


MEMORANDUM

TO: County Superintendents  
RESA Executive Directors  
County Special Education Directors  
Patsy Shank, Superintendent, WV Schools for the Deaf and the Blind  
Fran Warsing, Superintendent, Office of Institutional Education Programs  
RESA Special Education Administrators  
West Virginia Advisory Council for the Education of Exceptional Children  
Parent Educator Resource Centers  
West Virginia Developmental Disabilities Council  
West Virginia Parent Training Information  
West Virginia Advocates  
Mountain State Parents Children and Adolescents Network  
Mountain State Family Alliance  
Due Process Hearing Officers  
Mediators  
West Virginia American Federation of Teachers  
West Virginia Education Association

FROM:  Lynn Boyer, Ph.D.  
Executive Director  
Office of Special Programs, Extended and Early Learning

SUBJECT: Policy 2419: *Regulations for the Education of Students with Exceptionalities, Effective January 11, 2010*

DATE: January 15, 2010

The Office of Special Programs, Extended and Early Learning (OSP) is pleased to announce revisions to Policy 2419: *Regulations for the Education of Students with Exceptionalities* were approved by the West Virginia Board of Education at its December 2009 meeting and became effective January 11, 2010. Revisions bring the policy into compliance with December 2008 changes to the federal regulations implementing the Individuals with Disabilities Education Act of 2004 (IDEA), most notably regarding the parent's right to revoke consent for special education services and to clarify and strengthen the consistency of other sections of the policy with federal requirements. A summary of all revisions is attached.

A conference call hosted by the OSP to review the changes is scheduled for 9:00 - 10:30 a.m., Tuesday, February 2, 2010. Call in information and slides for the presentation will be provided at a later date. In addition, the following resources may be accessed from the OSP Policy 2419 Web page at <http://wvde.state.wv.us/osp/policy2419.html>:

Policy 2419  
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- Policy 2419 in Adobe pdf and Microsoft Word versions.
- Executive Summary
- Policy 2419 showing revisions (bill analysis format with underlines and strikethroughs).
- Summary of revisions (also attached)

Existing training videos and questions and answers from the 2007 policy remain available but are being reviewed to ensure all information remains in effect.

The OSP is printing copies of the policy with a table of contents, to be disseminated in February. The *Procedural Safeguards Available to Parents and Students with Exceptionalities* booklet is being revised to reflect the regulatory changes. The OSP will print and provide to districts sufficient copies for initial distribution to parents in early spring. Additionally, the *Hand in Hand* parent handbook has been revised and also will be made available this spring.

Please direct any questions to Dr. Sandra McQuain, Assistant Director, OSP, [smcquain@access.k12.wv.us](mailto:smcquain@access.k12.wv.us) or me at [lboyer@access.k12.wv.us](mailto:lboyer@access.k12.wv.us).

Attachment

LB:SM:jly

**ATTACHMENT**

**SUMMARY OF REVISIONS TO POLICY 2419:  
REGULATIONS FOR THE EDUCATION OF STUDENTS WITH EXCEPTIONALITIES  
Effective January 11, 2010**

| <b>Page</b>  |  |
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| <b>Chapter 1 – Free Appropriate Public Education</b> |  |
| 6  | Sec. 3.C. Medicaid parental consent documentation process revised.   |
| 7  | Sec. 3. The term “standard diploma” does not include a modified diploma or GED.  |
| <b>Chapter 2 – Child Find</b>                        |  |
| 9  | Sec. 3. A. Any interested person or agency may make a referral for a student suspected of needing special education; clarifies who receives and processes referrals.   |
| 9-10   | Sec. 3.C. Student Assistance Team responsibilities generally and procedures for processing written referral for special education specifically are clarified. Options for SAT disposition of a referral, including conducting the problem-solving process, immediate request for initial evaluation when warranted or closing the problem-solving process, are delineated. SAT procedures for making a referral for multidisciplinary evaluation were revised, including revision of the timeline for prior written notice and requesting consent from parent to <u>five</u> days. |
| 11   | Refer to Chapter 3, Sec. 3 and Chapter 10, Sec. 3 for prior written notice definition.   |
| <b>Chapter 3 – Evaluation/Reevaluation</b>           |  |
| 14   | Sec. 2. D. Within ten days of receipt of parental <u>written</u> request for additional evaluation, the IEP team provides prior written notice of its response. If decision is to conduct the evaluation, 60 day timeline applies.   |
| 15   | Sec. 3.A. Clarifies prior written notice is provided when requesting parent consent for evaluation/reevaluation, in addition to the consent form.  |
| 16   | Sec. 3.B.2. Written consent for evaluation/reevaluation will be requested within five days of decision (includes PWN).   |
| <b>Chapter 4 - Eligibility</b>                       |  |
| 19   | Sec. 1. Clarifies Eligibility Committee must convene within 80 days of parent consent for evaluation or after completion of reevaluation.  |
| 20   | Sec. 2. For students meeting applicable eligibility requirements, parents are provided information pertaining to WV Schools for the Deaf and the Blind.  |
| 26   | Sec. 3. G. Within eligibility criteria for gifted, special considerations have been revised regarding procedures when general intellectual ability score is unduly affected by one or more composite scores.   |
| 27   | Sec. 3. G. Aligns four-year plan for gifted students moving into grades 9-12 with Policy 2510 regarding provision of honors, Advanced Placement and International Baccalaureate classes. School representative on the review team is not required to be the counselor.   |
| 28   | Sec.3.I. Eligibility criteria for mental impairment include mild to moderate and <u>moderate</u> to severe ranges.   |
| 30   | Sec. 3. L. Dates for implementation of Response to Intervention for SLD eligibility were revised.  |
| 31   | Sec. 3. L. Students who do not achieve mastery on essential <u>or critical</u> grade-level skills are identified for Tier 2 supports and interventions.  |
| 36   | Sec. 3. L. Dates for phasing out severe discrepancy model for SLD eligibility were revised.  |

**Chapter 5 – Individualized Education Program**

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| 43    | Sec. 1. B. At the conclusion of an IEP meeting in which consensus between parents and the district is not reached, district IEP team representative makes the decision and provides PWN to parent.  |
| 43    | Sec. 1. C. IEP team must convene and conduct manifestation determination within ten days of any <u>disciplinary removal resulting in a change of placement</u> , and if appropriate, complete a functional behavioral assessment and/or develop or review a behavioral intervention plan.   |
| 45    | Sec. 1. D. Parent may <u>invite</u> the Part C coordinator or representative to attend the first IEP meeting.   |
| 46-47 | Sec.2.C. IEP considerations were revised to clarify which considerations are mandatory for all IEPs and which considerations are required when applicable to the student.   |
| 50    | Sec. 2.G. Location, Extent/Frequency and Duration: Hallway was deleted as location for services.  |
| 51    | Sec.2.I. Statewide and District-wide Achievement Testing Section – Test name was changed to WESTEST2 throughout. Requirements duplicated in West Virginia <i>Guidelines for Participation in State Assessments</i> have been deleted. Requirements, including testing accommodations and eligibility criteria for students taking APTA, remain in effect, but now are found only in the <i>Guidelines</i> document at <a href="http://wvde.state.wv.us/oaa/filecabinet.html#federal">http://wvde.state.wv.us/oaa/filecabinet.html#federal</a> (click on 2010 guidelines under the <b>General</b> documents section).  |
| 52    | Sec.2.J. Least restrictive environment (LRE) – LRE requirements regarding removal from the general educational environment, supplementary aids and services and participation in nonacademic and extracurricular activities remain the same but have been reordered for clarity.  |
| 53    | Sec. 2.J. Services and placement needed by each student must be based on the student's unique needs that result from his or her disability or giftedness, not on the student's category of exceptionality <u>or the availability of placement options, services, staff or space</u> . The placement decision is made after all sections of the IEP, except the educational environment section, have been completed. Placement is determined at least annually. The IEP Team must consider the student's needs and the services <u>required</u> to meet those needs (not just available services).  |
| 56-57 | Sec.2.K. & L. Parent right to revoke consent has been added as follows:<br><b>K. Consent for Initial Placement and Revoking Consent</b><br><br>Prior written notice and informed consent are required for the initial provision of special education and related services as described in the IEP. If the parent or adult student to whom rights have been transferred refuses initial consent, the district will not provide special education and related services to the student. The district documents reasonable efforts to obtain informed consent from the parent/adult student for the initial provision of special education and related services.<br><br>A parent/adult student may revoke consent for continued provision of special education and related services at any time. The revocation of consent must be in writing. Within five days of receipt of the written revocation of consent, the district must provide prior written notice to the parent, and to the adult student, if applicable, that special education and related services will cease. |

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|   | <p>When a parent/adult student refuses to respond to a request for or refuses consent to the initial provision of special education and related services or revokes consent for continued special education and related services:</p> <ol style="list-style-type: none"> <li>1. The district must provide PWN containing all the required content of PWN and must fully inform the parent of the reasons the district believes the student should receive special education and the potential consequences of refusing services, such as implications for student achievement, graduation, discipline protections and transition to post school outcomes.</li> <li>2. Neither mediation nor a due process complaint may be used to attempt to obtain agreement or a ruling that services be provided.</li> <li>3. The district will not be in violation of the requirement to make FAPE available to the student or the requirement to provide special education and related services; and</li> <li>4. The district will not be required to convene an IEP meeting or develop an IEP for the student.</li> </ol> <p>Additionally when consent for continued provision of special education and related services is revoked after the student has initially been provided services:</p> <ol style="list-style-type: none"> <li>1. The district is not required to amend the student's educational records to remove any references to the student's receipt of special education and related services because of the revocation of consent.</li> <li>2. The parent/adult student maintains the right to request initial evaluation. A subsequent request for the student to be re-enrolled in special education is treated as a request for initial evaluation.</li> <li>3. The district is not deemed to have knowledge that the student is a student with a disability, and the student may be disciplined as a general education student and is not entitled to Policy 2419 discipline protections.</li> </ol> <p><b>L. Parent or Adult Student Objection to a Subsequent IEP</b></p> <p>The revocation of consent rule applies to revocation of all special education and related services. Consent cannot be revoked for a particular service. Parent/adult student disagreements with the provision of a particular service, a change in placement or other IEP components may be addressed by the IEP team and the dispute resolution processes. If the IEP Team agrees free appropriate public education (FAPE) would be provided if the student does not receive the service or IEP provision in question, the IEP may be revised accordingly. If, however, the IEP Team and parent/adult student disagree regarding IEP provisions, the district provides PWN of the proposed or refused changes. The parent may use dispute resolution processes as defined in Chapter 11.</p> |
| 57  | Sec.2.M. At the conclusion of the IEP Team meeting, prior written notice and a copy of the IEP must be provided to the parent /adult student.  |
| 60  | Sec.5.E. Clarifies the procedural safeguards notice must be given to parent/adult students upon issuance of a disciplinary notice of suspension or expulsion resulting in an change of placement.  |
| <b>Chapter 6 – Administration of Services</b> |  |
| 63  | Sec.4.B. Maximum case management limit of 20 students with Developmental Delays  |

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|  | applies only to students with IEPs.  |
| 66   | Sec. 4.B. Clarifies at least one <u>special education</u> teacher is required to provide instruction to meet per period caseload requirements.   |
| 67   | Sec. 4.B. When students with different levels of service need are provided instruction in the same class, the minimum staffing ratio for the highest level of need applies.  |
| 67   | Sec. 4.B. Maximum number of students for pre-k “sessions” changed to “classrooms”.   |
| 67   | Sec. 4.B. Table reformatted to clarify caseload limits. Staffing requirements revised for universal pre-k.<br><br><b>Universal Pre-k with Students with IEPs</b> 20 students per classroom with limit of 10 students with IEPs per classroom;<br>2 staff persons per classroom (1 teacher and 1 additional staff person) with no more than 9 students with IEPs<br>3 staff persons per classroom (1 teacher and 2 additional staff persons) required for 10 students with IEPs   |
| <b>Chapter 7 - Discipline</b>  |  |
| 69   | Sec.2. Provide same day written notice of the removal, <u>PWN</u> , and the procedural safeguards notice to the parent/adult student of the disciplinary action resulting in a change in placement.  |
| 70   | Sec.2.C. Clarifies removal to Interim Alternative Educational Setting (IAES), allowed only for drugs, weapons or serious bodily injury violations, may be made by school personnel (e.g. unilaterally by administrator).<br>Changes term to “serious bodily <u>injury</u> ”, consistent with federal definition.   |
| <b>Chapter 9 – General Supervision and Accountability for Performance and Compliance</b> |  |
| 87   | Sec.2.B. WVDE Responsibility. The WVDE must monitor districts’ implementation of the requirements of IDEA and this policy, and must ensure when a district’s noncompliance is identified it is corrected as soon as possible and in no case later than one year after WVDE’s notification of the noncompliance. The district will be notified of the noncompliance in writing. The noncompliance is corrected upon WVDE’s review and approval of documentation and evidence submitted by the district of implementation of actions correcting the noncompliance.<br><br>District Responsibility. Upon notification in writing of a noncompliance with IDEA or Policy 2419, the district will develop and implement such corrective actions as are required to correct the noncompliance as soon as possible, and in no case later than one year from the date of notification. The district will provide to the WVDE the documentation required to verify the noncompliance has been corrected as soon as possible and within timelines set by WVDE to ensure timely review and approval of the documentation. |
| <b>Chapter 10 – Procedural Safeguards</b>  |  |
| 92   | Sec.3.A. Clarifies PWN includes a statement that the parent/adult student has protection under the procedural safeguards (rather than “has special education rights”), consistent with IDEA regulations.   |
| 92   | Sec.3.B. Changes the timeline for prior written notice: PWN must be provided to the parent /adult student <u>five</u> days prior to implementing the proposed action or within <u>five</u> days of the refusal.  |

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| 93                              | Sec.6. Parent right to revoke consent added. If a parent/adult student revokes consent, the revocation is not retroactive, that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked. If consent is revoked after the student has initially been provided special education and related services, the district is not required to amend the student's educational records to remove any references to the student's receipt of special education and related services because of the revocation of consent.  |
| 94-95                           | Sec.6.E. If at any time subsequent to the initial provision of special education and related services the parent/adult student revokes consent in writing for the continued provision of special education and related services, the district may not continue to provide special education and related services, but must provide prior written notice complying with Chapter 10, Section 3, before ceasing provision of special education and related services. The district is not considered in violation of the FAPE requirement and is not required to convene an IEP Team meeting or develop an IEP for the student for whom consent is revoked. Dispute resolution procedures may not be used to obtain agreement or a ruling that the services may be provided to the student. |
| Chapter 11 – Dispute Resolution |   |
| 101                             | Sec.2. Clarifies mediation may be requested for any matter under IDEA, consistent with IDEA regulations.  |
| 103                             | Sec.3.A. <u>WVDE</u> (not district) informs a parent/adult student of any free or low-cost legal or other relevant services available to him or her if a due process complaint is requested or if the parent/adult student requests such information.   |
| 107                             | Sec.3.I. State law determines whether parties have the right to be represented by nonattorneys at due process hearings.   |
| 110                             | Sec.3.N. Sets timeline to file civil action to appeal a due process hearing decision in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy <u>within 90 days of the issuance of the hearing officer's written decision.</u>  |
| 124                             | Glossary - Deleted a statement from the definition of prior written notice that indicated PWN could be met by various special education process forms.  |