

EXECUTIVE SUMMARY

WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy Number and Title: Policy 2419: *Regulations for the Education of Students with Exceptionalities*

Background: Policy 2419 establishes the regulations for compliance with the federal Individuals with Disabilities Education Act of 2004 (IDEA 2004), and West Virginia Code, Chapter 18, Article 20 regarding provision of services to students with exceptionalities. The policy is formatted to include the *West Virginia Procedures Manual for the Education of Students with Exceptionalities*. The Manual outlines the policies and procedures districts must follow in meeting the requirements of IDEA and West Virginia Code.

Proposals: On December 1, 2008, the U.S. Department of Education published in the Federal Register revisions to the implementing regulations for IDEA. As a condition of its application for IDEA funding, the West Virginia Department of Education provided assurances Policy 2419, including the procedures manual, would be revised to conform to the new regulations. The regulations establish a parent's right to revoke consent for provision of special education services and require state education agency monitoring systems to identify district noncompliance with IDEA and ensure correction as soon as possible and no later than within one year of notification. Revisions in addition to the required changes strengthen alignment with IDEA regulations and clarify the procedures.

Revisions pursuant to December 1, 2008 IDEA regulatory changes:

- Procedures implementing the parent's right to revoke consent for provision of special education have been added to Chapter 5, Section 2.K. and Chapter 10, Section 6.
- Timelines and procedures for the WVDE to correct identified noncompliance have been added to Chapter 9, Section 2. B.
- State law determination regarding whether nonattorneys may represent a party in a due process hearing has been added to due process hearing rights, Chapter 11, Section 3.I.

Additional revisions:

- The timeline and procedures for obtaining parent consent for Medicaid billing have been clarified.
- The Student Assistance Team procedures for addressing referrals and requests for multidisciplinary evaluation have been reordered, and timelines and responsibilities have been delineated. The process for handling referrals and initial requests for evaluation has been aligned with IDEA regulations.
- Prior written notice requirements have been revised throughout to ensure consistency with IDEA regulations.
- The Eligibility Committee is required to provide parents of students meeting eligibility criteria for blindness, low vision, deafness, hard of hearing or deafblindness information regarding West Virginia Schools for the Deaf and the Blind.
- Special considerations for eligibility of students with giftedness have been revised to reflect current evaluation practices.
- Eligibility criteria for mental impairment have been clarified to align with certification

patterns and student needs.

- Dates pertaining to implementation of Response to Intervention as a method for determining eligibility for specific learning disabilities have been extended per Dr. Paine's March 2009 memo and subsequent WVBE waiver.
- The order of the IEP considerations has been adjusted to align with IDEA regulations.
- Information duplicated in the *West Virginia Guidelines for Participation in State Assessments* has been removed.
- The least restrictive environment requirements have been reorganized, and the requirement to make placement based on student needs has been strengthened.
- Caseload requirements for preK programs serving students with Individualized Education Programs (IEPs) have been adjusted and clarified.
- Circumstances in which a mediation may be requested have been revised to reflect IDEA regulations.
- The timeline for appeal of a due process hearing decision to civil court has been changed to 90 days, consistent with IDEA regulations.
- Minor revisions have been made to attorney fee requirements to align with IDEA regulations.
- Former Policy 2419 caseloads no longer in effect under current policy have been deleted as the timeline for new caseloads is now in effect.

Impact: The proposed revisions bring Policy 2419 and the procedures manual into compliance with IDEA 2004, including December 1, 2008 revisions.

Response to Comments: To comply with federal requirements, the policy was published for public review for sixty days and comments were accepted from October 13 through November 12. Thirty-nine people commented. Five public hearings were attended by a total of 31 individuals. Comments were received from, nine teachers, fourteen special education directors and specialists, four school psychologists, three parents, two principals, four higher education students, West Virginia Advocates, West Virginia Developmental Disabilities Council and one legislator. In response to comments: 1) the timeline for prior written notice was reduced to five days; 2) closing the case was added as an option for Student Assistance Team (SAT); 3) "in writing" was added to the procedure for parent requests for additional evaluations; 4) a reference directing readers to the prior written notice definition was added to SAT section and 5) "session" was changed to "classroom" regarding universal pre-K caseloads.