screening with further assessment if indicated.
3. Hearing screening with further assessment if indicated.
4. Speech and language screening, with further assessment if indicated.
5. Social history.
6. Psychological evaluation which will include:
 - (a) Individual intelligence test
 - (b) Measure of adaptive behavior
7. Precise psychiatric diagnosis, including level of retardation, if present.
8. WVAATS Screening.
9. Assessment of academic performance.
10. Assessment of developmental functioning.
11. Assessment of motor abilities, including needs for physical therapy and occupational therapy.
12. Assessment of vocational interest or aptitudes.
13. In-residence observation of behavior and skills during evaluation period.

B. A separate report (or easily identifiable portion of another report) will be completed for each item required in Section 200.100A. The reports will be written and will include:

1. Name and form of the evaluation instrument used.
2. Results of the evaluation, including any sub-tests.
3. Interpretation of the evaluation results; including individual strengths and weaknesses.

4. Observations of individuals testing behavior and the relationship of the testing behavior to the results.
 5. Specific recommendations of educational needs based on results.
- C. Each individual will receive a program of education during the evaluation process. Written observation notes relating to behavior and skills will be made by the staff providing that program.
- 200.200 Adequate trained staff will be available to administer the necessary evaluations.
- A. All tests or evaluation instruments will be administered by staff who are certified, licensed, or appropriately qualified.
 - B. The evaluation will be administered by a multidisciplinary team, including at least one teacher or specialist with knowledge in the area of the suspected disability and at least one person certified or licensed to conduct individual diagnostic evaluations.
- 200.300 Procedural safeguards will be employed to ensure that the rights of the individual and the parent(s) are protected in the evaluation procedure.
- A. Written parental or individual (if over 18 and legally competent) consent will be obtained or due process procedures implemented prior to initiating the evaluation procedures.
 - B. Written parent notification, which names evaluation instrument to be used and use to be made of the results, will be sent to the parent or individual within three days of admission.
 - C. Tests and evaluation materials and procedures will be selected and administered.
 1. So as to be racially or culturally non-discriminatory;
 2. Which have been validated for the specific purpose for which they are used;
 3. In the individual's native language or other mode of communication;
 4. Which are appropriate to measure the areas of educational needs of the child; and
 5. Which are selected to measure rather than reflect the child's impairment.

D. All record keeping and transfer procedures protect the confidentiality of personally identifiable information.

1. Individual and/or Parent(s) shall be permitted upon request to inspect and review any educational records which are collected, maintained, or used by the agency.
2. Written parental or individual (if over 18 and legally competent) consent must be obtained before revealing or transferring evaluation records to any other agency or person outside the Department of Health.
3. A parent or individual (if over 18 and legally competent) may request the removal of inaccurate; misleading information from record. Agency may amend or follow procedure of due process. (See Appendix A)

- 200.400 A comprehensive evaluation will be initiated within 5 calendar days and completed within 20 calendar days of admission to a residential facility.
- 200.500 The facilities, materials, equipment, space and time required for the evaluation procedures will be made available as needed.
- 200.600 Any agency, organization, or individual conducting evaluational activities for or within the Department of Health shall adhere to these standards.
- 200.700 The facility will collect, maintain, and report current and accurate data for evaluation procedures.
- A. Personally identifiable evaluational data will be maintained in a confidential file adhering to rules of confidentiality.
 - B. Collective Data representing non-personally identifiable information will be used for planning and reporting as needed.
 - C. The facility will prepare and submit to the Office of Children's Services any reports requested.
- 200.800 Evaluation staff and records will be utilized in the development of a comprehensive Individual Educational Plan for the individual.
- 200.900 The quality and appropriateness of the evaluation procedure will be ensured by:
- A. The hospital/center Program Director and/or Clinical Director will review at least 20% of the individual evaluation records annually. Any reduction in quality from these standards will be reported in writing to the Chief Administrative Officer of the facility and the Office of Children's Services.
 - B. The Director of Children's Services or designee will review three (3) randomly selected individual evaluation records at each facility each quarter. Any reduction in quality from these standards will be reported in writing to the Chief Administrative Officer and the Clinical Director/Program Director of the facility and to the Director of Institutional Services.

- C. An annual on-site review will be conducted by a monitoring team which will review all procedures related to the standards. The results of this monitoring will be maintained in the offices of:
1. The Chief Administrative Officer of the facility.
 2. The Office of Children's Services in the West Virginia Department of Health.
 3. The Office of Special Education and Student Support Systems in the West Virginia Department of Education.

SERVICE PLANNING

300.000 A plan for the delivery of services will be developed which will ensure the most appropriate education for all individuals age 22 and under within the auspices of the Department of Health.

In meeting the requirements of this standard the Chief Administrative Officer of the facility shall ensure that:

300.100 A multidisciplinary team will develop a Comprehensive Individual Education Plan for each individual following the completion of the comprehensive evaluation.

A. The multidisciplinary team shall consist of no fewer than 5 members including:

1. The Coordinator of Special Education who will serve as Chairman.
2. A teacher in the school the child will attend.
3. The professional personnel who administered the comprehensive evaluation or one who is qualified to interpret the evaluation data.
4. One or both of the child's parents if the individual is under 18 or legally incompetent.
5. The individual.
6. The Superintendent or designee of the county of the individual's residence.
7. Other individuals at the discretion of the parent(s), individual, or agency.

B. The multidisciplinary team will proceed as follows:

1. Review all evaluation data and recommendations.
2. Consider capabilities and limitations of the individual including the priorities of the individual.

3. Write present levels of functioning.
4. Write long-term goals in a priority ranked listing.
5. Write short-term objectives related to goals.
6. Establish needed services related to long-range goals.
7. Name persons to provide service.
8. Consider least restrictive environment possibilities related to each service.
9. Make recommendations for implementation.
10. Set date for initiation of services.
11. Project duration of services.
12. Establish criteria and schedule for progress assessment.
13. The chairman will be responsible for recording the findings and recommendations in the form of a Comprehensive Individual Educational Plan and submitting that plan to the Clinical Director and/or Program Director, with a list of signatures and position titles of participants.
14. The signature of the parents or individual if over 18 and legally competent, will indicate approval of the plan.

300.200 Adequate trained staff will be available to perform the functions required by the Multidisciplinary Team.

300.300 Procedural safeguards will be employed to ensure that the rights of the individual and the parent(s) are protected in the development of the Comprehensive Individual Educational Plan.

- A. The Coordinator of Special Education will take the following steps to encourage one or both parents of any individual under 18 or legally incompetent individual to be present at the meeting(s) in which the Comprehensive Individual Educational Plan is developed.
 1. The parents or individual (if over 18 and legally competent) will be notified at least two (2) weeks prior to the date of the meeting.
 2. The notification will be written and will include the date, time, participants, place, and purpose of the meeting along with the information that the parents or individual may bring other people to the meeting.
 3. If the parents fail to respond or refuse to attend, accurate detailed written records of attempts to communicate by phone, letter, or visits must be kept.

4. The parent, or individual (if over 18 and legally competent) upon request, will be given a copy of the IEP.
 - B. The individual will be present. He/she will participate, if at all possible, in the development of the Comprehensive Individual Educational Plan.
- 300.400 Proceed according to the following timetables for the development of the Comprehensive Individual Educational Plan to ensure expedient delivery of services for the individual.
- A. The Comprehensive Individual Education Plan team will meet not later than 25 days following entry into the facility.
 - B. The Comprehensive Individual Educational Plan will be submitted to the Program Director and/or Clinical Director for signature within 3 days following the meeting.
- 300.500 The facilities, materials, space and time required for the development of the Comprehensive Individual Educational Plan will be made available as needed.
- 300.600 Any agency, organization or individual conducting service planning activities for or within the Department of Health shall adhere to these standards.
- 300.700 The agency will collect, maintain and report current and accurate data on the service planning process.
- A. The Comprehensive Individual Educational Plan will be placed in the office of the Coordinator of Special Education adhering to the rules of confidentiality.
 1. Personally identifiable data will be maintained in a confidential file adhering to rules of confidentiality.
 2. Collective data representing non-personally identifiable information will be used for planning and reporting as needed.
- 300.800 The Comprehensive Individual Educational Plan will precipitate the provision of the outlined services for the individual to begin immediately.
- 300.900 The quality and appropriateness of the Comprehensive Individual Educational Plan process and product will be evaluated as follows:
- A. The hospital/center Program Director and/or Clinical Director will review at least 20% of the Individual Educational Plans annually. Any reduction in quality from these standards will be reported to the Chief Administrator of the facility and the Office of Children's Services.

- B. The Director of Children's Services or designee will review three randomly selected Individual Educational Plans at each facility each quarter. Any reduction in quality from these standards will be reported to the Chief Administrative Officer of the facility, the Clinical Director and/or Program Director of the facility, and the the Director of Institutional Services.
- C. An annual on-site review will be conducted by a monitoring team which will review all procedures related to these standards. The results will be maintained in the offices of:
 - 1. The Chief Administrative Officer of the facility.
 - 2. The Office of Children's Services in the West Virginia Department of Health.
 - 3. The Office of Special Education and Student Support Systems in the West Virginia Department of Education.

SERVICE PROVISION

400.000 Each facility will establish and maintain a system which offers the special education and/or related services needed to implement the Comprehensive Individual Educational Plan for all individuals.

In meeting the requirements of this standard, the Chief Administrative Officer of the facility shall ensure that:

400.100 Specified professional and paraprofessional staff will provide Special Education and/or related services for all individuals as outlined by the Comprehensive Individual Educational Plan.

A. Prior to the initiation of the actual service provision, the Coordinator of Special Education will:

- 1. Develop a written weekly schedule which ensures the provision of services as outlined in the Comprehensive Individual Educational Plan indicating the date for implementation.
- 2. Develop, with the aid of other professional and paraprofessional staff, a behavioral plan which will set forth procedures and/or responses which must be consistent with the living unit staff in interactions with the individual.
 - a. Review all goals and short-term objectives to determine which of these might require total staff participation.
 - b. Review various approaches which are appropriate for the situation.
 - c. Select the approach most desirable.

d. Write into a behavioral plan the agreed-upon procedure and/or response.

B. Implement the weekly schedule and behavioral plan.

400.200 Adequate trained staff will be available to provide the needed services designated by the comprehensive Individual Educational Plan.

A. Ensure that teachers meet minimum certification standards for the area of exceptionality in which they are presently teaching, as specified in the West Virginia Standards for Certification or as regulated by the West Virginia Board of Education.

B. Professional staff meet the requirements of the standards of the appropriate agency or organization.

C. Utilize paraprofessional personnel who are trained according to each facility's requirements and supervised by qualified supervisors.

400.300 Procedural safeguards will be employed to ensure that the rights of the individual and/or parent(s) are protected in the provision of services.

A. The parent or individual (if over 18 and competent) will be provided, upon request, the schedule and behavioral plan.

B. Carnegie Units/Credits will be available to individuals who satisfactorily complete unit course requirements while in residence.

C. Special education services will be made available to individuals age 22 and under who have not received a high school diploma.

400.400 Proceed according to the following timetable for the provision of services to all individuals age 22 and under.

A. The weekly schedule will indicate an exact date on which services will begin -- that date being not later than 30 days following entry into the facility.

400.500 The facilities, materials, space and time required for the implementation of the Comprehensive Individual Educational Plan will be made available as needed.

400.600 Any agency, organization, or individual conducting service provision activities for or within the Department of Health shall adhere to these standards.

400.700 The agency will collect, maintain and report current and accurate data on the service provision process.

A. The weekly schedule and behavioral plan will be placed in the Office of the Coordinator of Special Education adhering to the rules of confidentiality.

1. Personally identifiable data will be maintained in a

confidential file adhering to rules of confidentiality.

2. Collective data representing non-personally identifiable information will be used for planning and reporting as needed.

400.800 All staff involved in providing the necessary services will maintain weekly progress records for each individual which will be reviewed periodically in progress assessment.

400.900 The quality and appropriateness of the provision of services will be evaluated as follows:

A. Teachers and teacher aides will be evaluated annually by the Coordinator of Special Education or designee by:

- a. Classroom observation
- b. Analysis of pupil progress
- c. Self-evaluation

Written reports of the evaluation will be reviewed by the Director of Children's Services.

B. The Director of Children's Services or designee will review at least three randomly selected weekly schedules, progress records, and behavioral plans at each facility each quarter. Any reduction in quality from these standards will be reported in writing to the Chief Administrative Officer of the facility and the Director of Institutional Services of the West Virginia Department of Health.

C. An annual on-site review will be conducted by a monitoring team which will review all procedures related to these standards. The results of this monitoring will be maintained in the offices of:

1. The Chief Administrative Officer of the facility.
2. The Office of Children's Services of the West Virginia Department of Health.
3. The Office of Special Education and Student Support Systems of the West Virginia Department of Education.

PROGRESS ASSESSMENT AND RE-EVALUATION

500.000 Attention to the progress and status of each individual will be maintained through continuous progress assessment and periodic re-evaluation.

In meeting the requirements of this standard, the Chief Administrative Officer of each facility will ensure that:

500.100 Procedures will be implemented to provide for the periodic assessment of progress and a review and/or revision of the Comprehensive Individual Educational Plan.

- A. The educational and related services staff will meet at the request of the Coordinator of Special Education or the parent but not less often than every 6 months to review the

short-term objectives written in the Comprehensive Individual Plan.

1. Each staff member will record weekly progress data related to the short-term objectives.
 2. This data will be reviewed by the staff.
 3. If changes are indicated in the Comprehensive Individual Educational Plan, the parent(s) or individual (if over 18 and legally competent) must be notified.
 4. A written report of this meeting will be placed in the Comprehensive Individual Educational Plan record and a copy given to the parent(s) upon request.
- B. The Comprehensive Individual Educational Plan will be reviewed and/or revised annually by a committee of staff members chosen by the Coordinator of Special Education, the parent, and/or the individual.
1. If revisions are indicated, written parental or individual (if over 18 and legally competent) notification is necessary.
 2. The Coordinator of Special Education will submit a copy of the revised Comprehensive Individual Educational Plan to the Clinical Director and/or Program Director, for signature within 3 days following the meeting.
- C. A comprehensive re-evaluation of the individual will be completed at least once every three years.
1. The standards contained in the evaluation section 200.000 will apply.

500.200 Adequate trained staff will be available to conduct periodic assessment and re-evaluation.

- A. The staff will be provided with adequate time and training for the procedures for keeping weekly records and attending progress review meetings.
1. Weekly lesson plans and progress records will reflect the short-term objectives stated in the Comprehensive Individual Plan.
 2. Progress records will indicate the dates on which each objective was met.
 3. The report of the assessment meeting will indicate the number of objectives satisfactorily completed in each service area.

- B. The educational and related services staff will conduct the annual review of the Comprehensive Individual Educational Plan.
- 500.300 Procedural safeguards will be employed to ensure that the rights of the individual and parent(s) are protected in the progress assessment and re-evaluation procedure.
- A. Utilize the review and/or the re-evaluation information in any change of the Comprehensive Individual Educational Plan or placement of the individual.
 - B. Give 2 weeks written notice to the parent or individual (if over 18 and legally competent) prior to the Comprehensive Individual Educational Plan review.
 - C. Document in writing all progress assessments, Comprehensive Individual Educational Plan reviews or re-evaluations.
- 500.400 Proceed according to the following timetable in making periodic progress assessments, Comprehensive Individual Educational Plan reviews, and re-evaluations.
- A. Progress will be recorded weekly by individual staff members.
 - B. Progress assessment meetings will be held not less than every 6 months for each individual.
 - C. The Comprehensive Individual Educational Plan will be reviewed not less than once annually.
 - D. Comprehensive re-evaluation for each individual will be conducted not less than once every 3 years.
- 500.500 The facilities, materials, space and time required for progress assessment and re-evaluation will be made available as needed.
- 500.600 Any agency, organization, or individual conducting progress assessment and/or re-evaluation for or within the Department of Health shall adhere to these standards.
- 500.700 The agency will collect, maintain and report current and accurate data on the progress assessment and re-evaluation process.
- A. Personally identifiable progress assessment and re-evaluation data will be maintained in the office of the Coordinator of Special Education in a confidential file adhering to rules of confidentiality.
 - B. Collective Data representing non-personally identifiable information will be used for planning and reporting as needed.

500.800 Progress assessment and re-evaluation data will be used to initiate a change or update the Comprehensive Individual Educational Plan and/or to initiate a referral for change in placement.

500.900 The quality and appropriateness of the progress assessment and re-evaluation will be evaluated as follows:

- A. The Program Director and/or Clinical Director will personally attend progress assessment and/or Comprehensive Individual Educational Plan review meetings of at least 20% of the individuals reviewed per year. Any reduction in quality from these standards will be reported in writing to the Chief Administrative Officer of the facility and to the Director of Children's Services.
- B. The Director of Children's Services or designee will review at least three randomly selected individual records at each facility each quarter. Any reduction in quality from these standards will be reported in writing to the Chief Administrative Officer of the facility and to the Director of Institutional Services of the West Virginia Department of Health.
- C. An annual on-site review will be conducted by a monitoring team which will review all procedures related to these standards. The results will be maintained in the offices of:
 1. The Chief Administrative Officer of the facility.
 2. The Office of Children's Services in the West Virginia Department of Health.
 3. The Office of Special Education and Student Support Systems in the West Virginia Department of Education.

REFERRAL

600.000 A systematic and consistent process of referral will be used to ensure a continuous appropriate education for all individuals age 22 and under within and/or out of the institutional programs.

In meeting the requirement of this standard the Chief Administrative Officer of the facility will ensure that:

600.100 Progress assessment, Comprehensive Individual Educational Plan review, and/or re-evaluation results will be used to document any referral to other programs/schools.

- A. The educational and related services staff chaired by the Coordinator of Special Education will prepare a written recommendation to the Clinical Director and/or Program Director which contains the following:

1. A brief synopsis of progress or lack of progress.
 2. Recommended referral and justification for referral.
- B. The Clinical Director and/or Program Director will convene a referral committee consisting of the following:
1. Coordinator of Special Education.
 2. One (1) Special Education Teacher and one other professional service provider currently working with the individual.
 3. One (1) Special Education Teacher and one other professional service representative from the program or school to which the individual may be referred.
 4. Parent unless individual is over 18 and legally competent.
 5. Individual.
 6. Other members as requested by parent, individual, or agency.

C. This referral committee will proceed as follows:

1. Review the recommendation.
2. Refer final decision to the Clinical Director and/or Program Director with proposed date of action.

600.200 Adequate trained staff will be available to implement the referral process.

600.300 Procedure safeguards will be employed to ensure that the rights of the individual and parent(s) are protected in the referral process.

- A. Parent and/or individual notification must be given prior to any change in placement unless such placement was written into the initial Comprehensive Individual Educational Plan.
- B. Parent notification and/or individual notification must be given prior to making changes in the initial Comprehensive Individual Educational Plan.
- C. Referral to public school programs will be accompanied by a West Virginia Search and Serve process form (Part 1).
- D. Records will be transferred outside the agency only with written consent of the parents or individual.

- 600.400 Proceed according to the following time-lines in the referral process:
- A. The Coordinator of Special Education will submit the written report containing recommendation for referral to the Clinical Director and/or Program Director within 2 days of the review team meeting.
 - B. The Clinical Director and/or Program Director, will convene the referral committee within 5 days after receiving the written recommendation.
 - C. The Clinical Director and/or Program Director will indicate approval or disapproval within 2 days following this meeting.
 - D. If approved, initiation of the proposed placement and revision of the Comprehensive Individual Educational Plan will occur within 5 days following approval.
- 600.500 The facilities, materials, space and time required for referral assessment will be made available as needed.
- 600.600 Any agency, organization, or individual conducting referral assessment for or within the Department of Health shall adhere to these standards.
- 600.700 The agency will collect, maintain and report current and accurate data on the referral assessment process.
- A. Personally identifiable referral assessment data will be maintained in a confidential file adhering to rules of confidentiality.
 - B. Collective Data representing non-personally identifiable information will be used for planning and reporting as needed.
- 600.800 The referral process will provide for the least restrictive placement for each individual in residential programs.
- 600.900 The quality and appropriateness of the referral assessment will be evaluated as follows:
- A. Approval required as follows:
 - 1. The Clinical Director and/or Program Director must approve all referrals.
 - 2. Any problems related to the referral process will be referred to the Director of Children's Services of the West Virginia Department of Health.

B. An annual on-site review will be conducted by a monitoring team which will review all procedures related to these standards. The results will be maintained in the offices of:

1. The Chief Administrative Officer of the facility.
2. The Office of Children's Services in the West Virginia Department of Health.
3. The Office of Special Education and Student Support Systems in the West Virginia Department of Education.

APPENDIX A

PROCEDURAL SAFEGUARDS

Approved by the
West Virginia Board of
Education, October, 1978

PROCEDURAL SAFEGUARDS

A. POLICY STATEMENT

The West Virginia Department of Education shall insure that each county school system or participating agency providing special education and related services in West Virginia establishes and implements procedural safeguards for exceptional individuals and their parents, with respect to the provision of a free appropriate public education. (121a.501)

The following due process procedures have been adopted by West Virginia to comply with Section (612(5)(A), 615).

B. NOTIFICATION

1. Written notification shall be given to the parent(s) before:
 - a. The county school system or participating agency prepares to initiate or change the screening, evaluation, educational placement, instruction, and/or reevaluation of the individual or the provision of a free appropriate public education provided to the individual. (121a.504(a)(1))
 - b. The participating agency refuses to initiate or change the screening, evaluation, educational placement, instruction, and/or reevaluation of the individual or the provision of a free appropriate public education provided to the individual. (121a.504(a)(2))
2. Time of prior notice:
 - a. Whenever the county school system or participating agency proposes or refuses to initiate or change the identification, referral, screening, evaluation, educational placement, instruction, or reevaluation of an individual, the parent shall be notified a reasonable time prior to the proposed action. (121a.504(a))
3. Content of notice. The content of the notice shall:
 - a. Have a full explanation of all the procedural safeguards available to the parents that specifies:
 1. the opportunity to examine educational records;
 2. the opportunity for independent educational evaluations;
 3. a policy of prior notice regarding status or plan;
and

4. the opportunity for an impartial due process hearing.
(121a.505(a)(1))
- b. Describe the action proposed or refused by the county school system or participating agency; an explanation of why the county school system or participating agency proposes or refuses to take the action; and describe any options the county school system or participating agency considered and the reasons those options were rejected.
(121a.505(a)(2))
- c. Describe each screening and/or evaluation procedure, test, record, or report upon which the proposed or refused action is based. (121a.505(a)(3))
- d. A description of any other factors which are relevant to the agency's proposal or refusal.
- e. The notice shall be written in a language understandable to the general public and expressed in the native language of the parent(s) or in other mode of communication used by the parent(s) unless it is clearly not feasible to do so. (121a.505(b)(1)(2))
- f. If the native language or other mode of communication of the parent(s) is not a written language, the county school system or participating agency shall take steps to insure:
 1. That the notice is translated orally or by other means to the parent(s) in his/her native language or other mode of communication.
 2. That the parent(s) understands the content of the notice.
 3. That there is documentation that the requirements under (1) in this subsection have been met.
(121a.505(c)(1)(2)(3))

C. PARENTAL CONSENT

1. A county school system or participating agency shall obtain written parental consent prior to initiating or changing the individual screening, evaluation, placement, instruction, or reevaluation of the individual.
2. A county school system or participating agency may use due process hearing procedures to determine if the child may be individually screened, evaluated, placed, instructed or reevaluated without parental consent. (121a.504(c)(2))

3. A county school system or participating agency shall follow all procedures cited with reference to parental consent for the collection, maintenance and disclosures of personally identifiable data or information.

D. INDEPENDENT EDUCATIONAL EVALUATION

1. Provide the parent, upon request, the names, addresses and telephone numbers of appropriate agencies where independent educational evaluations can be obtained, including public agencies providing such services at minimal or no cost.
2. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the county school system or participating agency. However, the county school system or participating agency may initiate a hearing to show that its evaluation is appropriate. If the final decision is that the existing evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the public expense. (121a.503(b))
3. If the parent obtains an independent evaluation at his/her own expense, the results of the evaluation must be considered by the county school system or participating agency in any decision made with respect to the provision of a free appropriate public education to the individual, and may be presented by either party as evidence at a hearing. (121a.503(c))
4. If an impartial hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be assumed by the county school system or the participating agency. (121a.503(d))
5. Whenever the county school system or participating agency pays for an independent educational evaluation, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the county school system or participating agency uses when it initiates an evaluation. (121a.503(e))

E. MEDIATION

Following written notification, the county director of special education shall arrange a conference with the parents of a handicapped child to discuss any questions that stem from a possible change in educational placement. If agreement cannot be reached

through this type of conference, however, and a formal hearing is requested, the following procedure shall be utilized. (1975)

F. DUE PROCESS HEARING

A request for a hearing before an impartial hearing officer should be made in writing by the parent to the county superintendent or participating agency, who will be responsible for carrying into effect the following procedures. (1975)

1. The parent(s), the county school system, or the participating agency may initiate a hearing on any of the matters described in Notification. (121a.506(a))
2. The hearing shall be conducted by the county school system or participating agency directly responsible for the education of the child. (121a.506(b))
3. The county school system or participating agency shall inform the parent of any free or low-cost legal and other relevant services available in the area, if:
 - a. the parent requests the information; or
 - b. the parent, the county school system, or the participating agency initiates a hearing under this section. (121a.506(c))
4. The county school system or participating agency, upon receipt of a request for a hearing, shall contact the parent(s) to establish a time, place, and date for the hearing which is reasonably convenient to the parent(s) and individuals involved. (121a.512(d))
5. At least fifteen (15) days prior to the hearing, the parents shall be notified as to time, place, and date of the hearing. (1975)

G. IMPARTIAL HEARING OFFICER

1. The county school system or participating agency shall appoint the impartial hearing officer. The hearing officer shall meet the following criteria:
 - a. A college degree and/or an endorsement from the West Virginia Department of Education, Division of Professional Development Systems, in an area of special education (i.e., learning disabilities, speech pathology, audiology, behavioral disorders, mental retardation, visually impaired, etc.).

- b. Professional experience within the last two years in an area of special education (i.e., administration, school psychology, deaf education, physically handicapped, etc.).
 - c. Have completed a hearing officer training program conducted by the West Virginia Department of Education.
 2. The impartial hearing officer shall preside at the hearing, shall conduct the proceedings in a fair and impartial manner, and shall take steps to insure that all hearings and reviews will be conducted and completed as quickly as possible.
 3. The assigned hearing officer shall not be:
 - a. a person who is an employee of the county school system, the RESA of which the county is a member, or participating agency which is involved in the education or care of the child; or
 - b. any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (12la.507(a))
 4. A person who otherwise qualifies to conduct a hearing under paragraph (3a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. Hearing officers shall be paid by the county board or participating agency involved in the hearing solely for the purpose of compensating the hearing officer for time expended in travel, the hearing proceedings and preparing the report.
 5. The West Virginia Department of Education, Division of Special Education and Student Support Systems, shall maintain a list of persons trained to serve as hearing officers. The listing shall include a statement of qualifications of each person, the county or agency of employment and the RESA of which the county is a member. This information shall be provided to each county school system or participating agency requesting such information.
 6. Each county school system or participating agency shall keep a list of persons who serve as hearing officers. The list will include a statement of the qualifications of each of those persons. (12la.507(c))

H. HEARING RIGHTS

1. The individual shall remain in his/her present educational setting until the hearing officer enters a decision following

the hearing (except that in emergency situations where the health and safety of the individual or of other persons would be endangered by continuing the present placement. A change in placement may be made earlier by written order of the county superintendent or agency director.). (1975) (121a.513(a))

2. If the complaint involves an application for initial admission to a county school system, the child, with the consent of the parents, must be placed in the county school program until the completion of all the proceedings. (121a.513(b))
3. The parent(s) has the right to obtain an independent evaluation of the individual's educational needs, subject to the procedures under Notification. (1975) (121a.513(a))
4. The parent(s) shall have access to school reports, files and records pertaining to the individual, for inspection and reproduction at reasonable expense provided the fee does not prevent the parent(s) from exercising his/her right to inspect and review those records. (121a.562(2))
5. The parents of a handicapped child shall be afforded an opportunity to inspect and review all education records with respect to:
 - a. the identification, evaluation and educational placement of the child; and
 - b. the provision of a free appropriate public education to the child. (121a.502)

I. PROCEDURES

1. The hearing shall be closed to the public unless the parents request an open hearing. (121a.508(b)(2))
2. The individual shall have the right to attend the hearing if:
 - a. he/she has reached the age of majority; or
 - b. the parent(s) determines that the individual is to attend (unless the hearing officer believes that attendance by the individual would be harmful to his/her welfare, the individual may be excluded from all or portions of the hearing).
3. The burden of proof as to the appropriateness of any proposed action, as to why more normalized placement could/could not adequately and appropriately serve the individual's educational

needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the school personnel recommending placement. (1975)

4. At all stages of the due process procedures, interpreters for the deaf when needed, and interpreters fluent in the primary language of the home when needed, shall be provided at public expense. (1975)
5. Any party to a hearing has the right to:
 - a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children. (121a.508(a)(1))
 - b. Present evidence and confront, cross-examine, and compel the attendance of witnesses. (121a.508(a)(2))
 - c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing. (121a.508(a)(3))
 - d. Obtain a written or electronic verbatim record of the hearing. (121a.508(a)(4))
 - e. Obtain written findings of fact and decisions. The county school system or participating agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State Advisory Council. (121a.508(a))

J. HEARING DECISIONS

1. The hearing officer shall provide the county board of education or participating agency and the parents with a written report within ten (10) days of the hearing.
2. The written report of the hearing officer shall be based solely upon evidence and testimony presented at the hearing. (1975)
3. If the hearing officer feels that insufficient information precludes the preparation of a written report, the hearing officer may request additional information while declaring the hearing in continuance.

Identical copies of the information requested by the hearing officer shall be submitted to the hearing officer and the other party within seven days. The parent(s) and the school system shall be given the opportunity to refute the new testimony in writing.

The hearing officer shall submit the written report to the school system or participating agency within ten days of his receipt of this information.

4. The impartial hearing officer's written report shall include:
 - a. child identifiable information;
 - b. names of those present at the hearing;
 - c. a summary of evidence and testimony presented at the hearing;
 - d. any material or statements specifically requested to appear in the records by all parties;
 - e. a decision for each issue in the request for a hearing;
 - f. a timeline for implementing each decision;
 - g. applicable laws, rules, policies, regulations and rationale relevant to each issue and its recommendations;
 - h. the right to obtain a verbatim report of the hearing and request an appeal; and
 - i. procedures for initiating an appeal.
5. The county school system or participating agency and the parents must be afforded the opportunity to review the hearing officer's written report and to decide whether to accept or reject the decision.
6. If both parties accept the written report, appropriate action shall be taken to implement the decision.
7. If the parent rejects the decision of the county school system or participating agency, the parent may appeal to the State Superintendent of Schools, West Virginia Department of Education.
8. If the county school system rejects the decision of the impartial hearing officer, the impartial hearing officer shall initiate an automatic appeal to the State Superintendent of Schools, West Virginia Department of Education.

K. ADMINISTRATIVE APPEAL

1. If the hearing is conducted by a county school system or participating agency other than the West Virginia Department

of Education, any party aggrieved by the findings and decision in the hearing may appeal to the State Superintendent of Schools, West Virginia Department of Education. (121a.510(a))

2. When an appeal is requested, the State Superintendent of Schools shall appoint the reviewing official(s) who shall:
 - a. verify that the parent(s) wishes to appeal;
 - b. follow all procedures prescribed by the State Board of Education;
 - c. examine the entire hearing record;
 - d. insure that procedures at the hearing were consistent with due process procedures;
 - e. seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in section I, Procedures, apply;
 - f. afford the opportunity for oral or written argument, or both, at the discretion of the reviewing official(s); and
 - g. submit to the State Board of Education their findings and recommendations.
3. The decision of the State Board of Education shall be made within thirty (30) days after the receipt of a request for a review. That decision is final unless one of the parties brings a civil action.
4. A copy of the decision of the State Board of Education will be sent to all parties within ten (10) days of the decision of the State Board.

I. TIMELINES OF HEARINGS AND REVIEWS

1. The county school system or participating agency shall insure that not later than forty-five (45) days after the receipt of a request for a hearing:
 - a. a final decision is reached in the hearing; and
 - b. a copy of the decision is mailed to each of the parties.
2. The State Superintendent of Schools shall insure that not later than thirty (30) days after the receipt of a request for a review:
 - a. a final decision is reached in the review; and

- b. a copy of the decision is mailed to each of the parties.
3. A hearing officer or the reviewing official may grant specific extension of time beyond the periods set out in paragraphs (1) and (2) of this section at the request of either party. (121a.512)

M. SURROGATE PARENTS

Each county school system or participating agency shall insure that the rights of a handicapped child are protected when no parent can be identified; the county school system or participating agency, after reasonable efforts, cannot discover the whereabouts of a parent; or the child is a ward of the State under the laws of the State.

N. DETERMINATION AND ASSIGNMENT

1. Any employee of a county education agency, State Department of Education, residential school or any other person whose work involves education or treatment of children, who knows of a child possibly needing special education services and knows that the parents or guardians are not known, unavailable, or that the child is a ward of the State, should file a request for assignment of a surrogate to the child. This request should be filed with the child's county school system or participating agency.
2. In an effort to determine whether or not the parents or guardians are in fact unknown, unavailable, or the child is a ward of the State, the county school system or participating agency should send a notice of the need for a surrogate to the adult in charge of the child's place of residence and to the parents or guardians at their last known address.
3. The State Department of Education, Division of Special Education and Student Support Systems, will, upon request, assist as necessary with the determination of need.
4. The county school system or participating agency should weigh all available evidence and determine whether or not the parents or guardians are unknown, unavailable, or the child is a ward of the State. This determination should be completed within 30 days following receipt of the original request for a surrogate, and the finding of the county school system or participating agency. If the need for a surrogate exists, such assignment should be made by the county school system or participating agency within 30 days.
5. Once assigned, the surrogate should represent the child at least through the time of the first periodic review of the child's educational placement.

O. RECRUITMENT

When the need for a surrogate parent is determined to exist, the following steps will be implemented.

1. The county school system or participating agency shall be responsible for the recruitment of eligible persons who can serve as surrogate parents.
2. Nomination will be accepted by the county board of education or participating agency from any agency or association that has an interest in the education of exceptional children. Examples of agencies or associations may include: regional education service agencies, local and state associations for handicapped children, and/or state or county advisory councils.
3. Nominations will be sought when a request for determination is made to allow for sufficient time to recruit and train a surrogate parent.
4. Surrogates shall be approved by the county boards of education or participating agencies from a list of people recommended by the county superintendent or agency director.

P. QUALIFICATION OF SURROGATE PARENTS

The county school system or participating agency shall insure that a person selected as a surrogate:

1. Has no interest that conflicts with the interests of the individual involved.
2. Has knowledge and skills that insure adequate representation of the child.
3. Is not an employee of the State, county school system or participating agency which is involved in the education of the individual. A surrogate parent is not an employee of the county school system or participating agency solely because he/she is paid by the county school system or participating agency to serve as a surrogate parent.

Q. TRAINING

The surrogate parent will represent the child in all matters relating to:

1. the identification, evaluation and educational placement of the child; and
2. the provision of a free appropriate public education to the child.

The West Virginia Department of Education, Division of Special Education and Student Support Systems, will cooperate with each county school system or participating agency to undertake the training of the surrogate parent to insure that this person has knowledge and skills that will insure adequate representation of the child.

R. IMPLEMENTATION OF PROCEDURAL SAFEGUARDS

1. To assure that procedural safeguards are adhered to by all county school systems or participating agencies, the West Virginia Department of Education shall:
 - a. Distribute to all county school systems or participating agencies Standards for the Education of Exceptional Children which specify procedures that are consistent with procedural safeguards and which county school systems or participating agencies must follow.
 - b. Submit an amendment to Chapter 18, Article 20, Sections 1-6 of the West Virginia Code that would place responsibility and authority for special education and related services provided by all agencies under the general supervision of the State Department of Education.
 - c. Require all county school systems or participating agencies to promulgate and assure implementation of procedural safeguards as a part of the submission of the EHA, VI-B application.

S. MONITORING

Comprehensive Program Evaluation/Administrative Monitoring (CPE/AM) activities have been established by the Department of Education, Division of Special Education and Student Support Systems.

T. REVISION

Appendix A constitutes the complete policy of the West Virginia Department of Education with reference to procedural safeguards.

APPENDIX B

PROCEDURES FOR THE COLLECTION,
MAINTENANCE AND
DISCLOSURE OF STUDENT DATA

Approved by the
West Virginia Board of
Education, August, 1978

PROCEDURES FOR THE COLLECTION, MAINTENANCE
AND DISCLOSURE OF STUDENT DATA

AUTHORITY

These procedures are issued consistent with the powers of the West Virginia Board of Education as established by Chapter 18, Article 2, Section 5 of the Code of West Virginia. Such procedures are required by Public Law 93-380, Education Amendments of 1974; Public Law 94-142, Education of Handicapped Children Act, effective October 1, 1977, and their respective regulations.

SECTION 1 - APPLICABILITY

1. These procedures are applicable to all education agencies and institutions that are under the general supervision of the West Virginia Board of Education.
2. Except as otherwise specifically provided, these procedures apply to education records of students who are, have been, or will be in attendance at the educational institution which collects, maintains, or discloses the records.

SECTION 2 - PURPOSE

The purpose of these procedures is to set forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by agencies and institutions under the general supervision of the West Virginia Board of Education.

SECTION 3 - DEFINITIONS

As used in these procedures:

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and having homebound instruction, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U. S. Commissioner of Education.

"Consent" means that (1) the parent has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so, (2) the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the

records (if any) which will be released and to whom, and (3) the parent understands that the granting of consent is voluntary on the part of the parent.

"Directory information" includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information.

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is under the general supervision of the West Virginia Board of Education.

"Education records" (a) means those records which: (1) are directly related to a student, and (2) are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution; (b) the term does not include:

1. Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:
 - a. Are in the sole possession of the maker thereof, and
 - b. Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.
2.
 - a. Records relating to an individual who is employed by an educational agency or institution which (a) are made and maintained in the normal course of business; (b) relate exclusively to the individual in that individual's capacity as an employee; and (c) are not available for use for any other purpose.
 - b. This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

3. Records relating to an eligible student which are:
 - a. Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or para-professional acting in his or her professional or para-professional capacity, or assisting in that capacity;
 - b. Created, maintained, or used only in connection with the provision of treatment to the student; and
 - c. Not disclosed to anyone other than individuals providing the treatment; provided, that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

4. Records of an educational agency or institution which contain only information related to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

"Financial Aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

"Institution of post-secondary education" means an institution which provides education to students beyond the secondary school level. "Secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

"Panel" means the body which will adjudicate cases at the State level.

"Parent" includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights of access and consent unless the agency or institution has been provided with evidence that there is a court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

"Personally identifiable" means that the data or information includes (a) the name of a 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, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

"Records" means any information or data recorded in any medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

"Secretary" means the Secretary of the U. S. Department of Health, Education and Welfare.

"Student" includes any individual with respect to whom an educational agency or institution collects, maintains, or discloses educational records.

"Superintendent" means the State Superintendent of Schools.

SECTION 4 - STUDENT RIGHTS

1. For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.
2. The status of an eligible student as a dependent of his or her parents does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (1) of this section.
3. These procedures shall not be construed to preclude educational agencies or institutions from according students rights in addition to those accorded to parents of students.

SECTION 5 - FORMULATION OF INSTITUTIONAL POLICIES AND PROCEDURES

Each educational agency or institution shall formulate and adopt a policy of:

1. Informing parents of students or eligible students of their rights under Section 6.
2. Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with Section 9, including at least:

- a. A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;
 - b. With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;
 - c. A schedule of fees for copies; and
 - d. A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.
3. Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by Sections 16 and 22, the policy shall include, at least:
- a. A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under Section 16 (1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest"; and
 - b. A specification of the personally identifiable information to be designated as "directory information" under Section 22.
4. Maintaining the records of disclosures of personally identifiable information from the education records of a student required to be maintained by Section 17 and permitting a parent or an eligible student to inspect that record.
5. Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records of a hearing and permitting the parents of a student or an eligible student to place a statement in the education records of the student as provided in Section 13 (3).

The policy required to be adopted by this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

SECTION 5-A - COLLECTION OF INDIVIDUALLY IDENTIFIABLE DATA

1. Consent of parents for the collection of individually identifiable data must be obtained prior to the administration of an evaluation or individual screening measure that is used to determine eligibility for programs outside of the regular instructional programs and services.
2. Consent of parents to collect personally identifiable data is NOT required when such collection is a normal part of the educational program.

SECTION 6 - ANNUAL NOTIFICATION OF RIGHTS

1. Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:
 - a. Their rights under these procedures adopted under Section 5. The notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and
 - b. The right to file complaints under Section 25 concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.
2. Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

SECTION 7 - LIMITATIONS ON WAIVERS

1. Subject to the limitations in this section and Section 10, a parent of a student or an eligible student may waive any of his or her rights under these procedures. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.
2. An educational agency or institution may not require that a parent of a student or an eligible student waive his or her rights under these procedures. This paragraph does not preclude an educational agency or institution from requesting such a waiver.
3. An individual who is an applicant for admission to an institution of post-secondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation.

4. All waivers under paragraph (3) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.
5. A waiver under this section may be made with respect to specified classes of (1) education records, and (2) persons or institutions.
6. a. A waiver under this section may be revoked with respect to any actions occurring after the revocation.
b. A revocation under this paragraph must be in writing.
c. If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

SECTION 8 - FEES

1. An educational agency or institution may charge a fee for copies of educational records which are made for the parents of students, students, and eligible students; provided, that the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.
2. An educational agency or institution may not charge a fee to search for or retrieve the education records of a student.

SECTION 9 - RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

1. Each educational agency or institution shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.
2. The right to inspect and review education records under paragraph (1) of this section includes:
 - a. The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and
 - b. The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

3. An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

SECTION 10 - LIMITATIONS ON RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

SECTION 11 - DESTRUCTION OF EDUCATION RECORDS

1. An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:
 - a. The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under Section 9;
 - b. Explanations placed in the education record under Section 13 shall be maintained as provided in Section 13 (4);
 - c. The record of access required under Section 17 shall be maintained for as long as the education record to which it pertains is maintained;
 - d. Records of handicapped children shall not be destroyed without parental consent. Prior to any destruction of such data parents must be informed and give consent for that destruction. They must be informed that records may be needed for other purposes, such as social security benefits, etc. If the parents request that the information be destroyed, the agency may retain certain information in perpetuity. A permanent record of a student's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed, and years completed may be maintained without time limitation.
2. The following shall apply to the length of time and special consideration for the maintaining of all student records:
 - a. Directory information may be maintained in perpetuity. This includes a student's name, address, telephone

listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information;

- b. Academic grades and attendance records may be maintained in perpetuity;
- c. Other personally identifiable data which is no longer needed to provide educational services for the child may be, but is not required to be destroyed, and may be retained permanently;
- d. Student records shall be reviewed and screened at each level of school transition, i.e., elementary to middle school or junior high school to senior high school;
- e. Student records may be kept and used for research purposes under condition of anonymity; and
- f. Duplicate files of student records should be maintained in separate facilities.

SECTION 12 - REQUEST TO AMEND EDUCATION RECORDS

- 1. The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amends them.
- 2. The educational agency or institution shall decide whether to amend the educational records of the student in accordance with the request within a reasonable period of time in receipt of the request.
- 3. If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under Section 13.

SECTION 13 - RIGHT TO A HEARING

- 1. A local educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge

the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with Section 14.

2. If, as a result of the hearing, the local educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.
3. If, as a result of the hearing, the local educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.
4. Any explanation placed in the education records of the student under paragraph (3) of this section shall:
 - a. Be maintained by the local educational agency or institution as part of the education records of the students as long as the record or contested portion thereof is maintained by the agency or institution; and
 - b. If the education records of the student or the contested portion thereof is disclosed by the local educational agency or institution to any party, the explanation shall also be disclosed to that party.

SECTION 14 - CONDUCT OF THE HEARING

The hearing required to be held by Section 13 (1) shall be conducted according to procedures which shall include at least the following elements:

1. The hearing shall be held within a reasonable period of time after the local educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably, at least fourteen (14) days, in advance of the hearing.
2. The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

3. The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under Section 13, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney.
4. The local educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing.
5. The decision of the local educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

SECTION 15 - PRIOR CONSENT FOR DISCLOSURE REQUIRED

1. a. An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in Section 16.
 - b. Consent is not required under this section where the disclosure is to:
 - (1) The parent of a student who is not an eligible student; or
 - (2) The student himself or herself.
2. Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.
3. The written consent required by paragraph (1) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:
 - a. A specification of the records to be disclosed;
 - b. The purpose of the disclosure; and
 - c. The party or class of parties to whom the disclosure may be made.

4. When a disclosure is made pursuant to paragraph (1) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

SECTION 16 - PRIOR CONSENT FOR DISCLOSURE NOT REQUIRED

1. An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is:
 - a. To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interest.
 - b. To officials of another school or school system in which the student seeks or intends to enroll.
 - c. Subject to the conditions set forth in Section 20, to authorized representatives of:
 - (1) The Comptroller General of the United States;
 - (2) The Secretary of Health, Education and Welfare;
 - (3) State educational authorities.
 - d. In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:
 - (1) To determine the eligibility of the student for financial aid;
 - (2) To determine the amount of the financial aid;
 - (3) To determine the conditions which will be imposed regarding the financial aid; or
 - (4) To enforce the terms or conditions of the financial aid.
 - e. To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to the State statute adopted prior to November 19, 1974.

- f. To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; provided, that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted. The term "organizations" includes, but is not limited to, federal, State and local agencies, and independent organizations.
- g. To accrediting organizations in order to carry out their accrediting functions.
- h. To parents of a dependent student.
- i. To comply with a judicial order or lawfully issued subpoena; provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith.
- j. To appropriate parties in health or safety emergency subject to the conditions set forth in Section 21.

SECTION 17 - RECORD OF DISCLOSURE REQUIRED TO BE MAINTAINED

- 1. An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student maintain a record kept with the education records of the student which indicates:
 - a. The parties who have requested or obtained personally identifiable information from the education records of the student; and
 - b. The legitimate interest these parties had in requesting or obtaining the information.
- 2. Paragraph (1) of this section does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials, or to disclosures of directory information.

3. The record of disclosures may be inspected:
 - a. By the parent of the student or the eligible student;
 - b. By the school official and his or her assistant who are responsible for the custody of the records; and
 - c. For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in Section 16 (1) (a) and (c).

SECTION 18 - LIMITATION ON REDISCLOSURE

1. An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.
2. Paragraph (1) of this section does not preclude an agency or institution from disclosing personally identifiable information under Section 16, with the understanding that the information will be redisclosed to other parties under that section; provided, that the recordkeeping requirements of Section 17 are met with respect to each of those parties.
3. An educational agency or institution shall, except for the disclosure of directory information under Section 22, inform the party to whom a disclosure is made of the requirements set forth in paragraph (1) of this section.

SECTION 19 - CONDITIONS FOR DISCLOSURE TO OFFICIALS OF OTHER SCHOOL AND SCHOOL SYSTEMS

1. An educational agency or institution transferring the education records of a student pursuant to Section 16 (1) (b) shall:
 - a. Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, except:
 - (1) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

SECTION 23 - REVIEW OFFICER

1. The Superintendent shall designate a Review Officer to investigate, process, and review violations and complaints which may be filed concerning alleged violations of these policies. The Review Officer or a hearing panel which the Review Officer may designate will adjudicate cases referred to the office of the Superintendent.
2. Complaints should be addressed to:

Office of the Superintendent
West Virginia Department of Education
Capitol Complex, Room B-358
Charleston, West Virginia 25305

SECTION 24 - REPORTS AND RECORDS

1. Each educational agency or institution shall:
 - a. Submit reports in the form and contain such information as the Review Officer or the Hearing Panel may require to carry out their functions under this part; and
 - b. Keep the records and afford access thereto as the Review Officer or the Hearing Panel may find necessary to assure the correctness of these reports and compliance with the provisions of these policies.

SECTION 25 - COMPLAINT PROCEDURE

1. Complaints regarding violations of rights accorded parents and eligible students, under these policies, shall be submitted to the Office of the Superintendent in writing.
2.
 - a. A Review Officer will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.
 - b. The notification to the agency or institution under paragraph (2) (a) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

- (2) When the agency or institution includes a notice on its policies and procedures formulated under Section 5, that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;
 - b. Provide the parent of the student or the eligible student upon request, with a copy of the education records which have been transferred; and
 - c. Provide the parent of the student or the eligible student, upon request with an opportunity for a hearing under these procedures.
2. If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of paragraph (1) of this section.

SECTION 20 - DISCLOSURE TO CERTAIN FEDERAL AND STATE OFFICIALS FOR FEDERAL PROGRAM PURPOSES

1. Nothing in these policies shall preclude authorized representatives of officials listed in Section 16 (1) (c) from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.
2. Except when the consent of the parent of a student or an eligible student has been obtained under Section 15, or when the collection of personally identifiable information is specifically authorized by federal or State law, any data collected by officials listed in Section 16 (1) (c) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and State legal requirements.

SECTION 21 - CONDITIONS FOR DISCLOSURE IN HEALTH AND SAFETY EMERGENCIES

1. An educational agency or institution may disclose personally identifiable information from the education records of a

student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

2. The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:
 - a. The seriousness of the threat to the health or safety of the student or other individuals;
 - b. The need for the information to meet the emergency;
 - c. Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and
 - d. The extent to which time is of the essence in dealing with the emergency.
3. Paragraph (1) of this section shall be strictly construed.

SECTION 22 - CONDITIONS FOR DISCLOSURE OF DIRECTORY INFORMATION

1. An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information under paragraph (3) of this section.
2. An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (3) of this section.
3. An educational agency or institution which wishes to designate directory information shall give public notice of the following:
 - a. The categories of personally identifiable information which the institution has designated as directory information;
 - b. The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and
 - c. The period of time within which the parent of the student or the eligible student must inform the agency or

3. a. The Review Officer will investigate all timely complaints received to determine whether there has been a failure to comply with these policies and may permit further written or oral submission by both parties.
 - b. Following the investigation the Review Officer will provide written notification of findings and the basis for such findings, to the complainant and the agency or institution involved.
 - c. If the Review Officer finds that there has been a failure to comply there will be included in the notification under paragraph (3) (b) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all the circumstances of the case, for the agency or institution to voluntarily comply.
4. If the educational agency or institution does not come into compliance within the period of time set under paragraph (3) (c) of this section, the matter will be referred by the Review Officer to the Superintendent for action.

SECTION 26 - TERMINATION OF FUNDING

1. If the Superintendent after reasonable notice and opportunity for a hearing by the Review Officer:
 - a. Finds that an educational agency or institution has failed to comply with the policies, and
 - b. Determines that compliance cannot be secured by voluntary means may issue a decision, in writing, that no funds, State or federal, shall be made available to that educational agency or institution until there is no longer any such failure to comply.

SECTION 27 - HEARING PROCEDURES

1. PANELS. The Review Officer may designate Hearing Panels to conduct one or more hearings under Section 26. Each Panel shall consist of not less than three members. The Review Officer may designate himself or herself to serve as Chairperson of a Hearing Panel.
2. PROCEDURAL RULES
 - a. With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution

of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel:

- (1) In whole or in part in writing, or
 - (2) In an informal conference before the Panel which shall afford each party:
 - (a) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and
 - (b) An opportunity to be represented by counsel.
- b. With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition, to provisions required by subparagraph (a) (2) of this paragraph, provisions designed to assure to each party the following:
- (1) An opportunity to a record of the proceedings;
 - (2) An opportunity to present witnesses on the party's behalf; and
 - (3) An opportunity to cross-examine other witnesses either orally, through written interrogatories, or other modes of communications.

SECTION 28 - INITIAL DECISION; FINAL DECISION

1. The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before the Review Officer alone, the Review Officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.
2. Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Superintendent with a notice affording the party an opportunity to submit written comments thereon to the Superintendent within a specified reasonable time.
3. The initial decision of the Panel transmitted to the Superintendent shall become the final decision of the Superintendent unless, within 25 days after the expiration of the time for

receipt of written comments, the Superintendent advises the Review Officer in writing of his determination to review the decision.

4. In any case in which the Superintendent modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Hearing Panel.
5. Review of any initial decision by the Superintendent shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel to the proceedings.
6. No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.