

APPENDIX A

W.Va. Code § 16-3-4
Immunizations

WEST VIRGINIA CODE

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

(a) Whenever a resident birth occurs, the commissioner shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public, private and parochial school in this state or a state-regulated child care center.

(b) Except as hereinafter provided, a child entering school or a state-regulated child care center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough.

(c) No child or person may be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio,, rubella, tetanus and whooping cough or produces a certificate from the commissioner granting the child or person an exemption from the compulsory immunization requirements of this section.

(d) Any school or state-regulated child care center personnel having information concerning any person who attempts to be enrolled in a school or state-regulated child care center without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough shall report the names of all such persons to the commissioner.

(e) Persons may be provisionally enrolled under minimum criteria established by the commissioner so that the person's immunization may be completed while missing a minimum amount of school. No person shall be allowed to enter school without at least one dose of each required vaccine.

(f) County health departments shall furnish the biologicals for this immunization for children of parents or guardians who attest that they cannot afford or otherwise access vaccines elsewhere.

(g) Health officers and physicians who provide vaccinations must present the person vaccinated with a certificate free of charge showing that they have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough, or he or she may give the certificate to any person or child whom he or she knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough.

(h) The commissioner is authorized to grant, renew, condition, deny, suspend or revoke exemptions to the compulsory immunization requirements of this section, on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(1) A request for an exemption to the compulsory immunization requirements of this section must be accompanied by the certification of a licensed physician stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(2) The commissioner is authorized to appoint and employ an Immunization Officer to make determinations on request for an exemption to the compulsory immunization requirements of this section, on a statewide basis, and delegate to the Immunization Officer the authority granted to the commissioner by this subsection.

(3) A person appointed and employed as the Immunization Officer must be a physician licensed under the laws of this state to practice medicine.

(4) The Immunization Officer's decision on a request for an exemption to the compulsory immunization requirements of this section may be appealed to the State Health Officer.

(5) The final determination of the State Health Officer is subject to a right of appeal pursuant to the provisions of article five, chapter twenty-nine a of this code.

(i) A physician who provides any person with a false certificate of immunization against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio,, rubella, tetanus and whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25 nor more than \$100.

W.Va. Code § 16-3D-1

TB

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-1. Purpose and legislative findings.

(a) The purpose of this article is to bring together the state law governing compulsory testing for tuberculosis (TB) of students and school personnel as well as the statutes pertaining to the treatment, control and commitment of persons with the disease at hospitals, clinics and other health care facilities throughout the state.

(b) The targeted tuberculin testing and treatment guidelines published by the Centers for Disease Control and Prevention (CDC) in the year two thousand recommends that routine testing of low-risk populations for administrative purposes be discontinued. The elimination of routine retesting of school personnel in accordance with this recommendation will result in significant savings to the state.

(c) According to the CDC, high risk groups or persons that should be tested for latent TB infection include:

- (1) Close contacts of a person known or suspected to have TB;
- (2) Foreign-born persons from areas where TB is common;
- (3) Residents and employees of high-risk congregate settings;
- (4) Health care workers who serve high-risk clients;
- (5) Medically underserved, low-income populations;
- (6) High-Risk racial or ethnic minority populations;
- (7) Children exposed to adults in high-risk categories;
- (8) Persons who inject illicit drugs;
- (9) Persons with HIV infection; and
- (10) Persons with certain medical conditions, such as substance abuse, chest X-ray findings suggestive of previous TB, diabetes mellitus, silicosis, prolonged corticosteroid therapy, other immunosuppressive therapy, cancer of the head and neck, end-stage renal disease,

intestinal bypass or gastrectomy, chronic malabsorption syndromes, or low body weight of ten percent or more below the ideal.

(d) Early diagnosis, proper and complete treatment for people with active TB disease prevents transmission to others as well as preventing the emergence of multidrug resistant TB.

(e) The TB Control Program should be funded at levels necessary to accomplish directly observed therapy for all patients with active TB disease in West Virginia and to implement targeted testing of high-risk groups.

§16-3D-2. Definitions.

As used in this article:

(1) "Active Tuberculosis" or "Tuberculosis" means a communicable disease caused by the bacteria, *Mycobacterium tuberculosis*, which is demonstrated by clinical, bacteriological, radiographic or epidemiological evidence. An infected person whose tuberculosis has progressed to active disease may experience symptoms such as coughing, fever, fatigue, loss of appetite and weight loss and is capable of spreading the disease to others if the tuberculosis germs are active in the lungs or throat.

(2) "Bureau" means the Bureau for Public Health in the Department of Health and Human Resources;

(3) "Commissioner" means the Commissioner of the Bureau for Public Health, who is the state health officer;

(4) "Local board of health," "local board" or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(5) "Local health department" means the staff of the local board of health; and

(6) "Local health officer" means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the commissioner.

(7) "Tuberculosis suspect" means a person who is suspected of having tuberculosis disease due to any or all of the following medical factors: the presence of symptoms, the result of a positive skin test, risk factors for tuberculosis, or findings on an abnormal chest x ray, during the time period when an active tuberculosis disease diagnosis is pending.

§16-3D-3. Compulsory testing for tuberculosis of school children and school personnel; commissioner to approve the test; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis.

(a) Pupils found or suspected to have active tuberculosis shall be temporarily removed from school while their case is reviewed and evaluated by their personal physician and the local health officer. Pupils shall return to school when their personal physician and the local health officer, in consultation with the commissioner, indicate that it is safe and appropriate for them to return.

(b) School personnel found or suspected to have active tuberculosis shall have their employment suspended until the local health officer, in consultation with the commissioner, approves a return to work.

(c) The commissioner may require selective testing of students and school personnel for tuberculosis when there is reason to believe that they may have been exposed to the tuberculosis organism or they have signs and symptoms indicative of the disease. School nurses shall identify and refer any students or school personnel to the local health department in instances where they have reason to suspect that the individual has been exposed to tuberculosis or has symptoms indicative of the disease.

§16-3D-4. Report of cases, admissions, registration of patients.

(a) Every physician practicing in this state, every public health officer in the state, and every chief medical officer having charge of any hospital or clinic or other similar public or private institution in the state shall report electronically or in writing to the local health department in the patient's county of residence all information required by the Commissioner for every person having tuberculosis who comes under his or her observation or care. Such report shall be made within twenty-four hours after diagnosis.

(b) Every local health department shall forward all reports of tuberculosis cases filed pursuant to this section to the Bureau tuberculosis program within twenty-four hours of receipt of such reports.

(c) The chief medical officer of each tuberculosis institution, hospital or other health care facility shall report the admission of any patient with tuberculosis to the Bureau together with any other information the Commissioner may require. He or she shall make a similar report of the discharge or death of any patient. From such reports and other sources, the Bureau shall prepare and keep current a register of persons in this state with tuberculosis. The name of a person so registered shall not be made public nor shall the register be accessible to anyone except by order of the Bureau, the patient, or by the order of the judge of a court of record.

§16-3D-5. Forms for reporting and committing patients; other records.

(a) The Bureau shall prescribe the written and electronic forms for reporting all required information regarding patients with tuberculosis.

(b) The Bureau shall prescribe the written and electronic forms to be used in committing patients to any state hospital or other health care facility where care and treatment of tuberculosis patients is conducted.

§16-3D-6. Cost of maintenance and treatment of patients.

The cost of maintenance and treatment of patients admitted to state designated tuberculosis institutions shall be paid out of funds appropriated for the respective institutions. No patient shall be required to pay for such maintenance and treatment, but the institutions are authorized to receive any voluntary payments therefore.

§16-3D-7. Procedure when patient is a health menace to others; court ordered treatment; requirements for discharge; appeals.

(a) If any practicing physician, public health officer, or chief medical officer having under observation or care any person with tuberculosis is of the opinion that the

environmental conditions of that person are not suitable for proper isolation or control by any type of local quarantine as prescribed by the Bureau, and that the person is unable or unwilling to conduct himself or herself and to live in such a manner as not to expose members of his or her family or household or other persons with whom he or she may be associated to danger of infection, he or she shall report the facts to the Bureau which shall investigate or have investigated the circumstances alleged.

(b) If the Commissioner or local health officer finds that any person's physical condition is a health menace to others, the Commissioner or local health officer shall petition the circuit court of the county in which the person resides, requesting an individualized course of treatment to deal with the person's current or inadequately treated tuberculosis. Refusal to adhere to prescribed treatment may result in an order of the court committing the person to a health care facility equipped for the treatment of tuberculosis: *Provided*, That if the Commissioner or local health officer determines that an emergency situation exists which warrants the immediate detention and commitment of a person with tuberculosis, an application for immediate involuntary commitment may be filed pursuant to section nine of this article.

(c) Upon receiving the petition, the court shall fix a date for hearing thereof and notice of the petition and the time and place for hearing shall be served personally, at least seven days before the hearing, upon the person with tuberculosis alleged to be dangerous to the health of others.

(d) If, upon hearing, it appears that the complaint of the Bureau is well founded, that other less restrictive treatment options have been exhausted, that the person has tuberculosis, and that the person is a danger to others, the court shall commit the individual to a health care facility equipped for the care and treatment of persons with tuberculosis. The person shall be deemed to be committed until discharged in the manner authorized in subsection (e) of this section: *Provided*, That the hearing and notice provisions of this

subsection do not apply to immediate involuntary commitments as provided in section nine of this article.

(e) The chief medical officer of the institution to which any person with tuberculosis has been committed may discharge that person when, after consultation with the Commissioner and the local health officer in the patient's county of residence, it is agreed that the person may be discharged without danger to the health of others. The chief medical officer shall report immediately to the Commissioner and to the local health officer in the patient's county of residence each discharge of a person with tuberculosis.

(f) Every person committed under the provisions of this section shall observe all the rules of the institution. Any patient so committed may, by direction of the chief medical officer of the institution, be placed apart from the others and restrained from leaving the institution so long as he or she continues to have tuberculosis and remains a health menace.

(g) Nothing in this section may be construed to prohibit any person committed to any institution under the provisions of this section from applying to the Supreme Court of Appeals for a review of the evidence on which the commitment was made. Nothing in this section may be construed or operate to empower or authorize the Commissioner or the chief medical officer of the institution to restrict in any manner the individual's right to select any method of tuberculosis treatment offered by the institution.

§16-3D-8. Return of escapees from state tuberculosis institutions.

If any person confined in a state tuberculosis institution by virtue of an order of a circuit court as provided in sections seven and nine of this article shall escape, the chief medical officer shall issue a notice giving the name and description of the person escaping and requesting his or her apprehension and return to the hospital. The chief medical officer shall issue a warrant directed to the sheriff of the county commanding him or her to arrest and carry the escaped person back to the hospital, which warrant may be executed in any part of the state. If the person flees to another state, the chief medical officer shall notify the appropriate

state health official in the state where the person has fled, and that state health official may take the actions that are necessary for the return of the person to the hospital.

§16-3D-9. Procedures for immediate involuntary commitment; rules.

(a) An application for immediate involuntary commitment of a person with tuberculosis may be filed by the Commissioner or local health officer, in the circuit court of the county in which the person resides. The application shall be filed under oath, and shall present information and facts which establish that the person with tuberculosis has been uncooperative or irresponsible with regard to treatment, quarantine or safety measures, presents a health menace to others, and is in need of immediate hospitalization.

(b) Upon receipt of the application, the circuit court may enter an order for the individual named in the action to be detained and taken into custody for the purpose of holding a probable cause hearing. The order shall specify that the hearing be held forthwith and shall appoint counsel for the individual: *Provided*, That in the event immediate detention is believed to be necessary for the protection of the individual or others at a time when no circuit court judge is available for immediate presentation of the application, a magistrate may accept the application and, upon a finding that immediate detention is necessary, may order the individual to be temporarily committed until the earliest reasonable time that the application can be presented to the circuit court, which period of time shall not exceed twenty-four hours except as provided in subsection (c) of this section.

(c) A probable cause hearing shall be held before a magistrate or circuit judge of the county in which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours, or as soon thereafter as possible.

(d) The individual shall be present at the probable cause hearing and shall have the right to present evidence, confront all witnesses and other evidence against him or her, and to examine testimony offered, including testimony by the Bureau or its designees.

(e) At the conclusion of the hearing the magistrate or circuit court judge shall enter an order stating whether there is probable cause to believe that the individual is likely to cause serious harm to herself or others as a result of his or her disease and actions. If probable cause is found, the individual shall be immediately committed to a health care facility equipped for the care and treatment of persons with tuberculosis. The person shall remain so committed until discharged in the manner authorized pursuant to subsection (e), section seven of this article: *Provided*, That in the case of an alcoholic or drug user, the judge or magistrate shall first order the individual committed to a detoxification center for detoxification prior to commitment to health care facility equipped for the care and treatment of persons with tuberculosis.

(f) The Bureau shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article, including, but not limited to, rules relating to the transport and temporary involuntary commitment of patients.

W.Va. Code § 18-2-7a
Healthy Lifestyles

WEST VIRGINIA CODE

§18-2-7a. Legislative findings; required physical education; program in physical fitness.

(a) The Legislature hereby finds that obesity is a problem of epidemic proportions in this state. There is increasing evidence that all segments of the population, beginning with children, are becoming more sedentary, more overweight and more likely to develop health risks and diseases including Type II Diabetes, high blood cholesterol and high blood pressure. The Legislature further finds that the promotion of physical activity during the school day for school children is a crucial step in combating this growing epidemic and in changing the attitudes and behavior of the residents of this state toward health promoting physical activity.

(b) As a result of these findings, the state Department of Education shall establish the requirement that each child enrolled in the public schools of this state actively participates in physical education classes during the school year to the level of his or her ability as follows:

(1) *Elementary school grades.* -- Not less than thirty minutes of physical education, including physical exercise and age-appropriate physical activities, for not less than three days a week.

(2) *Middle school grades.* -- Not less than one full period of physical education, including physical exercise and age-appropriate physical activities, each school day of one semester of the school year.

(3) *High school grades.* -- Not less than one full course credit of physical education, including physical exercise and age-appropriate physical activities, which shall be required for graduation and the opportunity to enroll in an elective lifetime physical education course.

(c) Enrollment in physical education classes and activities required by the provisions of this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all other subjects and classes: *Provided*, That schools which do not currently have the

number of certified physical education teachers, do not currently have the required physical setting or would have to significantly alter academic offerings to meet the physical education requirements may develop alternate programs that will enable current staff, physical settings and offerings to be used to meet the physical education requirements established herein. These alternate programs shall be submitted to the state Department of Education and the Healthy Lifestyle Council for approval. Those schools needing to develop alternate programs shall not be required to implement this program until the school year commencing two thousand six.

(d) The state board shall prescribe a program within the existing health and physical education program which incorporates fitness testing, reporting, recognition, fitness events and incentive programs which requires the participation in grades four through eight and the required high school course. The program shall be selected from nationally accepted fitness testing programs designed for school-aged children that test cardiovascular fitness, muscular strength and endurance, flexibility and body composition: *Provided*, That nothing in this subsection shall be construed to prohibit the use of programs designed under the auspices of the President's Council on Physical Fitness and Sports. The program shall include modified tests for exceptional students. Each school in the state shall participate in National Physical Fitness and Sports Month in May of each year and shall make every effort to involve the community it serves in the related events.

(e) The state board shall promulgate a rule in accordance with the provisions article three-b, chapter twenty-nine-a of this code that includes at least the following provisions to provide for the collection, reporting and use of body mass index data in the public schools:

(1) The data shall be collected using the appropriate methodology for assessing the body mass index from student height and weight data;

(2) The data shall be collected on a scientifically drawn sample of students;

(3) The data shall be collected and reported in a manner that protects student confidentiality;

(4) The data shall be reported to the Department of Education; and

(5) All body mass index data shall be reported in aggregate to the Governor, the state Board of Education, the Healthy Lifestyles Coalition and the Legislative Oversight Commission on Health and Human Resources Accountability for use as an indicator of progress toward promoting healthy lifestyles among school-aged children.

W.Va. Code §18-2-9
Required Course of Instruction

WEST VIRGINIA CODE

§18-2-9. Required courses of instruction.

(a) In all public, private, parochial and denominational schools located within this state there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the Constitution of the United States and in the government of the State of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The state board shall, with the advice of the state superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this code.

(b) The state board shall cause to be taught in all of the public schools of this state the subject of health education, including instruction in any of the grades six through twelve as considered appropriate by the county board, on: (1) The prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity to maintaining healthy weight; and (4) education concerning cardiopulmonary resuscitation

and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health and Human Resources. The state board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

(c) An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.

(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in subsection (b) of this section shall include at least thirty minutes of instruction for each student prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform cardiopulmonary resuscitation. The term “psychomotor skills” means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as “psychomotor skills”. The CPR instruction must be based on an instructional program established by the American Heart Association or the American Red Cross or another program which is nationally recognized and uses the most current national evidence-based Emergency Cardiovascular Care guidelines and incorporates psychomotor skills development into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide or oversee such instruction. The instruction may be given by community members, such as emergency medical technicians, paramedics, police officers, firefighters, licensed nurses and representatives of the American Heart Association or the American Red Cross. These community members are

encouraged to provide necessary training and instructional resources such as cardiopulmonary resuscitation kits and other material at no cost to the schools. The requirements of this subsection are minimum requirements. A local school district may offer CPR instruction for longer periods of time and may enhance the curriculum and training components, including, but not limited to, incorporating into the instruction the use of an automated external defibrillator (AED): *Provided*, That any instruction that results in a certification being earned must be taught by an authorized CPR/AED instructor.

(e) The full week of classes during the week within which September 11 falls shall be recognized as “Celebrate Freedom Week.” The purpose of Celebrate Freedom Week is to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded.

Celebrate Freedom Week must include appropriate instruction in each social studies class which:

(1) Includes an in-depth study of the intent, meaning and importance of the Declaration of Independence and the Constitution of the United States with an emphasis on the Bill of Rights;

(2) Uses the historical, political and social environments surrounding each document at the time of its initial passage or ratification; and

(3) Includes the study of historical documents to firmly establish the historical background leading to the establishment of the provisions of the Constitution and Bill of Rights by the founding fathers for the purposes of safeguarding our Constitutional republic.

The requirements of this subsection are applicable to all public, private, parochial and denominational schools located within this state. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

(f) Beginning the 2018-2019 school year, students in the public schools shall be administered a test the same as or substantially similar to the civics portion of the

naturalization test used by the United States Citizenship and Immigration Services between their ninth and twelfth grade years as an indicator of student achievement in the area of civics education. The test results may be reported in the aggregate to the county board for evaluation by the board's curriculum director and reported to the board members. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

W.Va. Code § 18-2K-1

The Diabetes Care Plan Act

ARTICLE 2K. THE DIABETES CARE PLAN ACT.

§18-2K-1. Title of article.

This article shall be known as "The Diabetes Care Plan Act."

§18-2K-2. Adoption of guidelines for individual diabetes care plans.

(a) The State Board of Education shall adopt guidelines for the development and implementation of individual diabetes care plans on or before January 1, 2007. The guidelines for information and allowable actions in a diabetes care plan shall meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care setting. The State Board of Education shall consult with the Bureau for Public Health and the Department of Health and Human Resources in the development of these guidelines. The State Board of Education also shall consult with county board of education employees who have been designated as responsible for coordinating their individual county's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794. In its development of these guidelines, the state Board of Education shall consider recent resolutions by the Office of Civil Rights of the United States Department of Education regarding investigation of complaints alleging discrimination against students with diabetes.

The guidelines adopted by the state board shall include:

(1) Procedures for school nurses to develop an individual diabetes care plan for any student diagnosed with diabetes, which shall involve the parent or guardian, the student's health care provider, the student's classroom teacher, the student if appropriate, and other appropriate school personnel;

(2) Procedures for regular review of an individual care plan.

(3) Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student

is able to participate in the student's diabetes care and management and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student; and

(4) Procedures for information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

(b) The State Board of Education shall provide that the guidelines and any subsequent changes are published and disseminated to county boards of education.

§18-2K-3. Establishment and implementation of diabetes care plans by county boards to support and assist students with diabetes.

Each county board of education shall establish and adopt a diabetes care plan which shall be implemented in schools in which students diagnosed with diabetes are enrolled. The plan shall be adopted not later than six months after the state Board of Education adopts guidelines for the plans pursuant to section two of this article. The plan shall meet all of the guidelines for diabetes care plans adopted by the state Board of Education pursuant to section two of this article. In particular, the boards shall require the implementation of the procedures set forth in those guidelines for the development and implementation of individual diabetes care plans. County boards also shall make available necessary information and staff development to teachers and school personnel in order to appropriately support and assist students with diabetes in accordance with their individual diabetes care plans.

§18-2K-4. Progress report to the Legislature.

The State Board of Education shall report no later than September 1, 2007, to the Legislative Oversight Commission on Health and Human Resources Accountability on the board's progress regarding the adoption and dissemination of the guidelines pursuant to section two of this article and the establishment and implementation of diabetes care plans by county boards of education pursuant to section three of this article.

W.Va. Code § 18-5-15d
Aids In-Service Training

WEST VIRGINIA CODE

§18-5-15d. In-service training programs in the prevention, transmission, spread and treatment of acquired immune deficiency syndrome; parent attendance.

Under guidelines established by the Department of Education in consultation with the department of health, training programs on the prevention, transmission, spread and treatment of acquired immune deficiency syndrome shall be provided by the county boards as in-service training for all school personnel. The county boards shall encourage the attendance of parents at these programs and notify such parents to the fullest extent practicable, including notification in written form and by publication.

W.Va. Code § 18-5-17
Pre-Enrollment Screenings

WEST VIRGINIA CODE

§18-5-17. Compulsory pre-enrollment hearing, vision and speech and language testing; developmental screening for children under compulsory school age.

(a) All children entering public school for the first time in this state shall be given prior to their enrollments screening tests to determine if they might have vision or hearing impairments or speech and language disabilities. County boards of education may provide, upon request, such screening tests to all children entering nonpublic school. County boards of education shall conduct these screening tests for all children through the use of trained personnel. Parents or guardians of children who are found to have vision or hearing impairments or speech and language disabilities shall be notified of the results of these tests and advised that further diagnosis and treatment of the impairments or disabilities by qualified professional personnel is recommended.

(b) County boards of education shall provide or contract with appropriate health agencies to provide, upon the request of a parent or guardian residing within the district, developmental screening for their child or children under compulsory school attendance age: *Provided*, That a county board is not required to provide such screening to the same child more than once in any one school year. Developmental screening is the process of measuring the progress of children to determine if there are problems or potential problems or advanced abilities in the areas of understanding language, perception through sight, perception through hearing, motor development and hand-eye coordination, health, and psycho-social or physical development. The boards shall coordinate the provision of developmental screening with other public agencies and the interagency plan for exceptional children under section eight, article twenty of this chapter to avoid the duplication of services and to facilitate the referral of children and their parents or guardians who need other services. The county boards shall provide notice to the public of the availability of these services.

(c) The state Board of Education is hereby authorized to promulgate rules consistent with this section. The state superintendent is directed to apply for federal funds, if available, for the implementation of the requirements of this section.

W.Va. Code § 18-5-22
School Nurse Ratio

WEST VIRGINIA CODE

§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

(a) County boards shall provide proper medical and dental inspections for all pupils attending the schools of their county and have the authority to take any other action necessary to protect the pupils from infectious diseases, including the authority to require from all school personnel employed in their county, certificates of good health and of physical fitness.

(b) Each county board shall employ full time at least one school nurse for every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof: *Provided*, That each county shall employ full time at least one school nurse: *Provided, however*, That a county board may contract with a public health department for services considered equivalent to those required by this section in accordance with a plan to be approved by the state board: *Provided further*, That the state board shall promulgate rules requiring the employment of school nurses in excess of the number required by this section to ensure adequate provision of services to severely handicapped pupils. An appropriation may be made to the state department to be distributed to county boards to support school health service needs that exceed the capacity of staff as mandated in this section. Each county board shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of students with specialized health care needs.

(c) Any person employed as a school nurse must be a registered professional nurse properly licensed by the West Virginia Board of Examiners for Registered Professional Nurses in accordance with article seven, chapter thirty of this code.

(d) Specialized health procedures that require the skill, knowledge and judgment of a licensed health professional may be performed only by school nurses, other licensed school

health care providers as provided in this section, or school employees who have been trained and retrained every two years who are subject to the supervision and approval by school nurses. After assessing the health status of the individual student, a school nurse, in collaboration with the student's physician, parents and, in some instances, an individualized education program team, may delegate certain health care procedures to a school employee who shall be trained pursuant to this section, considered competent, have consultation with, and be monitored or supervised by the school nurse: *Provided*, That nothing in this section prohibits any school employee from providing specialized health procedures or any other prudent action to aid any person who is in acute physical distress or requires emergency assistance. For the purposes of this section "specialized health procedures" means, but is not limited to, catheterization, suctioning of tracheostomy, naso-gastric tube feeding or gastrostomy tube feeding. "School employee" means "teachers" as defined in section one, article one of this chapter and "aides" as defined in section eight, article four, chapter eighteen-a of this code. Commencing with the school year beginning on July 1, 2002, "school employee" also means "secretary I", "secretary II" and "secretary III" as defined in section eight, article four, chapter eighteen-a of this code: *Provided, however*, That a "secretary I", "secretary II" and "secretary III" shall be limited to the dispensing of medications.

(e) Any school service employee who elects, or is required by this section, to undergo training or retraining to provide, in the manner specified in this section, the specialized health care procedures for those students for which the selection has been approved by both the principal and the county board shall receive additional pay of at least one pay grade higher than the highest pay grade for which the employee is paid: *Provided*, That any training required in this section may be considered in lieu of required in-service training of the school employee and a school employee may not be required to elect to undergo the training or retraining: *Provided, however*, That commencing with July 1, 1989, any newly employed school employee in the field of special education is required to undergo the training and retraining as provided

in this section: *Provided further*, That if an employee who holds a class title of an aide is employed in a school and the aide has received the training, pursuant to this section, then an employee in the field of special education is not required to perform the specialized health care procedures.

(f) Each county school nurse, as designated and defined by this section, shall perform a needs assessment. These nurses shall meet on the basis of the area served by their regional educational service agency, prepare recommendations and elect a representative to serve on the council of school nurses established under this section.

(g) There shall be a council of school nurses which shall be convened by the state Board of Education. This council shall prepare a procedural manual and shall provide recommendations regarding a training course to the Commissioner of the Bureau for Public Health who shall consult with the state Department of Education. The state board then has the authority to promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement the training and to create standards used by those school nurses and school employees performing specialized health procedures. The council shall meet every two years to review the certification and training program regarding school employees.

(h) The State Board of Education shall work in conjunction with county boards to provide training and retraining every two years as recommended by the Council of School Nurses and implemented by the rule promulgated by the state board.

W.Va. Code § 18-5-22a
Administration of Medication

WEST VIRGINIA CODE

§18-5-22a. Policy for the administration of medications.

All county boards of education shall develop a specific medication administration policy which establishes the procedure to be followed for the administration of medication at each school.

No school employee shall be required to administer medications: *Provided*, That nothing herein shall prevent any school employee to elect to administer medication after receiving training as provided herein: *Provided, however*, That any school employee in the field of special education whose employment commenced on or after July 1, 1989, may be required to administer medications after receiving training as provided herein.

W.Va. Code § 18-5-22b
Asthma Medication

WEST VIRGINIA CODE

§18-5-22b. Providing for self-administration of asthma medication; definitions; conditions; indemnity from liability; rules.

(a) For the purposes of this section, the following words have the meanings specified unless the context clearly indicates a different meaning:

(1) "Medication" means asthma medicine, prescribed by:

(A) A physician licensed to practice medicine in all its branches; or

(B) A physician assistant who has been delegated the authority to prescribe asthma medications by a supervising physician; or

(C) An advanced practice registered nurse who has a written collaborative agreement with a collaborating physician. Such agreement shall delegate the authority to prescribe the medications for a student that pertain to the student's asthma and that have an individual prescription label.

(2) "Self-administration" or "self-administer" means a student's discretionary use of prescribed asthma medication.

(b) A student enrolled in a public, private, parochial or denominational school located within this state may possess and self-administer asthma medication subject to the following conditions:

(1) The parents or guardians of the student have provided to the school:

(A) A written authorization for the self-administration of asthma medication; and

(B) A written statement from the physician or advanced practice registered nurse which contains the name, purpose, appropriate usage and dosage of the student's medication and the time or times at which, or the special circumstances under which, the medication is to be administered;

(2) The student has demonstrated the ability and understanding to self-administer asthma medication by:

(A) Passing an assessment by the school nurse evaluating the student's technique of self-administration and level of understanding of the appropriate use of the asthma medication; or

(B) In the case of nonpublic schools that do not have a school nurse, providing to the school from the student's physician or advanced practice registered nurse written verification that the student has passed such an assessment; and

(3) The parents or guardians of the student have acknowledged in writing that they have read and understand a notice provided by the county board or nonpublic school that:

(A) The school, county school board or nonpublic school and its employees and agents are exempt from any liability, except for willful and wanton conduct, as a result of any injury arising from the self-administration of asthma medication by the student; and

(B) The parents or guardians indemnify and hold harmless the school, the county board of education or nonpublic school and its employees or guardians and agents against any claims arising out of the self-administration of the medication by the student.

(c) The information provided to the school pursuant to subsection (b) of this section shall be kept on file in the office of the school nurse or, in the absence of a school nurse, in the office of the school administrator.

(d) Permission for a student to self-administer asthma medication is effective for the school year for which it is granted and shall be renewed each subsequent school year if the requirements of this section are met.

(e) Permission to self-administer medication may be revoked if the administrative head of the school finds that the student's technique of self-administration and understanding of the use of the asthma medication is not appropriate or is willfully disregarded.

(f) A student with asthma who has met the requirements of this section may possess and use asthma medication:

(1) In school;

(2) At a school-sponsored activity;

(3) Under the supervision of school personnel; or

(4) Before or after normal school activities, such as before school or after school care on school operated property.

(g) The state board shall promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.

W.Va. Code 18-5-22c
Epinephrine Auto-Injectors

WEST VIRGINIA CODE

§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors; administration of injections; notice; indemnity from liability; rules.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school to stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) An allopathic physician licensed to practice pursuant to the provisions of article three, chapter thirty of this code or an osteopathic physician licensed to practice pursuant to the provisions of article fourteen, chapter thirty of this code may prescribe within the course of his or her professional practice standing orders and protocols for use when necessary by a school which wishes to maintain epinephrine auto-injector pursuant to the provisions of this section.

(c) A school nurse, as set forth in section twenty-two of this article, may administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the school nurse medically believes the individual is experiencing an anaphylactic reaction. A school nurse may use the school supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(d) Nonmedical school personnel who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school or county board to administer the epinephrine auto-injector are authorized to administer an

epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an anaphylactic reaction. Non-medical school personnel may use the school supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(e) School transportation employees, including bus drivers, who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school or county board to administer an epinephrine auto-injector may administer an epinephrine auto-injector to a student or school personnel during transportation to or from a school function when the school transportation employee reasonably believes, based upon his or her training, that the individual is experiencing an anaphylactic reaction. A school transportation employee may use the individual's personal supply of epinephrine auto-injectors or the school's supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school: *Provided*, That a school transportation employee shall defer to an individual possessing a higher degree of medical training or the parent of the child experiencing an anaphylactic reaction, if either are present at the time of the reaction; *Provided, however*, That the school transportation employee, trained and authorized to administer epinephrine auto-injectors, is not subject to the terms of section twenty-two of this article.

(f) Prior notice to the parents of a student of the administration of the epinephrine auto-injector is not required. Immediately following the administration of the epinephrine auto-injector, the school shall provide notice to the parent of a student who received an auto-injection.

(g) A school nurse, a trained school transportation employee, or trained and authorized nonmedical school personnel who administer an epinephrine auto-injection to a student or to school personnel as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the epinephrine auto-injection unless the act or omission was the result of the school nurse, school transportation employee, or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

(h) For the purposes of this section, all county boards of education may participate in free or discounted drug programs from pharmaceutical manufacturers to provide epinephrine auto-injectors to schools in their counties which choose to stock auto-injectors.

(i) All county boards of education are required to collect and compile aggregate data on incidents of anaphylactic reactions resulting in the administration of school-maintained epinephrine auto-injectors in their county during a school year and forward the data to the state superintendent of schools. The state superintendent of schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

(j) The State Board of Education, as defined in article two of this chapter, shall consult with the state health officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel and school transportation employees who may administer epinephrine auto-injectors following the necessary training;

(2) The training requirements necessary for nonmedical school personnel and school transportation employees to be authorized to administer an epinephrine auto-injection;

(3) Training on anaphylaxis and allergy awareness for food service workers in the school system, if easily available locally;

(4) Storage requirements for maintaining the epinephrine auto-injectors within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school-maintained epinephrine auto-injection including who administered the injection, the rationale for administering the injection, the approximate time of the injection and any other necessary elements to make the student's parents fully aware of the circumstances surrounding the administration of the injection;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all epinephrine auto-injectors;

(7) Detailed reporting requirements for county boards of education on incidents of use of school-maintained epinephrine auto-injectors during a school year; and

(8) Any other requirements necessary to fully implement this section.

W.Va. Code 18-5-22d
Opioid Antagonists

WEST VIRGINIA CODE

§18-5-22d. Providing for the maintenance and use of opioid antagonist; administration; notice; indemnity from liability; rules.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of an opioid antagonist for use in emergency medical care or treatment for an adverse opioid event. Opioid antagonists shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) A school nurse, as set forth in section twenty-two of this article, is authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, or at an event on school property when the school nurse medically believes the individual is experiencing an adverse opioid event.

(c) Nonmedical school personnel who have been trained in the administration of an opioid antagonist and who have been designated and authorized by the school to administer the opioid antagonist are authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, at an event on school property when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an adverse opioid event.

(d) Prior notice to the parents of a student of the administration of the opioid antagonist is not required. Immediately following the administration of the opioid antagonist, the school shall provide notice to the parent of a student who received the opioid antagonist.

(e) A school nurse or trained and authorized nonmedical school personnel who administer an opioid antagonist as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the opioid antagonist unless the act or omission was the result of the school nurse or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

(f) All county boards of education are required to collect and compile aggregate data on adverse opioid events resulting in the administration of school maintained opioid antagonist in their county during a school year and forward the data to State Superintendent of Schools. The State Superintendent of Schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

(g) Nothing in this section requires a public, private, parochial or denominational school located within this state to possess an opioid antagonist. A public, private, parochial or denominational school located within this state or a county board of education is immune from liability from any civil action arising from the public, private, parochial or denominational school located within this state not possessing an opioid antagonist in the school.

(h) The State Board of Education, as defined in article two of this chapter, shall consult with the State Health Officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel who may administer opioid antagonist following the necessary training;

(2) The training requirements necessary for nonmedical school personnel to be authorized to administer an opioid antagonist;

(3) Training on what constitutes an adverse opioid event;

(4) Storage requirements for maintaining the opioid antagonist within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained opioid antagonist including who administered the antagonist, the rationale for administering the antagonist, the approximate time of the administration of the opioid antagonist and any other necessary elements to make the student's parents fully aware of the circumstances surrounding the administration of the antagonist;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all opioid antagonist;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained opioid antagonist during a school year; and

(8) Any other requirements necessary to fully implement this section.

W.Va. Code § 30-7-1(et seq)

RN Code

WEST VIRGINIA CODE

§30-7-1. Definitions.

As used in this article:

(a) "Advanced practice registered nurse" means a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients as a certified nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination.

(b) "Board" means the West Virginia Board of Examiners for Registered Professional Nurses;

(c) "Collaborative relationship" means a working relationship, structured through a written agreement, in which an advanced practice registered nurse may prescribe drugs in collaboration with a qualified physician;

(d) "Practice of registered professional nursing" or "registered professional nursing" means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician, a licensed dentist or a licensed advanced practice registered nurse, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others; and

(e) "Temporary permit" means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective, or the holder is

granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.

§30-7-1a. Eligibility for licensure by meeting requirements which existed prior to the legislative enactments during the 2012 legislative session.

An applicant for licensure as an advanced practice registered nurse as set forth in section one of this article who completed an advanced nursing education program and was recognized, licensed or certified in an advanced practice or a certified nurse midwife by West Virginia or another state before December 31, 2012, may apply for and receive an advanced practice registered nurse license if that applicant meets the requirements that were in place in West Virginia at the time the applicant qualified for initial advanced practice licensure.

§30-7-2. License required to practice.

(a) It is unlawful for any person not licensed under the provisions of this article to practice or to offer to practice registered professional nursing in this state, or to use any title, sign, card or device to indicate that such person is a registered professional nurse: Provided, That any professional nurse holding an active, unencumbered license to practice in another state, who accompanies a patient to whom he or she administers nursing care while such patient is in transit or being transported into, out of, or through this state, may practice without a license issued under this article with the following limitations: (1) Such nurse may only administer nursing care to the patient whom they are accompanying in this state; and (2) under no circumstances is any such nurse authorized to practice nursing in this state for longer than forty-eight hours within any three-month period; and (3) under no circumstances shall any such nurse hold him or herself out as a registered professional nurse licensed in this state. Such forty-eight

hour period shall commence and run from the time such nurse first enters the borders of this state in the company of his or her patient and therefrom run continuously, whether or not such nurse dispenses nursing care, until such forty-eight hour period has elapsed.

(b) To practice as an advanced practice registered nurse in this state, a person must have a valid advanced practice registered nurse license issued by the board. It is unlawful for any person to practice or offer to practice as an advanced practice registered nurse, to use any title, sign, card or device to indicate or give the impression that such person is an advanced practice registered nurse or to practice as, perform the role of, or use any title, sign, card or device to indicate that the person is a certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist or certified nurse practitioner, unless that person is currently licensed by the board as an advanced practice registered nurse.

§30-7-3. Board of examiners for registered professional nurses.

The Governor shall appoint, by and with the advice and consent of the Senate, a board consisting of five members who shall constitute and be known as the West Virginia board of examiners for registered professional nurses.

Appointments hereunder shall be made by the Governor, by and with the advice and consent of the Senate, from lists submitted to the Governor by the West Virginia nurses' association. Such lists shall contain the names of at least three persons eligible for membership for each membership or vacancy to be filled and shall be submitted to the Governor on or before June 1 of each year and at such other time or times as a

vacancy on the board shall exist. Appointments under the provisions of this article shall be for a term of five years each or for the unexpired term, if any, of the present members. Any member may be eligible for reappointment, but no member shall serve longer than two successive terms. Vacancies shall be filled in the same manner as is provided for appointment in the first instance. The Governor may remove any member for neglect of duty, for incompetence, or for unprofessional or dishonorable conduct.

Each member of the board hereafter appointed shall (a) be a citizen of the United States and a resident of this state, (b) be a graduate from an accredited educational program in this or any other state for the preparation of practitioners of registered professional nursing, or be a graduate from an accredited college or university with a major in the field of nursing, (c) be a graduate from an accredited college or university, (d) be a registered professional nurse licensed in this state or eligible for licensure as such, (e) have had at least five years of experience in teaching in an educational program for the preparation of practitioners of registered professional nursing, or in a combination of such teaching and either nursing service administration or nursing education administration, and (f) have been actually engaged in registered professional nursing for at least three within the past five years preceding his or her appointment or reappointment.

Each member of the board shall receive \$50 for each day actually spent in attending meetings of the board, or of its committees, and shall also be reimbursed for actual and necessary expenses: Provided, That the per diem increased by this amendment shall be effective upon passage of this article.

§30-7-4. Organization and meetings of board; quorum; powers and duties generally; executive secretary; funds.

The board shall meet at least once each year and shall elect from its members a president and a secretary. The secretary shall also act as treasurer of the board. The board may hold such other meetings during the year as it may deem necessary to transact its business. A majority, including one officer, of the board shall constitute a quorum at any meeting. The board is hereby authorized and empowered to:

(a) Adopt and, from time to time, amend such rules and regulations, not inconsistent with this article, as may be necessary to enable it to carry into effect the provisions of this article;

(b) Prescribe standards for educational programs preparing persons for licensure to practice registered professional nursing under this article;

(c) Provide for surveys of such educational programs at such time as it may deem necessary;

(d) Accredite such educational programs for the preparation of practitioners of registered professional nursing as shall meet the requirements of this article and of the board;

(e) Deny or withdraw accreditation of educational programs for failure to meet or maintain prescribed standards required by this article and by the board;

(f) Examine, license and renew the licenses of duly qualified applicants;

(g) Conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license;

(h) Keep a record of all proceedings of the board;

(i) Make a biennial report to the Governor and the Legislative Oversight Commission for Health and Human Resources Accountability;

(j) Appoint and employ a qualified person, who shall not be a member of the board, to serve as executive secretary to the board;

(k) Define the duties and fix the compensation for the executive secretary; and

(l) Employ such other persons as may be necessary to carry on the work of the board.

All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of this article. No part of this special fund shall revert to the General Funds of this state. The compensation provided by this article and all expenses incurred under this article

shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against the General Funds of this state.

§30-7-5. Schools of nursing.

(a) A nursing program is determined to be board approved if the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education. The accreditation is considered board approved and is exempt from board rules that require ongoing approval if the school or program maintains this accreditation.

(b) By July 1, 2022, all nursing programs shall be accredited by a national accrediting agency recognized by the United States Department of Education. A program created after July 1, 2018, shall have 5 years to obtain accreditation by an accrediting agency recognized by the United States Department of Education.

(c) The board may require information concerning the nursing program to be reported to the board by legislative rule. The requested information shall be consistent with information already being collected by the schools which is required to maintain the program's accreditation.

(d) The board shall approve a new nursing program until the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education.

§30-7-5a. Schools of nursing faculty requirements.

(a) Full-time nursing faculty members shall:

(1) Have a graduate degree with a major in nursing; have a bachelor's degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor's degree with a major in nursing and at least 10 years of direct patient care experience in nursing;

(2) Have evidence of current experience in nursing practice and education sufficient to demonstrate professional competence. For faculty with less than two years' experience in education, the nursing program administrator will submit to the board mentoring and orientation plans as defined by board guidelines and function under the guidance of a faculty member fully qualified in the specific teaching area and professional competence; and

(3) Have credentials which verify status as a registered professional nurse in West Virginia.

(b) Part-time nursing faculty members shall:

(1) Have a graduate degree with a major in nursing; have a bachelor's degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor's degree with a major in nursing and at least two years of direct patient care experience in nursing;

(2) Have evidence of current experience in nursing practice and education sufficient to demonstrate professional competence. For faculty with less than two years' experience in education, the nursing program administrator will submit to the board mentoring and orientation plans as defined by board guidelines and function under the guidance of a faculty member fully qualified in the specific teaching area and professional competence; and

(3) Have credentials which verify status as a registered professional nurse in West Virginia.

(c) The board may grant an exception to the requirements in §30-7-5a(a) and §30-7-5a(b) of this code for faculty members who have qualifications other than those set forth in these subsections which are acceptable to the board.

§30-7-6. Qualifications; licensure; fees; temporary permits.

(a) To obtain a license to practice registered professional nursing, an applicant for such license shall submit to the board written evidence, verified by oath, that he or she: (1) Is of good moral character; (2) has completed an approved four-year high school course of study or the equivalent thereof, as determined by the appropriate educational agency; and (3) has completed an accredited program of registered professional nursing education and holds a diploma of a school accredited by the board.

(b) The applicant shall also be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral examination. Upon successfully passing such examination or examinations, the board shall issue to the applicant a license to practice registered professional nursing. The board shall determine the times and places for examinations. In the event an applicant shall have failed to pass examinations on two occasions, the applicant shall, in addition to the other requirements of this section, present to the board such other evidence of his or her qualifications as the board may prescribe.

(c) The board may, upon application, issue a license to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country if in the opinion of the board the applicant meets the qualifications required of registered professional nurses at the time of graduation.

(d) The board may, upon application and proper identification determined by the board, issue a temporary permit to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country. Such temporary permit authorizes the holder to practice registered professional nursing in this state while the temporary permit is effective. A temporary permit shall be effective for ninety days, unless the board revokes such permit prior to its expiration, and such permit may not be renewed. Any person applying for a temporary license under the provisions

of this paragraph shall, with his or her application, pay to the board a nonrefundable fee of \$10.

(e) Any person holding a valid license designated as a "waiver license" may submit an application to the board for a license containing no reference to the fact that such person has theretofore been issued such "waiver license." The provisions of this section relating to examination and fees and the provisions of all other sections of this article shall apply to any application submitted to the board pursuant to the provisions of this paragraph.

(f) Any person applying for a license to practice registered professional nursing under the provisions of this article shall, with his or her application, pay to the board a fee of \$40: Provided, That the fee to be paid for the year commencing July 1, 1982, shall be \$70: Provided, however, That the board in its discretion may, by rule or regulation, decrease either or both said license fees. In the event it shall be necessary for the board to reexamine any applicant for a license, an additional fee shall be paid to the board by the applicant for reexamination: Provided further, That the total of such additional fees shall in no case exceed \$100 for any one examination.

(g) Any person holding a license heretofore issued by the West Virginia state Board of Examiners for Registered Nurses and which license is valid on the date this article becomes effective shall be deemed to be duly licensed under the provisions of this article for the remainder of the period of any such license heretofore issued. Any

such license heretofore issued shall also, for all purposes, be deemed to be a license issued under this article and to be subject to the provisions hereof.

(h) The board shall, upon receipt of a duly executed application for licensure and of the accompanying fee of \$70, issue a temporary permit to practice registered professional nursing to any applicant who has received a diploma from a school of nursing approved by the board pursuant to this article after the date the board last scheduled a written examination for persons eligible for licensure: Provided, That no such temporary permit shall be renewable nor shall any such permit be valid for any purpose subsequent to the date the board has announced the results of the first written examination given by the board following the issuance of such permit.

(i) To obtain a license to practice as an advanced practice registered nurse, an applicant must submit a written application, verified by oath, to the board together with an application fee established by the board through an authorized legislative rule. The requirements for a license to practice as an advanced practice registered nurse in this state are listed below and must be demonstrated to the board through satisfactory evidence submitted with the application for a license:

(1) The applicant must be licensed in good standing with the board as a registered professional nurse;

(2) The applicant must have satisfactorily completed a graduate-level program accredited by a national accreditation body that is acceptable to the board; and

(3) The applicant must be currently certified by a national certification organization, approved by the board, in one or more of the following nationally recognized advance practice registered nursing roles: certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist or certified nurse practitioner.

§30-7-6a. Special volunteer registered professional nurse license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for registered professional nurses retired or retiring from the active practice of nursing who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer registered professional nurse license shall be issued by the West Virginia Board of Examiners for registered professional nurses to registered professional nurses licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the registered professional nurse's acknowledgment that:

(1) The registered professional nurse's practice under the special volunteer registered professional nurse license will be exclusively devoted to providing nursing care to needy and indigent persons in West Virginia;

(2) The registered professional nurse will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any nursing services rendered under the special volunteer registered professional nurse license;

(3) The registered professional nurse will supply any supporting documentation that the board may reasonably require; and

(4) The registered professional nurse agrees to continue to participate in continuing education as required by the board for the special volunteer registered professional nurse license.

(b) Any person engaged in the active practice of nursing in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the registered professional nurse or the clinical setting.

(c) Any registered professional nurse who renders nursing service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer registered professional nurse license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the nursing service at the clinic unless the act or omission was the result of the registered professional nurse's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the registered professional nurse and the clinic pursuant to which the registered professional nurse will provide voluntary uncompensated nursing services under the control of the clinic to patients of the clinic before the rendering of any services by the registered professional nurse at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

(d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a registered professional nurse rendering voluntary nursing services at or for the clinic under a special volunteer registered professional nurse license authorized under subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section six of this article and in the legislative rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer registered professional nurse license to any registered professional nurse whose license is or has been subject to any disciplinary action or to any registered professional nurse who has surrendered his or her license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a registered professional nurse license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a registered professional nurse license.

(g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any registered professional nurse covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a registered professional nurse who holds a special volunteer registered professional

nurse license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

§30-7-6b. Special volunteer license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for advanced practice registered nurses retired or retiring from the active practice of nursing who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer advanced practice registered nurse license shall be issued by the West Virginia Board of Examiners for Registered professional nurses to advanced practice registered nurses licensed or otherwise eligible for licensure pursuant to this article and the rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the advanced practice registered nurse's acknowledgment that:

(1) The advanced practice registered nurse's practice pursuant to the special volunteer advanced practice registered nurses license will be exclusively devoted to providing nursing care to needy and indigent persons in West Virginia;

(2) The advanced practice registered nurse will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or

compensation but may donate to the clinic the proceeds of any reimbursement, for any nursing services rendered pursuant to the special volunteer advanced practice registered nurse license;

(3) The advanced practice registered nurse will supply any supporting documentation that the board may reasonably require; and

(4) The advanced practice registered nurse agrees to continue to participate in continuing education as required by the board for the special volunteer advanced practice registered nurse license.

(b) Any person licensed as an advanced practice registered nurse in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the advanced practice registered nurses or the clinical setting.

(c) A advanced practice registered nurse and his or her collaborating physician who render nursing service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge pursuant to a special volunteer advanced practice registered nurse license authorized pursuant to subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the

expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the nursing service at the clinic unless the act or omission was the result of the advanced practice registered nurse's and his or her collaborating physician's gross negligence or willful misconduct. For the immunity pursuant to this subsection to apply, there must be a written agreement between the licensed practical nurse and the clinic pursuant to which the advanced practice registered nurse will provide voluntary uncompensated nursing services under the control of the clinic to patients of the clinic before the rendering of any services by the advanced practice registered nurse at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

(d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a advanced practice registered nurse rendering voluntary nursing services at or for the clinic pursuant to a special volunteer advanced practice registered nurse license authorized pursuant to subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section six of this article and in the rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer advanced practice registered nurse license to any advanced practice registered nurse whose license is or has been subject to any disciplinary action or to any advanced practice registered nurse who has surrendered his or her license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a advanced practice registered nurse license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a advanced practice registered nurse license.

(g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any advanced practice registered nurse covered pursuant to the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a advanced practice registered nurse who holds a special volunteer advanced practice registered nurse license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

§30-7-7. Qualifications and licensure of persons not citizens of United States.

(a) The board may, upon application, issue a license to practice registered professional nursing by endorsement to any person who is not a citizen of the United States of America if such person: (1) Has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country; and (2) shall, in any such state, territory or foreign country, have passed a written examination in the English language which, in the opinion of the board, is comparable in content and scope to the type of written examination that is required in subsection

(b) of section six of this article.

(b) All other provisions of this article shall be applicable to any application for or license issued pursuant to this section.

§30-7-8. Renewal of licenses; reinstatement; fees; penalties; inactive list.

The license of every person licensed and registered under the provisions of this article shall be annually renewed except as hereinafter provided. At such time or times as the board in its discretion may determine, the board shall mail a renewal application to every person whose license was renewed during the previous year and every such person shall fill in such application blank and return it to the board with a renewal fee of \$25 within thirty days after receipt of said renewal application: Provided, That the board in its discretion by rule may increase or decrease the renewal fee. Upon receipt of the application and fee, the board shall verify the accuracy of the application and, if the same be accurate, issue to the applicant a certificate of renewal for the current year. Such certificate of renewal shall entitle the holder thereof to practice registered professional nursing for the period stated on the certificate of renewal. Any

licensee who allows his or her license to lapse by failing to renew the license as provided above may be reinstated by the board on satisfactory explanation for such failure to renew his or her license and on payment to the board of the renewal fee hereinabove provided and a reinstatement fee of \$50. Any person practicing registered professional nursing during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violation of this article. A person licensed under the provisions of this article desiring to retire from practice temporarily shall send a written notice of such desire to the board. Upon receipt of such notice the board shall place the name of such person upon the inactive list. While remaining on this list the person shall not be subject to the payment of any renewal fees and shall not practice registered professional nursing in this state. When the person desires to resume active practice, application for renewal of license and payment of the renewal fee for the current year shall be made to the board.

§30-7-8a. Supplemental fees to fund center for nursing; emergency rules.

(a) The board is authorized to assess a supplemental licensure fee not to exceed \$10 per license per year. The supplemental licensure fee is to be used to fund the center for nursing and to carry out its purposes as set forth in article seven-b of this chapter.

(b) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the supplemental licensure fee.

(c) The board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the initial fee assessment.

§30-7-9. Contents of license or certificate.

Each license or certificate issued by the board shall bear a serial number, the full name of the applicant, the date of expiration of any such license and the date of issuance of any such certificate, the seal of the board, and shall be signed by the executive secretary of the board.

§30-7-10. Use of titles.

Any person licensed pursuant to this article may use the title "registered nurse" and the abbreviation "R.N." or the term "nurse". Except as otherwise provided in article seven-a of this chapter, no other person may assume a title or use abbreviations or any other words, letters, figures, signs, or devices to indicate that the person using the same is a registered professional nurse.

§30-7-11. Denial, revocation, or suspension of license; grounds for discipline.

(a) The board shall have the power to deny, revoke, or suspend any license to practice registered professional nursing issued or applied for in accordance with the provisions of this article, or to otherwise discipline a licensee or applicant upon proof that he or she:

(1) Is or was guilty of fraud or deceit in procuring or attempting to procure a license to practice registered professional nursing; or

(2) Has been convicted of a felony; or

(3) Is unfit or incompetent by reason of negligence, habits, or other causes; or

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or

(5) Is mentally incompetent; or

(6) Is guilty of conduct derogatory to the morals or standing of the profession of registered nursing; or

(7) Is practicing or attempting to practice registered professional nursing without a license or reregistration; or

(8) Has demonstrated abnormal prescribing or dispensing practices pursuant to §30-3A-4 of this code; or

(9) Has willfully or repeatedly violated any of the provisions of this article.

(b) An advanced practice registered nurse licensed under this article may not be disciplined for providing expedited partner therapy in accordance with §16-4F-1 et seq. of this code.

§30-7-11a. Voluntary agreements relating to alcohol or chemical dependency; confidentiality.

(a) In order to encourage voluntary participation in monitored alcohol, chemical dependency or major mental illness programs and in recognition of the fact that major mental illness, alcoholism and chemical dependency are illnesses, any person who holds a license to practice registered nursing in this state or who is applying for a license to practice registered nursing in this state may enter into a voluntary agreement with a nurse health program as defined in section one, article seven-e of this chapter. The agreement between the licensee or applicant and the nurse health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the program of recovery.

(b) Any voluntary agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board, shall not be disclosed to the board and shall not be public information if:

(1) Such voluntary agreement is the result of the licensee or applicant self enrolling or voluntarily participating in the board- designated nurse health program;

(2) The board has not received nor filed any written complaints regarding said licensee or applicant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients; and

(3) The licensee or applicant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.

(c) Pursuant to this section, if any licensee or applicant enters into a voluntary agreement with a nurse health program as defined in section one, article seven-e of this chapter, and then fails to comply with or fulfill the terms of said agreement, the nurse health program shall report the noncompliance to the board within twenty-four hours. The board may initiate disciplinary proceedings pursuant to section eleven of this article or may permit continued participation in the nurse health program or both.

(d) If the board has not instituted any disciplinary proceeding as provided for in this article, any information received, maintained or developed by the board relating to the alcohol or chemical dependency impairment of any licensee or applicant and any voluntary agreement made pursuant to this section shall be confidential and not available for public information, discovery or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

(e) Notwithstanding any of the foregoing provisions, the board may cooperate with and provide documentation of any voluntary agreement entered into pursuant to this section to licensing boards in other jurisdictions of which the board has become aware and may be appropriate.

§30-7-12. Exceptions.

This article shall not be construed to prohibit:

(a) The furnishing of nursing assistance in an emergency; or

(b) The practice of nursing incidental to a program of study by students enrolled in a nursing education program accredited by the board; or

(c) The practice of any legally qualified nurse of another state who is employed by the United States or any bureau, division or agency thereof, while in the discharge of his or her official duties.

§30-7-13. Prohibitions and penalties.

It shall be a misdemeanor for any person, including any corporation or association, to:

(a) Sell or fraudulently obtain or furnish any nursing diploma, license or record or aid or abet therein; or

(b) Practice registered professional nursing under cover of any diploma, license or record illegally or fraudulently obtained or signed or issued or under fraudulent representation; or

(c) Practice registered professional nursing unless duly licensed to do so under the provisions of this article; or

(d) Use in connection with his or her name any designation tending to imply that he or she is licensed to practice registered professional nursing unless duly licensed so to practice under the provisions of this article; or

(e) Practice registered professional nursing during the time his or her license issued under the provisions of this article shall be suspended or revoked; or

(f) Conduct a nursing education program for the preparation of registered professional nursing practitioners unless such program has been accredited by the board; or

(g) Otherwise violate any provisions of this article.

Upon conviction, each such misdemeanor shall be punishable by a fine of not less than twenty-five nor more than \$250.

§30-7-14. Injunction or other relief against unlawful acts.

The practice of registered professional nursing by any person who has not been licensed under the provisions of this article, or whose license has expired or has been suspended or revoked, is hereby declared to be inimical to the public health and welfare and to be a public nuisance. Whenever in the judgment of the board any person has engaged in, is engaging in or is about to engage in the practice of registered professional nursing without holding a valid license hereunder, or has engaged, is engaging or is about to engage in any act which constitutes, or will constitute, a violation of this article, the board may make application to the appropriate court having equity jurisdiction for an order enjoining such practices or acts, and upon a showing that such person has engaged, is engaging or is about to engage, in any such practices or acts, an injunction, restraining order, or such other order as the court may deem appropriate shall be entered by the court.

The remedy provided in this section shall be in addition to, and not in lieu of, all other penalties and remedies provided in this article.

§30-7-15. Administration of anesthetics.

In any case where it is lawful for a duly licensed physician or dentist practicing medicine or dentistry under the laws of this state to administer anesthetics, such anesthetics may lawfully be given and administered by any person (a) who has been licensed to practice registered professional nursing under this article, and (b) who holds a diploma or certificate evidencing his or her successful completion of the educational program of a school of anesthesia duly accredited by the American association of nurse anesthetists: Provided, That such anesthesia is administered by such person in the presence and under the supervision of such physician or dentist.

§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy; rule-making authority.

(a) The board may, in its discretion, authorize an advanced practice registered nurse to prescribe prescription drugs in accordance with this article and all other applicable state and federal laws. An authorized advanced practice registered nurse may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.

(b) The board shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced

practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by advanced practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under Schedule III shall be limited to a thirty day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a collaborative agreement as set forth in section fifteen-b of this article, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a "chronic condition" is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity. The prescriber authorized in this section shall note on the prescription the chronic disease being treated.

(c) The board may promulgate emergency rules to implement the provisions of this article pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

(d) The board shall transmit to the Board of Pharmacy a list of all advanced practice registered nurses with prescriptive authority. The list shall include:

- (1) The name of the authorized advanced practice registered nurse;
- (2) The prescriber's identification number assigned by the board; and
- (3) The effective date of prescriptive authority.

§30-7-15b. Eligibility for prescriptive authority; application; fee; collaborative relationships and agreements.

(a) An advanced practice registered nurse shall be eligible to apply for authorization to prescribe drugs pursuant to section fifteen-a of this article after satisfying the following requirements:

- (1) Be licensed and certified in West Virginia as an advanced practice registered nurse;
- (2) Be at least eighteen years of age;
- (3) Have completed forty-five contact hours of education in pharmacology and clinical management of drug therapy under a program approved by the board, fifteen hours of which shall have been completed within the two-year period immediately prior to entering into a prerequisite collaborative relationship;

(4) Provide the board with evidence that he or she is a person of good moral character and not addicted to alcohol or the use of controlled substances;

(5) Does not have his or her advanced practice registered nursing license, certification or registration in any jurisdiction suspended, limited or revoked; and

(6) Submit a completed, notarized application to the board, accompanied by a fee as established by the board by rule.

(b) The board shall authorize an applicant to prescribe prescription drugs under the terms of a collaborative agreement and in accordance with section fifteen-a of this article and applicable legislative rules if the applicant has met the prerequisites of subsection (a) of this section and the following additional prerequisites are satisfied:

(1) The board is satisfied that the collaborating physician is licensed in good standing;

(2) The collaborative agreement is sufficient in form;

(3) The applicant has completed the education requirements; and

(4) The applicant has submitted a completed application on forms developed by the board and paid an application fee established by the board in legislative rule.

(c) A collaborative agreement for a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing and include, but not be limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the collaborating physician;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic joint review and updating of the written guidelines or protocols.

(d) Verification of a collaborative agreement shall be filed with the board by the advanced practice registered nurse with documentation of completion of the education requirements described in subsection (a) of this section. The board shall forward a copy of the verified agreement to the board through which the collaborative physician is licensed.

(e) The board shall, upon application, authorize an advanced practice registered nurse to prescribe prescription drugs in accordance with section fifteen-a of this article without the further requirement of a collaborative agreement if the applicant has satisfied the following prerequisites:

(1) Has practiced at least three years in a duly-documented collaborative relationship with granted prescriptive authority;

(2) Licensed in good standing with the board; and

(3) Has submitted a completed application on forms developed by the board and paid an application fee established by the board in legislative rule.

(f) Notwithstanding the provisions of subsection (e) of this section, the board may require an advanced practice registered nurse to practice in a collaborative agreement if the board determines, by order arising out of the board's complaint process, that a collaborative relationship is necessary for the rehabilitation of a licensee or for protection of the public.

§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

(a) Prescriptions authorized by an advanced practice registered nurse must comply with all applicable state and federal laws; must be signed by the prescriber with the initials "A.P.R.N." or the designated certification title of the prescriber; and must include the prescriber's identification number assigned by the board or the prescriber's national provider identifier assigned by the National Provider System pursuant to 45 C. F. R. §162.408.

(b) Prescriptive authorization shall be terminated if the advanced practice registered nurse has:

(1) Not maintained current authorization as an advanced practice registered nurse; or

(2) Prescribed outside the advanced practice registered nurse's scope of practice or has prescribed drugs for other than therapeutic purposes; or

(3) Has not filed verification of a collaborative agreement with the board if such an agreement is required.

(c) Prescriptive authority for an advanced practice registered nurse must be renewed biennially. Documentation of eight contact hours of pharmacology during the previous two years must be submitted at the time of renewal.

(d) The board shall notify the Board of Pharmacy within twenty-four hours after termination of, or change in, an advanced practice registered nurse's prescriptive authority.

§30-7-15d. Advanced practice registered nurse signatory authority.

(a) An advanced practice registered nurse may provide an authorized signature, certification, stamp, verification, affidavit or endorsement on documents within the scope of their practice, including, but not limited to, the following documents:

(1) Death certificates: Provided, That the advanced practice registered nurse has received training from the board on the completion of death certificates;

(2) “Physician orders for life sustaining treatment,” “physician orders for scope of treatment” and “do not resuscitate” forms;

(3) Handicap hunting certificates; and

(4) Utility company forms requiring maintenance of utilities regardless of ability to pay.

(b) An advanced practice registered nurse may not sign a certificate of merit for a medical malpractice claim against a physician.

§30-7-15e. Joint Advisory Council on Limited Prescriptive Authority.

(a) On July 1, 2016, there is created the Joint Advisory Council on Limited Prescriptive Authority. The purpose of the Council is to advise the board regarding collaborative agreements and prescriptive authority for advanced practice registered nurses.

(b) The Governor shall appoint:

(1) Two allopathic physicians as recommended by the Board of Medicine who are in a collaborative relationship with advanced practice registered nurses;

(2) Two osteopathic physicians who are in active collaborative relationships as recommended by the Board of Osteopathic Medicine who are in a collaborative relationship with advanced practice registered nurses;

(3) Six advanced practice registered nurses as recommended by the Board of Examiners for Registered Professional Nurses who have at least three years full-time practice experience, and shall include at least one certified nurse practitioner, one certified nurse-midwife, and one certified registered nurse anesthetist, all of whom actively prescribe prescription drugs;

(4) One licensed pharmacist as recommended by the Board of Pharmacy;

(5) One consumer representative; and

(6) One representative from a school of public health of an institution of higher education.

(c) All members of the Council who are healthcare providers shall have at least three years full-time practice experience and hold active state licenses.

(d) Each member shall serve for a term of three years. The Governor shall stagger the terms so that no more than five appointments shall expire annually. Prior to the election of a chairman, the board shall be called together by the representative from a school of public health of an institution of higher education.

(e) A majority of members appointed to the Council shall constitute a quorum to conduct official business.

(f) The Council shall choose its own chairman and shall meet at the call of the chairman at least biannually.

(g) The Council may perform the following duties:

(1) Review and evaluate applications for advanced practice registered nurses to prescribe without a collaborative agreement;

(2) Assist advanced practice registered nurses with entering into collaborative agreements in non-emergency situations, including providing the contact information for physicians with whom the advanced practice registered nurses may collaborate;

(3) Advise the board in emergency situations of a rescinded collaborative agreement, giving a sixty day grace period;

(4) Assist the board in developing and proposing emergency rules;

(5) Review and advise on complaints against advanced practice registered nurses;

(6) Develop pilot project allowing independent prescribing of controlled substances by advanced practice registered nurses and study results to assure patient/public safety;

(7) Develop other studies and/or pilot projects, including but not limited to:

(A) Issues of access, outcomes and cost effectiveness of services;

(B) The development of recommendations for reciprocity;

(C) The optimal length of time for transition into independent prescribing; and

(D) Methods to foster effective interprofessional communication.

§30-7-16. General law applicable.

Except to the extent that the provisions of this article may be inconsistent therewith, the board shall conform to the requirements prescribed in article one of this chapter.

§30-7-17.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

§30-7-18. Nursing shortage study commission; legislative findings; members, appointment and expenses; duties.

(a) The Legislature finds the following:

(1) Health care services are becoming complex and it is increasingly difficult for patients to access integrated services;

(2) Quality of patient care is jeopardized because of insufficient nursing staff;

(3) To ensure the adequate protection of patients in acute care settings, it is essential that qualified registered nurses and other licensed nurses be accessible and available to meet the needs of patients;

(4) In West Virginia, and across the country, concerns about an increasing nursing shortage continue to grow;

(5) A number of factors contribute to the growing shortages in qualified nursing personnel;

(6) The way care is delivered has changed dramatically over the last decade with more people being treated in outpatient settings, shorter and more intense lengths of stay in acute and long-term care settings, and the development of alternatives to nursing home care;

(7) These changes have led to a number of employment options becoming available to nurses that did not exist previously, making it difficult for employers of nurses to recruit and retain qualified nursing personnel;

(8) Severe cutbacks in the federal Medicare program, state budgetary pressures related to the Medicaid program and continued pressure from insurers to reduce their costs and to retrospectively deny payment for services rendered, have: (A) Made it extremely difficult for many providers to keep up with other employers in salaries and benefits and to recruit and retain qualified nursing personnel; and (B) increased stresses in the work environment;

(9) The increasing reliance on temporary employment agencies to meet nursing personnel needs further complicates the situation as continuity of care is disrupted, quality of patient care is jeopardized, and costs pressures are further increased; and

(10) Because of the multifaceted nature of these problems, it is critical that all of the interested and affected parties cooperate and collaborate in the development of solutions.

(b) A nursing shortage study commission shall be created by the West Virginia board of examiners for registered professional nurses. The board shall appoint eleven members to the commission. The board shall appoint:

(1) Two individuals who are on the board of examiners for registered professional nurses, one of which is employed in a school of nursing;

(2) Two individuals that are employed as registered professional nurses in a hospital and who work primarily providing direct patient care;

(3) Two registered professional nurses who work as long-term care nurses, one of whom works in a nursing home and one of whom works for a home health agency, both of whom work primarily providing direct patient care;

(4) One administrator of a hospital in this state;

(5) One doctoral prepared nurse researcher;

(6) One nursing home administrator; and

(7) Two representatives of the public not currently or previously employed in hospital, nursing home or for a related entity.

(c) Members of the commission are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. Six of the appointed members is a quorum for the purpose of conducting business. The board shall designate a chair, who is not a public official. The commission shall conduct all meetings in accordance with the open meeting law pursuant to article nine-a, chapter six of this code.

(d) The commission shall:

(1) Study the nursing shortage in West Virginia and ways to alleviate it, including, but not limited to:

(A) Evaluating mechanisms currently available in the state and elsewhere intended to enhance education, recruitment, and retention of nurses in the workforce and to improve quality of care;

(B) Assessing the impact of shortages in nursing personnel on access to, and the delivery of, quality patient care;

(C) Developing recommendations on strategies to reverse the growing shortage of qualified nursing personnel in the state, including:

(i) Determining what changes are needed to existing programs, current scholarship programs and funding mechanisms to better reflect and accommodate the changing health care delivery environment and to improve quality of care to meet the needs of patients;

(ii) Facilitating career advancement within nursing;

(iii) Identifying more accurately specific shortage areas in a more timely manner;

(iv) Attracting middle and high school students into nursing as a career; and

(v) Projecting a more positive and professional image of nursing.

(2) Report to the Legislature by February 1, 2002, its findings and recommendations on or before February 1 each year thereafter.

§30-7-19. Circulating registered nurses.

A registered nurse as defined in this article, qualified by education, licensed, and experienced in operating room nursing, shall be present as a circulating nurse in each operating room in a hospital, or ambulatory surgical center as defined by section one, article five-b, chapter sixteen of this code, during operative procedures.

§30-7-20. Pilot program.

The board shall develop a pilot program for unlicensed personnel to administer medication in a nursing home including the development of a training program in cooperation with the West Virginia Board of Practical Nurses and the West Virginia Health Care Association. Prior to implementation of the pilot program, the board shall submit its plans for approval to the Legislative Oversight Commission for Health and Human Resources Accountability for its consideration prior to the 2011 Legislative session. The Board of Nursing shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code effectuate the provisions of this section.

W.Va. Code § 30-7A-1(et seq.)

LPN Code

WEST VIRGINIA CODE

§30-7-1a. Eligibility for licensure by meeting requirements which existed prior to the legislative enactments during the 2012 legislative session.

An applicant for licensure as an advanced practice registered nurse as set forth in section one of this article who completed an advanced nursing education program and was recognized, licensed or certified in an advanced practice or a certified nurse midwife by West Virginia or another state before December 31, 2012, may apply for and receive an advanced practice registered nurse license if that applicant meets the requirements that were in place in West Virginia at the time the applicant qualified for initial advanced practice licensure.

§30-7A-2. Use of titles.

(a) Any person licensed pursuant to this article may use the title "licensed practical nurse," "practical nurse" and the abbreviation "L.P.N" or the term "nurse". Except as otherwise provided in article seven of this chapter, no other person may assume such title, or use such abbreviation, or any other words, letters, figures, signs, or devices to indicate that the person using the same is a licensed practical nurse or a practical nurse.

§30-7A-3. Qualifications of applicants for license.

Except as otherwise provided in section six of this article, any person desiring to obtain a license to practice practical nursing shall submit to the board satisfactory evidence that he or she: (a) Is of good moral character; (b) has acquired at least a tenth grade education or its equivalent; (c) has completed a course of study in an accredited school for practical nurses as defined by the board and holds a diploma therefrom; and (d) has completed such other general educational requirements as may be prescribed by the board.

§30-7A-4. Application for license or registration; examination fee.

The provisions of section six, article one, chapter thirty of the code shall apply to this article, except that an applicant for license as a practical nurse shall pay such fee as the board shall prescribe.

§30-7A-5. Board of examiners; powers; duties.

The Governor shall appoint, by and with the advice and consent of the Senate, seven citizens of the State of West Virginia who shall constitute the "West Virginia state board of examiners for licensed practical nurses" and they shall be charged with the duty of administering the provisions of this article. Of the seven members so appointed two shall be licensed practical nurses, one of whom shall be a graduate of an approved school of practical nursing, and both of whom shall have had not less than five years' experience as licensed practical

nurses, two shall be registered professional nurses, at least one of whom shall be experienced in practical nurse education; one shall be a doctor of medicine; one shall be a hospital administrator actively engaged as such in this state and one shall be a vocational educator. Such appointments shall be for terms of five years each, except that in the initial appointments, one licensed practical nurse and one registered professional nurse shall be appointed for a term of five years, one licensed practical nurse and one registered professional nurse shall be appointed for a term of four years, the doctor of medicine shall be appointed for a term of three years, the hospital administrator shall be appointed for a term of two years and the vocational educator shall be appointed for a term of one year. The practical nurses so to be appointed, initially and subsequently, shall be selected by the Governor from a list to be submitted to him by the Licensed Practical Nurses' Association of West Virginia, Inc., which list shall contain the names of at least two licensed practical nurses for each board member so to be appointed, who shall have been licensed by examination and who shall have not less than five years' experience as a licensed practical nurse. The doctor of medicine so appointed shall be selected by the Governor from two nominations submitted to him by the West Virginia state medical association; each registered professional nurse so appointed shall be selected by the Governor from two nominations submitted to him by the West Virginia Nurses Association, Inc.; the hospital administrator shall be appointed by the Governor from two nominations submitted to him by the West Virginia hospital association; and the vocational educator shall be appointed by the Governor from two nominations submitted to him by the state Board of Education. Any member of the board may be eligible for reappointment, but no member shall serve more than two successive terms. The board is hereby authorized to appoint and employ a qualified person to perform the duties of executive secretary and to act as educational advisor to the board. Such secretary shall act under the direction of the board. The board shall furnish the secretary a headquarters and shall provide such office equipment and clerical assistance as the duties of the office may require. The board shall have power to appoint such nurses, deputies, clerks, assistants, inspectors and employees as shall be necessary for the proper exercise of the powers and duties of the board. The compensation and expenses of the members of the board and its appointees and employees shall be paid out of such funds as are allocated to the board in its annual budget. The secretary shall keep the records of proceedings of the board, and shall keep a registry of the names and addresses of all practical nurses registered under this article, which registry shall be a public record. Said board shall hold not less than two regular meetings each year and such additional meetings at such times and places as the board may determine. The board is authorized to adopt and, from time to time, to revise such rules and regulations not inconsistent with this article, as may be necessary to enable it to carry into effect the provisions hereof. The board shall prescribe curricula and standards for schools and courses preparing persons for licensure under this article. It shall survey such schools and courses at such times as it may deem necessary. It shall survey and accredit such schools, clinical practice areas and courses as meet the requirements of this article and of the board. It shall examine, license and renew the license of duly qualified applicants.

§30-7A-6. Examination and licensure of practical nurses; present practitioners.

The applicant, except as hereinafter provided, shall be required to pass a written examination in such subjects as the board shall determine. Each written examination may be supplemented by such oral or practical examination as the board may deem necessary. The board shall determine the times and places for the examination. Notices of examination shall

be sent by mail to each person known by the secretary to be an applicant for an examination or registration at least thirty days previous to any such scheduled examination. Upon the applicant's successful completion of an appropriate examination as prescribed by the board and satisfaction of the other requirements of this article, the board shall issue to the applicant a license to practice practical nursing. The board shall issue such license by endorsement to any applicant who has been duly licensed or registered as such, or to a person entitled to perform similar services under a different title, in another state, territory or foreign country if, in the opinion of the board, the applicant meets the other requirements for licensed practical nurses in this state. On or before June 30, 1968, any practical nurse who exhibits proof, satisfactory to the board, that he or she has been engaged in practical nursing in this state for a period of three years and who satisfactorily completes an appropriate examination as prescribed by the board shall be issued a license by waiver by said board, which shall be so designated on its face.

Any person obtaining a license by waiver who has completed extension courses equal in theory to those for the graduate practical nurses, as determined by the board, may at any time thereafter take the examination prescribed by the board for graduate practical nurses and obtain a license without the designation of "waiver" thereon.

§30-7A-6a. Special volunteer license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for licensed practical nurses retired or retiring from the active practice of nursing who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer license provided by this section shall be issued by the West Virginia Board of Examiners for licensed practical nurses to licensed practical nurses licensed or otherwise eligible for licensure pursuant to this article and the rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the board's other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the licensed practical nurse's acknowledgment that:

(1) The licensed practical nurse's practice pursuant to the special volunteer licensed practical nurse license will be exclusively devoted to providing nursing care to needy and indigent persons in West Virginia;

(2) The licensed practical nurse will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any nursing services rendered pursuant to the special volunteer licensed practical nurse license;

(3) The licensed practical nurse will supply any supporting documentation that the board may reasonably require; and

(4) The licensed practical nurse agrees to continue to participate in continuing education as required by the board for the special volunteer licensed practical nurse license.

(b) Any person engaged in the active practice of licensed practical nursing in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the licensed practical nurse or the clinical setting.

(c) Any licensed practical nurse who renders nursing service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge pursuant to a special volunteer licensed practical nurse license authorized pursuant to subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the nursing service at the clinic unless the act or omission was the result of the licensed practical nurse's gross negligence or willful misconduct. For the immunity pursuant to this subsection to apply, there must be a written agreement between the licensed practical nurse and the clinic pursuant to which the licensed practical nurse will provide voluntary uncompensated nursing services under the control of the clinic to patients of the clinic before the rendering of any services by the licensed practical nurse at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

(d) Notwithstanding the provisions of subsection (c) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a licensed practical nurse rendering voluntary nursing services at or for the clinic pursuant to a special volunteer licensed practical nurse license authorized pursuant to subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section six of this article and in the rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer licensed practical nurse license to any licensed practical nurse whose license is or has been subject to any disciplinary action or to any licensed practical nurse who has surrendered his or her license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a licensed practical nurse license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a licensed practical nurse license.

(g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any licensed practical nurse covered pursuant to the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a licensed practical nurse who holds a special volunteer licensed practical nurse license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

§30-7A-7. Renewal or reinstatement of license.

The license of every person licensed under the provisions of this article shall expire on June 30, next following the date of license. In order for such license to be renewed, the licensee shall comply with such rules and regulations of the board as are applicable to renewals. The renewal fee for all licenses shall be \$5, subject to change by the board. Upon receipt of the renewal fee the board shall issue to the licensee a certificate of renewal for the current year, beginning July first and expiring June thirtieth of the following year. Such certificate shall render the holder thereof a legal practitioner for the period stated on the certificate of renewal. Any licensee who allows his or her license to lapse by failing to renew the license as provided above may be reinstated by the board on satisfactory explanation for such failure to renew his or her license and on payment of a reinstatement fee of \$5, subject to change by the board, in addition to the renewal fee hereinbefore set out. Any person practicing practical nursing during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violation of this article. A person licensed under the provisions of this article desiring to retire from practice temporarily shall give written notice of such desire to the board. Upon receipt of such notice the board shall place the name of such person upon the nonpracticing list. While remaining on this list the person shall not be subject to the payment of any renewal fees and shall not practice as a licensed practical nurse in the state. When such person desires to resume practice, application for renewal of license and payment of the renewal fee for the current year shall be made to the board.

§30-7A-7a. Supplemental fees to fund center for nursing; emergency rules.

(a) The board is authorized to assess a supplemental licensure fee not to exceed ten dollars per license per year. The supplemental licensure fee is to be used to fund the center for nursing and to carry out its purposes as set forth in article seven-b of this chapter.

(b) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the supplemental licensure fee.

(c) The board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the initial fee assessment.

§30-7A-8. Schools of practical nursing.

(a) A practical nursing program is determined to be board approved if approved by the board, or the program is accredited by a national accrediting agency recognized by the United States Department of Education. The accreditation is considered board approved and is exempt from board rules that require ongoing approval if the school or program maintains this accreditation.

(b) By July 1, 2022, all practical nursing programs shall be accredited by a national accrediting agency recognized by the United States Department of Education. A program created after July 1, 2018, shall have 5 years to obtain accreditation by an accrediting agency recognized by the United States Department of Education.

(c) The board may require information concerning the practical nursing program to be reported to the board by legislative rule. The requested information shall be consistent with information already being collected by the schools which is required to maintain the program's accreditation.

(d) The board shall approve a new practical nursing program until the program is accredited by a national accrediting agency recognized by the United States Department of Education.

§30-7A-9. Construction of article; acts not prohibited.

The provisions of this article shall not be construed as prohibiting:

(1) The care of a sick, disabled, injured, crippled or infirm person by a member or members of such person's family, or by close relatives, or by domestic servants, housekeepers or household aides thereof, whether employed regularly or because of emergency circumstances due to illness or other disabilities.

(2) The work and services of auxiliary hospital personnel, such as nursing aides, maids, orderlies, technicians, volunteer workers and other like hospital employees.

(3) Practical nursing by students enrolled in accredited schools for practical nursing incidental to their course of study.

(4) Practice of nursing in this state by any legally qualified practical nurse of another state or country for a period not to exceed six months or whose engagement requires such practical nurse to accompany and care for a patient temporarily residing in this state during the period of such engagement.

(5) Nursing services rendered by a graduate of an approved school of practical nursing working under qualified supervision during the period between completion of his or her course of nursing education and notification of the results of the first licensing examination following graduation. In cases of hardship and upon petition to the board, the board may grant an extension of such period to such graduate.

§30-7A-10. Disciplinary proceeding; grounds for discipline.

The board shall have the right, in accordance with rules and regulations promulgated under the provisions of article three, chapter twenty-nine-a of this code, to refuse to admit an applicant for the licensure examination for the hereinafter stated reasons, and also the board shall have the power to revoke or suspend any license to practice practical nursing issued by the board in accordance with the provisions of this article, or to otherwise discipline a licensee upon satisfactory proof that the person: (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing; or (2) is convicted of a felony; or (3) is habitually intemperate or is addicted to the use of habit-forming drugs; or (4) is mentally incompetent; or (5) is guilty of professional misconduct as defined by the board; or (6) who practices or attempts to practice without a license or who willfully or repeatedly violates any of the provisions of this article.

§30-7A-11. Prohibited acts; penalties.

It shall be a misdemeanor for any person, firm, corporation or association of persons to: (1) Sell or fraudulently obtain or furnish any nursing diploma, license or record or aid or abet therein; or (2) practice practical nursing unless duly licensed to do so under the provisions of this article; or (3) use in connection with his or her name any designation tending to imply that he or she is a licensed practical nurse unless duly licensed so to practice under the provisions of this article; or (4) practice practical nursing during the time his or her license issued under the provisions of this article shall be suspended or revoked; or (5) conduct a school of practical nursing or a course for training of practical nurses unless the school or course has been accredited by the board; or (6) otherwise violate any provision of this article.

Any person convicted of any such misdemeanor shall be punishable by a fine of not less than twenty-five nor more than \$100.

APPENDIX B

WVBE Policy 2419
Regulations for the Education of Students
with Exceptionalities

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 16
REGULATIONS FOR THE EDUCATION OF STUDENTS WITH EXCEPTIONALITIES (2419)**

§126-16-1. General.

1.1. Scope. -- These policies and procedures apply to preschool, early childhood, middle childhood, adolescent and adult students whose educational programs require special education and related services. These apply to three year olds, as of their third birth date, through five year olds with disabilities, students with disabilities ages five through twenty-one, all exceptional gifted students in grades nine through twelve and to all gifted students in grades one through eight as specified. Rights under these regulations cease to apply at the end of the school year in which the student turns twenty-one years of age, that is, the year in which the student is twenty-one years of age prior to September 1 or the student has met graduation requirements for a standard high school diploma.

1.2. Authority. -- W. Va. Const., Article XII, §2, W. Va. Code §18-20-1 et seq., and the Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446.

1.3. Filing Date. -- July 13, 2017.

1.4. Effective Date. -- August 14, 2017.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR16, West Virginia Board of Education Policy 2419, Regulations for the Education of Students with Exceptionalities, filed August 15, 2014, and effective September 15, 2014, and repeals W.Va. 126CSR17, West Virginia Board of Education Policy 2419.11, Rules for Requesting an Exception to the Regulations for the Education of Exceptional Students, filed June 3, 1991, and effective July 15, 1991.

§126-16-2. Purpose.

2.1. The Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446, herein after referred to as IDEA 2004 and the IDEA regulations (34 CFR Part 300), require that the State set forth policies and procedures to demonstrate that the State has established a goal providing full educational opportunity to all students with disabilities who are residents of West Virginia, aged birth through twenty-one years of age and a detailed timetable for accomplishing that goal. The State of West Virginia affirms the goal to provide full educational opportunities by 2020 for all students with disabilities, aged birth through twenty-one years of age, residing within its jurisdiction. The State works toward the realization of this goal through the implementation of, and compliance with, IDEA 2004 and any subsequent reauthorization, state policies and procedures and the implementation of the West Virginia Results and Compliance System Procedures (RCSP).

2.2. West Virginia's mandatory special education statute legislates a child identification effort by county boards of education. Chapter 18, Article 20, Section 2, of the West Virginia Code states, "The board of education of each county is empowered and is responsible for providing suitable educational facilities, special equipment and such special services as may

be necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type..." The mandated target group for the state child find requirements includes individuals with disabilities residing in West Virginia from birth through twenty-one years of age, gifted students from first through eighth grades, and exceptional gifted in grades nine through twelve. Part C of IDEA 2004 requires interagency collaboration in child find activities targeting children from birth through five years of age.

2.2.a. The intent of the federal and state legislative child find mandates is to require an active search by the state and local education agencies for individuals with disabilities ages birth through twenty-one, gifted individuals from first through eighth grades, and exceptional gifted in grades nine through twelve, including students with disabilities who are homeless or are wards of the state and students with disabilities attending private schools, regardless of the severity of their disability, who are in need of special education and related services. Mandated child find activities include identification of students residing in other states who are attending private schools in West Virginia.

2.3. West Virginia Code, Chapter 18, Article 20, the state's mandatory special education statutes, and IDEA 2004 affirm that education is a right extended to all individuals with exceptionalities and not a privilege. These mandates assure that all individuals with disabilities ages three through twenty-one years of age, including students with disabilities who have been suspended or expelled from school, all gifted students in grades one through eight, and all exceptional gifted students in grades nine through twelve, have available a free appropriate public education (FAPE) which includes special education and related services in the least restrictive environment (LRE) to meet their unique special educational needs. This applies to all public agencies that provide special education and related services to students with exceptionalities.

§126-16-3. Incorporation by Reference.

3.1. The West Virginia Procedures Manual for the Education of Students with Exceptionalities is attached and incorporated by reference into this policy. Copies may be obtained in the Office of the Secretary of State and in the West Virginia Department of Education (WVDE).

§126-16-4. Summary.

4.1. Federal statute and West Virginia Code provide requirements for identifying students with exceptionalities whose learning needs are adversely impacted by their disability or giftedness and need special education services and support. Therefore, the term "exceptionality" in this policy and procedures manual refers to eligible students with disabilities and eligible students who are gifted. These policies and procedures outline the responsibilities of the State and local education agency in meeting these requirements.

§126-16-5. Severability.

5.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity must not affect other provisions or applications of this rule.

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INTRODUCTION

West Virginia Procedures Manual for the Education of Students with Exceptionalities

The West Virginia Procedures Manual for the Education of Students with Exceptionalities outlines the policies and procedures districts must follow in meeting the requirements of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), West Virginia State Code, Chapter 18, Article 20 and Regulations for the Education of Students with Exceptionalities (2419).

To receive federal funds available under IDEA 2004, districts must adopt and implement appropriate special education policies and procedures. These policies and procedures must be consistent with federal and state laws, rules, regulations and legal requirements and must be approved by the West Virginia Department of Education (WVDE). This manual is provided to each school district as West Virginia Department of Education (WVDE) approved policies and procedures to be adopted by the district's Board of Education. Any changes to procedures outlined in the manual must have WVDE approval. Appendices supplement the body of the manual and are not to be adopted as, or considered to be, policy.

Chapter 1

FREE APPROPRIATE PUBLIC EDUCATION

A free appropriate public education (FAPE) must be available to all students residing in the state between the ages of three and twenty-one, inclusive, who are eligible for special education services. FAPE is individually determined for each student. FAPE must include special education services in the least restrictive environment (LRE) and may include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms may be found in the glossary. Districts must also ensure that students have available to them the variety of education programs and services available to students without exceptionalities including art, music, industrial arts, consumer and homemaking education and vocational education.

Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the IDEA 2004 means special education and related services that:

1. Are provided without charge at public expense (free);
2. Are provided in conformity with an appropriate individualized education program (IEP) developed in adequate compliance with the procedures outlined in this manual and reasonably calculated to enable the student to receive educational benefit (appropriate);
3. Are provided under public supervision and direction; and
4. Include an appropriate preschool, elementary or secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the WVDE, including the requirements of IDEA 2004.

Section 2. FAPE Considerations

A. District Obligation

The district is required to ensure that FAPE is available to students residing in the district who are eligible for special education services, including students with disabilities who have been suspended or expelled from school as provided for in Chapter 7. This includes students who reside in group, personal care, or foster homes, as well as state operated facilities and students who are migratory or homeless.

The district is obligated to make FAPE available to each eligible student in the district as follows:

1. Students who are at least three years old and are eligible for special education services unless the parent/adult student has refused special education services;
2. Students who have not yet turned twenty-one years of age prior to September 1 and have not graduated with a standard high school diploma; or
3. As specified in West Virginia Code §18-20-1 students with disabilities whose IEPs provide for an alternate (modified) diploma must be allowed to participate in graduation ceremonies with their same grade classmates when requested by parents in writing and must be allowed to continue to receive services until twenty-one years of age.
4. Students with disabilities whose suspension(s) or expulsion(s) results in a change of placement; or
5. Students determined in need of special education and related services, even though the student has not failed or been retained in a course or grade, and is advancing grade to grade.

Special education programs and services may be provided by any one or more of the following:

1. A single local educational agency;
2. Two or more local educational agencies cooperatively;
3. A regional educational service agency (RESA) until July 1, 2018; or
4. Contract(s) for services from other public or private agencies or individuals.

If placement in a public or private residential program is necessary, the program must be at no cost to the parents of the student.

The district's requirement to provide special education services does not relieve an insurer or similar third party from a valid obligation to provide or pay for services for an eligible student. In cases where the payment source for services is being determined, the district must ensure there is no delay in implementing the student's IEP consistent with Chapter 5.

Students with exceptionalities will be provided an instructional day, a school day and school calendar at least equivalent to that established for students without exceptionalities of the same chronological age in the same setting.

B. Applicability to Detained Youth

Eligible students with disabilities who are in state correctional institutions are afforded special education and related services that are in accordance with applicable state and federal laws and regulations. This includes students who had received services in accordance with an IEP, but who had left school prior to their incarceration, as well as students who did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability for Part B services.

C. Using Private and Public Insurance Funds to Provide FAPE

Private Insurance Funds

If a student is covered by a parent's private insurance, the district may access this insurance only if the parent provides informed consent. Each time the district proposes to access the private insurance, the district must obtain written parental consent and inform the parent that his or her refusal to permit the district to access the private insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost.

Public Insurance Funds

The financial responsibility of public agencies, including Medicaid and other public insurers obligated under Federal or State law or assigned responsibility under State policy, must precede financial responsibility of the district. However, if the public agency other than the educational agency fails to provide or pay for special education or related services, the district responsible for developing the student's IEP must provide or pay for these services to the student in a timely manner. Students with disabilities who are covered by public benefits or insurance may not be disqualified from an eligible service for Medicaid reimbursement because that service is provided in a school context.

1. The public agency is required to provide written notification to the child's parents prior to accessing a child's public benefits or insurance for the first time and annually thereafter. The notice must inform the child's parents of the following:

- a. Prior written parental consent will be requested to release personal information from a child's education records or information about the services that may be provided for the purpose of billing Medicaid or another specific agency for Individualized Education Program (IEP) services.
 - b. The consent form will state the student's personal education records and information that will be disclosed, the purpose of the disclosure (e.g. Medicaid billing) and the agency to which the records will be released. By consenting, parents will state they understand and agree that their or their child's public benefits or insurance will be accessed to reimburse the cost of services.
 - c. Parents cannot be required to sign up for or enroll in public benefits or insurance programs for their child to receive free appropriate public education, that is, IEP services.
 - d. Parents are not required to pay out-of-pocket expense such as a deductible or co-pay amount resulting from filing a claim, but may pay the cost that otherwise would be paid by parents.
 - e. Parents must be informed that their public insurance (e.g., Medicaid) will not be billed if it would:
 - i. result in a decrease in lifetime benefits;
 - ii. result in the child's parents paying for services that would otherwise be covered and that are needed for the child outside of the time the child is in school;
 - iii. result in an increase in premiums or discontinuation of public benefits or insurance;
 - or
 - iv. risk loss of eligibility for home and community-based waivers based on the total (aggregated) health-related expenditures for the child or the child's parents.
 - f. Parents have the right to withdraw consent to disclose their child's personal information for billing purposes at any time.
 - g. Parents' withdrawal of consent, or refusal to provide consent, to release their child's personal information for purposes of accessing their public benefits or insurance (e.g., for Medicaid billing) does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to parents.
2. To access a student's public insurance (e.g., Medicaid reimbursement), the district must obtain and maintain documentation of parent/adult student annual prior consent specifying:
 - a. the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child),
 - b. the purpose of the disclosure of educational records,
 - c. the agency to which the disclosure may be made (e.g. Medicaid) and
 - d. specifies that the parent understands and agrees that the public agency may access the parent's or the child's public benefits or insurance to pay for services.
 3. If a child moves to a new public agency, the new public agency must obtain a new ~~one-time~~ annual prior consent consistent with the services the new public agency is providing to the child.

4. At any time a parent withdraws consent to disclose their child's personal information for billing purposes, the withdrawal must be submitted in writing, and the public agency may no longer bill the child's public insurance.

If it is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a service specified on their child's IEP, the district may use Part B funds to pay for services to ensure FAPE. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR §80.25. If a district spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for the purpose of the maintenance of effort provisions of Part B of IDEA 2004.

D. Extended School Year

The district must ensure that extended school year (ESY) services are available as necessary to provide FAPE as determined by the IEP Team for all students with disabilities including children aged three through five.

E. Nonacademic Services

The district must ensure that students with exceptionalities are afforded an equal opportunity to participate in nonacademic and extracurricular services and activities by providing the supplementary aids and services determined appropriate and necessary by the student's IEP Team.

In addition, physical education services, specially designed if necessary, must be made available to every student receiving FAPE in accordance with West Virginia Board of Education policies.

Section 3. Exceptions to FAPE

The obligation to provide FAPE does not apply to:

- Students ages eighteen through twenty-one who, in the last educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a student with a disability and did not have an IEP. This exception does not apply to a student who had been identified as a student with a disability and had received services in accordance with an IEP but left school prior to incarceration or did not have an IEP in their last educational setting but who had actually been identified as a student with a disability;
- Students who have graduated high school with a standard high school diploma; or
- Students removed from school for disciplinary reasons for less than eleven cumulative school days in a school year.
- Students who are home schooled.

A standard high school diploma is awarded to students who meet graduation requirements aligned with the West Virginia College- and Career-Readiness Standards unless the student pursues an alternate means to earn high school credit through Optional Pathway and receives a high school diploma in accordance with Policy 2444.4: *Issuance of the State of West Virginia Diploma*.

Chapter 2

CHILD FIND

The Child Find system involves three basic steps leading to the determination of whether or not a student requires special education. The steps are location, identification, and evaluation. This chapter describes location and identification activities. The evaluation step is covered in Chapter 3.

Section 1. District Responsibility

The district is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students with disabilities residing in the district, between the ages of three and twenty-one, inclusive, regardless of the severity of the disability, gifted students from first through eighth grades and exceptional gifted students in grades nine through twelve who may need special education. The district is also responsible for coordinating with the West Virginia Department of Health and Human Resources (WV DHHR) regarding the Child Find system for children ages birth to three years.

The Child Find system must include all students suspected of needing special education and related services within the district's geographic boundaries who are:

1. Enrolled in public school;
2. Home schooled;
3. Enrolled in private schools, including religious schools, located in the district;
4. Not enrolled in school, including children ages birth through five;
5. Highly mobile students including migrant students;
6. Homeless students;
7. Wards of the state; or
8. Suspected of having a disability as defined in Chapter 4 even though the student has not failed or been retained in a course or grade and is advancing from grade to grade.

Section 2. Locating Students

Locating students who may need special education services involves coordinating with other agencies and promoting public awareness.

A. Coordination

The WV DHHR WV Birth to Three is responsible for the Child Find system for infants and toddlers, birth to three years of age. Although lead agency responsibility for WV Birth to Three has been designated to the WV DHHR, state and local interagency agreements provide for collaboration and coordination of services. The district should develop local interagency agreements and procedures to maximize resources and services for students and families and ensure a smooth and effective transition from early childhood programs to public school.

B. Public Awareness

Annually, the district must take the necessary ongoing steps to ensure that parents, district staff, private school representatives and the general public are informed of the following:

- The nature of students with exceptionalities;
- The availability of special education and related services;
- A student's right to FAPE;
- Confidentiality protections; and
- The referral process, including the person to contact for initiating a referral.

This information may be provided through a variety of methods such as distributing brochures or flyers, including providing information in school or district publications, disseminating articles and announcements to newspapers, and/or arranging for radio and television messages and presentations.

Section 3. Referrals

A. Referral Sources

A parent or any other interested person or agency may refer a student who is suspected of needing special education and related services. Referrals received from an outside source are forwarded to the student assistance team (SAT) at the student's school for consideration. The district must receive and process these written referrals in accordance with the SAT process described in Section 3.D. for school-aged students. A member of the SAT must provide written assistance to parents who may need additional help to complete their request in writing. For preschool age children or home-schooled students, the referral is received and processed directly by the special education director or designee.

Each district must locate, identify and evaluate all students suspected of needing special education services who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district in accordance with Chapter 8. Referrals for private school students are received and processed directly by the special education director or designee.

B. The Screening Process

As specified in West Virginia Code §18-5-17, developmental screening is the general education process conducted to determine whether there are problems or potential problems in the areas of vision, hearing, speech and language. Screening must be conducted annually for:

- All students entering kindergarten or preschool; and
- All students entering West Virginia public and private schools for the first time.

Additionally, districts must conduct developmental screening for children under compulsory school attendance age upon the request of a parent or guardian of a child residing in the district or attending a private school within the district. This developmental screening must be conducted within thirty school days of the written request. The district is not required to provide such screening to the same child more than once in any one school year. Children identified through the screening process should be referred for further evaluation.

At least ten days prior to initiation of screening activities, districts must provide public notice of the screening program. Information released through media sources should include the purpose, types and dates of screenings and the means for parents to request their child not participate.

C. Student Assistance Team (SAT) Membership and Responsibilities

Consistent with WV Policy 2510, *Assuring the Quality of Education: Regulations for Education Programs*, each public school must establish a SAT that consists of at least three persons, including a school administrator or designee, who must serve as the chairperson, a current teacher(s) and other appropriate professional staff.

The SAT is required to:

1. Receive training in referral procedures for multidisciplinary evaluations, Multi-Tiered System of Supports (MTSS), alternative education placements, disciplinary procedures and other school

- processes as appropriate for ensuring student progress and maintenance of a safe school environment;
2. Collect and maintain data on the activities of the team, including dates of meetings and the results of its recommendations;
 3. Conduct the problem-solving process that includes designing and monitoring implementation of interventions and/or reviewing interventions designed by other school teams;
 4. Reviews individual students' needs that have persisted despite being addressed through academic and/or behavioral supports;
 5. Allow parents to review recommendations made by team regarding the child's program and to provide feedback to the team about those recommendations;
 6. Receive and process written referrals from outside sources suspecting a student may need special education, including referrals and requests for initial evaluations made by parents; and
 7. Initiate initial evaluation for special education and related services for students, when warranted based on the outcome of interventions.

D. Procedures for Written Referrals for Special Education Evaluation

As noted previously, the SAT may receive referrals for a variety of purposes. When the referral specifically is a **written referral for special education multidisciplinary evaluation**, or a written parent request for initial evaluation, the following procedures are required.

1. Within five school days of receipt of a written SAT referral for a multidisciplinary evaluation, appropriate persons, must be notified of the date, time, location and specific information needed for the meeting.
2. Within ten school days of receipt of the written SAT referral, the SAT must conduct a review of the area(s) of concern, collect and analyze available educational data and review previous interventions and make a determination regarding further action.

The SAT has the following options:

- a. Conduct the SAT problem-solving process:
 - Initiate, continue or modify interventions within a timeline established for the student by the SAT;
 - Review the effectiveness of the SAT's recommendations within the timeline established for the student, but in no case may the review take place beyond forty-five school days;
 - Ensure problem solving activities of the SAT are not used to delay processing a request for initial evaluation where immediate action is warranted; and
 - Close the problem-solving process when appropriate based on results of interventions; or
 - b. Request an initial evaluation, in cases where warranted, for example, a sensory impairment or other significant disability requiring immediate attention or when presented evidence and documentation of previous interventions sufficient to make a decision; or
 - c. When a written request for initial evaluation has been initiated by the parent, determine whether the evaluation will be conducted, and provide prior written notice of the decision and a copy of the procedural safeguards to the parent.
3. The SAT must invite parents to review recommendations made by the SAT in regard to the student's program and to provide feedback to the team about those recommendations.
 4. Within five days of the SAT decision to request an initial multidisciplinary evaluation, or to conduct an evaluation requested by the parent, prior written notice (PWN) and a copy of the procedural safeguards are provided to the parent, and informed parental consent is requested for conducting

the evaluation. The request for parent consent is completed by the MDET at the direction of the special education director or designee. The SAT may serve as the multidisciplinary evaluation team (MDET) to determine the evaluations to be requested, provided it has the required membership for MDET.

5. The principal, classroom teacher or other designated individual is responsible for documenting the date written parental consent for initial evaluation is received and immediately forwarding this request to the special education director or designee.
6. Within five days of an SAT decision to refuse a written parent request for initial evaluation, prior written notice (PWN) and a copy of the procedural safeguards are provided to the parent,

Refer to Chapter 3, Section 3 and Chapter 10, Section 3 for a definition of prior written notice and the required content of the notice.

Chapter 3

EVALUATION/REEVALUATION

Several phases are involved in establishing student eligibility for special education. Chapter 2 discussed procedures to locate and identify students with suspected exceptionalities. This chapter outlines the requirements for evaluations/reevaluations and assessments.

Section 1. Evaluation Team

The evaluation team is a group of people with the responsibility to make decisions regarding evaluation and assessments. This team includes the same membership as the individualized education program (IEP) team (although not necessarily the same individuals) and other qualified professionals as appropriate. The parent/adult student is a member of the evaluation team and must be provided an opportunity to provide input and participate in making team decisions including what additional data, if any, are needed to fulfill the purposes of an initial evaluation/reevaluation. The evaluation team may conduct its business with or without holding a meeting. However, if requested by the parent/adult student, a team meeting will be held. The SAT (Chapter 2 Section 3 D.) is one forum or option for addressing the decisions to be reached by the evaluation team.

Section 2. Planning, Conducting and Timelines for a Multidisciplinary Evaluation

Evaluation means procedures used in accordance with the protection in evaluation requirements of IDEA 2004 and West Virginia Code §18-20-1 to determine whether a student has a disability or is gifted, and the nature and extent of the special education and related services the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade or class. Screening of a student by a teacher or specialist to determine the appropriate instructional strategies for curriculum implementation (e.g., universal benchmark assessments, continuous progress monitoring) is not considered to be an evaluation for eligibility for special education and related services and does not require parental consent. However, the evaluation team may consider the results of such screenings to assist in determining areas to evaluate.

A. Initial Evaluation

The principal, classroom teacher or other designated individual is responsible for documenting the date written parental consent for initial evaluation is received and immediately forwarding this request to the special education director or designee. Within eighty days of the documented date, the district must conduct a full, individual initial evaluation and convene an eligibility committee (EC) to determine the student's eligibility for special education before the provision of special education and related services to a student with an exceptionality. The purpose of an initial evaluation is to gather information to determine:

1. Whether the student has a disability or is gifted;
2. The educational needs of the student, including present levels of academic achievement and related developmental needs of the student;
3. The effects of the exceptionality on educational and functional performance;
4. If the student needs specially designed instruction; and
5. The nature and extent of the special education needed by the student.

The eighty-day timeline will not apply to a district if:

1. The parent repeatedly fails or refuses to produce the student [34CFR§ 300.301 (d)].
2. The student changes district of enrollment during evaluation process [34CFR§300.301(d)]. The exception only applies if the subsequent district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent district agree to a specific time when the evaluation will be completed [34CFR§ 300.301 (e)]. Written documentation of the agreed upon timeline between parent and district is to be developed.
3. Districts are closed due to circumstances resulting in a state of emergency determined by the Governor of West Virginia. The timeline will be extended directly proportional to the duration of the state of emergency.
4. Districts are closed due to weather conditions determined by the county superintendent. The timeline will be extended directly proportional to the duration of the weather conditions. Days missed must be clearly documented in the student's file to accurately record the interruption.
5. Summer break.

As part of an initial evaluation, if appropriate, the evaluation team will review existing evaluation data on the student including:

1. Evaluations and information provided by the parent/adult student; and
2. Data regarding the student's response to scientific research-based general education interventions using:
 - a. Current classroom-based assessments and classroom-based observations;
 - b. Observations by teachers and related service providers; and
 - c. Results from statewide and district-wide testing.

Based on that review, and input from the parent/adult student, the team will decide what additional data, if any, are needed to fulfill the purposes of an initial evaluation. If the team determines that no additional data are needed, the district must notify the parents/adult student of that determination and the reasons for the determination and the right of the parents to request an assessment.

B. Reevaluation

Within three years of the date of the last EC, or more frequently if the parent or teacher requests or conditions warrant (e.g., if the district determines that the educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation), the district must conduct, as appropriate, an individual multidisciplinary reevaluation to determine a student's educational needs and continued eligibility for special education and related services and whether any additions or modifications to the student's special education and related services are needed to enable the student to meet their measurable annual IEP goals and to participate, to the extent appropriate, in the general education curriculum. As part of the reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the student, including:

1. The current IEP and the student's progress toward meeting the annual goals;
2. Evaluations and information provided by the parent of the student;
3. Current classroom-based, local or state assessments and classroom-based observations; and

4. Observations by teachers and related service providers.

This team may conduct its review with or without holding a meeting but must document its decisions on the Reevaluation Determination form.

If the IEP Team decides that additional evaluations are needed, the team will obtain consent as described in Section 3.B., Consent Requirements. This evaluation must be conducted prior to the established triennial review date. For students with giftedness, a reevaluation must be conducted during the eighth grade year to determine eligibility for exceptional gifted

If the IEP Team decides that no additional assessments are needed to determine the educational needs of the student and whether the student continues to be a student in need of special education, the district must provide PWN to the parent/adult student of that determination and the reasons for the determination and of his or her right to request an assessment for this purpose. If the student's parent, teacher or the adult student requests a reevaluation, this evaluation must be conducted prior to the established triennial review date.

The district must also reevaluate a student with a disability before determining that the student is no longer eligible for special education, unless:

1. The student graduates with a standard high school diploma or an alternate (modified) diploma; or
2. The student reaches the age of twenty-one.

For a student whose eligibility terminates under circumstances described above, the district must provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the student in meeting his/her postsecondary goals. PWN must be provided to the parent/adult student if the student is exiting special education due to graduation with a standard high school diploma.

While reevaluation procedures must be provided at no cost to the parent/adult student, reevaluations may not occur more than once a year without district and parent agreement.

C. Additional Evaluations Requested by an EC or IEP Team

Additional evaluations requested by the EC or IEP Team must be completed and an EC or IEP Team meeting held within sixty days from receipt of parental consent for the identified evaluations. Request for parental consent for additional evaluations must be sent within five school days of the EC or IEP Team meeting generating the request for evaluation.

If the EC or IEP team determines that a comprehensive multidisciplinary evaluation is required to determine whether a student meets the criteria for a different exceptionality, the district must conduct the evaluation within eighty days of the documented date of receipt of parental consent.

In those instance when an additional evaluation to be completed by an outside agency has not been completed within sixty days, the district is required to document its reasonable efforts to obtain the additional evaluation within sixty days. In this situation, when a district has documented its reasonable efforts to obtain the evaluation within sixty days, the district is not considered to be in violation of the sixty-day timeline.

D. Parental Request for Additional Evaluation

Upon receipt of a written parental request for an additional evaluation, the IEP team considers the request, with or without holding a meeting, and within five days of receipt provides prior written notice of its response. If the evaluation is conducted, the aforementioned timelines apply. If the parent/adult student requests an additional assessment for reasons other than the determination of educational needs or eligibility, such as admission to college, the district is not obligated to conduct the evaluation but must consider the request and provide PWN of the district's response to the request.

Section 3. Written Notice and Consent for Evaluation

A. Written Notice Requirements

Within five days of the district's decision to evaluate or reevaluate, written notice requesting consent for evaluation or reevaluation must be provided to the parent/adult student. Written notice must be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent/adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the district must take steps to ensure the parent/adult student understands the content of the notice. Any non-written notice should be documented with written evidence that the requirements of this section have been met.

The written notice must include the following prior written notice (PWN) requirements:

1. A description of the evaluation or reevaluation proposed or refused by the district;
2. An explanation of why the district proposes to evaluate or reevaluate the student;
3. A description of other options the district considered and the reasons why those options were rejected;
4. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused evaluation or reevaluation;
5. A description of any other factors relevant to the evaluation or reevaluation;
6. A statement that the parent/adult student has protection under the procedural safeguards, and a description of how to obtain a copy of the Procedural Safeguards Notice; and
7. Sources to contact to obtain assistance in understanding the Procedural Safeguards Notice.

In addition to PWN, the *Notice of Individual Evaluation/Reevaluation Request* form is provided. The date of receipt by the school/district of the signed parental consent form must be documented in the student's individual West Virginia Education Information System (WVEIS) student record under Student Special Education Information, Student Special Education Referral/Reevaluation Detail.

B. Consent Requirements

1. Definition of Consent

Consent means that the parent/adult student:

- a. Has been fully informed in his or her native language or other mode of communication of all information relevant to the evaluation for which consent is sought;

- b. Understands and agrees in writing (as indicated by signature) to the carrying out of the activity;
- c. Has been given enough information to make informed decisions about the district's request to conduct an evaluation. Information must be provided on the various types of assessments for which consent is sought;
- d. Understands that the granting of consent is voluntary on the part of the parent/adult student and may be revoked at anytime.

If consent is revoked, the revocation is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Consent for evaluation must not be construed as consent for the initial provision of special education and related services.

2. Consent for Evaluation/Reevaluation

Written consent must be sought for evaluation and reevaluation. Based on recommendations from the evaluation team, the district will seek consent to administer the needed assessments within five days of the decision to evaluate/reevaluate. If the parent/ adult student fails to respond within ten school days of the initial request for consent, the district must mail or hand-deliver a second notice. If the parent/adult student once again fails to respond, the district must document reasonable measures taken to obtain consent, which may include:

- a. A record of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent to the parent/adult student and any response received; and/or
- c. Detailed records of visits made to the parent's/adult student's home or place of employment and the results of those visits.

If the parent/adult student fails to respond after the district has taken reasonable measures to obtain consent for assessments and after the passage of thirty school days from the initial request for consent, the district may:

- a. As part of a reevaluation, provide PWN that the district will conduct the reevaluation; or
- b. As part of an initial evaluation, pursue the evaluation by using mediation or filing a due process complaint.

If the parent refuses consent, the district may use mediation or due process hearing procedures if the student is enrolled in or seeking enrollment in a public school. However, the district cannot pursue the evaluation if the student is in a parental private placement or is home schooled.

C. When Written Notice and Consent Are Not Required

Neither written notice nor consent is required for:

- 1. The review of existing data as part of an evaluation or reevaluation;
- 2. The administration of a test or other assessment that is administered to all students unless consent is required of the parents of all the students;
- 3. Screening, including monitoring of progress by a teacher or specialist, to determine the appropriate instructional strategies for curriculum implementation; and
- 4. Initial evaluations, when the student is a ward of the state and is not residing with the student's parent, if:
 - a. Despite reasonable efforts, the district cannot discover the whereabouts of the parents;
 - b. The rights of the parents have been terminated under state law; or

c. The rights of the parents to make educational decisions have been subrogated by a judge in accordance with state law and consent has been provided for the initial evaluation by an individual appointed by the judge to represent the child.

D. Information from Other Agencies or Districts

Policy 4350: *Procedures for the Collection, Maintenance and Disclosure of Student Information* and the Family Educational Rights and Privacy Act (FERPA) do not require the consent of the parent/adult student for the district to:

1. Request information from other public school districts that the student has attended; or
2. Send information to other public school districts, including schools maintained by the Office of Diversion and Transition Programs or the West Virginia Schools for the Deaf and Blind, in which the student enrolls or intends to enroll.

Parental consent is required prior to the sharing of information between the district of residence and the district where a private school is located if a student has been parentally-placed in the private school.

Before the district seeks to obtain relevant information about a student from other agencies, consent must be obtained from the parents. A copy of the signed consent form for release of information must be included with the letter(s) requesting the information. A copy of the signed consent form for release of information must be maintained in the student's confidential file.

Section 4. Evaluation Procedures

A. Areas to Evaluate

For an initial evaluation, the student must be evaluated in all areas related to the suspected exceptionality including, if appropriate, health, vision, hearing, social and emotional status, adaptive skills, behavioral performance, general intelligence, academic performance, communicative status, motor abilities, assistive technology services and/or devices, post-secondary interests/preferences and vocational aptitudes. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the suspected exceptionality.

For a child who is deaf or hard of hearing, a comprehensive language assessment in the child's language and communication mode must be included in his/her comprehensive evaluation.

B. Evaluation Procedures and Instruments

The district must ensure, at a minimum, that the evaluation or reevaluation meets the following requirements:

1. A variety of assessment tools and strategies must be used to gather relevant, functional, developmental and academic information about the student, including information provided by the parent/adult student. This information must be used to determine:
 - a. Whether the student is a student with an exceptionality;
 - b. The content of the student's IEP including information related to enabling the student to be involved in and progress in the general education curriculum (or, for a preschooler, to participate in appropriate activities) should the student be determined to require special education and related services.

2. No single measure or evaluation may be used as the sole criterion for determining whether a student is a student with an exceptionality and for determining an appropriate educational program for the student.
3. The district must use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
4. Assessments and other evaluation materials must be:
 - a. Selected and administered so as not to be discriminatory on a racial or cultural basis;
 - b. Provided and administered in the student's native language and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally unless it is not feasible to do so. Attempts to provide a qualified examiner in the student's native language or mode of communication must be documented;
 - c. Used for purposes for which they are valid and reliable; and
 - d. Administered in accordance with any instructions provided by the producer of the assessments.
 - e. For a child who is deaf or hard of hearing, a comprehensive language assessment in the child's language and communication mode must be included in his/her comprehensive evaluation.
5. Tests and other assessment materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
6. Tests must be selected and administered so as to best ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those are the factors that the test purports to measure). This includes the provision of accommodations, such as assistive technology, braille and interpreters.
7. Assessments of students with exceptionalities who transfer from one district to another district in the same academic year are coordinated with the student's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
8. The district must provide and use assessment tools and strategies that produce relevant information that directly assists persons in determining the educational needs of the student.
9. All services and assessments must be provided at no expense to the parent/adult student.

C. Qualifications and Responsibilities of Evaluators

Individuals conducting evaluations must be:

1. Appropriately certified, licensed or otherwise qualified to administer the evaluations for which they are responsible;
2. Trained in the use of the specific evaluation instruments or techniques for which they are responsible;
3. Knowledgeable in the area of concern; and
4. Knowledgeable in the applicable state and federal regulations.

Each evaluator, including the classroom teacher, must write, sign and date an individual evaluation report. Prior to the reevaluation date or within eighty days of initial parental consent for evaluation, each evaluator must make the written report available to the EC and parent.

Chapter 4

ELIGIBILITY

Several phases are involved in establishing student eligibility for special education. Chapter 3 discussed the requirements for evaluations and assessments. This chapter will outline eligibility requirements, definitions and eligibility criteria.

Section 1. Eligibility Determination

Within eighty days of receipt of consent for an initial evaluation or after the completion of a reevaluation and prior to the established reevaluation date, the district must convene an Eligibility Committee (EC) meeting to determine whether a student is or continues to be a student in need of special education services. EC members should be selected in consideration of the presented evaluation information and must consist of the parent and/or adult student and qualified professionals as follows:

- District administrator of special education, principal or designee;
- Members of the multidisciplinary evaluation team;
- General and/or special educator;
- Additional individuals with specific expertise related to the student and the area(s) of concern;
- For initial EC's, the referring teacher; and
- For students suspected of having a specific learning disability (SLD), the student's general education teacher and at least one person qualified to conduct individual diagnostic examinations of students such as a school psychologist, speech language pathologist (SLP) or reading specialist.

The district must provide written notice to the parent and/or adult student and other EC members of the meeting time, date, place, purpose and invited members no less than eight days prior to the scheduled meeting date. If the parent is unable to attend, the district must use other methods to ensure participation such as videoconferences and conference calls.

The EC will draw upon information from a variety of sources, including, as appropriate, but not limited to, formative assessments, aptitude and achievement tests, parent/adult student input, teacher observations, health, social or cultural background, adaptive behavior, and functional assessments. The EC must ensure that information obtained from all of these sources is documented and carefully considered. The EC will consider these evaluation or reevaluation findings and determine whether the student meets or continues to meet eligibility criteria.

Results of the multidisciplinary evaluation must be utilized by the EC as the primary source of information to determine the student's educational needs and whether the student meets the following three prongs as described in Section 3. State Eligibility Criteria:

- Meets the eligibility criteria in one of the designated exceptionalities;
- Experiences an adverse effect on educational performance; and
- Needs special education; or
- No longer meets the eligibility criteria or no longer needs specially designed instruction.

A student cannot be identified as a student in need of special education services if the primary reason for such a decision is:

- A lack of appropriate instruction in ELA College- and Career- Readiness Standards (CCRS), including the essential components of Reading Foundations-Fluency, Phonics and Word Recognition, Phonological Awareness and Print Concepts.;

- A lack of appropriate instruction in math; or
- Limited English proficiency.

Using the results of the multidisciplinary evaluation, the EC must determine the student's primary exceptionality when more than one exceptionality condition is present. The committee must discuss how each exceptionality affects the student's educational and functional performance and determine and document which has the most adverse impact on the student's participation and progress in the general curriculum.

If consensus upon the primary exceptionality cannot be reached, the district administrator or designee must make the decision and provide the parent/adult student with PWN of the decision.

Section 2. Eligibility Report

Upon completing the review of the student's multidisciplinary evaluation or reevaluation, the EC must prepare an Eligibility Committee Report and provide a copy of the report to the parent/adult student. The parent/adult student and other IEP Team participants must have all the information they need to participate meaningfully in the IEP Team meeting. Copies of the evaluation reports and documentation of eligibility determination must be provided at no cost to the parent/adult student.

Eligibility Committee Report for Evaluation/Reevaluation

The Eligibility Committee Report includes:

1. Signatures with dates and positions of all eligibility committee members;
2. All data on the student as required in the State Eligibility Criteria for the area of suspected exceptionality (see Section 3 of this chapter);
3. The specific exceptionality determined for state and federal reporting purposes;
4. Information about how the student's exceptionality affects his or her educational performance;
5. The committee's decision regarding whether the student needs special education services;
6. Recommendations for those students deemed ineligible for special education to be considered by the SAT or the instruction and intervention team; and
7. The date of the eligibility determination.

The eligibility committee is required to write an Eligibility Committee Report detailing how the student meets eligibility requirements even if no new assessments were conducted. The report must address each required eligibility component and include results of previous assessments if they are being used to determine eligibility.

For students suspected of having a specific learning disability (SLD), the committee must also complete a SLD Team Report (see Section 3.L.). For students who are gifted, the Eligibility Committee Report is required to document compliance with reevaluation timelines.

If a student meets the criteria for blindness, low vision, deafness, hard of hearing or deafblindness on the Eligibility Report, the parents or guardians must be provided information pertaining to the West Virginia Schools for the Deaf and Blind so they are aware of the options available and may make an informed decision regarding educational services and programming for their child.

Section 3. State Eligibility Criteria

The district must use the eligibility criteria and assessment procedures set forth by the WVDE when determining eligibility for special education. These criteria and assessment procedures are listed under

items A – N. in this section. Listed under each exceptionality definition are the eligibility criteria that must be used to determine whether an individual qualifies as a student with an exceptionality in need of special education. To demonstrate eligibility for special education services, a three-pronged test of eligibility must be met.

Three-Prong Test of Eligibility

Requirements of the three-prong test of eligibility are:

1. **Meets State Eligibility Requirements:** The state eligibility requirements for specific exceptionalities are listed in this chapter.
2. **Experiences Adverse Effect on Educational Performance:** The term “adverse effect on educational performance” is broad in scope. An adverse effect is a harmful or unfavorable influence of the disability on the student’s performance. Educational performance includes both academic areas (reading, math, communication, etc.) and nonacademic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.). Consideration of all facets of the student’s condition that adversely affect educational performance involves determining any harmful or unfavorable influences that the disability has on the student’s academic or daily life activities. Adverse effect is not solely measured by scores on individual testing but may also be determined through consideration of other data such as classroom performance and retention history. For students who are gifted, the eligibility committee is not required to document an adverse effect; rather, the impact of the giftedness on the student’s educational performance must be documented.
3. **Needs Special Education:** Special education is specially designed instruction, at no cost to the parents, to meet the unique needs of the student with an exceptionality. Specially designed instruction means the content, methodology, or delivery of instruction is adapted, as appropriate, to address the unique needs of the student that result from the student’s exceptionality and to ensure access of the student to the general curriculum so that the student can meet the educational standards that apply to all students.

A student is not eligible for special education unless all three of the above components are satisfied and documented. A student who only needs a related service and not special education is not eligible.

Use of Reevaluation Data in Determining Continuing Eligibility

Districts must carefully consider the reevaluation of students initially found eligible for special education. Districts must consider the effect of exiting a student from special education who has received special education for many years and how the removal of such supports will affect the student’s educational progress, particularly for a student who is in the final year(s) of high school.

Definitions and Eligibility Criteria

A. Autism

Definition: Autism is a developmental disability, generally evident before age three, significantly affecting verbal and nonverbal communication and social interaction and adversely affecting educational performance. A student who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this section are satisfied. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

Eligibility Criteria for Autism

An eligibility committee will determine that a student is eligible for special education services as a student with autism when **all** of the following American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria (1 through 5) are met:

1. Documentation will assure that the student meets all of a. and at least two from b.:
 - a. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following, currently or by history:
 - i. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
 - ii. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
 - iii. Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.
 - b. Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by **at least two** of the following:
 - i. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypies, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
 - ii. Insistence on sameness, inflexible adherence to routines, or ritualized patterns or verbal nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat food every day).
 - iii. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interest).
 - iv. Hyper- or hypo-reactivity to sensory input or unusual interests in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).
 - c. Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).
 - d. Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
 - e. These disturbances are not better explained by intellectual disability (intellectual developmental disorder) or global developmental delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability, social communication should be below that expected for general developmental level.

2. The student is diagnosed as having autism by a psychiatrist, physician, licensed psychologist or school psychologist.
3. The student's condition adversely affects educational performance.
4. The student needs special education.
5. The student's educational performance **is not** adversely affected primarily because the student has an emotional/behavioral disorder as defined in this chapter.

Note: Individuals with a well-established DSM-IV diagnosis of autism disorder, Asperger's disorder, or pervasive developmental disorder not otherwise specified should be given the diagnosis of autism spectrum disorder. Individuals who have marked deficits in social communication, but whose symptoms do not otherwise meet criteria for autism spectrum disorder, should be evaluated for social (pragmatic) communication disorder.

B. Blindness and Low Vision

Definition: Blindness and low vision refers to an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

Eligibility Criteria for Blindness and Low Vision

An eligibility committee will determine that a student is eligible for special education services as a student with blindness and low vision when any criteria of 1 and criteria 2 and 3 are met:

1. The student has a documented visual impairment, not primarily perceptual in nature, as determined by an optometrist, ophthalmologist or neurologist:
 - a. Measured acuity of 20/70 or less in the better eye with correction at distance or near;
 - b. Visual field restriction of twenty degrees or less in the better eye;
 - c. A deteriorating eye condition which will result in loss of visual efficiency (e.g., glaucoma, retinitis pigmentosa, or macular degeneration);
 - d. A visual loss caused by a disturbance of the posterior visual pathway and/or cortex with the characteristic behaviors associated with cortical visual impairment; or
 - e. Measured acuity of 20/70 or better in the better eye with correction at distance or near and a functional vision evaluation conducted by a certified teacher of the visually impaired determines the student:
 - i. has limited ability in visually accessing program-appropriate educational media and materials including but not limited to textbooks, photocopies, chalkboards, computers or environmental signs without modification;
 - ii. has limited ability to visually access the full range of program-appropriate educational media and materials without accommodations including but not limited to changes in posture, body movement focal distance or squinting;
 - iii. demonstrates variable visual ability due to environmental factors including but not limited to contrast, weather, color or movement, that cannot be controlled, or
 - iv. experiences reduced or variable visual ability due to visual fatigue or factors common to the eye condition.
2. The student's physical eye condition, even with correction, adversely affects educational performance.
3. The student needs special education.

C. Deafblindness

Definition: Deafblindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs designed solely for students with deafness or blindness or students who are hard of hearing or partially sighted.

Eligibility Criteria for Deafblindness

An eligibility committee will determine that a student is eligible for special education services as a student with deafblindness when all of the following criteria are met:

The student exhibits characteristics consistent with the definition.

1. The student is diagnosed by an optometrist or ophthalmologist for vision loss and by an otologist, otolaryngologist, or audiologist for hearing loss.
2. The student's condition adversely affects educational performance.
3. The student needs special education.

Deafblindness should be the primary eligibility for a student who meets the above criteria. In addition, a student meeting the above criteria and who also has additional impairments contributing to the student's severe educational needs may be determined eligible for deafblindness.

D. Deafness

Definition: Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects a student's educational performance.

Eligibility Criteria for Deafness

An eligibility committee will determine that a student is eligible for special education services as a student who is deaf when all of the following criteria are met:

1. The student exhibits characteristics consistent with the definition and relies primarily on vision to access spoken communication.
2. The student has been diagnosed by an otologist, otolaryngologist, or audiologist as having a hearing loss.
3. The student's condition adversely affects educational performance.
4. The student needs special education.

E. Developmental Delay

Definition: Developmental delays occur in students, ages three through five, who are functioning at, or lower than, 75% of the normal rate of development in two or more of the following areas:

- Cognition;
- Physical development including gross motor and/or fine motor skills;
- Communication;
- Social/emotional/affective development; and/or
- Self-help skills.

Eligibility Criteria for Developmental Delay

An eligibility committee will determine that a student is eligible for special education services as a student with developmental delay when all of the following criteria are met:

1. The student exhibits characteristics consistent with the definition.

2. The student needs special education.

Special Considerations

1. Special education and related services for the eligible student with a developmental delay will be provided as of the student's third birthday when eligibility is determined prior to the third birthday.
2. Each district will participate in transition planning conferences arranged by the designated lead agency for Part C.
3. For a student transitioning from a Part C early intervention program, an interagency transition plan must be developed to assure that by the time a student turns three years of age either an IEP or Individual Family Service Plan (IFSP) which meets the requirements of Chapter 5, Section 2. IEP Development of these regulations has been developed and implemented by the district.
4. For a student who turns three years old in the spring/summer, the district is responsible for implementation of the IEP or IFSP services for students as of the third birthday, regardless of which agency provides the services.
5. If appropriate, a student who turns three years old in the fall may begin Part B services under the local educational agency at the beginning of the school year preceding the third birthday.
6. If the developmental delay is the result of a vision and/or hearing loss, eligibility must be determined under that exceptionality if the student meets the eligibility for that exceptionality.
7. When a student reaches age six, he or she no longer meets the eligibility criteria for developmental delay; therefore, the IEP Team must follow procedures for reevaluation and reconvene the eligibility committee prior to the student's 6th birthday to determine eligibility under another exceptionality.

F. Emotional/Behavioral Disorder

Definition: An emotional/behavioral disorder means a condition in which a student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems; or
6. Schizophrenia.

The term does not include students who are socially maladjusted unless it is determined they have an emotional/behavioral disorder.

Eligibility Criteria for Emotional/Behavioral Disorder

An eligibility committee will determine that a student is eligible for special education services as a student with an emotional/behavioral disorder when all of the following criteria are met:

1. The student continues to exhibit an emotional/behavioral disorder consistent with the definition after Targeted and Intensive interventions have been implemented within the Multi-Tiered System of Supports (MTSS) framework (e.g., as documented in the WVEIS on the Web Interventions Tab and described in the Specific Learning Disabilities eligibility criteria).

2. The student has been observed exhibiting one or more of the characteristics listed in the definition of emotional/behavioral disorder and the characteristics have been observed and documented:
 - a. For a long period of time; and
 - b. By more than one knowledgeable observer trained in data gathering; and
 - c. In more than one setting; and
 - d. At a level of frequency, duration, and/or intensity that is significantly different from the student's peers in the same or similar circumstances.
3. The student's condition adversely affects educational performance in the area of academics, peer and/or teacher interaction, and/or participation in class/school activities.
4. The student exhibits behavior(s) that is not primarily the result of physical, sensory or intellectual deficits.
5. The student needs special education.

G. Gifted

Definition: Giftedness is exceptional intellectual abilities and potential for achievement that requires specially designed instruction and/or services beyond those normally provided in the general classroom instruction.

Eligibility Criteria for Gifted, Grades One through Eight:

An eligibility committee will determine that a student is eligible for special education services as a gifted student in grades one through eight when the following criteria are met:

1. General intellectual ability score at the 97th percentile rank or higher on a comprehensive test of intellectual ability in consideration of 1.0 standard error of measurement;
2. At least one of the four core curriculum areas of academic achievement at the 90th percentile rank or higher as measured by an individual standardized achievement test, or at least one of the four core curriculum areas of classroom performance demonstrating exceptional functioning as determined during the multidisciplinary evaluation; and
3. The need for specially designed, differentiated instruction and/or services beyond those normally provided in the general classroom. Differentiated instruction for gifted students may include enrichment of the content emphasizing the development of higher-level thinking, including critical thinking, creative thinking, and problem solving skills and/or acceleration of content while the student remains in the chronologically appropriate grade. Related services may include, for example, guidance and counseling, independent study and distance learning. This is not an all-inclusive list.

Special Considerations:

1. **Intellectual Ability.** If the student's general intellectual ability score is unduly affected by performance in one or more composite scores, the evaluator may use, for purposes of eligibility, an alternate general ability index or an individual composite measure as permitted in the test manual or other technical reports. The evaluator must include a statement in the report indicating which score is the better indicator of the student's intellectual abilities and the supporting reasons for this determination.
2. **Historically Under-represented Gifted Population.** Historically Under-represented Gifted Population are those students whose giftedness may not be apparent due to low socioeconomic status, a disability in accordance with this policy, or a background that is linguistically or culturally different. If it is determined that the eligibility criteria and/or

assessment instruments discriminate against a student because the student belongs to a historically under-represented gifted population, eligibility for gifted services must be based upon criteria that complement the definition and eligibility for gifted as described in this policy. To determine whether a student demonstrates the potential for intellectual giftedness when the student does not meet the eligibility criteria as described in this policy, the eligibility committee must consider all data gathered by the multidisciplinary evaluation team. These data include, but are not limited to, individual achievement, group achievement, classroom performance, teacher input, inventories, scales, checklists, student product(s) and parent information. The following lists different procedures that the eligibility committee may use in determining eligibility of a student who belongs to a historically under-represented population. This is not an exhaustive list.

- a. Using an alternative assessment to identify giftedness in minority students.
- b. Using a matrix to get a total picture.
- c. Using parent, student, and teacher rating scales to give added information.
 3. There are students who may have exceptional intellectual ability and be disabled. If a student meets the eligibility criteria for both gifted or exceptional gifted and a disability, the disability must be the primary exceptionality.

Eligibility Criteria for Exceptional Gifted, Grades Nine through Twelve

Before the end of the eighth grade year, the IEP Team will:

1. Conduct a reevaluation determination to review existing evaluation data which includes the following:
 - a. Evaluations and information provided by the parents of the student;
 - b. Current classroom-based assessments and observations; and
 - c. Observations by teachers and related service providers; and
2. On the basis of that review, identify what additional data, if any, are needed to determine that a student is eligible for special education services as an exceptional gifted student in grades nine through twelve using one or more of the following criteria:
 - a. The eligibility criteria for one or more of the disabilities as defined in this section; and/or
 - b. The definition for economically disadvantaged; and/or
 - c. The definition for underachievement, which takes into consideration the student's ability level, educational performance and achievement levels; and/or
 - d. The definition for psychological adjustment disorder as documented by a comprehensive psychological evaluation.
3. If the student is eligible as exceptional gifted, the district must develop an IEP. If the student is not eligible as exceptional gifted, the IEP Team must review and adjust in consultation with the student's advisor the Personalized Education Plan (PEP) to include courses through the senior year. Courses classified as Honors, Dual Credit, Advanced Placement (AP) and/or International Baccalaureate (IB), classes are to be indicated on the PEP. The implementation and annual review of this plan are required of the district. Students that already have a Four Year Education Plan in place will continue to have the document reviewed.

H. Hard of Hearing

Definition: Hard of hearing is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

Eligibility Criteria for Hard of Hearing

An eligibility committee will determine that a student is eligible for special education services as a student who is hard of hearing when all of the following criteria are met:

1. The student exhibits characteristics consistent with the definition and relies primarily on hearing to access spoken communication.
2. The student has been diagnosed by an otologist, otolaryngologist, or audiologist as having a hearing loss.
3. The student's condition adversely affects educational performance.
4. The student needs special education.

I. Intellectual Disability

Definition: Intellectual disability is defined as significantly subaverage intellectual functioning that exists concurrently with deficits in adaptive skill areas. These deficits are manifested during the developmental period and adversely affect the student's educational performance.

Eligibility Criteria for Intellectual Disability

An eligibility committee will determine that a student is eligible for special education services as a student with an intellectual disability when all of the following criteria are met:

1. General intellectual functioning:
 - a. The student with mild to moderate intellectual disability has general intellectual functioning ranging from two to three standard deviations below the mean, in consideration of 1.0 standard error of measurement as determined by a qualified psychologist, using an individually administered intelligence test; or
 - b. The student with the most significant cognitive disabilities (moderate to severe intellectual disability) has general intellectual functioning more than three standard deviations below the mean, in consideration of 1.0 standard error of measurement as determined by a qualified psychologist, using an individually administered intelligence test; and
2. The student exhibits concurrent deficits in adaptive functioning expected for his or her age across multiple environments based on clinical and standardized assessments in at least one of the following domains: conceptual, social or practical; and ^{*}
 - a. If intellectual functioning and adaptive functioning are inconsistent in severity^{*}, an observation must be completed to determine the level of supports required.
^{*} See Appendix for Severity Levels for Adaptive Functioning.
3. The age of onset is eighteen or below; and
4. The student's condition adversely affects educational performance; and
5. The student needs special education.

Caution is advised when assessing students with cultural and language issues to prevent inappropriate identification of these students as having a cognitive impairment. When determining eligibility, tests measuring intellectual ability must be used with care; that is, only those tests designed and normed for the population being tested may be used. Tests measuring intellectual ability that are translated into another language by the examiner or an interpreter yield invalid test results and must not be used as the basis of the eligibility determination. Evaluation teams must consider using nonverbal tests of intellectual ability when the student is culturally or linguistically diverse.

J. Orthopedic Impairment

Definition: Orthopedic impairment means a severe physical limitation that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., spina bifida, congenital amputation, osteogenesis imperfecta), an impairment caused by disease (e.g., poliomyelitis, bone tuberculosis), or an impairment from other causes (e.g., cerebral palsy, amputations, fractures or burns that cause contracture).

Eligibility Criteria for Orthopedic Impairment

An eligibility committee will determine that a student is eligible for special education services as a student with an orthopedic impairment when documentation of all of the following criteria exists:

1. The student exhibits characteristics consistent with the definition.
2. The student has an orthopedic impairment diagnosed and described by a licensed physician.
3. The existence of educational needs as a result of the orthopedic impairment.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

K. Other Health Impairment

Definition: Other health impairment means having limited strength, vitality or alertness, including heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. These health problems may include, but are not limited to, asthma, , attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke to such a degree that it adversely affects the student's educational performance.

Eligibility Criteria for Other Health Impairment

An eligibility committee will determine that a student is eligible for special education services as a student with an other health impairment when documentation of all of the following criteria exists:

1. The student exhibits characteristics consistent with the definition;
2. The student has a chronic or acute medical or health condition as diagnosed and described by a licensed physician; with the exception of ADHD which can be diagnosed by a school psychologist or licensed psychologist. and
3. The existence of educational needs as a result of the medical or health condition.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

L. Specific Learning Disability

Definition: Specific learning disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculation, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. As specified in §18-20-10:

1. Dyslexia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities.

2. Dyscalculia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with numerical information, learning arithmetic facts, and performing accurate or fluent calculations.

Disorders/Conditions Not Included:

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional/behavioral disorder or environmental, cultural, or economic disadvantage.

A student must not be determined to have a specific learning disability if the determinant factor is any of the following:

1. Lack of appropriate instruction in reading, including the Reading Foundations - Fluency, Phonics and Word Recognition, Phonological Awareness and Print Concepts;
2. Lack of appropriate instruction in math; or
3. Limited English proficiency.

Eligibility Committee (EC) Membership for SLD Determination:

The determination of whether a student manifests a specific learning disability must be made by the student's parent(s) and a team of qualified professionals, which must include:

1. The student's general education teacher; or if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; for a student of less than school age, an individual qualified to teach a student of his or her age; and
2. At least one person qualified to conduct individual diagnostic examinations of the student, such as a school psychologist, speech-language pathologist, or reading specialist.

Eligibility Committees must draw upon information from a variety of assessment tools and strategies and as specified in §18-20-10 ensure all students receive necessary and appropriate screenings and early assessments for specific learning disabilities. The Eligibility Committee may not rely on any single procedure for determining eligibility for special education and related services.

Examples of sources include formative and summative assessments, ongoing progress monitoring, aptitude and achievement tests, cognitive assessments, parent input, and teacher recommendations as well as information about the student's physical condition, social or cultural background, and adaptive behavior. The EC must also ensure that information obtained from all of these sources is documented and carefully considered.

ELIGIBILITY DETERMINATION: MULTI-TIERED SYSTEM OF SUPPORTS

Definition. Multi-Tiered System of Supports (MTSS) is a framework of multiple supports for all students and includes the process referred to as response to intervention (RTI). MTSS includes: 1) Providing high-quality instruction matched to student needs; 2) screening all students for academic and behavior concerns; 3) continuous monitoring of student performance; and 4) using learning rate over time and level of performance to make important educational decisions. It is a systematic multi-level approach for supporting the diverse needs of students in both academic and behavioral domains through the use of universal design for learning (UDL), differentiated instruction and targeted and intensive interventions based on ongoing assessments of student performance. This process is characterized by procedures aligned with the steps of problem solving and documents a student's response or non-response to general education instruction and the student's academic performance in comparison to grade-level standards.

Components of Multi-Tiered Instruction and Intervention

Research based practices that support the MTSS approach include scientifically based curricula and instruction, multi-tiered instruction models, progress monitoring, formative assessment, systematic analysis of academic and behavioral needs by problem solving teams and matching instruction to specific skill deficits and strengths as evidenced by formative assessment.

A multi-tiered framework of service delivery features increasing intensities of instruction in direct proportion to student needs. Embedded in each level are research based instructional practices customized to increase student achievement of targeted skills. Ongoing assessment of student mastery of State-approved grade-level skills is fundamental, and frequent progress monitoring data are used to identify and adjust appropriate target areas for instructional support.

Parent Notice Requirements

When a student participates in the MTSS process and receives targeted and/or intensive supports, the district must notify the student's parents, and maintain documentation that the student's parents were notified, about the following:

1. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
2. Strategies for increasing the student's rate of learning;
3. Information and education to parents regarding specific learning disabilities including dyslexia and dyscalculia and the services available to students as specified in §18-20-10; and
4. The parent's right to request an evaluation at any time throughout the MTSS process.

When a student has been provided an opportunity to learn with the additional targeted and intensive supports provided within the multi-tiered instructional framework described below, and the student's documented instructional response indicates a need for long-term specially designed instruction, a request for parental consent for initial evaluation for special education and related services is made. If consent is given, the student must be evaluated, and eligibility must be determined within 80 days of receipt of parental consent, unless the evaluation timeline is extended by mutual written agreement of the student's parents and the Eligibility Committee.

Universal Instruction

Universal Instruction includes universal screening of all students to determine levels of proficiency or mastery of grade-level content, skills and knowledge. All students are screened at the beginning of the school year to determine which students are at risk for not meeting grade-level standards. Those identified students at risk or not making progress also are screened at the middle and end of the year. Instruction in Universal is aimed at general education classroom instructional objectives that enhance learning within the Universal academic program. Classrooms are characterized by differentiated and scaffolded instruction, use of scientific, research based instructional methods, and ongoing monitoring of student progress. Students who do not achieve mastery on essential State-approved grade-level standards, as substantiated by assessment results, are identified for additional supports at the Targeted Level by a problem-solving team.

Targeted Instruction

The primary goal of Targeted Instruction is to provide short-term strategic instruction to support all students who are performing below State-approved grade-level standards. Targeted Instruction is in addition to Universal Instruction and is provided to small groups of students with similar instructional needs.

Instructional supports may be developed through a problem-solving approach use of academic or behavioral assessments to craft individualized plans or a standard treatment protocol (use of a specific evidence-based practice). Targeted Instruction begins after students have been identified as achieving below State-approved grade-level standards and have demonstrated a lack of response to Universal Instruction.

Students supported by Targeted Instruction receive small group instruction in addition to the time provided to all students in the Universal instructional block. Explicit instruction to address specific needs is used. Targeted Instruction should be implemented for a minimum of one nine-week period, with progress monitoring occurring every two to three weeks to adjust instruction and ensure mastery. Targeted Instruction continues only until the specific concept or behavior is in place (usually short-term). Targeted Instruction may be longer depending on student progress toward benchmarks. Three to five 15 to 30 minute sessions per week are suggested. Subject area, programmatic level and time frame defined by the instructional materials are pertinent variables.

Intensive Instruction

The third level, Intensive Instruction, is designed to provide explicit instruction to students who do not make sufficient progress even when provided focused small group supports. Targeted Instruction must be documented prior to moving a student to Intensive. Intensive Instruction is provided in a small group setting or, as warranted, individual settings. Intensive Instruction should be implemented for a minimum of one nine-week period, but could be longer depending on student progress toward benchmark. Progress monitoring occurs every one to two weeks, and formative assessments are used confirm the student's response to instruction. Three to five 30 to 60 minute sessions per week are suggested. When evidence suggests instructional supports at Intensive Level will be needed long-term, a request for a comprehensive evaluation to determine eligibility for special education and related services should be considered.

Components of a Systematic Problem Solving Process

Systematic problem solving refers to a set of procedures used by an instructional team to examine and analyze the nature and severity of a student's academic or behavioral need. Parent participation is a key component in the process, which includes the following components:

Identify and Define Needs

The student's academic or behavioral need is explained in objective, measurable terms. Both the student and the learning environments are analyzed through data collection (e.g., screening, classroom walk-throughs, observations). The match or mismatch between the learner and his or her learning environment is described.

Analyze the Problem

The goal of problem analysis is to determine why this problem or need is occurring. Additional data are collected on the specific academic and/or behavioral need noted in the problem description. Data must be collected over a period of time and must be representative of the student's typical academic performance and/or behavior in the learning environment. Data collection procedures must be reliable, designed for individual student assessment and allow for repeated measurement of the same skills or behavior over time. Use the data to analyze the problem and explore specific evidence-based instruction to address the need.

Develop a Plan

Design an individual student instructional plan by using the data collected over time. Establish the instructional goal(s) for the plan, and describe the instruction to be provided. Include a progress monitoring plan, persons responsible for implementation and projected timelines.

Implement and Monitor the Plan

The plan is monitored for the integrity of implementation. Progress monitoring refers to a systematic, frequent collection of individual performance data. The measures are repeated over time and charted for documentation purposes.

Evaluate and Adjust the Plan

Evaluate the effectiveness of the instruction provided by comparing the student's initial level of performance to performance results achieved as a result of implementing the instructional plan. If the instruction is not producing the desired results, adjust the instructional plan based on the data.

Eligibility Standards

Using the MTSS process and comprehensive assessment the EC determines eligibility for specific learning disability based on the following standards for comparison. Each standard must be discussed at the EC meeting and corresponding documentation must be on file for each student.

Standard 1- Level of Learning

The first element in identifying a student with a specific learning disability is whether the student does not achieve adequately for his/her age or does not meet State-approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards:

1. Oral expression;
2. Listening comprehension;
3. Written expression;
4. Basic reading skill;
5. Reading fluency skills;
6. Reading comprehension;
7. Mathematics calculation; or
8. Mathematics problem solving.

The performance measure used to verify this standard must be both representative of the student's curriculum and useful for instructional planning. The student's response to customized instruction must be documented.

Documentation includes one or more of the following:

- Results of formative assessments administered pre- and post-instruction;
- Cumulative record reviews;
- Student class work samples;
- Anecdotal teacher records; or
- Standardized assessments.

Standard 2- Rate of Learning or Pattern of Strengths and Weaknesses

The second element in identifying a student with a specific learning disability may be met by determining insufficient rate of learning or a pattern of strengths and weaknesses in cognitive and academic abilities.

Rate of Learning

The data gathered through ongoing progress monitoring of the student's performance during an intervention period is used to determine if rate of learning has been met.

This standard is met when the student's learning rate or growth toward target skills is substantially below grade-level peers and, based on progress monitoring data (i.e., charting), a reasonable rate of progress cannot be projected even when the student is provided supplemental intervention instruction of reasonable intensity and duration.

Documentation includes:

- Progress monitoring data collected before, during and after the provision of Targeted instruction and Intensive instruction (suggested minimum nine week period of each); and
- Records indicating specific instruction provided, including frequency and duration (e.g., instructional plan, WVEIS on the Web Interventions Tab, daily lesson plan).

Pattern of Strengths and Weaknesses

In addition to not achieving adequately on age or State-approved grade level achievement standards, a specific learning disability may be confirmed if the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the EC to be relevant to the identification of a specific learning disability, using appropriate assessments.

Documentation includes:

- Formal educational, cognitive and/or medical evaluation reports;
- Formative assessments and progress monitoring data; and
- Functional academic and/or behavioral assessments.

Standard 3- Exclusion Factors

The final standard by which the EC may determine SLD eligibility is the assurance that the student's underachievement is not primarily the result of any of the following:

1. A visual, hearing, or motor disability;
2. Intellectual disability;

3. Behavior/emotional disorder;
4. Cultural factors;
5. Environmental or economic disadvantage; or
6. Limited English proficiency.

Documentation includes:

- Formal educational, cognitive and/or medical evaluation reports;
- Formative assessments and progress monitoring data; and
- Functional academic and/or behavioral assessments.

Validating Underachievement

As in determining all other areas of disability, the EC must ensure that the underachievement of a student suspected of having a specific learning disability is not due to lack of appropriate instruction in English language arts, written expression or mathematics, and the team must consider, as part of the evaluation described in Chapter 3, Section 4, the following factors:

1. Data that demonstrate that prior to or as part of the referral process, the student was provided appropriate instruction in general education settings; and
2. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction (i.e., formative and progress monitoring data), which was provided to the student's parents.

Observation Requirement

The student suspected of having a specific learning disability must be observed in the learning environment, including the general classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The EC must decide to:

1. Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for evaluation; or
2. Have at least one member of the evaluation team conduct an observation of the student's academic performance in the general classroom after the student has been referred for an evaluation and parental consent is obtained.

In the case of a student of less than school age or out of school, a group member must observe the student in an environment appropriate for a student of that age. The purpose of the observation is to document how the academic concern impacts the student's academic performance. The observation must also document the name and title of the observer and the site, date and duration of the observation.

Documentation of Student Response to Multi-Tiered Instruction

A thorough review of the following types of documentation will assist the EC in its eligibility determination. Most of this information is gathered and recorded throughout the natural course of a student's instruction, and intervention and does not necessarily constitute additional paperwork requirements.

- A chronology of the student's educational history (i.e., preschool participation, grade retention, special education services, cumulative attendance)

- Formative/classroom and progress monitoring data (e.g., Phonological Awareness Literacy Screening [PALS], DIBELS graphs, teacher-made curriculum-based measurements [CBMs])
- Specific documentation of the nature and intensity of general classroom instruction that evidences high quality instruction in reading/English language arts and mathematics (e.g., lesson plans)
- Comprehensive documentation of the nature (i.e., group size), frequency and duration of customized instruction results (e.g., instruction plans).
- Additional achievement/performance data (e.g., results of informal classroom assessments, teacher observations, grades, behavior data)
- Formal evaluation reports (e.g., standardized psychological and academic assessments)

Written Report Requirements: SLD Team Report

The SLD Team Report must contain a statement of:

1. Whether the student has a specific learning disability;
2. The basis for making the determination, including an assurance that the determination has been made in accordance with required evaluation procedures specified in Chapter 3, Section 4;
3. The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning; and
4. The educationally relevant medical findings, if any;
5. Whether:
 - a. The student does not achieve adequately for the student's age or to meet state-approved grade-level standards; and
 - b. The student does not make sufficient progress to meet age or state-approved grade-level standards; or
 - c. The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards or intellectual development.
6. The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional/behavioral disorder; cultural factors, environmental or economic disadvantage; or limited English proficiency on the student's achievement level.
7. If the student has been provided Multi-Tiered System of Supports (scientific, research-based instruction):
 - a. The instructional strategies used and the student-centered data collected; and
 - b. The documentation that the student's parents were notified about:
 1. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 2. Strategies for increasing the student's rate of learning; and
 3. The parent's right to request an evaluation at any time throughout the SPL-~~MTSS~~ process.

Dissenting Opinions:

This report must be dated and evaluation team members must certify in writing whether the report reflects each team member's conclusions. If the report does not reflect an individual team member's conclusions that team member must submit a separate statement presenting the member's conclusions.

M. Speech/Language Impairment

Definition: The Individuals with Disabilities Education Act (IDEA) defines a speech or language impairment as a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice

impairment that adversely affects a child's educational performance. (See Appendix for Documentation of Adverse Effects on Educational Performance for Students with Speech-Language Impairments) Communication disorders are also defined in the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5) as follows:

- *Language* includes the form, function and use of a conventional system of symbols (i.e., spoken words, sign language, written words, pictures) in a rule-governed manner for communication.
- *Speech* is the expressive production of sounds and includes an individual's articulation, fluency, voice and resonance quality.
- *Communication* includes any verbal or nonverbal behavior that influences the behavior, ideas or attitude of another individual.
- Assessments of speech-language and communication abilities must take into account the individual's cultural and language context, particularly for individuals growing up in bilingual environments.
- Standardized measures of language development and of nonverbal intellectual capacity must be relevant for the cultural and linguistic group (i.e., tests developed and standardized for one group may not provide appropriate norms for a different group.)

Language Disorder: Diagnostic Criteria

1. Persistent difficulties in the acquisition and use of language across modalities (i.e. spoken, written, sign-language, or other) due to deficits in comprehension or production that include the following:
 - a. Reduced vocabulary (word knowledge and use).
 - b. Limited sentence structure (ability to put words and word ending together to form sentences based on the rules of grammar and morphology).
 - c. Impairments in discourse (ability to use vocabulary and connect sentences to explain or describe a topic or series of events or have a conversation).
2. Onset of symptoms is in the early developmental period.

Eligibility Criteria for Language Disorder

An eligibility committee will determine that a student is eligible for special education and/or related services as a student who has a language disorder when the following criteria are met:

1. Two or more procedures, at least one of which yields a standard score, are used to assess both expressive and receptive modalities.
2. Language - A student with a language disorder exhibits:
 - a. Language abilities which are substantially and quantifiably below those expected for the students' chronological age and cognitive state of development, resulting in functional limitation in effective communication, social participation, academic achievement, or occupational performance, individually or in any combination.
 - b. Norm referenced language tests which yield two subtest or total test scores with the following characteristics: 1.5 or more standard deviations (SD) below the mean, a language quotient/standard score of 78 (mean of 100), a stanine of two and/or a percentile of 8.
 - c. Non-standardized/informal assessment indicates that the student has difficulty understanding and/or expressing ideas and/or concepts to such a degree that it interferes with the student's social/educational progress.
 - d. For a pre-school child to be considered for language intervention, the child's language should be determined to have a negative impact on social-

communicative interactions and one or both of the following characteristics must exist:

- i. Norm referenced language tests which yield two subtest or total test scores with the following characteristics: 1.5 or more standard deviations below the mean, a language quotient/standard score of 78 (mean of 100), a stanine of two and/or a percentile of 8.
 - ii. Non-standardized/informal assessment indicates that the student has difficulty understanding and/or expressing ideas and/or concepts to such a degree that it interferes with the student's social/educational progress.
3. The student's disability adversely affects educational performance.
 4. The student needs special education.
 - a. A communication disorder is not considered the primary disability when the symptoms are attributable to hearing or other impairments that are more appropriately defined under another eligibility category.
 - b. A communication disorder is considered a related service when services are required to assist an eligible student with an exceptionality to benefit from special education.

Speech Sound Disorder: Diagnostic Criteria

1. Persistent difficulty with speech sound production that interferes with speech intelligibility or prevents verbal communication of messages.
2. The difficulties cause limitations in effective communication that interfere with social participation, academic achievement, or occupational performance, individually or in any combination.
3. Onset of symptoms is in the early developmental period.

Eligibility Criteria for Speech Sound Disorder (Articulation/Phonology Disorder)

An eligibility committee will determine that a student is eligible for special education and/or related services as a student who has an articulation/phonology disorder when the following criteria are met:

1. At least two procedures are used to assess the student, one of which is a standardized measure.
2. The student's speech is determined to have a negative impact on academic, social and/or vocational functioning, and one of the following characteristics exists:
 - a. Two or more phonemic errors not expected at the student's current age or developmental level are observed during direct testing and/or conversational speech;
 - b. Two or more phonological processes not expected at the student's current age or developmental level are observed during direct testing and/or in conversational speech;
3. For a preschool student to be considered for articulation/phonology therapy, the student's speech should be determined to have a negative impact on social-communicative interactions and one or both of the following characteristics must exist:
 - a. Multiple phonemic errors that significantly reduce the student's speech intelligibility and are not expected at the student's current age or developmental level are observed during direct testing and/or conversational speech.
 - b. Two or more phonological processes that significantly reduce the student's speech intelligibility and are not expected at the student's current age or developmental level are observed during direct testing and/or in conversational speech;
4. Application of developmental norms from diagnostic tests verifies that speech sounds may not develop without intervention. (See Articulation Development Chart in Appendix).
5. The student's disability adversely affects educational performance.

6. The student needs special education.
 - a. A communication disorder is not considered the primary disability when the symptoms are attributable to hearing or other impairments that are more appropriately defined under another eligibility category.
 - b. A communication disorder is considered a related service when services are required to assist an eligible student with an exceptionality to benefit from special education.

Childhood-Onset Fluency Disorder (Stuttering): Diagnostic Criteria:

1. Disturbances in the normal fluency and time patterning of speech that are inappropriate for the individual's age and language skills, persist overtime and are characterized by frequent and marked occurrences of one (or more) of the following:
 - a. Sound and syllable repetitions.
 - b. Sound prolongations of consonants as well as vowels.
 - c. Broken words (e.g. pauses within a word).
 - d. Audible or silent blocking (filled or unfilled pauses in speech).
 - e. Circumlocutions (word substitutions to avoid problematic words).
 - f. Words produced with an excess of physical tension.
 - g. Monosyllabic whole-word repetitions.
2. The disorder causes anxiety about speaking or limitations in effective communication, social participation, or academic or occupational performance, individually or in any combination.
3. The onset of symptoms is in the early developmental period.

Eligibility Criteria for Childhood-Onset Fluency Disorder:

An eligibility committee will determine that an individual is eligible for special education and/or related services as a student who has a fluency disorder when all of the following criteria are met:

1. The student has a fluency rating of moderate or severe on the Suggested Guidelines for Stuttering Services or Suggested Guidelines for Stuttering Services for Preschool (See Appendix):
2. The student's disability adversely affects educational performance.
3. The student needs special education. (Speech/language therapy can be special education or a related service.)
 - a. A communication disorder is not considered the primary disability when the symptoms are attributable to hearing or other impairments that are more appropriately defined under another eligibility category.
 - b. A communication disorder is considered a related service when services are required to assist an eligible student with an exceptionality to benefit from special education.

Social (Pragmatic) Communication Disorder: Diagnostic Criteria

1. Persistent difficulties in the social use of verbal and nonverbal communication as manifested by all of the following:
 - a. Deficits in using communication for social purposes, such as greeting and sharing information, in a manner that is appropriate for social context.
 - b. Impairment of the ability to change communication to match context or the needs of the listener, such as speaking differently in a classroom than on a playground, talking differently to a child than to an adult and avoiding use of overly formal language.

- c. Difficulties following rules for conversation and storytelling, such as taking turns in conversation, rephrasing when misunderstood and knowing how to use verbal and nonverbal signals to regulate interaction.
 - d. Difficulties understanding what is not explicitly stated (e.g., making inferences) and nonliteral or ambiguous meaning of language (e.g., idioms, humor, metaphors, multiple meanings that depend on the context for interpretation).
2. The onset of symptoms may occur in the early developmental period but deficits may not fully manifest until social communication demands exceed limited capacities.
 3. The symptoms are not attributable to another medical or neurological condition or to low abilities in the domains of word structure and grammar, and are not better explained by autism disorders, intellectual disability (intellectual developmental disorder), global developmental delay, or another mental disorder.

Eligibility Criteria for Social (Pragmatic) Communication Disorder

An eligibility committee will determine that a student is eligible for special education and/or related services as a student who has a Social (Pragmatic) Communication Disorder based on the following:

1. Assessment measures that include norm referenced tests, multiple observations, checklists and structured tasks.
2. Assessment procedures that are contextually based and involve multiple settings and communication partners.
3. Assessment results indicate deficits in functional limitations in effective communication, social participation, social relationships, academic achievement and/or occupational performance, individually or in combination.
4. Social pragmatic communication disorder cannot be diagnosed in the presence of restricted repetitive behaviors, interests, and other activities related to the diagnosis of Autism.
5. The student's disability adversely affects educational performance.
6. The student needs special education.

Voice Disorder: Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:

- Interfere with communication;
- Draw unfavorable attention to the speaker;
- Adversely affect the speaker or listener; or
- Are inappropriate to the age and gender of the speaker.

A voice disorder does not exist when the vocal characteristics of quality, pitch, intensity, or resonance:

- Are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;
- Are the result of regional dialectic or cultural differences or economic disadvantage; or
- Do not interfere with educational or developmental performance.

Eligibility Criteria for Voice Disorder:

An eligibility committee will determine that a student is eligible for special education and/or related services as a student who has a voice disorder (speech impairment) when all of the following criteria are met:

1. The student has a voice production rating of moderate or severe on the Voice Rating Scale for students ages three through twenty-one years. (See Appendix for Voice Rating Scale).
2. The existence or absence of a structural or functional pathology is verified by an otolaryngologist.
3. The student's disability adversely affects educational performance.
4. The student needs special education.

Special Considerations:

1. Cognitive referencing refers to the practice of finding students not eligible for services when their language skills are deemed to be commensurate with their cognitive abilities. IDEA does not require a significant discrepancy between intellectual ability and achievement for a student to be deemed eligible for speech language services. Lack of discrepancy between cognitive level (i.e., mental age) and communication performance (i.e., language age) must not be the sole factor when determining eligibility for a severely speech and language disordered student. Other factors that must be considered are informal evaluation results, physical ability, and educational and therapy history.
2. A student's eligibility for speech and language services cannot be determined on the basis of having a primary language other than English or a language difference. Appropriate evaluation must verify the presence of an impairment in the primary and/or all languages spoken.
3. When verbal communication is not an effective means of communication for the student, the student must receive an Augmentative/Alternative Communication Evaluation to determine the need for an alternative means of communication. All available means of communicating within the student's ability level must be considered. This may include verbal, manual, pictorial or electronic modes of communicating.

N. Traumatic Brain Injury

Definition: Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

Eligibility Criteria for Traumatic Brain Injury

An eligibility committee will determine that a student is eligible for special education services as a student who has a traumatic brain injury when all of the following criteria are met:

1. The student has an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both as diagnosed by a licensed physician.
2. The student's condition adversely affects educational performance.
3. The student needs special education.

Chapter 5

INDIVIDUALIZED EDUCATION PROGRAMS

Special education is defined as specially designed instruction, at no cost to the parent, based on peer-reviewed research to the extent practicable, to meet the unique needs of a student with a disability or giftedness including instruction in the classroom, the home, hospitals, institutions and other settings. The definition of special education also includes instruction in physical education, speech/language therapy, transition services, travel training, assistive technology services and vocational education. Specially designed instruction means adapting the content, methodology or delivery of instruction to:

1. Address the unique needs of the student that result from his or her disability or giftedness; and
2. Ensure access to the general education curriculum so that the student with disabilities can meet the education standards that apply to all students.

The Standards-Based Individualized Education Program (SB-IEP) is a product of collaboration between a parent or adult student and educators who, through full and equal participation, identify the unique needs of a student with a disability or giftedness and plan the special education and related services to meet those needs. It sets forth in writing a commitment of resources necessary to enable the student to receive needed special education and related services. In addition, the IEP is a management tool that is used to ensure that each eligible student is provided special education and related services appropriate to the student's special learning needs. It serves as an evaluation device for use in determining the extent of the student's progress toward meeting the projected outcomes. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether an eligible student is actually receiving the free appropriate public education agreed to by the parents and the school.

Section 1. IEP Initiation

A. Purpose of Meeting

The primary purpose of an IEP Team meeting is to design an IEP that will meet the unique needs of an eligible student. The IEP Team plans the special education and related services designed to provide access to and progress in the general curriculum. The parent or adult student, district personnel and other IEP Team members should come prepared to participate in an open discussion regarding the student's individual needs and how those needs affect the student's mastery of the content standards and objectives. Placement decisions must be considered after the special education services are determined.

Informal or unscheduled conversations involving district personnel on various issues (e.g., teaching methodology, lesson plans or coordination of service provisions) are not considered a meeting as long as no decisions are made regarding issues addressed on the student's IEP. A meeting does not include preparatory activities that district personnel engage in to develop a proposal or a response to a parent or adult student proposal that will be discussed at a later meeting.

B. Team Decision Making

The IEP meeting serves as a communication vehicle between the parent or adult student and district personnel that enables them, as equal participants, to make joint, informed decisions regarding the student's special education services. All members of the IEP Team are expected to work toward consensus regarding the content of the student's IEP to ensure that he or she receives FAPE. Consensus means that all members are in general agreement regarding the IEP content.

If the parent or adult student and other IEP Team members cannot reach consensus regarding an IEP decision, then the district representative on the IEP Team must make the decision and provide PWN of the decision to the parent/adult student at the conclusion of the meeting and prior to implementing the IEP. The parent or adult student may exercise their right to mediation or a due process hearing regarding the decision (Refer to Chapter 11).

West Virginia statute requires that any teacher who disagrees with the IEP Team's decision file a written explanation outlining his/her disagreement or recommendations (West Virginia Code Section §18-20-1c (2)).

C. Scheduling IEP Meetings

An IEP meeting must be convened:

1. To develop an IEP within thirty days of eligibility determination and prior to the initiation of services.
2. To review the IEP periodically, but no longer than 365 days from the date of development of the current IEP. An IEP must be in effect at the beginning of each school year.
3. When another agency fails to deliver transition or other services outlined in the IEP, the IEP Team must reconvene to identify alternative strategies to meet the transition objectives for the child set out in the IEP.
4. Within twenty-one days of a written request by any member including the parent or adult student. However, if the district refuses a parent's or adult student's request to convene a meeting, it must respond to the parent/ adult student within five days of receipt of the request, including provision of prior written notice.
5. Within twenty-one days of receipt of written request by a general education teacher who has responsibility for implementing the IEP in accordance with WV Code §18-20-1c.
6. Within ten school days of any disciplinary removal resulting in a change of placement, the IEP Team must conduct a manifestation determination and if appropriate, complete a functional behavioral assessment and/or develop or review a behavioral intervention plan.

D. IEP Team Membership

The following are required members of the IEP Team:

- **Parent(s)** - This term means a natural, adoptive, or foster parent of a child; a guardian (but not the State if the child is a ward of the State); an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; or an individual assigned to be a surrogate parent.
- Not less than **one general education teacher** of the student, if the student is or may be participating in general education environment (including universal pre-K programs, Head Start). A general education teacher of the student is required to participate in developing the IEP of a student who is, or may be, participating in the general education environment. For preschool – age students, the general education teacher may be the kindergarten teacher or another appropriate designee. Other designees at the preschool level may include a care provider, Head Start teacher or community preschool teacher who meets state and/or national licensing standards. State Code requires the receiving and referring teachers participate in the development of the student's IEP (West Virginia Code §18-20-1c

(2)). Participation may be through attendance at the IEP meeting or by the provision of a classroom teacher report to the IEP Team.

- Not less than **one special education teacher of the student or, when appropriate, special education service provider (e.g., speech language pathologist)**. Generally, this individual will be the student's special education teacher or provider who has primary responsibility for implementing the student's IEP.
- A **representative of the district** who is qualified to provide or supervise the provision of special education, knowledgeable about the general education curriculum and knowledgeable about the availability of resources of the district and has the authority to allocate resources (one of the other members may be so designated if he/she meets these requirements). Examples include the county administrator of special education (CASE), principal, assistant principal or professional special education personnel. For speech only IEP Team members, the speech/language pathologist may serve as the district representative, if the criteria are met.
- An **individual who can interpret the instructional implications of evaluation results** (who may be one of the other members). Examples include special education specialist, audiologist, special educator, speech/language pathologist, related service provider or school psychologist.
- At parent or district discretion, **others with knowledge or special expertise** regarding the child, including related services personnel as appropriate. The determination of having knowledge and expertise regarding the student will be made by the parent or adult student or district personnel who invited the individual to be a member of the IEP Team.
- The **student** when appropriate, but required when the purpose of the meeting is consideration of the postsecondary goals and transition services needed for reaching those goals.
- To the extent appropriate and with parent or adult student consent, a **representative of any participating agency** that is likely to be responsible for providing or paying for transition services. If a representative does not attend, steps must be taken to obtain participation from the agency in transition planning.
- For a child previously served under West Virginia Birth to Three, at the request of the parent, **invite the Part C service coordinator or other representatives of the Part C system** to assist with the smooth transition of services.
- For a student being considered for or currently in a private school placement made by the IEP Team, ensure participation of a **representative of the private school or facility** through attendance at the meeting, or other methods such as conference telephone calls.

The role(s) filled by each IEP Team member will be designated on the IEP form.

A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of a student with a disability and the district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

Members of the IEP Team may be excused from an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

- The parent or adult student and district consent to this in writing.
- The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

School personnel must contact the parent to discuss excusal(s), obtain parent consent, and provide IEP Team Member In-Lieu-of Attendance Report forms to the identified team member(s). Excused team members must submit the In-Lieu of Attendance Reports form to parents and the IEP Team chair between receipt of parent consent for the excusal and the IEP Team meeting.

E. The General Educator's Role in IEP Development

If a student is or may be participating in the general education curriculum or environment, at least one of the student's general education teachers who is, or may be, responsible for implementing any portion of the IEP must participate in developing the IEP.

The general education teacher's role in the development, review and revision of the IEP includes:

- Discussion of the student's involvement and progress in the general education curriculum;
- Determination of appropriate positive behavioral interventions and strategies for the student; and
- Determination of supplementary aids and services, program accommodations, modifications and supports for school personnel.

F. Invitation to IEP Team Meetings

To the extent possible, the district should encourage the consolidation of all IEP Team meetings, including meetings that may involve eligibility, reevaluation and IEP development.

The district must:

1. Schedule and notify the parent of the meeting at a place and time mutually agreed on by the parent or adult student and the district.
2. Take steps to ensure one or both parents attend or have the opportunity to participate.
3. No less than eight days prior to the meeting unless waived by the parent, provide the parent/ adult student written notice of the meeting using the Notice of EC/IEP Team Meeting form, which includes:
 - a. The purpose, time and location of the meeting;
 - b. Who will attend the meeting; and
 - c. Information regarding the parent's or adult student's right to bring other people who have knowledge or special expertise regarding the student to the meeting. For students who were participating in Part C services, this would include their right to invite the Part C coordinator or representative to attend the first IEP meeting.
4. Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP Team, the notice also must:
 - a. Indicate that the purpose of the meeting will be consideration of the post-secondary goals and transition services for the student;
 - b. Indicate that the district will invite the student; and
 - c. Identify any other agency that will be invited to send a representative with the consent of the parent/adult student.
5. Invite the student, if appropriate or required, to attend and participate in his or her IEP Team meeting. If a purpose of the meeting is to consider transition, and the student does not attend, the district must take other steps to ensure that the student's preferences and interests are considered.
6. Take whatever action is necessary to ensure that a parent or adult student understands the proceedings at an IEP Team meeting, including arranging for an interpreter for a parent

or adult student who has a hearing impairment or whose native language is other than English.

7. Document its attempts to arrange a mutually agreed upon time and place for the meeting. Documentation could include records of telephone calls or conversations, copies of correspondence sent to the parent or adult student and any responses received, and detailed records of any visits made to the parent or adult student.
8. If neither parent can attend, provide alternatives to physical meetings such as video and telephone conferencing in the place of physical IEP meetings if the parent or adult student and district agree.
9. If the parent refuses to attend or the district cannot convince the parent to attend, conduct the IEP Team meeting and provide prior written notice of the decisions made.

Section 2. IEP Development

The WVDE provides IEP and special education process forms/templates, including the online IEP, to ensure that all IEPs are developed in compliance with federal and state regulations. Therefore, districts are required to use the WVDE Online IEP in the development of a student's IEP. The IEP requirements are listed below.

A. Student Information

All IEPs must include the required demographic components.

B. Documentation of Attendance

The district must ensure the attendance and participation of the IEP Team members at the IEP meeting. Signatures and positions of team members document attendance.

Team member signatures including parent or adult student do not reflect agreement or disagreement with the IEP, but only indicate attendance.

C. Considerations

In developing each student's IEP, the IEP Team must consider:

1. Strengths of the student;
2. Concerns of the parents for enhancing the education of their child;
3. Results of the initial evaluation or most recent evaluation of the student; and
4. Academic, developmental and functional needs of the student.

The IEP Team must consider the following special factors as applicable and document its consideration in the IEP:

1. For students with giftedness, the IEP Team will consider if acceleration is a focus of gifted service, and if so, its effect on high school graduation;
2. Consider whether the child needs assistive technology devices and services, the type of device and provision for home use, if any;
3. Consider the communication needs of the student;

4. If the student's behavior impedes his or her learning or that of others, the IEP Team will consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
5. If the student has blindness or low vision, the IEP Team will provide for instruction in braille and the use of braille unless the IEP Team determines that braille is not appropriate for the student. This determination can only be made after an evaluation of the student's reading and writing skills, needs and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in braille or the use of braille);
6. In the case of the student who is deaf or hard-of-hearing, the IEP Team will consider the language and communication needs of the student, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, the student's academic level and his or her full range of needs including opportunities for direct instruction in the student's language and communication mode;
7. If the student has limited English proficiency, the IEP Team will consider the language needs of the student as those needs relate to the IEP;
8. Written consent must be obtained to invite agency representative to discuss transition services; and
9. Consider the transition needs of the student.

Accessible Educational Materials Guidance – If the student understands instructional content at grade level, but is unable to read with sufficient accuracy and fluency to support comprehension at the same rate as his/her peers, or cannot physically manipulate the print medium; or due to blindness/low vision cannot see standard print materials, please refer to the Accessible Educational Materials guidance documents on the WVDE website.

D. Present Levels of Academic Achievement and Functional Performance

Using the information considered in Part C., the IEP Team identifies and develops statements of present levels of academic achievement and functional performance and measurable annual goals that enable school personnel to track the effectiveness of services and to accurately report progress toward goals.

Statements of present levels of academic achievement and functional performance must document:

1. How a school-age student's disability or giftedness affects his or her involvement and progress in the general education curriculum, i.e., the same curriculum used by students without disabilities (West Virginia CCRS); or
2. How a preschool student's disability affects his or her involvement and progress in the West Virginia Early Learning Standards Framework and how the disability affects the student's participation in appropriate activities.

Although the content of present levels of academic achievement and functional performance statements is different for each student, each statement must:

1. Be written in objective, measurable terms and easy-to-understand non-technical language;
2. Establish a basis for the other components of the IEP;
3. Provide a starting point for annual goal development; and
4. Articulate the gaps between the student's grade level expectations (CCRS) and his or her demonstrated performance.

E. Goals and/or Objectives

Measurable academic and functional annual goals must be related to the needs described in the present levels of academic achievement and performance statements. Specifically, annual goals must be written to:

1. Include a measurable statement that describes what a student is reasonably expected to accomplish from the special education program within the time period covered by the IEP, generally one year.
2. Enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability or giftedness.
3. Include the timeframe, condition, behavior and the evaluation procedure with performance criteria.

If the student who is deaf or hard of hearing does not demonstrate progress in expressive or receptive language skills as measured through an appropriate assessment tool, the IEP Team must explain the reasons for the lack of progress in meeting the language milestones or progressing towards them and recommend specific strategies, services and programs that will track the child's success towards English literacy.

For students taking the statewide alternate accountability assessment based on alternate academic achievement standards, each goal must have at least two objectives. Objectives must include a statement of how far the student is expected to progress toward the annual goal and by what date.

The IEP Team has the discretion to use objectives for any student eligible for IEP services.

For purposes of determining the need for extended school year services, for each student with a disability, the IEP Team must identify at least one critical skill area that is needed for the student to maintain levels of performance. A critical skill is denoted by marking an annual goal or short term objective with an asterisk.

The IEP must include a statement describing how the student's progress toward IEP goals will be measured and when the parent or adult student will be informed of the student's progress toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards).

F. Transition Services

Secondary transition services are defined as a coordinated set of activities for a student with an exceptionality that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The activities include instruction, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a provision of functional vocational evaluation. These activities are based on the individual student's needs, taking into account the student's preferences and interests.

Beginning with the first IEP to be in effect when a student is sixteen years old (or sooner at the discretion of the IEP Team), the IEP must include:

1. Appropriate, measurable postsecondary goals related to independent living skills, if needed;
2. Appropriate measurable postsecondary goals based upon age-appropriate transition assessment related to training, education and employment; and
3. Transition services (including courses of study) needed to assist the student in reaching postsecondary goals identified on the IEP.
4. Pre-employment Transition Services (Pre-ETS) which may include services provided by schools and by the Division of Rehabilitation Services that include:
 - Job exploration
 - Work-based learning
 - Counseling for transition & post-secondary programs
 - Workplace readiness training
 - Self-advocacy training

Districts must begin developing IEPs including secondary transition services with the first IEP in accordance with the timelines listed below:

- Student is fifteen years old by July 1, 2018
- Student is fourteen years old by July 1, 2019

The goals and transition services must be updated on the IEP annually.

Not later than the student's 17th birthday, the IEP must include a statement that the student has been informed whether or not special education rights will transfer to the student on his or her 18th birthday. Special education rights will transfer from the parent to the student when the student turns eighteen years old unless the parent has obtained legal guardianship.

G. Statement of Special Education and Related Services

Each student's IEP must describe the special education and related services, supplementary aids and services, based on peer-reviewed research to the extent practicable, and program modifications or supports for school personnel that will be provided to or on behalf of the student to enable the student to:

- Advance appropriately toward attaining the annual goals;
 - Be involved in and make progress in the general education curriculum;
 - Have an equitable opportunity to participate in extracurricular and other nonacademic activities; and
 - Be educated and participate with other students with and without disabilities.

The description of services in the IEP must identify:

1. Supplementary aids and services and program accommodations, modifications and supports for school personnel. Supplementary aids and services means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students in need of special education services to be educated with students without exceptionalities to the maximum extent

appropriate in accordance with LRE requirements. These services must be considered prior to removing a student from the general education classroom.

The determination of which supplementary aids and services are appropriate for a particular student must be made on an individual basis. Supplementary aids and services are any material/curricular/human resource or assistance, beyond what is normally afforded students without exceptionalities, provided to support a student with an exceptionality's placement. Supplementary aids may include, but are not limited to, large print books, positive behavioral interventions, assistive technology devices, auditory trainers, curriculum accommodations, services and other supports that are provided in general education classes or other education related settings to enable students in need of special education services to be educated with students without exceptionalities to the maximum extent appropriate. Supplementary services may include, but are not limited to direct instruction, peer tutoring and note taking.

An accommodation can be a device, practice, intervention, or procedure provided to a student with a disability that affords equal access to instruction or assessment. Accommodations do not change the content of the general education curriculum, nor reduce learning or achievement expectations, but allow students with disabilities access to the curriculum through technology, universal design for learning (UDL), differentiated instruction (DI), cognitive strategies instruction and scaffolding.

Modifications are changes in educational expectations for the student. These include actual changes in the general education curriculum and instruction or the use of an alternative or supplemental curriculum. Examples include mastery of essential concepts, acceleration, different test questions and material at a different reading level.

Supports for school personnel may include, but are not limited to, additional training in the use of assistive technology, specific instructional strategies or the use of technology; other professional development activities such as mentoring or coaching; and assistance in planning lessons using differentiated instruction.

2. Special Education Services

Special education services include specially designed instruction to meet the unique needs of the student. Special education services are those necessary to enable the student to achieve the annual goals, make progress in the general education curriculum and participate in extracurricular and other non-academic activities. Special education services document the goal area requiring specially designed instruction, e.g., English/Language Arts, Math, Behavior or Fine Motor Skills. Special education services are either direct or indirect. Direct services are instruction, therapies or interventions provided one-on-one or in groups to an eligible student in the general education classroom or in a special education school environment, home or community. Indirect services are services provided by a special education teacher or provider to the student's teacher(s) to directly benefit the student. Examples of indirect instruction are designing instructional materials or monitoring behavior management plans.

3. Related Services

The term "related services" refers to transportation and such developmental, corrective and other supportive services required to assist an eligible student to benefit from special education as described in the IEP. These services include, but are not limited to:

- Assistive technology

- Audiology
- Speech-language therapy
- Interpreting services
- Psychological services
- Physical therapy
- Occupational therapy
- Therapeutic recreation
- Counseling services
- Early identification and assessment of students' exceptionalities
- Rehabilitation counseling services
- Orientation and mobility services
- Medical services for diagnostic or evaluative purposes
- School nurse services
- Social work services in school
- Supports for school staff
- Parent counseling and training. Parent counseling and training includes helping a parent understand child development and the special needs of his or her child and acquire skills to support the implementation of his or her child's IEP.
- Transportation

This list of related services is not exhaustive and may include other developmental, corrective, supportive services or transition services. EXCEPTION: The term does not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device or the replacement of such device.

Although services may be of benefit to a student with an exceptionality, all of the services listed above may not be required for each individual student. Related services are the responsibility of the district only if the IEP Team determines they are required to assist the student to benefit from special education. Further, the student is not entitled to related services if:

- a. He or she does not need special education, or
- b. The parent or adult student does not consent to special education services.

Location, Extent/Frequency and Duration

For each service identified, the IEP must:

1. State the location where services and modifications will be provided. For supplementary aids, services or modifications, state the specific location, i.e., math classroom or community. For special education and related services, indicate the location as special education environment (SEE) or general education environment (GEE).
2. List the anticipated extent/frequency. A specific quantitative amount of time (e.g., minutes per week or month) or a specific description of the instructional/environmental circumstances (e.g., accelerated learning or pre-teaching provided prior to the introduction of new content) is required. Specifying a range is only acceptable if the IEP Team determines that it is necessary to meet the unique needs of the student. A range may not be used because of personnel shortages or uncertainty regarding the availability of staff or services.

3. State the date services will be initiated, in consideration of PWN requirements, and the expected duration of the services and modifications.

H. Extended School Year (ESY) Services

Determination of Services

For students with disabilities, the IEP Team must annually determine and document a student's need for ESY services. Students entitled to ESY services are those who require special education and related services in excess of the regular school year to maintain identified critical skills as described in the current IEP. The IEP Team in making its determination of a student's need for ESY must review documentation that the student exhibits, or may exhibit:

1. Significant regression during an interruption in educational programming;
2. A limited ability to recoup, or relearn skills once programming has resumed;
3. Regression/recoupment problem(s) that interfere with the maintenance of identified critical skills as described in the current IEP; and
4. Other factors that interfere with the maintenance of identified critical skills as described in the current IEP, such as predictive data; degree of progress; emerging skills and breakthrough opportunities; interfering behaviors; nature and/or severity of the disability; and special circumstances.

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

Documentation of Services

The type and length of the services the student requires is determined on an individual basis by the IEP Team. ESY services must consist of activities developed to maintain critical skills identified on the IEP developed for the academic year. The IEP Team must document the duration, number of hours per week and physical location of the special education and related services to be delivered.

Services

ESY services may not be limited to a particular category of disability or be unilaterally limited in the type, amount or duration of those services and must be provided at no cost to the parent. The district must annually inform parents of students with disabilities of the availability of ESY services and of procedures and criteria for determining a student's need for ESY services, and of their right to refuse ESY services.

I. Statewide and District-wide Achievement Testing

Students with disabilities participate at the grade level at which they are enrolled in all components of the West Virginia Measures of Academic Progress under standard conditions or with accommodations based upon the criteria in either regular or alternate accountability assessments. These have been designed to allow a variety of test administration options in presentation, response, setting or timing/scheduling within Standard Conditions for All Students. The allowable testing accommodations

are defined in the *West Virginia Guidelines for Participation in State Assessments* and the test administration manuals.

Role of the Individualized Education Program (IEP) Team

The IEP Team determines how the student participates in the West Virginia Measures of Academic Progress, including whether the student takes the General Summative Assessment or meets the criteria for participation in the

WV Alternate Assessment and whether the student needs allowable accommodations to be assessed appropriately. The testing conditions and accommodations, as appropriate, are documented in the student's IEP and WVEIS Special Education Student Information Record.

The parent, and the student if appropriate, must be involved in and informed of decisions regarding assessment participation. The implications of the decisions must be carefully explained to the parent and the student.

The IEP must specify how the student will participate in all the applicable assessments:

- Standard conditions for all students; or
- With accommodations - specific and acceptable accommodations as defined in the *West Virginia Guidelines for Participation in State Assessments*, if needed for appropriate assessment of the student, must be listed in the IEP and the test/subtest to which each applies; or
- Student meets criteria for WV Alternate Assessment and why the student cannot participate in the regular assessment.

When the student participates in the regular accountability assessment the student will also participate in the other components of the West Virginia Measures of Academic Progress. Accommodations needed for any statewide standardized accountability assessment or district assessment tests, must be specified on the IEP and be acceptable accommodations. Accommodations indicated in the IEP must be provided and documented during test administration to verify appropriate assessment accommodations were implemented.

J. Least Restrictive Environment Considerations and Placement Decisions

Least Restrictive Environment (LRE)

An eligible student must be educated with general education students in the general education classroom to the maximum extent appropriate. Removal from the general education environment occurs only when the nature or severity of the exceptionality is such that education in general classes and other settings with general education students cannot be achieved satisfactorily even with the use of supplementary aids and services. This requirement is known as the LRE. An appropriate LRE is one that enables the student to receive IEP services and make reasonable gains toward goals identified in an IEP.

In determining an appropriate placement in the LRE, the IEP Team begins with the general education environment with supplementary aids and services. If the student's IEP cannot be implemented in that environment with an expectation of reasonable progress on and achievement of IEP goals, a placement on the continuum of placement options providing less education with students without disabilities may be considered. An eligible student is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and modifications to the general education curriculum.

The IEP must explain the extent, if any, to which the student will **not** participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities and indicate the percentage of time in general and special education.

Participation in Nonacademic and Extracurricular Services and Activities: The IEP Team determines the supplementary aids and services appropriate and necessary for the student to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include, but are not limited to, meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development and assistance in making outside employment available.

The IEP Team must consider the following when determining the LRE in which the IEP can be implemented:

1. **LRE:** A student receiving special education services is to be educated with age-appropriate non-exceptional peers to the maximum extent appropriate based on the IEP. The LRE decision focuses on with whom the student is educated rather than where the student is educated. This provision includes students placed in public or private institutions or other care facilities.
2. **Basis of Placement:** Placement decisions are made individually for each student. The 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 or the availability of placement options, services, staff or space.
3. **When to Make and Review Placement Decisions:**
 - a. Placement decisions for a student are made after all sections of the IEP, except the educational environment section, have been completed.
 - b. Placement is determined at least annually by the IEP Team.
4. **Neighborhood School:** A student with a disability must be enrolled in the school he or she would attend if not disabled, unless the IEP requires another location. If the student cannot be educated in the neighborhood school, the student must be provided an educational program as close to the student's home as possible.
5. **Similar-age Peers:** In considering a setting outside the general education environment, the IEP Team must determine placement in environments, including classrooms and schools, with similar-age peers.
6. **Harmful Effects of Placement:** Consideration must be given to any potentially harmful effects of the placement on the student or on the quality of services
7. **Array of Services and a Continuum of Placement Options:** The IEP Team must consider an array of services and a continuum of placement options to meet the individual needs of each student. The continuum of placement options includes those options listed in this section for students ages six through twenty-one and students ages 3 through 5.

Placement Decisions

In determining an appropriate placement for a student with an exceptionality in the LRE, the IEP Team must consider the student's needs and the services required to meet those needs. The continuum of services for school-age and preschool students is described below. Regardless of placement, the student must be given access to the general education curriculum unless the IEP Team determines it to be inappropriate.

Placement Options for Students Ages Six Through Twenty-one

Educational time spent in age-appropriate community-based settings that include individuals with and without disabilities, such as college campuses or vocational sites, should be counted as time spent inside the general education classroom.

General Education: Full-Time - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for 80% or more of the school day. This may include students placed in:

- General education class with special education/related services provided within general education class;
- General education class with instruction within the general education class and with special education/related services provided outside the general education class; or
- General education class with special education services provided in a resource room.

General Education: Part-Time - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for no more than 79% of the school day and no less than 40% of the school day. This may include students placed in:

- Resource rooms with special education/related services provided within the resource room; or
- Resource rooms with part-time instruction in a general education class.

Special Education: Separate Class - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for less than 40% of the school day. This may include students placed in:

- Separate special classrooms with part-time instruction in a general education class; or
- Separate special classrooms with full-time special education instruction on a regular school campus.

Special Education: Special School - The student's specially designed instruction and related services are delivered in public or private separate day school facilities. This includes students receiving special education and related services, at public expense, for greater than 50% of the school day in public or private separate schools. This may include students placed in:

- Public and private day schools for students with disabilities;
- Public and private day schools for students with disabilities for a portion of the school day (greater than 50%) and in regular school buildings for the remainder of the school day; or
- Public and private residential facilities if the student does not live at the facility.

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

- A non-school environment, such as a public library, group home or mental health center;
- A medical treatment facility/hospital; or
- The home.

Special Education: Residential Facility - The student's specially designed instruction and related services are delivered in a facility which provides twenty-four hour care and supervision. This includes students with disabilities who received education programs and lived in public or private residential facilities during the school week, including students receiving special education and related services, at public expense, for greater than 50% of the school day in public or private residential facilities. This may include students placed in:

- Public and private residential schools for students with disabilities; or
- Public and private residential schools for students with disabilities for a portion of the school day (greater than 50%) and in separate day schools or regular school buildings for the remainder of the day.

This does not include students who received education programs at the facility, but do not live there.

Special Education: Parentally-Placed in Private School – The student who is enrolled by his or her parents or guardians in regular parochial or other private schools, whose basic education is paid through private resources, and whose specially designed instruction and related services, at public expense, are provided by the district under a service plan. This does not include students who are placed in private schools by the district.

Special Education: Correctional Facilities - The student's specially designed instruction and related services are delivered in correctional facilities. This includes all students receiving special education in:

- Short-term detention facilities (community-based or residential), or
- Correctional facilities.

Placement Options for Students Ages Three Through Five

Regular Early Childhood Program – The student is attending a regular early childhood program and receives specially designed instruction either in the regular early childhood environment or in another community setting. The early childhood programs include at least 50% students without disabilities and include, but are not limited to:

- Head Start;
- Kindergarten;
- reverse mainstream classrooms;
- private preschools;
- preschool classes offered to an eligible pre-kindergarten population by the public school system; and
- group child care.

The educational environment categories within regular early childhood setting include:

1. The child attends a Regular Early Childhood Program at least 10 hours per week AND is receiving the majority of hours (at least 50%) of special education and related services in the Regular Early Childhood Program.
2. The child attends a Regular Early Childhood Program at least 10 hours per week AND the child is receiving the majority of hours of special education and related services in some other location.
3. The child attends a Regular Early Childhood Program less than 10 hours per week AND the child is receiving the majority of hours (50% or more) of special education and related services in the Regular Early Childhood Program.
4. The child attends a Regular Early Childhood Program less than 10 hours per week AND the child is receiving the majority of hours (greater than 50%) of special education and related services in some other location.

Special Education Program – Special education programs include, but are not limited to, special education and related services provided in:

1. Special education classrooms: The student attends a program in a class that includes less than 50% students without disabilities and receives no services in an early childhood setting. This includes classrooms in:
 - a. Regular school buildings;
 - b. Child care facilities;
 - c. Hospital facilities on an outpatient basis; and
 - d. Other community – based settings.
2. Separate schools: Students who receive education programs in public or private day schools designed specifically for children with disabilities and do not attend an early childhood program.
3. Residential facilities: Students who receive education programs in publicly or privately operated residential schools or residential medical facilities on an inpatient basis and do not attend a early childhood program.

Home – The student receives some special education and related services in the principal residence of the student’s family or caregivers, and receives no services in an early childhood setting or in a special education setting. The student may receive some services in a service provider location. The term caregiver includes babysitters.

Service Provider Location – The student receives **all** of their special education and related services from a service provider, does not attend an early childhood program or a special education program and does not receive services in the home. Examples of service provider locations include, but are not limited to:

- Private clinicians’ offices;
- Clinicians’ offices located in school buildings,
- Hospital facilities on an outpatient basis, and
- Libraries and other public locations.

K. Consent for Initial Placement and Revoking Consent

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.

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. The revocation of consent rule applies to revocation of all special education and related services. Consent cannot be revoked for a particular service. 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 all related services will cease.

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:

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.
2. Neither mediation nor a due process complaint may be used to attempt to obtain agreement or ruling that services be provided.

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
4. The district will not be required to convene an IEP meeting or develop an IEP for the student.

Additionally when consent for continued provision of special education and related services is revoked after the student has initially been provided services:

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.
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.
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.

L. Parent or Adult Student Disagreement

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.

M. Following the Meeting

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. Prior to the initiation of services, the district must ensure that the student's IEP is accessible to each service provider who is responsible for its implementation, including but not limited to each general education teacher (including teachers of music, musical education, art and driver education), special education teacher, related service provider and other providers. In addition, each teacher and provider must be informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications and supports that must be provided for the student in accordance with the IEP. Teachers in whose class or program a student with exceptional needs is enrolled must participate in the meeting to develop the student's IEP, or read and sign a copy of the student's individualized education program acknowledging that he or she has read and understands it and make modifications for the student, if needed or identified, to help the student succeed in the class or program as specified in WV Code §18-20-1c.

Section 3. IEP Reviews

A. Annual Reviews

Each student's IEP must be reviewed at least annually, once every 365 days. Meetings may be held any time throughout the school year, as long as the IEP is reviewed annually and is in effect at the beginning of each school year. Either at or after the annual review, written notice that the new IEP changes will be implemented must be provided to the parent/ adult student.

The IEP review includes the following purposes:

1. To determine whether the student's annual goals have been achieved;

2. To revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. To consider whether a reevaluation is necessary or to address the results of reevaluation;
4. To address information about the student provided to, or by, the parent or adult student; and
5. To address the student's anticipated needs.

B. IEP Amendments

In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent/adult student and the district may agree, in writing, not to convene an IEP meeting for the purposes of making such changes, and instead, may develop a written document to amend the student's current IEP. Districts must document the changes made to the IEP on the IEP Amendment Form and provide a copy to the parents. The changes made during the amendment process must be incorporated into the Online IEP. The parent/adult student may request a copy of the revised IEP with the amendment incorporated. The annual review date remains the date of the original Online IEP. In accordance with WV Code §18-20-1c, each service provider impacted by the changes must read and sign a copy of the student's IEP.

C. Other IEP Reviews

If the parent/adult student believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP Team meeting. The district will grant any reasonable request for such a meeting. If the district refuses to convene an IEP meeting requested by the parent or adult student, the district must provide PWN to the parent/adult student, including an explanation of why the district has determined the meeting is unnecessary.

If any other member of the IEP Team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP Team meeting.

Section 4. IEPs for Transfer Students

A. Transfer from a West Virginia School District

When a student with a current WV IEP transfers school districts within the same school year, and enrolls in a new school, the district must make reasonable efforts to consult with the parent within two school days of initial enrollment and to initiate FAPE for the student within one school day of the parent consultation. FAPE includes services comparable to those described in the previously held IEP. Within ten school days of the parent or adult student consultation, the district must adopt the previously held IEP or develop and implement a new IEP.

B. Transfer from an Out-of-State District

When a student with a disability transfers from out of state to a West Virginia school district within the same school year, and enrolls in a new school, and had an IEP that was in effect in that other state, the district must make reasonable efforts to consult with the parent within two school days of initial enrollment and to initiate FAPE for the student within one school day of the parent consultation. FAPE includes services comparable to those described in the previously held IEP, in consultation with the parent or adult student, the district temporarily adopts the previously held IEP until such time as the district conducts an evaluation, if necessary, determines eligibility and develops and implements a new IEP, if appropriate.

Within two school days of enrollment, the receiving district must request records and supporting documents and any other records related to the provision of special education and related services from the sending district. If the district decides an evaluation is necessary to determine the transfer student's eligibility under West Virginia eligibility criteria, the district must conduct the evaluation using the requirements and timelines for initial evaluation, including obtaining parental consent.

C. Transmittal of Records

The district in which the student was previously enrolled must take reasonable steps to respond within one school day to the request for records from the new/receiving district. This includes schools administered by the Office of Diversion and Transition Programs (ODTP) and the West Virginia Schools for the Deaf and Blind. Parent consent is not required when transmitting records to a district in which the student seeks or intends to enroll.

Section 5. IEPs for Children from the West Virginia Birth to Three Program

A. Transition Planning for Children from WV Birth to Three

The district should develop and have in effect an interagency agreement with the WV DHHR the lead agency for the West Virginia Birth to Three Program under Part C of the IDEA 2004. The agreement will outline the obligations of each agency to ensure a smooth and effective transition of children assisted under Part C WV Birth to Three to programs serving students with developmental delays under Part B county boards of education. All county boards of education are required to develop WV Birth to Three - Part C to B transition procedures in accordance with IDEA.

In the case of a child who may be eligible for services because of developmental delays, the district will participate in a transition planning conference with the family that is arranged by the DHHR. With the family's agreement, the conference will be conducted at least ninety days and no more than nine months prior to the child's third birthday to discuss eligibility requirements under Part B of the IDEA 2004 and any services the child may receive.

The WV Birth to Three has the responsibility to:

1. Review the child's program options for the period from the child's third birthday through the remainder of the school year; and
2. Establish a transition plan that includes steps to support the transition of the toddler with a disability to preschool services. The interagency agreement/Transition procedures from Part C to B must outline the district's participation in this process.

B. IEP or Individual Family Service Plan (IFSP) Required

A child three through five year old who is eligible as a student with developmental delays must have an IEP implemented by his or her third birthday. If a child's third birthday occurs during the summer, the IEP Team must determine the date when services under the IEP will occur. At the discretion of the district, the IEP Team will consider an IFSP, which may be used in place of an IEP, if the child's parent is provided with a detailed explanation of the differences between an IFSP and an IEP and if written parental consent to use the IFSP is obtained. An IFSP may be used in place of an IEP and must be developed in accordance with Part B policies and procedures. The district is not required to develop an IFSP instead of an IEP. The district is required to implement only the educational components of the IFSP, if one is used.

C. Consent and Notice Requirements

1. Initial Provision of Special Education: Regardless of whether a district gains consent to evaluate or does not need to evaluate, when a student with a disability transitions from a Part C program, parental consent for the initial provision of special education and related services in a Part B program and written notice of the proposed IEP or IFSP are required. Eligibility and initial placement must be documented for Part B services.
2. Release of Information: The district must obtain written parental consent for the release of information to obtain pertinent student records from non-educational agencies such as DHHR developmental disabilities programs, medical providers, day-care centers and Head Start.
3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility and the student's present levels of performance, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier to Part C). Otherwise, only written notice to inform the parent of the district's decision to use the current evaluation data and not to conduct any further assessments must be provided to the parent. The parent must also be informed of his or her right to request additional assessments.

D. Part C to B Transition Timelines Considerations:

The timelines for transition from WV Birth to Three to the local school district will not apply to a district if one of the following is documented:

1. The parent repeatedly fails or refuses to produce the student for an evaluation or otherwise interrupts the evaluation process;
2. the child transferred/moved out of district;
3. The delay was due to exceptional family circumstances including, but not limited to: the family rescheduling or canceling the IEP meeting due to sickness or unavailability of the parent and/or child; and extreme weather conditions or a natural disaster where the length of the delay in conducting the meeting is directly proportional to the duration and severity of the disruption caused by the extreme weather conditions or natural disaster; or
4. The child was referred to WV Birth to Three less than 90 days before the third birthday. When the child is referred to Part B by WV Birth to Three less than 90 days before the third birthday, the evaluation must be completed within 80 days of parent consent, even if the timeline exceeds the third birthdate. Every effort should be made to complete evaluation, eligibility and the IEP, if applicable, by the third birthdate.

E. Child's Status During Due Process Hearing Proceedings

Following the development of an IEP or an IFSP, if an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot "stay put" in Part C when he or she is over the age of three. With written consent of the parent, the child must be placed in the public school until completion of all the hearing proceedings. If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.

F. Procedural Safeguards Notice

A copy of the Procedural Safeguards Notice must be made available to the parent/ adult student only one time a year except that a copy will also be given upon:

1. Initial referral or parental request for evaluation;
2. The first occurrence of the filing of a due process or state complaint;
3. Issuance of a disciplinary notice of suspension or expulsion resulting in a change of placement; and
4. The request of a parent/adult student.

It is recommended that the Procedural Safeguards Notice be given at the annual IEP meeting.

Section 6. Students with Disabilities in Adult Prisons

The following are exceptions for students with disabilities who are convicted as adults under West Virginia law and incarcerated in adult prisons:

1. The student will not participate in statewide assessments.
2. Transition planning and services do not apply if the student will remain in prison beyond his or her 21st birthday.

The IEP Team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

Chapter 6

ADMINISTRATION OF SERVICES

Each district must provide the special education and related services necessary to implement each student's IEP. The federal Education Department General Accounting Rules (34CFR§ 76.731) requires districts to maintain records to show compliance with the IEP.

Section 1. Initiation of Services

A complete IEP must be in effect prior to the provision of special education and related services. For initial IEPs, services must be implemented as soon as possible. Short delays in the immediate initiation of services may occur when IEP Team meetings are held during the summer or a vacation period, or when arrangements for services, such as transportation, must be made. A short delay during the school year should not exceed fifteen days. If the IEP Team determines the student needs extended school year and/or other services during the summer, these services must be provided, otherwise the implementation of the IEP will begin in the fall.

For a preschool student, the IEP must be in effect by the third birthday. If a child's third birthday occurs during the summer the IEP Team must meet to complete the IEP prior to the third birthday and to determine the date when services will be initiated. If the IEP Team determines the child needs extended school year and/or other services during the summer, these services must be provided once the child turns three years of age, otherwise the implementation of the IEP will begin in the fall.

A current IEP must be in effect at the beginning of each school year for each student receiving special education and related services. For a student transferring from another district or state, and in consultation with the parent/adult student, the district must initiate special education services comparable to those provided by the previous district until the current IEP is adopted or revised as specified in Chapter 5, Section 4, IEPs for Transfer Students.

Section 2. Provision of IEP Information

The student's IEP must be accessible to each general education teacher, special education teacher, related service provider and others responsible for its implementation. Each teacher and provider must be informed of his or her specific responsibilities related to implementing the student's IEP.

According to West Virginia State Code, the general education teacher is entitled to a signed copy of the IEP for the student prior to the placement of the student into the general education classroom when the student's IEP requires an adjustment in either the curriculum, instruction or service to be provided by the classroom teacher including modifications and supports that must be provided for the student in accordance with the IEP.

Section 3. Provision of Services

The district must provide:

- A continuum of service options in order to respond to the intensity and severity of students needs;
- Services in school facilities that serve age-appropriate non-exceptional peers;
- Classrooms for eligible school age students with exceptionalities in close proximity to classrooms for age-appropriate non-exceptional peers;
- Classrooms for eligible students with exceptionalities that are adequate and comparable to the classrooms for students without exceptionalities;

- Classrooms/facilities for eligible students who are exceptional and have physical and/or sensory impairments that are in compliance, to the extent necessary, with the requirements of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the specifications outlined in West Virginia Code, Chapter 18, Article 10F, the current Uniform Federal Accessibility Standards and WV State Board of Education Policy 6200;
- Transportation, specially designed if necessary, for all students with exceptionalities in accordance with West Virginia Code §18-5-13 and State Board of Education policies governing transportation;
- Appropriate grouping of students with exceptionalities for specially designed instruction based upon meeting the students' similar social, functional and/or academic needs, as specified in their IEPs and without regard to identified exceptionality;
- The opportunity for students with disabilities to earn the required credits for graduation;
- Daily monitoring of hearing aids or the external component of a surgically implanted devices worn by students in schools in accordance with established procedures to assure they are functioning properly;
- Assistive technology devices or assistive technology services, or both, to a student with a disability if required as part of the student's special education, related services or supplemental services;
- On a case-by-case basis, school-purchased assistive technology devices are located in a student's home or in other settings if the student's IEP Team determines that the child needs access to those devices in order to receive FAPE; and
- Services for young children in the least restrictive environment which includes utilizing approved participating partners in WV Pre-K. The socioeconomic level, ability and/or funding streams should not be viewed as deterrents to providing fully inclusive programs.

Section 4. Provision of Staff

A. Personnel

Each district must provide personnel as defined in West Virginia Board of Education Policy 5202 and set forth in the Every Student Succeeds Act (ESSA, 2016) and IDEA 2004 who are appropriately trained for the area(s) of exceptionality in which they have primary responsibility and adequate in number to implement the IEP of each eligible student in the district. Service personnel must be appropriately trained and supervised by qualified professionals.

As required by West Virginia Code §18-20-1c, an IEP may specify training for general education teachers to assist them in implementing the IEP goals and objectives. This training may be provided through individual consultation or formal professional development and must be provided by persons trained or certified to address the student's exceptional needs. In addition, general education teachers are entitled to training regarding the integrated classroom program and additional individualized training developed by the district, if requested, to prepare the teacher to meet the exceptional needs of individual students. Whenever possible, this training must be provided prior to placement. Where prior consultation or training is not possible, it must be provided no later than ten days following the placement of the student into the general education classroom. Unavoidable delays in the provision of training must not result in the exclusion of a student from any class.

B. Adequate Staff

It is the responsibility of the district to provide adequate staff to implement the IEP of each student. The number of students served in an instructional period and the assignment of paraprofessionals/aides must be determined based on the intensity of services required by the students. Teachers' class lists and student schedules must be developed and monitored to ensure the implementation of IEP services. While highly qualified teachers and licensed therapists must design and provide initial or original instruction, support personnel can provide reinforcement and practice of previously taught skills or content. Additionally, support personnel may be required to provide assistance to students in response to specific needs related to:

- Significant cognitive and/or sensory impairments;
- Communication;
- Safety;
- Mobility;
- Personal care;
- Behavior;
- Medical/health; or
- Other unique circumstances.

Additional considerations when making staffing determinations include:

- Planning time;
- Data collection, observation, assessment and report preparation;
- Consultation and IEP planning with general educators;
- IEP management;
- IEP Team meetings and meetings with parent(s);
- Age of the students because younger children require more assistance with personal tasks such as toileting, dressing and feeding; and
- Travel time for itinerant personnel.

Staffing for Case Management/Procedural Accountability

To ensure the provision of FAPE and adherence to procedural requirements, professional special education personnel may be assigned a group of students for whom they not only provide direct/indirect special education services but also for whom they provide specific case management/procedural accountability duties such as sending parent notices, scheduling IEP meetings, reporting progress to parents, coordinating services, tracking timelines and managing paperwork. The maximum number of students assigned to service providers is as follows:

Maximum Limits for Case Management Assignments	
Teachers of students with Developmental Delays ages 3-5	20 students with IEPs
Teachers of the Gifted	45
Speech Therapists	50
Teachers of all other Exceptionalities	30/See Class Size Requirement for Instructional Period

These are maximum limits within which the school/district administrator, in consideration of the teacher's schedule and overall responsibilities, must determine the number of students assigned to specific teachers or providers.

Class Size Requirements for Instructional Period

General educators and special educators, including speech language pathologists, work together to provide appropriate instruction for students with disabilities in all instructional environments. A general or special educator may provide direct instruction with the colleague educator providing consultation or modification of materials. Shared instructional models may be implemented or students may work at stations developed or directed by general and/or special educators. The special educator should meet with the general educator on a consistent basis to provide support to the students and the general educator.

All WV Pre-K classrooms (including special education) should to the extent practicable reflect the natural proportions of students with disabilities to those without disabilities within the school or community, but with no more than ten students with disabilities per session. Pre-K classrooms are limited to no more than twenty students per session. Pre-K special education classrooms require at least one aide regardless of the number of students being served. The provision of additional support staff is determined based on student needs and the IEP. The teacher-child ratios for Policy 2419 and 2525 are maximum requirements. This means a local board of education may enroll a smaller number of children in the classroom, if needed. Additionally, all Universal Pre-K classrooms (including special education) must provide a minimum of thirty-five square feet per child of usable indoor space for daily program activities. This requirement may limit the number of children per classroom.

Integrated classrooms – Integration occurs in general education when students with exceptional needs are provided required accommodations (supplementary aids and services). Students with exceptionalities whose individualized education programs require an adjustment in either instruction or service to be provided by the general classroom teacher must approximate natural proportions. When integrated classrooms are established in the four core academic subjects, i.e. English/language arts, science, social studies and math special education students requiring accommodations must not exceed 30% of the total class enrollment.

Co-Taught classrooms – Co-teaching is defined as two or more professionals delivering substantive instruction to a diverse or blended group of students in a single physical space. For co-taught classrooms where instructional responsibilities are shared between the special and general educator, special education students requiring specially designed instruction (special education) must not exceed 50% of the total class enrollment. The special educator should not be assigned to more than one co-teaching classroom during one instructional block.

Special education classrooms for students with disabilities – Students may receive special education services in special education environments. Special education staffing per instructional period is based on the student's level of need without regard to the area of disability. Below are considerations to assist the district special education administrator or designee in determining the needs of the student as Level I, Level II or ~~(optional)~~ Level III.

Students with Level I needs typically, but not exclusively, function within the school setting by:

- Receiving varying levels of assistance from a special educator during general education core academic classes or elective classes;
- Receiving small group instruction within special education classes;
- Taking the regular assessments under standard conditions or with accommodations;
- Participating in physical education classes independently;

- Participating in co-curricular or extracurricular activities independently;
- Receiving special education services in GEFT or GEPT;
- Using assistive technology to access WV CCRS;
- Working toward a standard diploma; or
- Participating in transition activities leading to a vocational completer certificate, postsecondary education, military service or employment.
- Receiving transition services that include coordination and linkages with the WV Division of Rehabilitation Services and adult community providers.

Students identified with Level I needs may reflect varied levels of capacity across the areas below:

- Cognition;
- Academic performance;
- Social interaction;
- Emotional/behavioral areas;
- Communication;
- Sensory abilities;
- Perceptual abilities;
- Motor abilities;
- Health/medical areas; and/or
- Other manifestations of their disability.

Note: Close adult supervision may be provided on a temporary or occasional basis to students with Level I needs who are experiencing unique medical needs, specific short-term difficulties or when the close adult supervision is being faded for students previously identified with Level II needs.

Students with Level II needs typically, but not exclusively, require services such as the following to function within a school setting:

- A markedly modified curriculum with a focus on basic or functional academics and life skills;
- Close adult supervision in structured opportunities when participating in general education classes, co-curricular and/or extracurricular activities;
- Close adult supervision to maintain the safety of the student or others;
- Close adult instruction, assistance and/or supervision with the use of assistive technology, medical equipment, medical procedures, travel training or mobility;
- A wide array and/or intensity of related services;
- A large number of repetitive trials or opportunities to demonstrate skills with a concomitant need for progress monitoring and record keeping on a daily basis;
- Transition activities that focus on vocational classes, supported employment or community-based work exploration;
- Instruction until the age of twenty-one; and/or
- Transition services that include coordination and linkage with the WV Division of Rehabilitation Services and community providers.

Students identified with Level II needs have significant and comprehensive needs related to:

- Cognition;
- Academic performance;
- Functional performance;
- Social interaction;
- Emotional/behavioral areas;

- Communication;
- Sensory abilities;
- Perceptual abilities;
- Motor abilities;
- Health/medical areas; and/or
- Other manifestations of their disability.

Students with Level III needs typically, but not exclusively, demonstrate those needs shown at Level II as well as needs such as those shown below to function within a school setting:

- Intense adult supervision across settings because the student poses a danger to him/herself and/or to others;
- Intensive instruction, services, safety assistance and supervision to learn and maintain skills and to increase independence in activities of daily living; and
- Transition services that include coordination and linkages with the Office of Behavioral Health Services for Intellectual/Developmental Disabilities, (I/DD) Waiver Program, Division of Rehabilitation Services and adult community services and community use.

The following chart provides maximum class size for instructional periods by programmatic level and level of service needs for students with disabilities as determined and documented by the district special education administrator or designee.

Maximum Number of Students per Instructional Period Based on Level of Service

Grade Span	Early Learning Programs Grades K - 5		Middle Level Programs Grades 6- 8	Secondary Level Programs Grades 9 - 12
	Level I Service Needs	Grades K-2 12 minimum staffing ratio 1:6	Grades 3-5 12 minimum staffing ratio 1:8	12
Level II Service Needs	12 minimum staffing ratio 1:6*		12 minimum staffing ratio 1:6*	12 minimum staffing ratio 1:6*

* The stated ratio provides a minimum standard for instructional responsibility.

Level I Service Needs

K-2 (1-6) 3-5 (1-8) students: at least one special education teacher is required to provide instruction and direction for the students during an instructional period.

K-2 (7-12) 3-5 (9-12) students: at least one special education teacher and another qualified adult are required to provide instruction and direction for the students during an instructional period.

Level II Service Needs

1-6 students: at least one special education teacher is required to provide instruction and direction for the students during an instructional period.

9-12 students: at least one special education teacher and another qualified adult are required to provide instruction and direction for the students during an instructional period.

Level III

Grade Span	Early Learning Programs Grades K - 5	Middle Level Programs Grades 6- 8	Secondary Level Programs Grades 9 – 12
Level III Service Needs	8 minimum staffing ratio 1:4**	8 minimum staffing ratio 1:4**	8 minimum staffing ratio 1:4**

** The stated ratio for Level III provides a minimum standard for instructional responsibility.

Level III Service Needs

1 – 4 students: at least one special education teacher is required to provide instruction and direction for the students during an instructional period.

5 - 8 students: at least one special education teacher and another qualified adult are required to provide instruction and direction for the students during an instructional period.

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. These ratios do not preclude the use of additional staff to support a student with Level II or Level III service needs. Staffing reflects both the standards as set forth in policy and the needs of the student as reflected on the IEP. Chapter 6, Section 4 requires each district to provide personnel in adequate numbers to implement the IEP of each eligible student in the district.

* **Special education classroom for students with giftedness** – When gifted services are delivered in a special education setting, no more than fifteen students may be scheduled in an instructional period.

The following chart provides maximum class size for children with developmental delays, ages three through five.

Maximum Number of Students Per Classroom for Children with Developmental Delays

Program	Maximum Students Per Classroom	Staff
Universal Pre-k with Students with IEPs	20 students per classroom with limit of 10 students with IEPs per classroom	2 staff persons per classroom (1 teacher and 1 additional staff person) with no more than 9 students with IEPs 3 staff persons per classroom (1 teacher and 2 additional staff persons) required for 10 students with IEPs
Special Education Pre-k	8 students	1 teacher and 1 additional staff person
	10 students	1 teacher and 2 additional staff persons

When student numbers exceed staffing ratios a waiver must be submitted. Waivers to staffing ratios may be requested in writing through the OSE waiver process. Waivers may require an on-site visit, will be considered on a case-by-case basis and remain valid for the current school year only.

Chapter 7 DISCIPLINE

According to West Virginia Code §18A-5-1, county boards of education are required to incorporate and implement in the schools a preventive discipline program, which may include Positive Behavior Interventions and Supports (PBIS). If a student's behavior, regardless of the student's disability, impedes his/her learning or the learning of others, the IEP Team must consider the use of strategies, including positive behavioral interventions and supports, to address the behavior. If the IEP Team determines that such services or supports are needed, they must be included in the IEP and be implemented.

Students with disabilities who are subject to disciplinary actions by a district are entitled to all of the due process rights afforded students without disabilities under West Virginia Code §18A-5-1a. In addition to these rights, IDEA 2004 provides added procedures and safeguards for a student with a disability whom the district is considering removing from his or her current educational placement for disciplinary reasons. The district must consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a student with a disability. However, these procedures do not prevent district personnel from maintaining a safe environment conducive to learning that is critical for all students.

Protected Students

These protections are afforded to students with disabilities and students not yet eligible, if the district has knowledge that the student is a student with a disability before the behavior that precipitated the disciplinary action occurred. The district is deemed to have knowledge if one or more of the following is true:

- a. The parent/adult student has expressed concern to district professional personnel that results in written documentation, that the student may need special education and related services.
- b. The parent/adult student has requested in writing that the student be evaluated for special education.
- c. The student's teacher or other district personnel have expressed concern about a pattern of behavior demonstrated by the student directly to the director of special education or to other district supervisory personnel in accordance with the district's established child find system and referral process.

Pursuant to Section 3.B of this chapter, these protections may apply if a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures.

These protections are not afforded to students who:

1. are solely eligible under the category of gifted, and
2. when there is no basis of knowledge that a student has a disability because one or more of the following is true:
 - a. an evaluation was conducted and a determination was made that the student did not have a disability;
 - b. the parent/adult student did not give written consent for an evaluation; or
 - c. the parent/adult student refused special education services.

If the district did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

Disciplinary Removals

Disciplinary removals are out-of-school suspensions, expulsions and placements in interim alternative educational settings (IAES). In determining the number of cumulative school days a student has been removed, consideration may be given to days of removal due to in-school suspensions, partial day suspensions and bus suspensions. An in-school suspension is not considered a day of suspension for purposes of this chapter as long as the student is afforded the opportunity to continue to participate in the general curriculum, continue to receive services specified on the student's IEP and continue to participate with students without disabilities to the extent he or she would have in his or her current placement. Portions of a school day that a student has been suspended may be considered a removal in regard to determining whether there is a pattern of removals that constitutes a disciplinary change of placement.

Whether a bus suspension counts as a day of suspension depends on whether the bus transportation is a part of the student's IEP. If bus transportation is a part of the student's IEP, a bus suspension must be treated as a disciplinary removal unless the district provides the bus service in some other way, because transportation is necessary for the student to obtain access to the location where services will be delivered. If bus transportation is not a part of the student's IEP, a bus suspension is not a disciplinary removal. In these cases, the student and the student's parent have the same obligation to get the student to and from school as a student without disabilities who has been suspended from the bus. However, the district should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in the IEP and whether the student's behavior on the bus should be addressed in the IEP or in a behavior intervention plan.

Disciplinary Change of Placement

A disciplinary change of placement is a removal from the student's current educational placement for more than ten consecutive school days or a series of removals that constitutes a pattern. A pattern is established when the series of removals totals more than ten cumulative school days in a school year, the student's behavior is substantially similar to his/her behavior in the previous incidents that resulted in the series of removals, and additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. Whether a pattern of removals constitutes a change of placement must be determined on a case-by-case basis by school personnel and must be documented on the Disciplinary Action Review Form (DARF). These determinations are subject to due process and judicial review.

After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent day of removal the district must provide services to the student.

Section 1. District Actions When Removals Are Not Considered a Change of Placement

School personnel may remove any student, including a student with a disability, for up to ten consecutive school days in a school year if the student violates Policy 4373: *Expected Behaviors in Safe and Supportive Schools*. During the initial ten cumulative days of removal, services need not be provided to a student with a disability unless services are provided to students without disabilities. These removals must be applied to the same extent as they are applied to students without disabilities.

School personnel may remove a student with a disability for up to ten consecutive school days per incident for separate acts of misconduct in a school year as long as the removals do not constitute a pattern resulting in a change of placement.

For each subsequent removal beyond ten cumulative school days in a year that is not a change in placement, school personnel in consultation with at least one of the student's teachers must determine the extent to which services are needed to enable the student to continue to participate in the general education

curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. This consultation must be documented on the Disciplinary Action Review Form (DARF).

Section 2. District Actions When Considering a Disciplinary Change of Placement

A manifestation determination is required if the district is considering removing a student with a disability from his or her current educational placement for disciplinary reasons beyond ten consecutive school days or more than ten cumulative school days when the district deems that a pattern exists. A manifestation determination is a review of the relationship between the student's disability and the behavior subject to disciplinary action. This review must be documented on the Disciplinary Action Review Form. Whenever considering a disciplinary action that will result in a change of placement, the district must:

1. Provide same day written notice of the removal, PWN, and the procedural safeguards notice to the parent/adult student of the disciplinary action to be taken; and
2. Within ten school days of any decision to change placement, meet with the parent and relevant members of the IEP Team (as determined by the parent and district) to conduct a manifestation determination by reviewing all pertinent information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:
 - a. If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or
 - b. If the conduct in question was the direct result of the district's failure to implement the IEP.

If the district, the parent and relevant members of the IEP Team determine that either of the conditions described in a. or b. is met, the conduct must be determined to be a manifestation of the student's disability, and the district must take immediate steps to remedy those deficiencies.

A. District Actions When Conduct is Determined to Be a Manifestation of the Student's Disability

The IEP Team must:

1. Conduct a functional behavior assessment (FBA), unless an FBA was conducted before the behavior, which resulted in the change of placement, occurred;
2. Develop and implement a behavior intervention plan (BIP), or review the existing BIP and modify, as needed, to address the current behavior(s); and
3. Return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP.

B. District Actions When Conduct is Determined Not to Be a Manifestation of the Student's Disability

School personnel may apply relevant disciplinary procedures in the same manner for the same duration as the procedures applicable to students without disabilities, except as provided below:

1. Convene the IEP Team to determine the educational services to be provided to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
2. Provide, as appropriate, a functional behavioral assessment (FBA), and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

C. District Actions When a Behavior Violation Involves Weapons, Illegal Drugs or Serious Bodily Injury

School personnel may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:

1. Carries or possesses a weapon at school, on school premises or at a school function; or
2. Knowingly possesses, carries, or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises or at a school function; or
3. Inflicts serious bodily injury to another person at school, on school premises, or at a school function.

Districts must use the following definitions when removing students because of the above special circumstances:

1. Weapon – a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such a term does NOT include a pocket knife with a blade of less than 2 ½ inches in length (18 U.S.C. Section 930 (g)(s)).
2. Illegal drug – a controlled substance, a drug or other substance identified under schedules I, II, III, IV or V in Section 202(c) of the Controlled Substance Act (21 U.S.C. 812 (c)). An illegal drug does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or used under any other authority under that Act or under any other provision of federal law.
3. Serious bodily injury - a bodily injury that involves:
 - a. A substantial risk of death;
 - b. Extreme physical pain;
 - c. Protracted and obvious disfigurement; or
 - d. Protracted loss or impairment of the function of the bodily member, organ or mental faculty.

The IAES must enable the student to receive educational services and participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the student's IEP. As appropriate, the setting must include a functional behavioral assessment and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

D. FAPE Requirements in an Interim Alternative Educational Setting (IAES)

If the student's placement will change to an IAES, the IEP Team must create/select an IAES that enables the student to:

1. Continue to receive education services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his or her IEP; and
2. Receive, as appropriate, an FBA and behavioral intervention services to address the behavior violation so that it does not recur.

Section 3. Additional Disciplinary Considerations

A. Requesting an Expedited Hearing

An expedited hearing is a hearing conducted by a WVDE special education due process hearing officer, that occurs within twenty school days of the request with a decision rendered within ten school days of the hearing.

An expedited due process hearing may be requested if:

1. The parent/adult student disagrees with:
 - a. The manifestation determination decision;
 - b. Any decision of the IEP Team regarding a change of placement during a disciplinary proceeding; or
 - c. The decision regarding the student's placement in an IAES; or
2. The district believes that maintaining the current placement is substantially likely to result in injury to the student or to others.

In an expedited hearing, the due process procedures described Chapter 11, Section 4, will be used with the following exceptions:

1. A resolution session meeting must occur within seven days of the date of the receipt of the due process complaint by the WVDE unless mutually waived by both parties.
2. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days or receipt of the due process complaint.
3. Time periods for disclosure of evidence and evaluations and recommendations based on those evaluations must not be less than five business days prior to the hearing.
4. The hearing must occur within twenty school days of the date the hearing is requested and must result in a determination within ten school days after the hearing with no extensions permitted.
5. The student remains in the IAES pending the decision of the hearing office or until the expiration of the time period provided (no more than forty-five days), whichever comes first, unless the parent/adult student and school personnel agree otherwise.

In making a determination in an expedited hearing, the due process hearing officer may:

1. Return the student from placement from which the student was removed; or
2. Order a change in placement of a student with a disability to an appropriate IAES setting for not more than forty-five days if the district believes maintaining the current placement of the student is substantially likely to result in injury to the student or others.

A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

When a request for an expedited hearing has been made, the student must remain in the IAES pending the decision of the hearing officer or until the expiration of the disciplinary removal, whichever occurs first unless the parent and the state education agency (SEA) or district agree otherwise.

B. Requesting an Evaluation for a Disciplined Student

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation must be conducted in an expedited manner. Pending the results of the evaluation, the student remains in the educational placement determined by district officials, which can include suspension or expulsion without educational services if services cease for students without disabilities.

1. If the student is subsequently determined eligible for special education, the district will immediately:
 - a. Convene an IEP Team meeting to develop an IEP, and

- b. Conduct a manifestation determination.
 - i. If the behavior was caused by or had a direct and substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the LRE.
 - ii. If the behavior was not caused by or did not have a direct and substantial relationship to the student's disability, the student is subject to the disciplinary action as determined by school personnel, but he or she is still entitled to receive FAPE, which must be defined by the IEP Team. Educational services cannot cease for more than ten school days in a school year. Educational services must be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
- 2. If the evaluation team determines that the student is not a student with a disability and is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students without disabilities who engage in comparable behaviors.

C. Referrals to and Action by Law Enforcement and Judicial Authorities

The district may report a crime committed by a student with a disability to appropriate authorities. The IDEA 2004 does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.

If a student brings a firearm to school, law enforcement must be contacted pursuant to the Gun-Free Schools Act.

If the district reports a crime, it will ensure that copies of the special education and disciplinary records of the student are provided to the appropriate law enforcement authorities for consideration, to the extent the release of records is permitted by the FERPA and WV Board of Education Policy 4350. Generally, the release of records requires parent or adult student consent.

D. Transfer of Discipline Records

West Virginia Code §18A-5-1a requires that when a student transfers to a new school in West Virginia, the principal of the school from which the student transfers must provide written record of any disciplinary action taken against the student to the principal of the school to which the student transfers. WVBE Policy 4350: Collection, Maintenance and Disclosure of Student Information describes the procedures and record requirements for transfer of records between WV schools.

Chapter 8 PRIVATE SCHOOL STUDENTS

Section 1. Definitions of Private School Placements

In order to describe the district's responsibilities for serving private school students, it is helpful to distinguish three separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why.

A. Definition of Voluntary Enrollment by a Parent

A parent may choose to enroll his or her child in a private school for a variety of personal reasons, such as to obtain a religious education, to attend a school with a particular philosophy or curriculum, or because the parent is dissatisfied with the services offered or provided by the district. This is considered a voluntary enrollment.

B. Definition of District Placement

At times, the district may place a student in a private school or facility to fulfill its obligation to provide FAPE. These placements are always made by an IEP Team in accordance with the requirements of Section 3 of this chapter.

C. Definition of Unilateral Placement by a Parent

A parent may withdraw a student with a disability from a public school and then enroll the student in a private school or provide services from a private provider at parent expense because he or she believes the district has not provided FAPE in a timely manner. In this case, the parents may be seeking reimbursement for the costs associated with the placement. This is considered a unilateral placement. All students who are unilaterally placed are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of a unilateral placement is included in Section 4. of this chapter.

Section 2. Students Voluntarily Enrolled by a Parent

To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the district, provision is made for the participation of those students in IDEA, Part B special education and/or related services as determined through a consultation process. The extent of services provided through IDEA, Part B funds is determined based on the number and location of the students enrolled in private schools in the district.

A. Child Find

The district must have an ongoing Child Find system to locate, identify, and evaluate all students with disabilities ages three through twenty-one residing and/or educated within the district's geographic boundaries. This includes students who have been placed by a parent in a private school (including a religious school) located in the district regardless of the student's residency.

The Child Find process must ensure the equitable participation of parentally-placed private school students with disabilities and include activities similar to Child Find activities for public school students including comparable timelines for the evaluation process. The district must consult with private school representatives and representatives of parents who place their children in private schools regarding the Child Find procedures.

B. Annual Count of Eligible Students

The district must conduct an annual count of the number of parentally-placed private school students with disabilities on December 1. This count will be used to determine the amount of funds the district must expend to provide special education and related services to private school students in the next fiscal year in accordance with Section 2 of this Chapter. The district must consult with representatives of private school students to determine how to conduct the count. All eligible parentally-placed private school students are counted, regardless of whether they are receiving services. Each district must maintain and provide the WVDE a record of the number of students evaluated, the number of students determined to be students with disabilities and the number of students receiving services under a Service Plan.

C. Consultation

To ensure timely and meaningful consultation, a district must consult with private school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and/or related services for the students, including the following:

1. **Child Find:** The Child Find process and how parentally-placed private school students suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
2. **Proportionate Share of Funds:** The determination of the proportionate amount of federal funds available to serve parentally-placed private school students with disabilities, including the determination of how the amount was calculated.
3. **Consultation Process:** The consultation process among the district, private school officials and representatives of parents of parentally-placed private school students with disabilities, including how such process will operate throughout the school year to ensure that parentally-placed private school students with disabilities identified through the Child Find process can meaningfully participate in special education and/or related services.
4. **Provision of Special Education and Related Services:** How, where, and by whom special education and/or related services will be provided for parentally-placed private school students with disabilities, including a discussion of:
 - a. Types of services, including direct services and alternate service delivery mechanisms;
 - b. How the services provided will be evaluated;
 - c. How such services will be apportioned if funds are insufficient to serve all students; and
 - d. How and when these decisions will be made.
5. **Written Explanation by the District Regarding Services:** How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.
6. **Written Affirmation:** When timely and meaningful consultation has occurred, the district must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the district must forward the documentation of the consultation process to the WVDE.

D. Determining the Proportionate Funding for Private School Students

IDEA requires school districts to use a proportionate share of funds received under Part B to provide services for parentally-placed students with disabilities who attend private schools within the boundaries of the district, regardless of their place of residence. To determine this proportionate amount, the district must first determine the number of these private school students through the Child Find activities developed in the consultation process.

The number of parentally-placed private school students who are found eligible as a student with a disability as of December 1 of the previous year is divided by the total (public and private) number of students with disabilities in the district to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by the district under Part B and Section 619 to determine the district's obligation.

1. State and local funds may supplement but may not supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school students with disabilities.
2. The costs of private school consultations and of carrying out Child Find activities, including individual evaluations, may not be paid from the proportionate share of funds.
3. The cost of any special education or related service, such as direct service, consultation, equipment, materials, or transportation may be used to determine that the district has satisfied its expenditure requirement for private school students with disabilities.
4. If a district has not expended for equitable services all of the funds described in the expenditure requirements by the end of the fiscal year, the district must obligate the remaining funds for special education and related services to parentally-placed private school students with disabilities during a carry-over period of one additional year.

E. Expenditure Requirements

1. The district must control and administer the IDEA, Part B funds used to provide special education and related services for parentally-placed private school students with disabilities.
2. The district may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the district must:
 - a. Retain title and exercise continuing administrative control over all equipment and supplies;
 - b. Ensure that all equipment and supplies are used only for Part B purposes;
 - c. Ensure that all equipment and supplies can be removed without remodeling the private school; and
 - d. Remove equipment and supplies if no longer needed or if necessary to prevent unauthorized use.
3. The district may use Part B funds to pay an employee of a private school to provide services to students with disabilities with a Service Plan when the employee performs the services:
 - a. Outside of his or her regular hours of duty; and
 - b. Under public supervision and control.
4. A district may use IDEA Part B, Section 611 and Section 619 funds to make public school personnel available in other than public facilities to the extent necessary to implement the students' Service Plans and if those services are not normally provided by the private school.
5. Part B and Section 619 funds must not be used to:
 - a. Finance the existing level of instruction in the private school or otherwise benefit the private school;
 - b. Meet the needs of the private school; or
 - c. Meet the general needs of students enrolled in the private school.

6. Part B and Section 619 funds must not be used for repairs, remodeling, or construction of private school facilities.
7. Part B and Section 619 funds must not be used for classes that are organized separately on the basis of school enrollment or religion if the classes are on the same site and include students enrolled in public and private schools.

F. Determination of Services

No private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in the district. Decisions about the services that will be provided must be made in accordance with the consultation requirements in Section C.

1. Following consultation with the private school representatives, the district will make final decisions with respect to services to be provided. Annual consultation is required to make these decisions. The period between consultations may vary based on circumstances within the district, such as significant changes in the total amount of funds to be expended and/or the number and location of private school students with disabilities.
2. If a student is designated to receive services, the district must initiate and conduct meetings to develop, review and revise a Service Plan for the student. A team composed of the same members required for IEP Teams must develop the Service Plan. In addition, the district must ensure that a representative of the religious or other private school attends the meeting. If the representative cannot attend, the district must use other means to ensure participation, including individual or conference telephone calls. The Service Plan must describe the specific special education and/or related services that will be provided to the student in light of the determinations that have been made by the district.

If a parent makes clear his or her intention to keep his/her eligible child enrolled in the private elementary or secondary school located in another district, the district where the student resides need not make FAPE available.

G. Provision of Services

1. Private school students with disabilities may receive a different amount of services than public school students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private school student to receive only a related service or piece of equipment, as determined through the consultation process.
2. Each student receiving services must have a Service Plan that describes the specific special education and/or related services the district will provide in light of the services the district determined, through the consultation process, it will make available.
3. To the extent appropriate, the district must initiate and conduct meetings to develop, review, and revise Service Plans consistent with the requirements for developing an IEP as outlined in Chapter 5.
4. The district must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the district must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
5. Services must be provided by employees of the district or through contract by the district with an individual, association, agency, organization, or other entity.

6. Special education and related services, including materials and equipment, must be secular, neutral and nonideological.
7. Services may be provided on the premises of private, including religious, schools, to the extent consistent with law.
8. Services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.
9. If necessary for a private school student to benefit from or participate in the services the district has selected to provide, the district must provide transportation from the student's school or home to the site where services will be provided. The district must take the student back to either the private school or the home, depending on the timing of the services. Transportation costs may be included in the district's expenditure requirement. The district is not required to transport the student from home to the private school.

H. Content of a Service Plan

Given the services that the district has elected to provide to private school students, the Service Plan must meet the requirements of the IEP to the extent appropriate (see Chapter 5). The Service Plan excludes elements that, although typical for an IEP, would be inappropriate given the services the district has elected to provide.

I. Dispute Resolution

A private school official has the right to submit a state complaint to the WVDE that the district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. Parents of private school students and private school officials may challenge decisions regarding equitable services by filing a formal state complaint with the WVDE in accordance with procedures outlined in Chapter 11. If the private school official submits a state complaint the private school must provide the basis of the non-compliance to the WVDE. The district will forward the appropriate documentation to the WVDE. If the private school official is dissatisfied with the decision of the WVDE, the official may submit a complaint to the Secretary of the US Department of Education by providing the basis of the complaint against the district to the Secretary, and the WVDE will forward the appropriate documentation to the Secretary.

If a parent files a state complaint, even if the complaint concerns a matter for which the due process procedures are not otherwise available, the state complaint procedures must provide the parent the opportunity to voluntarily engage in mediation to resolve the matter.

Parents of private school students may only file a due process complaint on child find requirements. The due process complaint request must be filed with the district in which the private school is located and a copy must be forwarded to the WVDE.

Section 3. Students Placed by the District

When the district, through the IEP Team, places a student with a disability in a private school or facility, the district must ensure the following:

1. A meeting is initiated and conducted to develop an IEP for the student.
2. All special education procedures and timelines are followed.
3. Special education and related services are provided in accordance with an IEP.
4. A representative of the private school or facility attends the meeting to develop the IEP or other methods are used to ensure participation by the private school or facility, including individual or conference telephone calls if the representative cannot attend.
5. The responsibility for reviewing and revising IEPs remains with the district

6. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP meeting conducted in a geographical area outside the jurisdiction of the district.
7. The placement in the private school or facility is the LRE for that student.
8. The student is provided an education that meets state and district standards.
9. The student is afforded the same rights as students with disabilities who attend public schools. The parent is afforded the same rights as parents of students attending public schools.
10. Even if a private school or facility implements a student's IEP, responsibility for compliance with this part remains with the district and the WVDE.

At the discretion of the district, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting, the district must ensure that the parent and a district representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

Prior to placing a student with a disability in a private school or facility outside of West Virginia, the district must document the following:

1. FAPE cannot be provided within the district, within the region, or within the state;
2. More than one private school or facility was investigated in regard to the feasibility of providing services;
3. The selected private school or facility has approved status in the state in which it is located, and assurances were provided that the school or facility meets the requirements of the IDEA;
4. A current and complete IEP has been developed; and
5. A current signed contract between the district and the private school or facility exists.

Section 4. Unilateral Placement by a Parent

A. General Provisions for Reimbursement

1. The district is not required to pay for costs of tuition, special education, or related services at a private school or facility for a student who was unilaterally placed there by a parent if the district made FAPE available to the student in a timely manner. However, the student is included in the population considered for services through the consultation process for parentally-placed private school students to the extent applicable. One way for the district to document that FAPE was available is to have developed or reviewed an IEP for a student who has been evaluated and found eligible. If a parent disagrees with the availability of FAPE and there is a question about financial responsibility, the parent may file a due process complaint.
2. If the parent of a student with a disability, who previously received special education and related services from the district, enrolls the student in a private elementary or secondary school without the consent of the district, a court or hearing officer may order the district to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:
 - a. The district had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and
 - b. The private school placement is appropriate.
3. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards.

B. Denial or Reduction of Reimbursement

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. Prior to removal of the student from the public school, the district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.
2. A judicial decision finds unreasonableness with respect to the actions taken by the parent.
3. The parent did not inform the district in writing that he or she rejected the placement proposed by the district to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This written notification by the parent must be provided to:
 - a. The IEP Team at the most recent IEP meeting prior to removing the student from the public school; or
 - b. The district, in writing, at least ten business days (including any holidays that occur on a business day) prior to removing the student from public school.

Reimbursement must not be reduced or denied under any of the following circumstances:

1. The district did not notify the parent of his or her obligation to provide the notice set forth in number 3. above.
2. The school prevented the parent from providing notice.
3. The district's proposed placement would likely result in physical harm to the student.

Reimbursement may not be reduced or denied for the parent's failure to provide the notice referenced above, in the discretion of the court or hearing officer if:

1. The parents are not literate or cannot write in English; or
2. The reduction or denial of reimbursement would likely result in serious emotional harm to the student.

Chapter 9

GENERAL SUPERVISION AND ACCOUNTABILITY FOR PERFORMANCE AND COMPLIANCE

Section 1. General Supervision

A. Responsibilities of the West Virginia Board of Education

The West Virginia Board of Education establishes policies and ensures that procedures are in effect to provide a free appropriate public education (FAPE) to all students with exceptionalities in accordance with state and federal laws and regulations. The Board ensures the WVDE implements the general supervision of all programs and services for eligible students with exceptionalities and that all services meet state standards and the requirements of IDEA 2004. All district and state operated programs and the education of all students with exceptionalities residing within the state are under the general supervision of the Board and WVDE.

The West Virginia Board of Education has primary responsibility to:

1. Establish regulations pertaining to the education of all eligible students with exceptionalities in the State;
2. Establish standards pertaining to the education of all eligible students with exceptionalities in the State;
3. Establish regulations to protect student and parent rights as they pertain to the education of all eligible students with exceptionalities in the State;
4. Ensure that eligible students with exceptionalities in the State, including individuals in residential institutions and private schools, receive an education in accordance with State and federal laws;
5. Establish certification requirements for personnel providing educational and related services to eligible students with exceptionalities;
6. Approve allocations and disburse state and federal funds designated for the education of eligible students with exceptionalities;
7. Administer education programs, including programs providing special education and related services for students with exceptionalities, in the State's correctional institutions in accordance with applicable State and federal laws and regulations;
8. Adopt the National Instructional Materials Accessibility Standard for purposes of providing instructional materials to persons with blindness or other persons with print disabilities in a timely manner after publication of the NIMAS in the Federal Register; and
9. Work collaboratively, to the maximum extent possible, with the state agency responsible for assistive technology programs.

B. Responsibilities of the West Virginia Department of Education

The WVDE has the primary responsibility for administering the requirements of the IDEA 2004 and West Virginia Code §18-20-2 and ensuring FAPE for students with exceptionalities. The WVDE has a primary leadership role in developing quality educational services for eligible students with exceptionalities in the State, providing guidance in the implementation of State Board of Education policies and regulations governing the education of eligible students with exceptionalities, and providing direction and assistance for special education services in the State. General supervision responsibilities of the WVDE include administration of funding, monitoring and supervision of local educational agency (LEA) implementation and implementation of interagency agreements to ensure collaboration among agencies serving students with exceptionalities.

The WVDE is responsible for ensuring that:

1. The requirements of IDEA 2004, Part B are implemented;
2. Each educational program for students with exceptionalities administered within the State, including each program administered by any other state or local agency, is under the general

- supervision of the WVDE and meets the education standards of the WVDE (including the requirements of IDEA 2004, Part B);
3. Policies and procedures implementing the State monitoring and enforcement requirements of the Act are in effect;
 4. Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) requirements are met in the provision of special education services to homeless students;
 5. The West Virginia Advisory Council for the Education of Exceptional Children is supported in order to provide guidance with respect to the education and related services for students with exceptionalities in the State;
 6. Policies and procedures are in place to prevent inappropriate over identification or disproportionate representation by race and ethnicity of students as students with disabilities:
 - a. Data are collected and examined to determine if significant disproportionality based upon race and ethnicity is occurring in the State and the districts with respect to:
 - i. The identification of students as students with disabilities, including those with a particular impairment;
 - ii. The placement in particular educational settings of these students; and
 - iii. The incidence, duration and type of disciplinary actions, including suspensions and
 - iv. expulsions.
 - b. When a significant disproportionality in identification or placement is determined to exist:
 - i. A review of the policies, practices and procedures is conducted, and, if appropriate, the policies, practices and procedures used in the identification or placement are revised to ensure that the policies, practices and procedures comply with the requirements of the Act; and
 - ii. The district is required to use the required amount of Part B funds to provide early intervening services to students in the district, particularly, but not exclusively, to students in those groups that were significantly over identified; and
 - iii. The district is required to publicly report on the revision of policies, practices and procedures described in b.i. above.
 7. The necessary procedures are developed, including guidelines, forms and instruments to implement the State Board of Education policies and State and federal laws governing the education of students with exceptionalities;
 8. A practical method is developed and implemented to determine which students are currently receiving needed special education and related services;
 9. Teachers and administrators in all districts are fully informed about their responsibilities for implementing LRE requirements and are provided with technical assistance and training necessary to assist them in this effort;
 10. LRE is effectively implemented for students in private or public institutions, including, if necessary, making arrangements such as memoranda of agreements or special implementation procedures;
 11. Copies of applicable standards are disseminated to each private school and facility to which a district has referred or placed a student with a disability;
 12. The implementation of all special education programs, including IEP and LRE requirements, for all eligible students with exceptionalities in the state, including students placed in residential institutions and private schools, incarcerated youth, and students with disabilities who are convicted as adults under state law and incarcerated in adult prisons is monitored through procedures such as written reports, on-site visits and parent questionnaires to assure the compliance with federal laws and regulations, state laws, policies, standards and regulations;

- 13.If there is evidence that a district makes placements that are inconsistent with LRE requirements, the WVDE conducts a review of the district's justification for its actions and assists in planning and implementing any necessary corrective actions;
- 14.Data, including data disaggregated by race and ethnicity, are examined to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities. If discrepancies are occurring, a review of the district's policies, practices and procedures relating to the development and implementation of IEPs is conducted; if appropriate, they may be revised to include the use of positive behavior interventions and supports, and procedural safeguards, to comply with IDEA 2004.
- 15.Direct educational services are provided, including special education and related services for students with exceptionalities, in the State's correctional institutions in accordance with written procedures developed to implement applicable State and federal laws and regulations;
- 16.An opportunity is provided for those private schools and facilities to participate in the development and revision of State standards that apply to them in the provision of services to students with disabilities;
- 17.Assistance is provided to districts in the development and/or modification of educational programs of study to meet the needs of students with exceptionalities in early, middle, ~~adolescent~~-secondary and adult education;
- 18.Statewide planning for educational services for eligible students with exceptionalities is completed;
- 19.The Department participates in the development and provision of programs for the training of educational personnel related to special education issues and services;
20. Liaisons are established with:
 - a. Other state and regional agencies, parent and professional organizations, and private agencies serving students with exceptionalities;
 - b. Colleges and universities preparing personnel to work with students with exceptionalities; and
 - c. Federal projects and national agencies which provide services for students with exceptionalities;
- 21.Districts, parents and other agencies are informed of the content and implications of regulations and State and federal laws pertaining to the education of eligible students with exceptionalities;
22. Each district establishes, maintains and implements procedural safeguards that meet the requirements of IDEA;
23. Methods for the provision of services are prescribed as follows:
 - a. An interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in paragraph b. and the WVDE that are needed to ensure FAPE is provided, including the provision of these services during the pendency of any interagency dispute referred to below. The agreement or mechanism must include the following:
 - i. An identification of, or a method for defining, the financial responsibility of each agency, including the state Medicaid agency and other public insurers of students with exceptionalities, for providing any services that are also considered special education or related services. The financial responsibility of each noneducational agency must precede the financial responsibility of the district (or the state agency responsible for developing the student's IEP);
 - ii. The conditions, terms, and procedures under which a LEA must be reimbursed by other agencies;
 - iii. Procedures for resolving interagency disputes from other agencies or otherwise implement the provisions of the agreement or mechanism; and
 - iv. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and

- timely and appropriate delivery of any services that are also considered special education.
- b. If any public agency other than an educational agency is otherwise obligated under federal or State law, or is assigned responsibility under State policy or pursuant to paragraph a. of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services relating to assistive technology devices, assistive technology services, supplementary aids, supplementary services, related services transition services) that are necessary for ensuring FAPE to students with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement.
 - c. Ensure that a noneducational public agency described in b. of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.
 - d. Ensure that if a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph b. of this section, the district (or state agency responsible for developing the student's IEP) must provide or pay for these services to the student in a timely manner. The district or state agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the district or state agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph a. of this section.
 - e. Ensure that the requirements are met through:
 - i. State statute or regulation;
 - ii. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 - iii. Other appropriate written methods as determined by the Chief Executive Officer of the state or designee of that officer; and
 - f. Document that the state has on file with the Secretary information that demonstrates the requirements of 23. a. – e. are met.
24. The State Performance Plan (SPP) for special education is developed, reviewed and/or revised, including performance goals and indicators, and progress is reported annually, including the progress of students with disabilities on statewide assessments, as required by the United States Department of Education;
 25. Valid and reliable data and information needed to report annually to the United States Department of Education are collected, including data for the SPP, Annual Performance Report (APR) and IDEA, Section 618 reports;
 26. Districts are given reasonable notice and an opportunity for a hearing under 34 CFR 76.401 (d) prior to the state making a final determination that a district is not eligible for assistance under Part B of IDEA;
 27. The State's funding mechanism does not result in placements that violate the LRE requirements and does not distribute funds based on the students' placements that would result in the failure to provide a student with a disability FAPE according to the student's unique needs described on the IEP;
 28. State and district personnel are prohibited from requiring parents to obtain a prescription for controlled substances (defined as those substances under schedules I,II,III,IV or V in section 202(c) of the Controlled Substances Act) as a condition of attending school, receiving an evaluation or receiving services;
 29. State and district-wide assessments, to the extent possible, are developed and administered using universal design principles; and

30. Developing, annually reviewing and amending as necessary, a state plan for high cost/high acuity funds in accordance with 34 CFR §300.704(c) and West Virginia Code §18-20-5 in consultation with local educational agency representatives, to include a definition of children with high acuity needs.
31. A local school district superintendent may request an exception to Policy 2419: Regulations for the Education of Exceptional Students for extenuating circumstances by submitting a waiver request: when student numbers exceed staffing ratios. Waivers to staffing ratios may be requested in writing through the OSE. Waivers may require an on-site visit, will be considered on a case-by-case basis and remain valid for the current school year.

C. Responsibilities of the Districts

The districts, including the West Virginia Schools for the Deaf and Blind and schools under the supervision of the WVDE Office of Diversion and Transition Programs, have the responsibility for implementing the requirements of the IDEA 2004 and West Virginia Code §18-20-2 and ensuring FAPE for students with exceptionalities. Districts have responsibility for providing quality educational services for eligible students with exceptionalities within their jurisdiction.

The districts are responsible for ensuring that:

1. Data that are maintained, collected and reported to the WVDE regarding special education students and personnel are accurate;
2. Information related to parentally-placed private school students is maintained and provided to the WVDE including:
 - a. The number of students evaluated;
 - b. The number of students determined to be student with a disability; and
 - c. The number of students served.
3. The compliance with the regulations of agencies, organizations, or individuals who provide contractual special education and/or related services is monitored;
4. Other agencies, organizations, or individuals are informed of the State and federal requirements pertaining to the education of students with exceptionalities;
5. Ongoing program evaluations are conducted to improve the effectiveness of services provided to eligible students with exceptionalities; and
6. Personally identifiable student data are collected, maintained and disclosed in accordance with state and federal confidentiality requirements.

Section 2. State Performance Plan

West Virginia has a well-established commitment to improving results for all students as established in the Consolidated State Application and Accountability Workbook, and for students with exceptionalities through the Results and Compliance System Procedures (RCSP), IDEA 2004 and the SPP. IDEA 2004 and the SPP further require the district to measure progress through collecting and analyzing data relevant to the established performance and compliance indicators and targets. District plans to maintain progress or correct deficiencies are developed and implemented with stakeholder support.

A. Performance Goals and Indicators

IDEA 2004 requires states to measure progress annually on performance goals and indicators established by the U.S. Department of Education for students with disabilities related to participation and results on statewide assessments, graduation rates, drop-out rates, disproportionality and suspension rates. The SPP sets forth monitoring priorities and seventeen performance and compliance indicators, with measures

specified for determining state and district performance. To the maximum extent possible, the goals for students with disabilities must be consistent with the goals and standards established by the State for all students. Performance targets and monitoring procedures for six years are included in the plan.

The SPP monitoring priorities are:

1. FAPE in the LRE, which includes graduation rates, dropout rates, participation and performance in statewide assessment, suspension rates, parent involvement, child find and placement in the LRE;
2. Disproportionality, which includes appropriate identification of racial/ethnic groups as students with disabilities; and
3. General supervision, which includes effective transition from early intervention to public school programs, effective secondary transition and post school outcomes, correction of noncompliance with IDEA requirements and effectiveness of the monitoring and dispute resolution systems.

WVDE Responsibility

The WVDE is required to collect, review and analyze data annually to determine whether the State and each district have met the established SPP targets on each of the seventeen indicators. Data are collected through three sources:

1. WVEIS, a dedicated statewide computer network with an integrated record system for all student, personnel and financial information through which all the data required by Section 618 of IDEA 2004 are collected;
2. The Results and Compliance System Procedures through which districts submit their self-assessment data; and
3. The dispute resolution (complaint, mediation and due process) web-based data systems.

The WVDE is required to report Section 618 data to the United States Department of Education, Education Data Exchange Network (EDEN) and the Office of Special Education Programs (OSEP) and to publicly report state and district data, which is accomplished primarily through the WVDE website. Section 618 reports include assessment participation and results, child count, race/ethnicity, educational environments, suspension, exit and personnel. Results on the seventeen SPP indicators are reported for the state in the Annual Performance Report, and for selected indicators for each district on the WVDE website. The SPP is revised as appropriate to ensure progress.

District Responsibility

The district is the primary unit for improving results, and progress on the SPP priorities and indicators depends on district efforts. The IDEA 2004 requires districts to adopt policies that are consistent with the WVDE's performance goals and indicators. Therefore, on an annual basis and as part of the district self-assessment requirements of the RCSP, the district will:

1. Use data-based decision-making procedures and a local steering committee to review and analyze Section 618 data and additional district-level data to determine if the district is making progress toward the State's performance goals and indicators and district self-assessment improvement plans;

2. Develop, implement, and revise district improvement plans as necessary to make progress toward performance goals and indicators, and submit these plans and progress reports as required to the WVDE; and
3. Correct any noncompliance on SPP compliance indicators within one year of notification by the WVDE.

B. State Monitoring and Determinations

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.

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.

C. Statewide and District Assessment Reporting

WVDE Responsibility

The WVDE is required to collect and report statewide and district-wide (if applicable) assessment data, including the:

1. Number of students with disabilities participating in regular assessments and the number of those students who were provided accommodations;
2. The number of students participating in alternate assessment(s); and
3. The performance results of students with disabilities, if doing so is statistically sound and does not disclose results identifiable to individual students.

Whenever the WVDE reports information to the public on the assessment of students without disabilities, it must include the information above, as well as:

1. Aggregated data that includes the performance of students with disabilities together with all other students; and
2. Disaggregated data on the performance of students with disabilities.

District Responsibility

The district is accountable for appropriately including all students in statewide and district-wide assessments, with or without accommodations, if determined appropriate by the IEP Team following the Guidelines for Participation of Students with Disabilities in State Assessment. Therefore, on an annual basis and as part of the self-evaluation requirements of the WVDE's monitoring system, the district must:

1. Ensure that all students with disabilities participate in West Virginia Measures of Academic Progress (WVMAP);
2. Use data-based decision-making procedures to review and analyze district-level data to determine if the district is making progress in including all eligible students with disabilities

in the statewide assessment program and in consistently improving the level of performance by students with disabilities; and

3. Develop, implement, and revise district improvement plans as necessary to make progress.

D. Suspension and Expulsion Rates

WVDE Responsibility

The WVDE is required to collect and analyze discipline data, including data disaggregated by race and ethnicity, from districts to determine whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities:

1. Among districts in the state; or
2. Compared to such rates for students without disabilities within the district.

District Responsibility

On an annual basis and as part of the self-evaluation requirements of the WVDE's monitoring system, the district must:

1. Ensure the suspension and expulsion data that it collects and reports to the WVDE are accurate;
2. Use data-based decision-making procedures to review and analyze district-level discipline data to determine if significant discrepancies are occurring between the long-term suspension and expulsion rates for students with and without disabilities; and
3. Develop, implement and revise district improvement plans, and when found to have a significant discrepancy, review and revise policies, procedures and practices as necessary to ensure that they are in compliance with the IDEA 2004 in relation to the following:
 - a. The development and implementation of IEPs;
 - b. The use of positive behavioral interventions and supports; and
 - c. Procedural safeguards.

E. Disproportionality

WVDE Responsibility

The IDEA 2004 requires the WVDE to collect and analyze data to determine whether the state or districts have significant disproportionality of students identified as needing special education based on race and ethnicity. The state is required to report the:

1. Number and percentage of students in each particular racial/ethnic group who are identified as eligible for special education and weighted risk ratio indicating the chances of a student within the racial group being identified;
2. Percentage of students in each racial/ethnic group who are identified under particular categories of disability and weighted risk ratio indicating the chances of a student within the racial group being identified within particular categories; and
3. Percentage of students in each racial/ethnic group who are placed in particular special education settings and weighted risk ratio indicating the chances of a student within the racial group being placed in the setting.

In the case of a determination of significant disproportionality, the WVDE must provide for a review of the policies, procedures and practices used and require any district identified to reserve the maximum amount allowed under law of federal special education funds to provide comprehensive coordinated early intervening services. The district is required to publicly report on the revision of policies, procedures and practices.

District Responsibility

On an annual basis and as part of the self-evaluation requirements of the WVDE's monitoring system, the district must:

1. Use data-based decision-making procedures to review and analyze district-level data on race to determine if significant disproportionality exists; and
2. Review and, if appropriate, revise the district improvement plan, policies, procedures and practices used in the identification or placement of students to prevent disproportionality based on race.

Section 3. Personnel

A. Professional

The district must ensure that personnel working with students with disabilities are fully licensed or certificated whether they contract with or are employed by the district. The district must take measurable steps to recruit, hire and retain personnel who meet WVDE certification, licensure or other requirements for position assignments, including those for teachers, related service providers, paraprofessionals and assistants. Nothing in IDEA 2004 creates a right of action on behalf of a student or class of students for failure to employ fully licensed or certificated personnel or prevents a parent from filing a state administrative complaint about staff qualifications.

Public school special education teachers must meet the personnel qualification requirements in IDEA as amended by the ESSA:

1. Has obtained full state certification as a special education teacher (including participating in an alternate route to certification as a special educator) or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher.
 2. Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis.
 3. Holds at least a bachelor's degree.
1. All WV education personnel must complete professional learning annually to maintain employment. At least twelve (12) of the hours for speech-language pathologists (SLPs) and speech-language pathology assistants (SLPAs) must relate directly to their professional growth and development. Specific topics should include: augmentative/alternative communication; phonology; articulation; receptive/expressive language; swallowing; fluency; voice disorders; cognitive/social aspects of communication; hearing (impact on speech and language); assessment of students with speech-language disorders and other topics related to the practice of speech-language pathology.

WVDE Responsibility

The WVDE is required to provide twelve (12) hours of professional development directly related to speech-language pathologists' professional growth and development. Professional development information must be made available to the districts to facilitate registration.

District Responsibility

The district is accountable for documenting speech-language pathologists' participation in twelve (12) hours of professional development directly related to their professional growth development and submit such documentation to the West Virginia Department of Education. District provided

professional development must be submitted to the West Virginia Department of Education for approval.

2. All WV education personnel must complete professional learning annually to maintain employment. At least twelve (12) of the hours for school psychologists must relate directly to their professional growth and development as specified by the NASP-Approved Standards and Domains of Practice (Adopted 2010). These areas/domains include data-based decision making and accountability; consultation and collaboration; interventions and instructional support to develop academic skills; interventions and mental health services to develop social and life skills; school-wide practices to promote learning; preventative and responsible services; family-school-community collaboration services; diversity in development and learning; research and program evaluation; and legal, ethical and professional practice.

WVDE Responsibility

The WVDE is required to provide twelve (12) hours of professional learning directly related to school psychologists' professional growth and development in collaboration with the professional state association. Professional development information must be made available to districts to facilitate registration.

District Responsibility

The district is accountable for documenting school psychologists' participation in the twelve (12) hours of professional development directly related to the school psychologists' professional growth and development. Districts provided professional development must be submitted to the West Virginia Department of Education for approval.

3. As specified in West Virginia Code §18-20-2 and §18A-20-4, a sign support specialist may be assigned to a student who is deaf or hard of hearing in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable.

WVDE Responsibility

The WVDE is required to approve a waiver for sign support specialist serving in lieu of an educational sign language interpreter after two years. This waiver is verification of a professional development plan when an educational sign language interpreter is unavailable.

District Responsibility

The cost of certification renewal and satisfying the requirements of the West Virginia Registry of Interpreters is paid in full by the employer for any service person who is:

- a. Employed as an educational sign language interpreter I or II and is required to complete any testing, training or continuing education in order to renew or maintain certification at that level;
- b. Employed as an educational sign language interpreter I and is required to complete any testing, training or continuing education to advance to an educational sign language interpreter II; or
- c. Employed as a sign support specialist and is required to complete any testing, training or continuing education in order to advance to an educational sign language interpreter I or II.

B. Paraprofessionals, Assistants and Aides

The district may employ paraprofessionals, interveners, assistants, and aides who are appropriately trained and supervised to assist in the provision of special education and related services to students with disabilities if they meet standards established by the WVDE.

Chapter 10

PROCEDURAL SAFEGUARDS

Education is a fundamental right and a necessary benefit for all West Virginia students. IDEA 2004 and Policy 2419 provide procedural safeguards, that is, procedures to protect the educational rights of students with exceptionalities who need changes in the manner in which their education is provided to ensure it is appropriate for their unique needs. These procedural safeguards ensure the student's right to free appropriate public education through informed parent/adult student participation in the special education process.

This chapter will address procedural safeguards of notice, consent, independent educational evaluation, and access to educational records. The remaining dispute resolution safeguards, state complaints, mediation, due process complaints, private placement, discipline, and attorneys' fees, are discussed in other chapters.

Section 1. Notice Requirements

IDEA 2004 and Policy 2419 require three types of notices, all of which must meet general requirements and additional criteria specific to the type of notice. The three types of notices are:

1. Procedural safeguards notice;
2. Prior written notice; and
3. Notice of meetings.

All notices must be written in the native language of the parent/adult student or other mode of communication used by the parent/adult student (unless it clearly is not feasible to do so) and must be written in an easily understandable manner. If the native language or mode of communication of the parent/adult student is not a written language, the district must take steps to ensure that the notice is translated orally or by other means to the parent/adult student in his or her native language or other mode of communication and the parent/adult student understands the content of the notice. The district must maintain written evidence that these requirements have been met.

Section 2. Procedural Safeguards Notice

To facilitate their informed participation, parents/adult students are informed of the extensive procedural safeguards through the Procedural Safeguards Available to Parents and Students with Exceptionalities document.

A. Procedural Safeguards Notice Contents

The notice includes a full explanation of the following procedural safeguards:

1. Independent educational evaluation;
2. Prior written notice;
3. Parent/adult student consent;
4. Access to educational records;
5. Opportunity to resolve complaints through due process complaints or the state complaint process, including:
 - a. Time period in which to file a complaint;
 - b. The opportunity for the agency to resolve the complaint;
 - c. The difference between the due process and state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
6. The availability of mediation;

7. The student's placement during pendency of decisions in due process hearings;
8. Procedures for students who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placements by parents of students in private schools at public expense;
10. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions; and
12. Attorneys' fees.

B. When the Procedural Safeguards Notice Is Provided

The district will provide the parent/adult student a procedural safeguards notice at least once per school year, that is, one copy between July 1 and June 30. Because notice must be provided on each of the following occasions, it may be necessary to provide more than one notice during a school year:

- Upon an initial referral or a parent/adult student request for evaluation;
- Upon the first occurrence of a filing of a due process complaint or state complaint alleging violations of Part B of IDEA 2004;
- Upon notice of a disciplinary removal resulting in a change of placement; and
- Upon request by the parent/adult student.

A parent/adult student may receive the procedural safeguards notice by electronic mail (e-mail) if the district makes that option available.

Section 3. Prior Written Notice

Prior written notice (PWN) is the act of informing a parent/adult student, in writing within a reasonable amount of time, before the district proposes or refuses to initiate or change the student's identification, the evaluation, educational placement, or provision of FAPE. PWN serves two purposes:

1. To provide the parent/adult student with enough information so that he or she is able to fully understand the district's proposed action(s) or refused action(s) and to make informed decisions, if necessary; and
2. To provide a framework for data-based discussion and problem solving.

A. Content of Prior Written Notice

PWN must include the following:

1. A description of the action proposed or refused by the district;
2. An explanation of why the district proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
4. A description of other options the IEP Team considered and the reasons why those options were rejected;
5. A description of other factors relevant to the district's proposal or refusal;
6. A statement that the parent/adult student has protection under the procedural safeguards, and if notice is not an initial referral for evaluation, a description of how to obtain a copy of the Procedural Safeguards Notice; and
7. Sources to contact in obtaining assistance in understanding their Procedural Safeguards Notice.

B. Timeline for the Provision of Prior Written Notice

PWN must be provided to the parent /adult student five days prior to implementing the proposed action or within five days of the refusal. This requirement does not apply to notice of disciplinary removals, which must be provided on the same day the decision to remove the student is made. If the district and parent agree, PWN must be provided and services may be initiated within a reasonable time, which may be fewer than five days.

Section 4. Notice of Meetings

To ensure that one or both of the parents of the student with an exceptionality are present at each meeting and are afforded the opportunity to participate in meetings, including EC and IEP meetings, the district must provide written notice by:

1. Notifying parents/adult students of the meeting early enough, i.e., no less than eight days prior to the scheduled meeting date, to ensure that they will have the opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.

The written notice must include:

1. The purpose, time, and location of the meeting;
2. Who will be in attendance; and
3. An explanation that at the discretion of the district or parent/adult student, other individuals who have knowledge or special expertise regarding the student as determined by the district or the parent/adult student inviting the individual, can attend the meeting.

When scheduling an initial IEP Team meeting for a child who was previously served in the WV Birth to Three program, the written notice must indicate this purpose, and indicate that the district will invite, at the parent's request, the WV Birth to Three service coordinator or other representative to assist with the smooth transition of services.

If the purpose of the meeting includes the consideration of post secondary goals and transition services for the student, at age sixteen, or younger if appropriate, the written notice must also indicate this purpose, indicate that the district will invite the student and identify any other agency that will be invited to send a representative. The parent/adult student must provide written consent to invite an agency representative to attend the IEP Team meeting.

Section 5. Parental Participation

To ensure parental participation in the special education process, the district must afford the parents of a student with an exceptionality an opportunity to inspect and review all education records with respect to the identification, evaluation and educational placement of the student, and the provision of a free appropriate public education to the student. The procedures for accessing education records are outlined in West Virginia State Board of Education Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data.

Parents must also be afforded an opportunity to participate in meetings with respect to the identification, evaluation and educational placement of the student, and the provision of a free appropriate public education to the student. Therefore, the district must take whatever action is necessary to ensure that the parent understands the proceedings at a meeting including arranging for an interpreter for parents with deafness or whose native language is other than English.

The district may conduct the EC and/or IEP Team meeting without a parent/adult student in attendance only when the district has documentation that reasonable measures have been taken to ensure parent/adult

student participation. If unable to convince the parent/adult student that he or she should attend, the district must have a record of its attempts to arrange a mutually agreed upon time and place such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parent/adult student and any responses received; and/or
3. Detailed records of visits made with the parent/adult student and the results of those visits.

If neither parent can attend, the district must use other methods to ensure parent/adult student participation, including individual or conference telephone calls.

The district must obtain written parental consent for the initial provision of special education services and provide the parent a copy of the IEP, at no cost to the parent.

Section 6. Informed Consent

Informed consent is written approval given by a parent/adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information must be provided in the native language or mode of communication of the parent/adult student. The parent/adult student must be informed that the approval is voluntary and may be revoked at any time. Consent is indicated by the parent's /adult student's signature. 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.

A. Informed Consent Required

Informed written consent is required before:

1. Conducting an initial evaluation or reevaluation to determine whether a student is eligible for special education when this involves more than a review of existing information. The district need not obtain parental consent for a reevaluation if the district can demonstrate and document that it made reasonable efforts to obtain consent and the parent has failed to respond.
2. Initially providing special education and related services to a student with a disability. Parent consent for initial evaluation may not be construed as consent for the initial provision of special education and related services. When a student with a disability transitions from WV Birth to Three to Part B services, the district must provide the student's parents a detailed explanation of the differences between an IFSP and an IEP. If the parent chooses an IFSP, the district obtains informed consent from the parent.
3. Disclosing personally identifiable information from the student's education records, unless provided as an exception under the FERPA and Policy 4350. The written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.
4. Accessing public benefits or insurance or private insurance to pay for services listed in the IEP. (See Chapter 1, Section 2, C.)
5. An agency representative likely to pay for or provide transition services attends an IEP meeting.

6. Personally identifiable information is released between officials in the district of residence and the district in which the private school is located.

B. Informed Consent Not Required

The district is not required to obtain informed consent in the following situations:

1. When a review of existing data is part of an evaluation or a reevaluation.
2. When tests are administered to both general and special education students in a grade or class and consent is not required for all students.
3. When a teacher or related-service provider conducts observations, ongoing classroom evaluation, or criterion-referenced tests, as described in the IEP, to determine the student's progress toward goals and benchmarks/objectives on the IEP.
4. When disclosing personally identifiable information to persons authorized to have access under FERPA.

C. Refusal to Give Consent

For initial evaluations, if the parent refuses consent or the parent fails to respond to a request to provide consent, mediation or due process procedures may be used, if appropriate. The district may not use the mediation or due process procedures if consent for the initial evaluation involves a student who has been parentally enrolled in a private school or is being home schooled.

If the parent refuses consent for or refuses to respond to a request for consent to initial provision of special education and related services after the district has documented reasonable efforts to obtain consent, the district cannot use mediation or due process to obtain placement. In this situation, 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 child for whom the parent refused consent.

The district may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit or activity, except as required by this part.

D. Failure to Respond to a Request for Consent Regarding Reevaluation

When a parent/adult student fails to respond to reasonable measures taken by the district to obtain written consent to determine continued eligibility, the district may proceed with the reevaluation. The district must have a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment.

E. Revoking Consent

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked only before the action occurs. Consent must be revoked in writing. 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,

Section 7. Independent Educational Evaluations

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the district responsible for the education of the student in question.

A. Right to an Independent Educational Evaluation

1. A parent/adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the district. The parent/adult student is entitled to only one IEE at public expense in response to a district evaluation.
2. The parent/adult student has the right to an IEE at his or her own expense at any time.
3. If the IEE meets the criteria outlined in Chapter 3, Section 4, the EC/IEP Team must consider the IEE in its decision making process.
4. The parent/adult student is not automatically entitled to have additional assessments beyond those determined necessary for an evaluation. However, if the parent/adult student is interested in additional or different assessments and the district refuses to provide them, he or she may pursue additional assessments through a due process hearing request. In addition, the district may initiate a due process hearing to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the evaluation conducted by the district was appropriate, the parent/adult student still has the right to an IEE but at his or her own expense.
5. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the district was not appropriate.

B. Procedures for Requesting an Independent Educational Evaluation

Within five days of a parent/adult student's written request for an IEE at public expense, the district may ask why he or she disagrees with the evaluation obtained by the district, but the district cannot require an explanation. Within ten school days of the written request for an IEE, the district must give the parent/adult student information about where the IEE may be obtained and the agency criteria, consistent with evaluation criteria described in Chapter 3, applicable for IEE including:

1. The location for the evaluation;
2. The required qualifications of the examiner; and
3. The maximum allowable charges for specified evaluations based on reasonable and prevailing rates typically paid by the district for similar evaluations, to eliminate unreasonably excessive fees, including travel costs for necessary services not available in the community.

Except for the criteria listed above, the district may not impose other conditions or timelines if doing so would be inconsistent with the parent's/adult student's right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

A parent/adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's cost criteria. If an IEE that falls outside the district's cost criteria is justified, that IEE will be publicly funded.

C. District Responsibilities Following Independent Educational Evaluation Requests

If a parent/adult student requests an IEE at public expense, the district must do one of the following within ten school days of written request:

1. Agree, in writing, to pay for an IEE at reasonable and prevailing rates, and provide the district's IEE criteria and information about where an IEE may be obtained.
2. Offer WVDE mediation to try to resolve differences. This is only available if parents agree to mediate.
3. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the parent/adult student may pursue an IEE, but at his or her own expense.

If a parent/adult student asks the district to pay for an IEE that has already been obtained, the district must:

1. Pay for the IEE; or
2. Request WVDE mediation when parents agree to mediate; and/or
3. Request a due process hearing within ten school days of the receipt of the evaluation report to show that the evaluation obtained by the parent/adult student did not meet the criteria for a publicly funded IEE; or
4. Request a due process hearing within ten school days of billing to demonstrate that the district's evaluation was appropriate. The district does not have to pay for an IEE if the hearing officer finds for the district.

D. Considerations of the Independent Educational Evaluation Results

If a parent/adult student obtains an IEE and makes that evaluation available to the district, the results must be considered by the district, if the IEE meets the district's criteria, in any decision made with respect to the provision of FAPE. The results may also be presented as evidence at a hearing regarding the student. This is true regardless of whether the IEE is at the expense of the parent/adult student or district.

The results of an IEE cannot be the sole determining factor for eligibility. The EC has the responsibility to use existing evaluation data and other information from a variety of sources, in addition to the IEE, to determine whether a student has an exceptionality or continues to have a disability under Policy 2419.

Section 8. Surrogate Parents

A surrogate parent is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA 2004. The surrogate parent may represent a student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of FAPE to the student.

A. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district's special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

1. A parent cannot be identified.
2. A parent cannot be found after reasonable efforts to locate the parent.
3. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student's education, including special education, provided he or she meets the criteria for a district-appointed surrogate.
4. The student is an unaccompanied homeless youth as defined in Section 725 (6) of the McKinney-Vento Homeless Assistance Act.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the natural parent is available but chooses not to participate. When

a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth below. The district will make reasonable efforts to assign a surrogate within thirty days after it determines that the student needs a surrogate.

B. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement and the provision of FAPE. The district must ensure the person selected and appointed as a surrogate parent:

1. Has knowledge and skills that ensure effective representation of the student.
2. Has no personal or professional interest that conflicts with the interest of the student.
3. Is not an employee of the WVDE, the district, or any other agency that is involved in the education or care of the student.

A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs may be appointed as temporary surrogates without regard to the above requirements until a surrogate can be appointed that meets all of the requirements of this section.

Section 9. Adult Students and the Transfer of Rights

An “adult student” is a student who is at least eighteen years of age to whom special education rights have transferred under the IDEA 2004 and West Virginia Code.

A. Discussion of the Transfer of Rights

Not later than the student’s 17th birthday, the IEP Team must discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns eighteen years of age unless a court has appointed a legal guardian to represent the educational interests of the student. Beginning not later than the 17th birthday, the IEP must include a statement that the student has been informed of the rights that will transfer at age eighteen.

B. Notice of Transfer of Parental Rights at Age Eighteen

When the student’s special education rights transfer at age eighteen, the parent and student must be notified that rights have transferred. The IEP must contain a statement that the student has been informed of the special education rights that have transferred to him or her.

C. Written Notice and IEP Team Participation

The right to receive written notice is always retained by both the parent and adult student. The parent will continue to receive copies of any notices, including those listed in Section 1 of this chapter. While a parent has the right to receive notices, only the adult student has the right to make decisions regarding his or her educational program.

Section 10. Confidentiality and Access to Records

The district must collect, use, and maintain information about a student to make appropriate decisions concerning special education and the provision of FAPE. IDEA 2004 and FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes

also provide for the right of the parent/adult student to review and inspect records. The full requirements may be found in West Virginia State Board of Education Policy 4350: Collection, Maintenance and Disclosure of Student Data. School personnel with responsibilities for educational records must be trained in these policies.

Additional procedural safeguards include the right to file a state complaint alleging a violation of IDEA 2004, Policy 2419 or Policy 4350, the right to request mediation and the right to file a due process complaint. These procedural safeguards may be found in Chapter 11, Dispute Resolution.

Chapter 11

DISPUTE RESOLUTION

A variety of options are available to resolve disagreements between parents/adult students and districts related to the implementation of state and federal special education laws and regulations regarding the identification, evaluation or educational placement of a student or the provision of FAPE. The WVDE administers a dispute resolution system including the following processes that may be used singly or in combination:

1. Facilitated Individualized Education Program Team Meeting
2. State complaint including early resolution;
3. Mediation; and
4. Due process complaint including a resolution process.

Section 1. Facilitated IEP Team Meeting

A Facilitated IEP Team meeting is a voluntary early dispute prevention option utilizing an impartial facilitator to guide the IEP process during the meeting and to assist members of the IEP Team to communicate effectively. A student's IEP is developed by a collaborative team whose required members share responsibility for the process, content and results. An IEP Facilitator provides assistance to the IEP Team as a preventative measure before a potential conflict develops into a more serious dispute. The IEP Facilitator is an impartial third party, not a member of the IEP Team, and has no stake in decisions made by the team. Facilitation is the process of helping the IEP Team complete a task, solve a problem or come to agreement to the mutual satisfaction of the participants.

A. Responsibilities of an Individual/District Requesting a Facilitated IEP

A district and/or parent/adult student may request a Facilitated IEP by submitting a written request to the WVDE. The WVDE has made available a form for requesting a Facilitated IEP although its use is not required. The request must contain an original signature (i.e., facsimiles and e-mails will not be accepted). The district and/or parent/adult student must agree to use the Facilitated IEP process. A request must be made at least two weeks prior to the scheduled IEP Team meeting.

B. Responsibilities of the West Virginia Department of Education

The WVDE administers a system which ensures:

1. The Facilitated IEP is voluntary and agreed to by both parties;
2. The Facilitated IEP is not used to deny or delay a parent/adult student's right to a hearing on the issue or to deny any other rights afforded under Part B of the Act;
3. The Facilitation is conducted by a qualified and impartial facilitator who is trained in facilitation techniques;
4. Facilitators are assigned from the list of qualified facilitators on a rotational basis and are available during the timeframe for the IEP Team meeting;
5. The Facilitated IEP is free to the parties;
6. The Facilitated IEP Team meetings are scheduled in a timely manner and adhere to all required timelines.

The IEP Facilitator must be:

1. Qualified and trained in effective facilitation techniques and be verified by the WVDE as having met the requirements for qualified facilitators and be on the WVDE-maintained list of qualified individuals, and
2. Impartial (the criteria for impartiality are listed below).

The IEP Facilitator must not:

1. Be an employee of the WVDE or an employee of the district who is involved in the care and education of the student;
2. Have a personal or professional interest that conflicts with the facilitator's objectivity; or
3. Have a student enrolled in the district involved in the Facilitated IEP.

When a Facilitated IEP Team Meeting occurs as a result of a state complaint, mediation or a due process hearing, the procedures as stated in Section 1.B may be altered by an agreement, decision or order.

Section 2. State Complaint Procedures

The federal regulations for implementing Part B of IDEA 2004 require each state to administer a complaint system for investigating and resolving state complaints. A formal state complaint is a charge that special education laws or regulations are not being followed by a district or public agency.

A. Responsibilities of an Individual/Organization Filing a State Complaint

An individual or organization, including one from another state, may file a state complaint under the procedures described below. The complaint must be in writing and include:

1. A statement that a public agency or the WVDE has violated a requirement of Part B of IDEA 2004 or its implementing regulations or West Virginia Code §18-20 and implementing regulations Policy 2419: Regulations for the Education of Students with Exceptionalities and/or Policy 4350: Procedures for the Collection, Maintenance and Disclosure of Student Data;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations against a specific student:
 - a. The name and address of the residence of the student;
 - b. The name of the school the student is attending;
 - c. In the case of a homeless student (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434 a (2)), available contact information for the student and the name of the school the student is attending;
 - d. A description of the nature of the problem of the student, including facts related to the problem; and
 - e. A proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. The party filing the complaint must forward a copy of the complaint to the district or public agency serving the student at the same time the party files the complaint with the WVDE. The WVDE has made available a form for filing a state complaint. Although the use of this form is not required, the complaint must be in writing and meet the criteria in 1. – 4. as described above.

B. Responsibilities of the West Virginia Department of Education

The WVDE has adopted written procedures for responding to or investigating complaints and widely disseminates these procedures to parents and other interested individuals including parent training and

information centers, protection and advocacy agencies, independent living centers, and other appropriate entities in the state.

Within sixty days after the complaint is filed, the WVDE must:

1. Carry out an independent on-site investigation if the WVDE determines the state complaint is sufficient. The WVDE will conduct an on-site investigation, if determined necessary based upon the nature of the allegations, review of information submitted by the parent/adult student and the district and information obtained through telephone interviews;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the district with the opportunity to respond to the complaint, including at a minimum, a proposal to resolve the complaint; and an opportunity for the district and the parent/adult student to voluntarily engage in mediation and/or early resolution;
4. Review all relevant information and make an independent determination as to whether the public agency is violating state or federal special education laws or regulations;
5. Issue a written decision to the district and the parent/adult student that addresses each allegation in the complaint and contains:
 - a. Findings of facts and conclusions;
 - b. The reasons for the WVDE's final decision; and
 - c. Procedures for effective implementation of the WVDE's final decisions, if needed, including:
 - i. Technical assistance activities;
 - ii. Negotiations; and
- iii. Corrective actions, including timelines, to achieve compliance. Timelines for completion of corrective activities will only be extended, if requested by the district within five days of the district's receipt of the decision, based upon exceptional circumstances.
 6. Address the district's failure to provide appropriate services, including corrective activities to effectively address the needs of the student, and appropriate future provision of services for all students with disabilities; and
 7. Permit an extension of the sixty-day time limit only if exceptional circumstances exist with respect to a particular complaint or if the parent and the district involved agree to extend the time to engage in mediation or other alternative dispute resolutions.

C. State Complaints and Due Process Complaints

If a written state complaint is received that is also the subject of a due process complaint, or contains multiple issues of which one or more are part of the due process complaint, the WVDE must set aside any part of the state complaint that is being addressed in the due process complaint until the conclusion of the hearing. Any issue that is not a part of the due process action will be resolved following the established state complaint procedures and timelines. For issues that are addressed in the due process hearing, the hearing officer's decision is binding on those issues and the WVDE must inform the complainant to that effect. Any remaining issues not addressed in the due process hearing decision will be investigated upon receipt of the hearing decision by the WVDE in accordance with the established state complaint procedures and timelines.

If an issue raised in a state complaint filed under this section has previously been decided in a due process hearing involving the same parties, the due process decision is binding on that issue and the WVDE must inform the complainant that the state complaint process cannot be used to overrule the due process decision.

A state complaint alleging a district's failure to implement a due process hearing decision must be investigated and resolved by the WVDE utilizing the state complaint procedures described in Section 1.B. of this chapter.

D. Early Resolution to State Complaints

Either the district or the parent/adult student may request early resolution to a state complaint investigation by contacting the other party and participating in a local conference if both the district and parent voluntarily agree to utilize the early resolution option. If early resolution is reached on any or all allegations within fifteen days of being notified of the receipt of the state complaint, the school district need not submit its written response to the allegations to the WVDE, and the state complaint will be considered resolved. However, the district must provide to the WVDE the signed Verification of Early Resolution form. Allegations not resolved will be investigated using these procedures.

Section 3. Mediation

Mediation is an informal, non-adversarial, confidential and voluntary process in which an impartial third party, the mediator, provides an opportunity to the parties involved in a dispute to resolve their differences and create a mutually satisfactory solution. IDEA 2004 requires that each state make mediation available to help districts and parents/adult students resolve disputes relating to any matter under IDEA. Mediation may take place at any time regardless of the filing of a due process and/or state complaint. Another component of the mediation system is an optional meeting to encourage mediation, which is described in Part C of this section.

The WVDE makes mediation information available to parents/adult students through the WVDE procedural safeguards document when a state complaint is filed for the first time, when a due process complaint is received and/or upon request of a parent/adult student or district who are attempting to resolve differences relating to the identification, evaluation or educational placement or the provision of FAPE to a student with a disability or an exceptionality.

A. Responsibilities of an Individual/District Requesting Mediation

A district and/or parent/adult student may request mediation by submitting a written request to the district or the WVDE. The WVDE has made available a form for requesting mediation although its use is not required. The request must contain an original signature (e.g., facsimiles and e-mails will not be accepted). The district and/or parent/adult student must both agree to use the mediation process.

If the parties resolve the dispute through the mediation process, the mediator will help the parties execute a legally binding agreement that sets forth that resolution. The agreement must:

1. State that all discussions that occurred during the mediation process will remain confidential and not be used as evidence in any subsequent due process hearing or civil proceedings; and
2. Be signed by both the parent/adult student and the representative of the district who has the authority to bind the district.

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

An agreement reached by the parties through WVDE mediation is enforceable in state and federal courts.

B. Responsibilities of the West Virginia Department of Education

In accordance with IDEA 2004, the WVDE administers a system of mediation, which ensures:

1. Mediation is voluntary and is agreed to by both parties;
2. Mediation is not used to deny or delay a parent/adult student's right to a hearing on the issue, or to deny any other rights afforded under Part B of the Act;
3. Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques;
4. Mediators are assigned from the list of qualified mediators on a rotational basis;
5. Mediation is free to the parties;
6. Parties to the mediation are informed of the confidential nature of the discussions that occur during mediation and these discussions may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute;
7. Parties may be required to sign a confidentiality agreement at the conclusion of the mediation;
8. Mediation sessions are scheduled in a timely manner and must be held in a location that is convenient to the parties in the dispute; and
9. That, if the parties resolve the dispute through the mediation process, the parties must execute a legally binding agreement that:
 - a. Describes the resolution;
 - b. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
 - c. Is signed by both the parent/adult student and a representative of the district who has the authority to bind the agency.

Mediators must be:

1. Qualified and trained in effective mediation techniques and in the requirements of IDEA 2004 and Policy 2419 (i.e., verified by the WVDE as having met the requirements for qualified mediators and on the WVDE-maintained list of qualified individuals); and
2. Impartial (the criteria for impartiality are listed below).

Mediators must not:

1. Be an employee of the WVDE or an employee of the district that is involved in the care and education of the student; or
2. Have a personal or professional interest that conflicts with the person's objectivity, including, but not limited to, representing boards of education or parents against boards of education (i.e., attorneys, advocates) and having a student enrolled in the district involved in the dispute.

A person who otherwise qualifies as a mediator is not an employee of the WVDE or an employee of the district solely because he or she is paid by the WVDE to serve as a mediator.

C. Meeting to Encourage Mediation

For parents and schools that choose not to use the mediation process, districts may establish procedures to offer parents/adult students an opportunity to meet at a convenient time and location with a disinterested party who:

1. Is under contract with an appropriate alternative dispute resolution entity, or a parent and training information center, or community parent resource center; and
2. Who would explain the benefits of, and encourage the use of the mediation process to the parents/adult students.

Section 4. Due Process Complaints

A due process complaint to request a due process hearing may be filed to resolve disputes on any matter related to the-identification, evaluation, educational placement of a student or the provision of a FAPE. The procedures relevant to due process complaints do not apply to students placed in a private school by the parent for issues regarding the provision of services, however, due process procedures do apply to child find, evaluation and reevaluation. Additionally, a parent who has unilaterally placed their child in a private school where FAPE is an issue, may file a due process complaint. Impartial due process hearing officers contracted by the WVDE conduct all hearings. Appeals of hearing decisions must be filed in state or federal court.

A. Filing a Due Process Complaint

A parent/adult student, the district or an attorney representing a party may file a due process complaint by contacting the district superintendent or the WVDE. The WVDE has a form available for submitting a due process complaint. Although the use of this form is not required, the complaint must be in writing and mailed or hand delivered to the other party and the coordinator responsible for due process complaints at the WVDE.

A due process complaint must be initiated within two years of the date the parent/adult student or district knew or should have known of the disputed decision or alleged action that forms the basis for the complaint. The two-year timeline will not apply if the parent/adult student was prevented from filing a complaint due to specific misrepresentations by the district that it had resolved the problem forming the basis of the due process complaint or the district's withholding information it was required to provide to the parent/adult student.

The WVDE 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 filed or if the parent/adult student requests such information.

The burden of proof will be on the party seeking relief in accordance with the decision in *Shafter v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163L. Ed.2d 387 (2005).

The party, or the attorney representing the party, must forward a copy of the due process complaint to the other party and to the WVDE, which must remain confidential.

B. Due Process Complaint Components

A due process complaint must be made in writing and must include the following:

1. The student's name, address of the residence of the student and the school the student is attending;
2. In the case of a homeless child or youth (within the meaning of the McKinney-Vento Homeless Assistance Act), available contact information for the student, and the name of the school the student is attending;
3. A specific description of the student's problem relating to the proposed or refused initiation or change, including the facts pertaining to the problem;
4. A proposed resolution of the problem to the extent known and available at the time; and
5. The signature of the individual requesting the due process hearing.

C. Sufficiency of Due Process Complaints

The district or the parent/adult student may not have a hearing on a due process complaint or participate in an early resolution session unless the due process complaint is sufficient; that is, meets the criteria in 1. – 5. listed in Section B., Due Process Complaint Components.

The due process complaint must be considered sufficient unless the district or the parent/adult student receiving the due process complaint notifies the hearing officer and the other party in writing within fifteen days of receipt of the due process complaint that the receiving party believes that the due process complaint does not meet the requirements of 1. – 5. as listed in Section B., Due Process Hearing Complaint Components.

The due process hearing officer must make a determination of sufficiency, on the face of the complaint, within five days of receiving notice that the party subject to the due process complaint believes that the due process complaint is insufficient. The hearing officer must immediately notify the parties in writing of the determination.

A party may amend a due process complaint only if:

1. The other party consents in writing to the change and is given the opportunity to resolve the due process issues through the resolution process described below; or
2. The hearing officer grants permission to amend the due process complaint no later than five days before the due process hearing begins.

If a party files an amended due process complaint, the timelines begin again for the resolution meeting and the resolution period as described in Section E., Resolution Process.

D. Responding to a Due Process Complaint

The party, the district or the parent, receiving a due process complaint must, within ten days of receiving the due process complaint notice send to the other party a response that specifically addresses the issues raised in the due process complaint notice and include the following:

1. An explanation of why the district proposed or refused to take the action raised in the due process complaint;
2. A description of other options the IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report that the district used as a basis for the proposed or refused action; and
4. A description of other factors relevant to the district's proposal or refusal.

Providing the parent/adult student with PWN does not preclude the district from asserting that the parent/adult student's due process complaint was insufficient, where appropriate.

E. Resolution Process

Resolution Meeting

The purpose of the resolution meeting is for the parent/adult student to discuss the due process complaint, and the facts that form the basis of the due process complaint, so the district has the opportunity to resolve the dispute that is the basis for the due process complaint. Within fifteen days of receiving a due process complaint from the parent as the party and prior to initiating a due process hearing, the district must convene a resolution meeting.

The “resolution team” includes the parent/adult student, a representative of the district who has decision-making authority and relevant members of the IEP Team as determined by the school district and the parent/adult student who have specific knowledge of the facts identified in the complaint. The district’s attorney will not attend the resolution session unless an attorney will accompany the parent/adult student.

The district must proceed with the resolution meeting even if it has challenged the sufficiency of the parent’s due process complaint. The WVDE or district may not suspend the 15-day resolution meeting timeline while schools are closed for breaks or holidays.

If the district has not resolved the due process complaint to the satisfaction of the parent/adult student within thirty days of the receipt of the due process complaint, the due process hearing may occur and the timeline for issuing a decision begins at the expiration of this thirty-day period.

Resolution Period

The resolution meeting need not be held if:

1. Both parties agree in writing to waive the meeting; or
2. Both parties agree to participate in mediation.

Except where 1. or 2. above apply, failure of the parent/adult student to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. If the district fails to hold the resolution meeting within fifteen days of receiving notice of a parent’s/adult student’s due process complaint or fails to participate in the resolution meeting, the parent/adult student may seek the intervention of a hearing officer to begin the due process hearing timelines. In cases where the district is unable to obtain the participation of the parent/adult student in the resolution meeting after reasonable efforts have been made and documented as specified in Chapter 10, Section 5, Parent Participation, the district may at the end of the thirty-day resolution period request that a hearing officer dismiss the parent’s/adult student’s due process complaint.

Adjustments to the 30-day Resolution Period

The 45-days timeline for the due process hearing starts the day after one of the following occurs:

1. Both parties agree in writing to waive the resolution meeting;
2. After either the mediation or resolution meeting starts, but before the end of the thirty-day period, the parties agree in writing that no agreement is possible; or
3. If both parties agreed in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or district withdraws from the mediation process.

Written Settlement Agreement

If a resolution is reached regarding the issues raised in the due process complaint, the district representative and parent/adult student will sign a legally binding document that is enforceable in state and federal court. If the parties sign a written agreement that adjusts the thirty-day resolution period by one of the three methods described above, either party may void this agreement within 3 business days of signing the agreement.

F. Responsibilities of the West Virginia Department of Education

IDEA 2004 requires that each state administer a due process complaint system as a means to resolving disputes between districts and parents/adult students. The WVDE has the following responsibilities with regard to the implementation of the WVDE due process complaint system:

1. Provide assistance in alternative means for submitting due process complaints in instances where parents are unable to submit written requests;
2. Develop a model form to assist parents/adult students in filing a due process complaint;
3. Maintain a list of attorneys trained to serve as hearing officers. The listing must include a statement of the qualifications of each person and must be provided to each district and to any party who requests the information in writing;
4. Inform the parties of the availability of mediation when a due process complaint is initiated or the parties request the information;
5. Provide information regarding any free or low-cost legal, and other relevant services in the area, to the parent/adult student if the parent/adult student requests the information or when the parent/adult student or district files a due process complaint;
6. Ensure that all required timelines for due process complaint resolution process and due process hearings are met; and
7. Transmit findings and decisions from due process hearings, after deleting any personally identifiable information, to the West Virginia Advisory Council for the Education of Exceptional Children and make those findings and decisions available to the public.

G. Qualifications of Due Process Hearing Officers

WVDE will ensure that due process hearing officers, at a minimum, have the following qualifications:

1. A law degree;
2. Admission to the West Virginia State Bar;
3. The knowledge of, and the ability to understand IDEA 2004 and federal regulations and Policy 2419 pertaining to the Act, and legal interpretations regarding special education law, regulations and state policy by federal and state courts;
4. The knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;
5. The knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice;
6. Competencies in due process, special education law, effective writing and speaking, decision-making and related areas, as evidenced through application, interview, and competency-based training; and
7. Impartiality (see specific criteria listed below).

Due process hearing officers must not be:

1. A person who is an employee of the WVDE or the district that is involved in the education or care of the student; or
2. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing; or
3. A lawyer who represents boards of education or parents in actions against boards of education.

An otherwise qualified due process hearing officer:

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

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

H. Selection of Due Process Hearing Officers

Upon receipt of a written request for a due process complaint, the WVDE must select a hearing officer by:

1. Using a rotational selection process from the list of qualified hearing officers;
2. Making an initial determination whether the hearing officer has a personal or professional interest which would conflict with objectivity in the hearing;
3. Selecting a new hearing officer if conflict is determined or the hearing officer is unavailable to conduct the hearing within timelines; and
4. Allowing either party to submit a challenge for cause to remove a hearing officer. This challenge must be submitted in writing to the hearing officer.

I. Due Process Hearing Rights

The party requesting a due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

Any party to a hearing or an appeal has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to students with exceptionalities; State law determines whether parties have the right to be represented by nonattorneys at due process hearings.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses and compel the production of relevant documents;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain written, or at the option of the parent/adult student, electronic, verbatim record of the hearing; and
5. Obtain written, or at the option of the parent/adult student, electronic findings of fact and decisions.

In addition, the following apply to disclosure of information:

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

Parents/adult students involved in hearings must be given the right to:

1. Have the student who is the subject of the hearing present;
2. Open the hearing to the public;
3. Have the record of the hearing and the findings of fact and decisions provided at no cost to the parent/adult student;
4. Be provided with interpreters for the deaf or interpreters fluent in the primary language of the home as needed at public expense at all stages of the due process procedures;
5. Have the hearing conducted at a time and place that is reasonably convenient; and
6. File a due process complaint on an issue separate from a due process complaint already filed.

J. Student's Status During Proceedings

During the pendency of any administrative or judicial proceeding regarding a due process complaint (except as provided for under Section L., 5.), unless the state or local agency and the parent/adult student agree otherwise, the student involved in the complaint must remain in his or her current educational placement. If the complaint involves an application for initial admission to public school, the student, with the consent of the parent, must be placed in the public school until the completion of all the proceedings.

If a complaint involves initial services for a child transitioning from Part C to Part B and the child is no longer eligible for Part C services because he/she turned three, the district is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of services, the district must provide those services that are not in dispute between the parent and the district.

If the decision of a hearing officer in a due process hearing agrees with the parent/adult student that a change of placement is appropriate, that placement must be treated as an agreement between the district and the parent/adult student.

K. Timelines and Convenience of Hearings

Not later than forty-five days after the expiration of the resolution process thirty-day period or the adjusted time periods described in Section 3, E., the hearing officer will issue a final decision, mailing a copy of the decision to each of the parties.

A hearing officer may grant specific extensions of time beyond the above timeline at the request of either party.

Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent/student involved.

L. Expedited Due Process Complaint

An expedited due process hearing is used only for disciplinary issues (refer to Chapter 7, Section 3.A) and may be requested with the WVDE, under the following circumstances:

1. The parent/adult student with a disability disagrees with a decision regarding a manifestation determination or with any decision regarding placement for disciplinary reasons, or
2. The district believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others.

M. Due Process Hearing

The impartial hearing officer must:

1. Preside at the hearing;
2. Conduct the proceedings in a fair and impartial manner; and
3. Take steps to assure that the hearing will be conducted and completed in an efficient manner.

Hearing officers must have the power to issue subpoenas requiring testimony and/or the production of books, papers, and physical or other evidence. Any person served with a subpoena pursuant to this section may object and ask the hearing officer in writing to quash or modify the subpoena as illegally or

improvidently issued. The hearing officer must immediately issue a decision on that validity of the subpoena. Any person served with a subpoena pursuant to this section must have the right to petition the United States District Court for the county in which the hearing is to be held for an order to quash any subpoena issued pursuant to this section. A hearing officer may petition said court for an order of enforcement of a subpoena issued by the hearing officer. Nothing in this section must prohibit the hearing officer from refusing to issue subpoenas which are requested for purposes of harassment, abuse of process, delay or which are obviously directed to persons who have no direct evidence in the matter to be heard.

A hearing officer's determination of whether a child received FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:

1. Impeded the student's right to FAPE;
2. Significantly impeded a parent's/adult student's opportunity to participate in the decision-making process regarding the provision of a FAPE; or
3. Caused a deprivation of educational benefit.

A hearing officer may order a district to comply with procedural requirements regardless of whether a district's failure resulted in a denial of FAPE.

A decision made in a hearing is final except that any party involved in the hearing may appeal the decision through civil action.

N. Civil Action

Any party aggrieved by the findings and decisions made in the hearing has the right to bring a civil action with respect to the due process hearing complaint notice in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within 90 days of the issuance of the hearing officer's written decision.

In any action brought under the above, the court must:

1. Receive the records of the administrative proceedings;
2. Hear additional evidence at the request of a party; and
3. Grant the relief that the court determines to be appropriate based upon the preponderance of the evidence.

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act. The procedures under 300.507 and 300.514 must be exhausted to the same extent as required had the action been brought under section 615 of the Act.

O. Attorneys' Fees

Parents are informed through the procedural safeguards notice that reasonable attorneys' fees may be awarded to parents of students with disabilities to cover attorneys' fees when the parent of a student with a disability is the prevailing party, subject to certain constraints, and that such attorneys' fees may be agreed to by the parties or awarded by a court. IDEA, Part B funds may not be used to pay attorneys' fees.

The court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing party who is the:

1. Parent of a child with a disability;

2. WVDE or district against the attorney of a parent/adult student who files a complaint that is frivolous, unreasonable or without foundation, or against the attorney of a parent/adult student who continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or
3. WVDE or district against the attorney of a parent/adult student, or against the parent/adult student, if the parent's/adult student's due process complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

A court awards reasonable attorneys' fees based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process complaint, at any time more than ten days before the proceeding begins;
2. The offer is not accepted within ten days; and
3. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP Team, including resolution meetings, unless the meeting is convened as a result of a due process decision or judicial action.

The court may award attorneys' fees and related costs to a parent/adult student who is the prevailing party and who was substantially justified in rejecting the settlement offer.

The court may reduce the amount of the attorneys' fees if the court finds the:

1. Parent/adult student, or the parent's/adult student's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
2. Amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
3. Time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. Attorney representing the parent/adult student did not provide to the district the appropriate information in the due process complaint notice.

The above provisions 1-4 do not apply if the court finds that the WVDE or district unreasonably protracted the final resolution of the action or proceeding or there was a violation of procedural safeguards.

GLOSSARY

Acceleration	Moving through a prescribed course of study at a faster or earlier rate. Acceleration includes, but is not limited to: compacted classes/schedules, testing out, advanced placement (if college credit is earned), fast-paced curriculum and high school credit for college classes.
Accommodation	An accommodation is an effort to alter the representation, presentation, or the student's engagement with the curriculum to enhance access and progress. Accommodations are changes in assessment or curriculum that do not alter the validity, reliability, or security of the test or curriculum. An accommodation does not alter what the student is expected to know. Accommodations do not change the content and are not considered interventions.
Adaptive Physical Education	General physical education, which has been modified or adapted, so that a student with disability can participate in the general physical education program. Modifications may include, but are not limited to, instructional adaptations and/or modified or specialized equipment.
Adaptive Skills	Those skills necessary to function adequately within a person's present environment. These skill areas are: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.
Adult Education	The educational program that addresses the intellectual, physical, social/emotional and occupational needs of persons sixteen years old and older who presently are not enrolled in a public school.
Adversely Affects	Interferes with the student's educational performance to the extent that the student is unable to achieve in the general education program within the range of functioning of the student's chronological age peers without exceptionalities.
Age-Appropriate	The term applies to peers of similar chronological ages or settings in which peers of similar chronological ages without exceptionalities are served.
State-Defined Alternate Diploma	Eligible students with disabilities who have been determined by an IEP Team to be unable, even with extended learning opportunities and significant instructional accommodations, to meet state and county standard graduation requirements may receive a State-defined alternate diploma. These students participate in the alternate assessment based on alternate academic achievement standards. The State-defined alternate diploma must be standards-based, be aligned with

State requirements for the regular high school diploma and be obtained within the time period for which the State ensures the availability of a free appropriate public education (FAPE).

Annual Goal

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

Assistive Technology Device

Any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of students with disabilities. The term does not include a medical device that is surgically implanted, or the replacement of such a device.

Assistive Technology Service

Any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
4. Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a student with a disability or, if appropriate, that student's family; and
6. Training or technical assistance for professionals, (including individuals providing education or rehabilitation services) employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student with a disability.

Audiological Services

Services provided by a qualified audiologist include:

1. Identification of students with hearing loss;

2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
6. An appropriate aid, and evaluating the effectiveness of amplification.

Behavior Intervention Plan (BIP)

Written, purposeful and individualized plan based upon a student's functional behavioral assessment. The BIP describes the positive behavioral interventions, strategies and supports required to implement the student's IEP goals and objectives in the areas of social, emotional and/or behavioral development. The BIP may include, but is not limited to:

Environmental modifications that reduce the likelihood of the problem behavior;

1. Guidance, structured opportunities and/or instruction in the use of new skills as a replacement for problem behaviors;
2. Consequences to promote positive change and diminish problem behavior;
3. A crisis management plan (if appropriate); and
4. Procedures for monitoring, evaluating and reassessing the plan as necessary.

Business Day

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

Career and Technical Education

Organized educational programs that are directly related to the preparation of individuals for employment.

Case Management

The maximum number of students for whom a special education teacher has primary responsibility in performing the administrative functions of the IEP process including:

1. Setting up meetings;
2. Ensuring appropriate forms are completed;
3. Ensuring timelines are met; and
4. Notifying participants of the times and dates of meetings.

Class List

The maximum number of students for whom a special education teacher has responsibility for direct instruction per instructional period.

Close Adult Supervision	The provision of staff to address the behavioral, academic, medical, health, safety or other needs of a student to enable them to make progress toward the goals of their IEP and be educated in the least restrictive environment.
Collaboration	A style of interaction in which two or more professionals work together toward a common goal.
Communication	Includes the ability to comprehend and express information through symbolic behaviors (e.g., facial expression, body movement, touch, gesture). Specific examples include the ability to comprehend and/or receive a request, an emotion, a greeting, a comment, a protest, or rejection. Higher level skills of communication (e.g., writing a letter) would also relate to functional academics.
Community- Settings	Community environment(s) in which the student will be expected to use/apply the skills or behaviors that are being learned.
Community Use	Refers to the appropriate use of community resources. This includes traveling in the community, shopping for groceries and other items, purchasing or obtaining services from community businesses (e.g., gas stations, repair shops, doctor's offices), attending places of worship, using public transportation, and using public facilities (e.g., schools, parks, libraries, recreational centers, streets, sidewalks, theaters). Related skills include appropriate behavior in the community, indicating choices and needs, social interaction, and the application of functional academics.
Confidentiality	The protection of all personally identifiable data, information and records collected or maintained by any agency or institution under the general supervision of the West Virginia Board of Education.
Consent	<ol style="list-style-type: none"> 1. The "parent" has been fully informed of information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; 2. The "parent" understands and agrees in writing to the carrying out of the activity for which her or his consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; 3. The "parent" understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and 4. If a "parent" revokes consent, that revocation is not retroactive (i.e. it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Consultation	An interaction in which a party provides assistance and expertise to assist another party. A special education teacher in WV who is not certified or highly qualified in the core academic area being taught serves in a consultative role as he or she contributes to teaching and learning in that core content area. Examples of these responsibilities are provided in Policy 5202.
Continuum of Alternative Placements	A range of settings in which eligible students with exceptionalities receive special education and related services.
Controlled Substance	A drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812 (c)).
Core Academic Subjects	English language arts/reading, mathematics, science, foreign language, civics and government, economics, arts, history and geography.
Co-teaching	When two or more educators co-plan, co-instruct, and co-assess a group of students with diverse needs in the same general education classroom. (Murawski, 2005).
Counseling Services	Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
Critical Skills	The cognitive, physical, communication, and/or social/emotional abilities needed for the student to maintain current levels of performance.
Dangerous Weapon	A weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such a term does NOT include a pocket knife with a blade of less than two and one-half inches in length (18 U.S.C. Section 930(g)(2)).
Day; Business	Day means calendar day unless otherwise indicated as school day or business day.
Day; School Day	Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day.) School day means any day, including a partial day that students are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without exceptionalities.

Destruction	Physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
Direct Services	Instruction, therapy or interventions provided one-on-one or in groups to an eligible student with an exceptionality in school, home or community settings.
Disciplinary Removal	Any instance in which a child is removed from his/her educational placement for disciplinary purposes, including in-school suspension, out-of school suspension, expulsion, removal by school personnel to an interim alternative educational setting for drug or weapon offenses or serious bodily injury, and removal by hearing officer for likely injury to self or others.
District	Has the same meaning as county school or local education agency. In West Virginia there are fifty-seven local school districts which include the fifty-five county districts, the West Virginia Schools for the Deaf and Blind and the schools operated by the WVDE, Office of Institutional Education Programs.
Drug Offenses	The use, possession, sale, or solicitation of drugs as identified in 21 U.S.C. Section 812(c). These offenses do not include use, possession, sale or solicitation of alcohol or tobacco.
Early Identification and Assessment	The implementation of a formal plan for identifying a disability as early as possible in a child's life.
Early Learning Programs	The educational program that addresses the intellectual, physical, and social/emotional needs of learners, across all programs and areas of study in grades Pre-K –five.
Economically Disadvantaged	A student whose family income meets the federal guidelines for reduced or free school lunch.
Education Records	Those records which are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution.
Educational Sign Language Interpreter	A paraprofessional meeting the requirements of Policy 5202: <i>Licensure of Professional/Paraprofessional Personnel</i> , who provides related services using sign language/communication systems and spoken languages in public school settings for purposes of providing access to the general curriculum, classroom dynamics, extracurricular activities and social interactions for students who are deaf and hard of hearing.
Educational Performance	A student's functioning (or performance) relative to age/grade performance in programs of study, basic communication

skills, social interaction and emotional development within the school and/or community environments.

Eligible Students with Exceptionalities

Those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained in this document, have been identified as having one of the following exceptionalities:

1. Autism, emotional/behavioral disorder, blindness and low vision, speech/language impairment, deafblindness, deaf and hard of hearing, gifted, exceptional gifted (grades nine - twelve) intellectual disability, orthopedic impairment, other health impairment, developmental delay, specific learning disability, traumatic brain injury; and
2. Need special education.

Eligible Students with Disabilities

Those individuals who, in accordance with the definitions, eligibility criteria, procedures and safeguards contained in this document, have been identified as having one of the following disabilities:

1. Autism, emotional/behavioral disorder, blindness and low vision, speech/language impairment, deafblindness, deaf and hard of hearing, intellectual disability, orthopedic impairment, other health impairment, developmental delay, specific learning disability, traumatic brain injury; and
2. Need special education.

Equipment

Means:

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

Evaluation

Procedures used in accordance with the protection in evaluation requirements of IDEA 2004 to determine whether a student is exceptional and the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student, and do not include basic tests administered to or procedures used with all students in a school, grade, or class.

Executive Skills	Those functions, which enable a person to plan, sequence and self-monitor multi-step activities and engage in organized, purposeful behavior.
Expulsion	An action taken by the district removing a child from his/her regular school for disciplinary purposes for the remainder of the school year or longer, in accordance with district policy. Includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days.
Extended School Year Services	Special education and related services that are provided to a student with a disability beyond the normal school year of the district, in accordance with the student's IEP, and at no cost to the parents of the student; and that meet the standards of the state educational agency.
Firearm	Any weapon, which will expel a projectile by action of an explosion.
Formative Assessment	An on-going classroom based assessment of student progress within an instructional program, which provides feedback to the student and information for the teacher to use in making necessary instructional adjustments, such as reteaching, alternative approaches or more opportunities for practice.
Free Appropriate Public Education (FAPE)	Special education and related services which: <ol style="list-style-type: none"> 1. Are provided at public expense, under public supervision and direction, and without charge to the parent; 2. Meet the standards of the state education agency, including the requirements of these regulations; 3. Include preschool, elementary school or secondary school education in the State, and 4. Are provided in conformity with an Individualized Education Program.
Functional Behavioral Assessment (FBA)	A sequential, multi-step, team evaluation process that helps to determine the purpose and the effect of the problem behavior(s) so that IEP goals and objectives can be identified, and interventions and modifications can be developed and implemented, specifically through a student's Behavioral Intervention Plan. A FBA requires that both school personnel and the parents evaluate the behaviors of concern within the broader perspective of the student's home and school environments.

Functional Listening Evaluation (FLE)	A FLE is conducted to assess how a student’s listening abilities are affected by noise, distance and visual input in the student’s natural listening environment.
Functional Vision Assessment (FVA)	A FVA is conducted by a teacher of the visually impaired (TVI). For children with visual impairments, it determines what they can see, how they use their vision (including sustainability of use), and under what conditions they can see. Its focus is on accessing the wide range of educational materials available across all environments. A comprehensive FVA is needed to identify adverse impact and determine the specially designed instruction necessary. After the initial comprehensive FVA, updates are recommended annually or if there is a change in vision, environments or educational materials; it is a rolling assessment. It is typically not done with children who are totally blind or have light perception only. For children with cortical vision impairment(s), the FVA encompasses the ten characteristic behaviors associated with CVI.
General Curriculum	The curriculum adopted by a district, schools within the district, or where applicable, the state education agency for all students from preschool through secondary school. In these regulations, the term means the West Virginia College-and Career-Readiness Standards (WVCCRS).
General Education	An educational program designed to meet the needs of all students in Pre-K, early childhood, middle childhood, adolescent or adult education. Instruction in a general education program includes community based, general and/or vocational education.
General Intellectual Functioning	Acquired learning and learning potential as measured by a systematic evaluation with one or more of the individually administered general intelligence tests or procedures.
Health and Safety	Maintaining one's own well-being; appropriate diet; illness identification, treatment, and prevention; basic first aid; sexuality; physical fitness; basic safety (e.g., following rules and laws, using seat belts, crossing streets, interacting with strangers; seeking assistance), regular physical and dental check-ups; and daily habits. Related skills include protecting oneself from criminal behavior, indicating choices and needs, interacting socially and applying functional academics.
High Cost/High Acuity	A child with a disability with an IEP is defined as a high cost child or child with high acuity needs if the cost of providing an education to the child is greater than three times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act) in West Virginia.
Historically Under-represented Gifted Population	Those students whose giftedness may not be apparent due to low socioeconomic status, a disability in accordance with this

Home Living	<p>policy, or a background that is linguistically or culturally different.</p> <p>Daily functioning within a home; housekeeping, clothing care, property maintenance, food preparation, planning and budgeting for shopping, home safety and daily scheduling. Related skills include orientation, behavior in the home and neighborhood, communication of choices and needs, social interaction and application of functional academics in the home.</p>
Homeless Children	As defined in the McKinney-Vento Homeless Assistance Act.
Illegal Drug	<p>A controlled substance; but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional, or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal Law.</p>
Independent Educational Evaluation	<p>An evaluation conducted by a qualified evaluator who is not employed by the district responsible for the education of the student in question, and who is selected by the party seeking the independent evaluation.</p>
Indirect Services	<p>Consultative services provided by a special education teacher or service provider to the individuals responsible for the provision of services described in the IEP to directly benefit the student. Indirect services include, but are not limited to, selecting or designing materials and/or activities, monitoring behavior management plans or evaluating progress on short term objectives.</p>
Individualized Education Program (IEP)	<p>A written statement for an eligible student with an exceptionality that is developed, reviewed and revised in accordance with Policy 2419 and IDEA 2004.</p>
Individualized Education Program Team or IEP Team	<p>A group of individuals described in regulations that is responsible for developing, reviewing or revising an IEP for an eligible student with an exceptionality.</p>
Individualized Family Service Plan (IFSP)	<p>A written plan for providing early intervention services to a child and the child's</p>
In-school Suspension	<p>Instances in which a child is temporarily removed from his/her classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision.</p>

Interveners	An intervener is a specially trained person who works consistently one-to-one with a student who is deafblind. The intervener facilitates access to the environmental information that is usually gained through vision and hearing but which is incomplete to the child who is deafblind. The intervener helps the student gather information, learn concepts and skills, and develop communication and language.
Instructional Day	Minimum number of instructional minutes per program level as specified in Policy 2510.
Interim Alternative Educational Setting	An appropriate setting determined by the student's IEP Team in which the student is placed for no more than forty-five school days. This setting enables the student to continue to receive educational services and participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the IEP. As appropriate, the setting includes a functional behavioral assessment and behavioral intervention services and modifications to address the behavior violation so that it does not recur.
Interpreting Services	With respect to students with deafness or who are hard of hearing: includes oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell.
Least Restrictive Environment	The educational placement which provides the services/conditions necessary to meet the unique educational and behavioral needs of the student, while providing the student with integration to the maximum extent appropriate with peers without exceptionalities.
Leisure	A variety of leisure and recreational interests that reflect personal preferences and choices. Public activities should reflect age and cultural norms. Skills include choosing and initiating activities, using and enjoying home and community leisure and recreational activities along and with others, playing socially with others, taking turns, choosing not to participate in leisure activities, participating longer and expanding one's awareness and repertoire of interests and skills. Related skills include behavior in the leisure and recreation setting, indicating choices and needs, social interaction and application of functional academics and mobility.
Local Educational Agency	A public board of education or other public authority legally constituted within a

State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. The term includes:

1. An educational service agency, as defined in these regulations; and
2. Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

Manifestation
Determination

The process by which the district, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) determine whether the child's behavior that led to the disciplinary removal is related to his or her disability.

Mediation

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

Medical Services

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

Meeting

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

Middle Level
Programs

The educational program that addresses the intellectual, physical, and social/ emotional needs of learners across all programs in areas of study in grades six - eight.

Modification

Substantive changes in an assessment or academic curriculum that changes the rigor or expectation. Modifications are generally made for students with significant intellectual or physical disabilities. A modification does alter content knowledge expectations.

Multidisciplinary
Evaluation

Comprehensive procedures used to determine whether a student is exceptional and the nature and extent of the special education and related services that the student needs. The

	<p>term means procedures that are conducted by a team of individuals representing a variety of disciplines. These procedures are used selectively with an individual student and do not include basic tests administered to or procedures used with all students in a school, grade or class.</p>
Multidisciplinary Evaluation Team	<p>A group of qualified personnel representing a variety of disciplines which determines the areas to be evaluated and conducts the multidisciplinary evaluation.</p>
Multi-Tiered System of Supports (MTSS)	<p>A three tiered framework that promotes a well-integrated system connecting general, supplemental, gifted and special education in providing high quality standards-based instruction, interventions and challenges that are matched to students' academic, social-emotional and behavioral needs.</p>
Native Language	<ol style="list-style-type: none"> 1. If used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student; 2. In all direct contact with a student (including evaluation of the child), the language normally used by the student in the home or learning environment; or 3. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the student (such as sign language, braille or oral communication).
Non-academic Services	<p>Non-academic and extracurricular services and activities are those provided by the local educational agency in addition to the required and elective programs of study. The term includes counseling, athletics, transportation, health services, recreational activities, special interest clubs or groups sponsored by the district, referrals to agencies, which provide assistance, and employment of students, including both employment by the district and assistance in making outside employment available.</p>
Non-aversive Behavioral Strategies	<p>Strategies that are employed to change or maintain behavior without the application of a noxious or painful stimulus or the use of a strategy that results in severe physical/emotional stress/discomfort or the prolonged deprivation of movement or basic biological needs.</p>
Normal Rate or Level of Development	<p>The average rate or level of developmental functioning as exhibited by students of the same chronological age. Rates or levels of development are indicated by age-equivalency measures such as developmental age, mental age, developmental quotient, intelligence quotient, standard scores and percentile and are dependent upon the type of evaluation instrument used.</p>

Objective Criteria	Standards established to determine whether a student is learning or has achieved a skill and if instruction is effective.
Objectives	Measurable, intermediate steps between a student's present levels of academic achievement and functional performance and the annual goals. Objectives are based on a logical breakdown of the major components of the annual goals.
Occupational Therapy	<p>Services provided by a qualified occupational therapist, which include:</p> <ol style="list-style-type: none"> 1. Improving, developing or restoring functions impaired or lost through illness, injury or deprivation; 2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and 3. Preventing, through early intervention, initial or further impairment or loss of function.
Orientation and Mobility	<p>Services provided to students with blindness or have low vision by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, including:</p> <ol style="list-style-type: none"> 1. Teaching students spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain or regain orientation and line of travel (for example, using sound at a traffic light to cross the street); 2. Teaching students to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; 3. Teaching students to understand and use remaining vision and distance low vision aids, as appropriate; and 4. Other concepts, techniques and tools, as determined appropriate.
Out-of-School Suspension	Instances in which a child is temporarily removed from his/her school for disciplinary purposes to another setting (e.g., home, behavior center). This includes both removals in which no IEP services are provided because the removal is ten days or less, as well as removals in which the child continues to receive services according to his/her IEP.
Out-of-State Placement	The placement of a student with a disability in a school/facility located outside of the state for special education and related services.
Parent	<ol style="list-style-type: none"> 1. A biological or adoptive parent;

2. A guardian, generally a person authorized to act as the parent or authorized to make educational decisions for the child;
3. An individual acting in the place of a biological or adoptive parent (e.g., grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for a child's welfare;
4. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent; or
5. A surrogate parent who has been appointed in accordance with state and federal requirements.

The term does not include the state, if a child is a ward of the state. State law may provide that a foster parent qualifies as a parent under IDEA 2004 and this policy if:

1. The natural parents' authority to make educational decisions on the child's behalf has been extinguished under state law;
2. The foster parent has an ongoing, long-term parental relationship with the child;
3. The foster parent is willing to participate in making educational decisions on the child's behalf; and
4. The foster parent has no interest that would conflict with the interests of the child.

When more than one party is qualified to act as a parent, the biological or adoptive parent must be presumed to be the parent unless this individual does not have the legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of the child, then such person or persons must be determined to be the "parent" for purposes of implementing IDEA 2004 and Policy 2419.

Parent Counseling and Training

Assisting parents in understanding the special needs of their child, providing parents with information about child development and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

Parent Training

Activities to improve the parents' understanding of child development, the specific educational needs of their exceptional child, procedural safeguards and surrogate responsibilities. The term includes the training of parents in specific skills relating to the management or education of the child while at home.

Parental Consent

See Consent.

Part B of the Individuals with Disabilities Education Improvement Act (IDEA)

Part B requires that states ensure students with disabilities aged three through twenty-one are provided a free appropriate public education. Part B services are overseen by the West Virginia Department of Education (WVDE) and implemented by the local school districts. Educational services under Part B are designed and provided through the Individualized Education Program (IEP) process.

Part C of the Individuals with Disabilities Education Improvement Act (IDEA)

Part C requires that states have a statewide comprehensive coordinated interagency system of services for infants and toddlers with disabilities from birth through age two. Under Part C, the governor designates a lead agency to implement Part C in the state. In West Virginia, the lead agency is the West Virginia Department of Health and Human Resources (WV DHHR). Services under Part C are designed and delivered through an Individualized Family Service Plan (IFSP).

Participating Agency

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

Pattern of Strengths and Weaknesses (PSW)

PSW is an approach used to identify students with specific learning disabilities. This approach is used to identify whether a child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development that is determined by the Eligibility Committee to be relevant to the identification of a specific learning disability, using appropriate assessments.

Personally Identifiable

Information that includes:

1. The name of the student, the student's parent, or other family member;
2. The address of the student;
3. A personal identifier, such as the student's social security number or student number; or
4. a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Personnel

A person who has met state educational agency approved or recognized certification, licensing, registration or other comparable requirements, which apply to the area in which he or she is providing special education or related services.

Physical Education

The development of:

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted physical education, movement education and motor development.

Physical Therapy

Services provided by a qualified physical therapist.

Placement

The setting in which the eligible exceptional student receives special education and related services. For students ages six through twenty-one, these settings are: General Education - Full-Time, General Education - Part-Time, Special Education - Separate Class, Special Education - Special School, Special Education - Out-of-School Environment and Special Education - Residential Facility. For students ages three - five, these settings are: Early Childhood Program, Special Education Program, Home and Service Provider Location.

Positive Behavioral Interventions, and Supports (PBIS)

A broad term that describes a comprehensive, research-based, proactive approach to behavioral support aimed at producing comprehensive change for students with challenging behavior. PBS encompasses multiple approaches: changing systems, altering environments, teaching skills and appreciating positive behavior. The goal of PBS is not to eliminate the behavior but to understand the behavior's purpose (based upon information from the student's functional behavioral assessment) so that the student can replace it with new, pro-social behaviors that achieve the same purpose. PBS strategies may include, but are not limited to:

1. Altering the classroom environment;
2. Increasing predictability and scheduling;
3. Increasing choice making;
4. Making curricular adaptations;
5. Appreciating positive behaviors; and/or
6. Teaching replacement skills.

Pre-ETS

The Pre-Employment Transition services may include services provided by schools and by the Division of Rehabilitation Services that include:

- Job Exploration
- Work-based learning
- Counseling for transition & post-secondary programs
- Workplace readiness training
- Self-advocacy training

Present Levels of Academic Achievement and Functional Performance

Specific statements that describe the effect of the student's exceptionality on his/her educational performance, including how the student's exceptionality affects the student's involvement and progress in the general education curriculum; or for preschool children, how the exceptionality affects the child's participation in age-relevant developmental

activities. These statements are written in objective measurable terms, to the extent possible, using relevant information such as recent evaluation reports, statewide testing results, current progress data and parent information.

Prior Written Notice

A written notice to inform a parent/adult student of the district's proposal or refusal to initiate or change the student's identification, evaluation, educational placement or provision of FAPE. The notice must be provided to the parent/adult student within a reasonable amount of time prior to implementing the proposed action/refusal.

Private/Religious School

An educational facility operated by a non-public agency or organization.

Procedural Safeguards

The due process protections afforded in the implementation of the West Virginia special education process.

Procedure

Any written course of action set forth to implement federal, state, and local policy which includes:

1. A description of the actions to be undertaken;
2. The criteria or standards to be used when decisions are required;
3. The person(s) responsible for such actions, and
4. The timelines for completion.

Written procedures must describe actions in terms, which are both measurable and operational.

Program of Study

A Pre-K through grade twelve curricular sequence that constitutes the subject matter to be offered in the public schools of West Virginia (e.g., English language arts, science, mathematics, social studies, vocational education, business education).

Psychological Adjustment Disorder

Significant emotional or behavioral symptoms that adversely affect a student's educational performance documented by a comprehensive psychological evaluation.

Psychological Services

Includes:

1. Administering psychological and educational tests, and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests;
5. Planning and managing a program of psychological counseling for students and parents; and

6. Assisting in developing positive behavioral intervention strategies.

Public Agency

State educational agency, regional educational agency, local educational agency and any other political subdivisions of the state, which are responsible for providing education to students with exceptionalities.

Public Expense

The public agency either pays for the full cost of the service or ensures that the service is otherwise provided at no cost to the parent.

Recreation

Includes:

1. Assessment of leisure function;
2. Therapeutic recreation services;
3. Recreation programs in schools and community agencies; and
4. Leisure education.

Regression /
Recoument

The loss of acquired skills and the inability to relearn those skills in a specified amount of time.

Rehabilitation
Counseling Services

Services provided by a qualified rehabilitation counseling professional, in individual or group sessions, that focus specifically on career development, employment preparation, achieving independence and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

Related Services

Transportation and such developmental, corrective and other supportive services as are required to assist an eligible student with an exceptionality to benefit from special education. The term includes, but is not limited to, assistive technology, audiology, interpreting services, speech and language pathology, psychological services, physical and occupational therapy, clean intermittent catheterization (CIC), recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, social work services in schools, school health services and school nurse services, early identification and evaluation of disabling conditions in students, medical services for diagnostic or evaluative purposes only and parent counseling and training. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device or the replacement of that device.

Removal by a Hearing Officer	Those instances in which an impartial hearing officer orders the removal of a student with a disability from his or her current educational placement to an appropriate alternative educational setting for not more than forty-five school days based on the hearing officer’s determination that maintaining the student’s current placement is substantially likely to result in injury to the student or others. The IEP Team is responsible for determining the alternative educational setting.
School Day	Any day, including a partial day, in which students are in attendance at school for instructional purposes. A school day is the time inclusive of homeroom, class changes, breaks/recess, lunch and other non-instructional activities from the first designated assembly of the student body in groups (homeroom or first period) to the dismissal of the student body. The term school day has the same meaning for all students in school, including students with and without exceptionalities.
School Health Services	Health services that are designed to enable a child with a disability to receive FAPE as described in the child’s IEP. Services coordinated through the certified school nurse (defined as a Registered Professional Nurse) to provide early identification of educational deficits and communicable disease, daily support and care for students with specialized health care needs during the school day with linkage and follow-up care to services as required in WVBE Policy 2422.7, WVBE Policy 2422.8 and WVBE Policy 2423.
Secondary Education Programs	The educational program that addresses the intellectual, physical, social/emotional and transition needs of learners for special education across all programs and areas of study in grades nine – twelve.
Secondary School	A nonprofit institutional day or residential school that provides secondary education, as determined under State Law, except that it does not include any education beyond grade twelve.
Self-Care	Skills involving eating, dressing, grooming, toileting and hygiene.
Self-Direction	Making choices. Self-direction includes learning and following a schedule; initiating appropriate activities consistent with one’s personal interests; completing necessary or required tasks; seeking assistance when needed; resolving problems in familiar and new situations; and demonstrating appropriate assertiveness and self-advocacy.
Serious Bodily Injury	A bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement;

or protracted loss or impairment of the function of a bodily member, organ or faculty (18 U.S.C. Section 1365(3)(h))).

Serious Misconduct

Any activity for which suspension or expulsion is a punishment for students unless, for a student with a disability, the behavior is a manifestation of that disability. These activities include:

1. Assault/battery on school employees (West Virginia Code §61-2-15);
2. Possession of a deadly weapon (West Virginia Code §61-7-11a);
3. Selling a narcotic drug on the premises of an educational facility, at a school sponsored function or on a school bus (West Virginia Code §60A-1-101);
4. Committing an act or engaging in conduct that would constitute a felony under the laws of this state if committed by an adult;
5. Unlawfully possessing on the premises of an educational facility or at a school sponsored function, a controlled substance governed by the Uniformed Controlled Substance Act;
6. Threatening to injure, or in any manner injuring, a pupil, teacher, administrator or other school personnel;
7. Willfully disobeying a teacher;
8. Possessing alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function;
9. Using profane language directed at a school employee or pupil;
10. Intentionally defacing any school property;
11. Participating in any physical altercation with another person while under the authority of school personnel; or
12. Habitually violating school rules or policies.

Service Plan

A written statement that describes the special education and related services to be provided by the district to a parentally-placed student with an exceptionality enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with Chapter 8 of this Policy and is developed and implemented in accordance with Chapter 5.

Shared Instructional Models

Include an array of service delivery options provided by general education, Title I and/or special education teachers, related services and support personnel and others that encompass consultative and co-teaching models and are undertaken for the purpose of maximizing results for all students.

Sign Support Specialist

West Virginia Code §18A-4-8(i)(15) defines sign support specialist as a person employed to provide sign supported speech assistance to students. Sign Support Specialists

provide signed communication support to a student who is able to access environments through audition (i.e, hearing). The Sign Support Specialist may be assigned to a student who is deaf or hard of hearing, in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and the sign support specialist is executing a professional development plan while actively seeking certification as an educational sign language interpreter I or II. After two years the sign support specialist may remain in the assignment only if an educational sign language interpreter I or II remains unavailable, and with an approved waiver by the West Virginia Department of Education. (HB2470)

Significant Cognitive Disability

Students with the most significant cognitive disabilities (moderate to severe intellectual disability) have general intellectual functioning more than three standard deviations below the mean, in consideration of 1.0 standard error of measurement as determined by a qualified psychologist, using an individually administered intelligence test; and the student exhibits concurrent deficits in adaptive functioning expected for his or her age across multiple environments based on clinical and standardized assessment in at least one of the following domains: conceptual, social or practical.

Social Skills

Social skills refer to appropriate and inappropriate social behavior. Appropriate social behavior includes behaviors such as making friends, showing appreciation, smiling, taking turns, cooperating with others, demonstrating honesty, trustworthiness and appropriate play, showing concern for others, displaying empathy and being fair. Inappropriate behavior includes behaviors such as tantrums, jealousy, fighting others, overstaying a welcome, being overly demanding, constantly needing reassurance and being non-assertive.

Social Work Services in Schools

Services that include:

1. Preparing a social or developmental history on a student with a disability;
2. Group and individual counseling with the student and family;
3. Working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and
4. Mobilizing school and community resources to enable the student learn as effectively as possible in her or his educational program, and assisting in developing positive behavior intervention strategies.

Socially Maladjusted

Students who are socially maladjusted (or more precisely Oppositional Defiant or Conduct Disordered) typically display

a persistent pattern of willful refusal to meet even minimum standards of conduct. Their behavior and values are often in conflict with society's standards. They exhibit a consistent pattern of antisocial behavior without genuine signs of guilt, remorse, or concern for the feelings of others. (Montgomery, 2006)

Special Education

Specially designed instruction, at no cost to parents, to meet the unique educational needs of an eligible student with an exceptionality, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes speech-language pathology services, vocational education and travel training if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a student with an exceptionality.

Special Transportation

Modifications made in regular school transportation to assure accessibility of special education and other related services for students with disabilities. Special transportation includes special equipment (such as special or adaptive buses, lifts, and ramps), and special care (such as need for health and safety maintenance, assistance of aide, medication in transit and/or positioning), if required to provide school transportation for a student with a disability.

Specially Designed Instruction

Adapting content, methodology or delivery of instruction:

1. To address the unique needs of an eligible student that result from the student's exceptionality; and
2. To ensure access of the student to the general curriculum, so that he or she can meet the educational standards that apply to all students.

Speech-Language Pathology Assistant

Speech-language pathology assistants are individuals who may provide services to students with communication disorders under the guidance and direction of a certified Speech-Language Pathologist (SLP). The requirements for the issuance of an authorization for speech assistants are defined in West Virginia Board of Education Policy 5202: *Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications*, which was approved by the West Virginia Board of Education in July 2003.

A speech-language pathology assistant must hold a minimum of a bachelor's degree in speech pathology or communication disorders from an accredited institution; be employed by a local West Virginia Board of Education; and receive the recommendation of the district superintendent verifying that the applicant is the most qualified candidate for the position and that no fully certified speech-language pathologist has

applied for the available position. Authorization must be renewed annually.

Speech-Language Pathology Services

Services provided by a qualified speech-language pathologist include, but are not limited to:

1. Identification of students with speech or language impairments;
2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, students and teachers regarding speech and language impairments.

Standard Deviation

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

Standard Error of Measurement

An indicator that allows a student's performance to be reported as a range of scores where it is highly probable the true score lies.

Standards-Based Individualized Education Program (SB-IEP)

The Standards-Based Individualized Education Program is an individualized plan reasonably calculated to result in educational benefit (FAPE). A SB-IEP includes grade-level expectations, student's strengths and weaknesses, and how the student's disability affects involvement/progression the general education curriculum (impact statement). The plan's annual goals are developed based on standards-focused content aligned with the Next Generation Content Standards and Objectives for West Virginia Schools, the Next Generation Alternate Academic Achievement Standards, the Early Learning Standards Framework, and/or the Next Generation Learning Skills and Technology Tools.

Student Assistance Team

A trained school-based team which provides a formalized process for the review of student needs and complements the work of instruction and intervention teams.

Supplementary Aids and Services

Aids, services and other supports that are provided in general education classes, other education-related settings and in extracurricular and nonacademic settings, to enable students with exceptionalities to be educated with students without exceptionalities to the maximum extent appropriate. Supplementary aids include any material/curricular resource or assistance, beyond what is normally afforded students without exceptionalities, provided to support a student with

an exceptionalty's placement, such as large print books, assistive technology devices, auditory trainers, curriculum adaptations and classroom modifications or

aids, services and other supports. Supplementary services include any human resource or assistance, beyond what is normally afforded students without exceptionalities, provided to support a student with an exceptionalty's placement, such as direct instruction, peer tutoring or note taking.

Supported
Employment

Paid work in the regular community work environment where persons without disabilities are employed. Individuals with disabilities are included in the work setting and receive initial training and on-going support services in the natural community work environment.

Transition
Services

A coordinated set of activities for a student with a disability, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including, but not limited to, post-secondary education, vocational training, integrated employment including supported employment, continuing and adult education, adult services, independent living or community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transportation

Includes:

1. Travel to and from school and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment (such as special or adapted buses, lifts and ramps), if required, to provide special transportation for a student with a disability.

Providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within that environment (e.g. in school, the home and the community).

Underachievement

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

Unilateral Removal

Instances in which school personnel (not the IEP Team) order the removal of students with disabilities from their current

educational placement to an appropriate interim alternative educational setting for not more than forty-five school days. The IEP Team is responsible for determining the interim alternative educational setting. Unilateral removals do NOT include decisions by the IEP Team to change a student's placement.

Universal Design for Learning (UDL)

Universal design for learning (UDL) is an education framework based on research in learning sciences, which guides development and management of flexible learning environments that can accommodate individual learning differences, for ALL learners. A UDL environment provides multiple means of representation, action and expression, and engagement.

Ward of the State

A child who, as determined by the state where the child resides is:

1. A foster child;
2. Award of the State; or
3. In the custody of a public child welfare agency.

The term does not include a foster child who has a foster parent who meets the definition of a parent.

Work

Holding a part- or full time job (supported or non-supported) or participating in a voluntary activity in the community. Related skills include specific job competencies, appropriate social behavior, appropriate work skills (e.g., completion of tasks, awareness of schedules, ability to seek assistance, take criticism), money management, the application of other functional academic skills, and skills related to going to and from work, preparing for work, managing oneself at work and interacting appropriately.

ACRONYMS AND ABBREVIATIONS

ADHD	Attention Deficit Hyperactivity Disorder
AEM	Accessible Educational Material
APR	Annual Performance Report
BIP	Behavior Intervention Plan
CASE	Council of Administrators of Special Education
CIC	Clean Intermittent Catheterization
DIBELS	Dynamic Indicators of Basic Early Literacy Skills
E/BD	Emotional/Behavioral Disorder
EC	Eligibility Committee
ECPBIS	Early Childhood Positive Behavioral Interventions Support
EDEN	Education Data Exchange Network
ESSA	Every Student Succeeds Act
ESY	Extended School Year
FAPE	Free Appropriate Public Education
FBA	Functional Behavior Assessment
FERPA	Family Educational Rights and Privacy Act
GEE	General Education Environment
HEAP	Health Education Assessment Project
IAES	Interim Alternative Educational Setting
IDEA 2004	Individuals with Disabilities Education Improvement Act of 2004
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IFSP	Individual Family Service Plan
LEA	Local Educational Agency
LRE	Least Restrictive Environment

LQ	Language Quotient
MTSS	Multi-Tiered System of Supports
NAEP	National Assessment of Educational Progress
NCLB	No Child Left Behind Act
NIMAS	National Instructional Materials Accessibility Standard
OFP	Office of Federal Programs
OSEP	Office of Special Education Programs (US)
OSE	Office of Special Education
PALS	Phonological Awareness Literacy Screener
PBIS	Positive Behavioral Interventions and Supports
PWN	Prior Written Notice
RDA	Results-Driven Accountability
RCSP	Results and Compliance System Procedures
SAT	Student Assistance Team
SD	Standard Deviation
SEA	State Education Agency
SEE	Special Education Environment
SLD	Specific Learning Disability
SLP	Speech-Language Pathologist
SLPA	Speech-Language Pathology Assistant
SPP	State Performance Plan
SSIP	State Systemic Improvement Plan
TASC	Test Assessing Secondary Completion
UDL	Universal Design for Learning
WVDE	West Virginia Department of Education

WV-DHHR	West Virginia Department of Health and Human Resources
WVEIS	West Virginia Education Information System
WVMAP	West Virginia Measures of Academic Progress

Documentation of Adverse Effects on Educational Performance Students with Speech-Language Impairments

IDEA requires that the EC determine how the speech-language impairment affects the progress and involvement of the student in the general curriculum. The EC must consider each student individually to determine how the student's disability adversely affects educational performance. Documentation of adverse effects on educational performance can be gathered from a thorough assessment of communication skills including input from the student, parent, and teacher. Information must be recorded by the speech-language pathologist (SLP) on the Eligibility Report form.

An assessment of a student's ability to communicate, rather than isolated skill assessment, will provide information on how the impairment affects the student. The following examples may be considered when determining how the student's ability to communicate may adversely impact educational performance:

1. Sound errors, voice quality, or fluency disorders inhibit the student from reading orally in class, speaking in front of the class, or being understood by teachers, peers, or family members.
2. Sound errors, voice quality, or fluency disorders embarrass the student. Peer relationships suffer as a result, or peers may make fun of the student.
3. Sound errors cause the student to make phonetic errors in spelling or have difficulty in phonics.
4. Grammatical errors create problems with a student's orientation in time.
5. Morphological errors inhibit the student from using or making complete sentences.
6. Semantic problems slow the student's ability to follow directions, give directions, make wants and needs known, make oneself understood, relate information to others, or fully participate in daily living.

Elimination of Phonological Processes in Typical Development
Phonological processes are typically gone by these ages (in year; months)

PHONOLOGICAL PROCESS	EXAMPLE	GONE BY APPROXIMATELY	CONSIDERED DELAYED
Pre-vocalic voicing	pig = big	3	3.6-4.0
Word-final de-voicing	pig = pick	3	3.6-4.0
Final consonant deletion	comb = coe	3.3	3.9-4.3
Fronting	car = tar ship = sip	3.6	4.0-4.6
Consonant harmony	mine = mime kittycat = tittytat	3.9	4.3-4.9
Weak syllable deletion	elephant = efant potato = tato television =television banana = nana	4	4.6-5.0
Cluster reduction	spoon = poon train = chain	4	4.6-5.0
Gliding of liquids	run = one leg = weg leg = yeg	5	5.6-6.0
Stopping /f/	fish = tish	3	3.6-4.0
Stopping /s/	soap = dope	3	3.6-4.0
Stopping /v/	very = berry	3.6	4.0-4.6
Stopping /z/	zoo = doo	3.6	4.0-4.6
Stopping 'sh'	shop = dop	4.6	5.0-5.6
Stopping 'j'	jump = dump	4.6	5.0-5.6
Stopping 'ch'	chair = tare	4.6	5.0-5.6
Stopping voiceless 'th'	thing = ting	5	5.5-6.0
Stopping voiced 'th'	them = dem	5	5.5-6.0

**Developmental Articulation Norms
Iowa-Nebraska Articulation Norms***

Sound	Age at which 90% of children acquire the sound		Age at which considered delayed	
	Females	Males	Females	Males
p b m	3 years	3 years	3 yrs-6 mos.	3 yrs-6 mos.
n	3 yrs-6 mos.	3 years	4 yrs.	3 yrs-6 mos.
h-	3 years	3 years	3 yrs.-6 mos.	3 yrs.-6 mos.
w-	3 years	3 years	3 yrs-6 mos.	3 yrs.-6 mos.
d	3 years	3 yrs.-6 mos.	3 yrs.-6 mos.	4 years
k	3 yrs.-6 mos.	3 yrs.-6 mos.	4 yrs.-6 mos.	4 yrs.-6 mos.
g	3 yrs.-6 mos.	4 years	4 yrs.-6 mos.	5 years
f- (as in fan)	3 yrs.-6 mos.	3 yrs.-6 mos.	4 yrs.-6 mos.	4 yrs.-6 mos.
y (as in yes)	4 years	5 years	4 yrs-6 mos.	5 yrs-6 mos.
t	4 years	3 yrs.-6 mos.	4 yrs.-6 mos.	4 years
th (voiced as in this)	4 yrs.-6 mos.	7 years	5 yrs.-6 mos.	8 years
l- (as in lemon)	5 years	6 years	6 years	7 years
-f (as in leaf)	5 yrs.-6 mos.	5 yrs.-6 mos.	6 years	6 years
v	5 yrs.-6 mos.	5 yrs.-6 mos.	6 yrs.-6 mos.	6 yrs.-6 mos.
th (voiceless as in thumb)	6 years	8 years	7 years	8 yrs.-6 mos.
sh ch j (as in jump)	6 years	7 years	7 years	8 years
-l (as in ball)	6 years	7 years	7 years	8 years
s z	7 years	7 years	8 years	8 years
ng	7 years	7 years	7 yrs.-6 mos.	7 yrs-6 mos.
r- (as in run)	8 years	8 years	8 yrs-6 mos.	8 yrs.-6 mos.
-er (as in water)	8 years	8 years	8 yrs-6 mos.	8 yrs.-6 mos.
Initial Clusters				
tw kw	4 years	5 yrs-6 mos.	5 yrs.	6 yrs-6 mos.
pl bl kl gl fl	5 yrs-6 mos.	6 years	6 yrs.-6 mos.	7 years
sp st sk sm sn sw sl skw spl	7 years	7 years	8 years	8 years
pr br tr dr kr gr fr	8 years	8 years	8 yrs.-6 mos.	8 yrs.-6 mos.
thr (as in throw) spr str skr	9 years	9 years	9 yrs.-6 mos.	9 yrs.-6 mos.

*Adapted from Smit, Hand, Freilinger, Bernthal, & Bird (1990). *Journal of Speech and Hearing Disorders*, 55, 779-798.

Note regarding sound positions: example- m refers to beginning, middle and ending words positions; h- refers to initial word positions; and -f refers to middle and final word positions.

Suggested Guidelines for Stuttering Services

I. Impairment/Observable Features

- a. Disfluency Rate: Assessed in *percent total words* stuttered in various communication contexts (e.g., conversational speech, reading, picture description, multiple communication partners)
- b. Types of Disfluencies: Stuttering disfluencies (word repetitions, sound/syllable repetitions, prolongations, blocks); Non-stuttering disfluencies (interjections, revisions, phrase repetitions).
 - c. Physical Tension
 - d. Secondary Behaviors

II. Child's Reactions

- a. Assessing the feelings, emotions and thoughts related to stuttering

III. Others' Reactions

- a. Assessing the reactions of parents, peers, teachers and others in the child's communication network.

IV. Life Impact

- a. Educational Impact: Assessing the child's willingness to participate in classroom activities related to verbal communication.
- b. Social Impact: Assessing the child's verbal communication with others in non-academic contexts.

	No Impact	Mild Impact	Moderate Impact	Severe Impact
Impairment	Child never exhibits physical tension or secondary behaviors. Child only exhibits non-stuttering like disfluencies that are <5% of total stuttered words	Child exhibits mild physical tension and rarely to sometimes exhibits secondary behaviors. Child exhibits a disfluency rate between 5-10%	Child exhibits moderate physical tension and frequently exhibits secondary behaviors. Child exhibits a disfluency rate between 10-15%	Child exhibits severe physical tension and almost always exhibits secondary behaviors. Child exhibits a disfluency rate >15%
Child's Reactions	Child never exhibits stuttering-related negative thoughts, feelings and emotions	Child rarely to sometimes exhibits stuttering-related negative thoughts, feelings and emotions	Child frequently exhibits stuttering-related negative thoughts, feelings and emotions	Child almost always exhibits stuttering-related negative thoughts, feelings and emotions
Others' Reactions	Others never react negatively toward the child's stuttering	Others rarely to sometimes react negatively toward the child's stuttering	Others frequently react negatively toward the child's stuttering	Others almost always react negatively toward the child's stuttering
Life impact	Stuttering never impacts the child's social or educational	Stuttering rarely to sometimes impacts the child's social or educational	Stuttering frequently impacts the child's social or	Stuttering almost always impacts the child's social or educational

	participation or life choices	participation or life choices	educational participation or life choices	participation or life choices
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Suggested Guidelines for Stuttering Services for Preschool

I. Impairment/Observable Features

- a. Disfluency Rate: Assessed in *percent total words* stuttered in various communication contexts (e.g., conversational speech, picture description, multiple communication partners)
- b. Types of Disfluencies: Stuttering disfluencies (word repetitions, sound/syllable repetitions, prolongations, blocks); Non-stuttering disfluencies (interjections, revisions, phrase repetitions).
- c. Physical Tension
- d. Secondary Behaviors

V. Child's Reactions

- a. Assessing the feelings, emotions and thoughts related to stuttering

VI. Others' Reactions

- a. Assessing the reactions of parents, peers, teachers and others in the child's communication network.

VII. Life Impact

- a. Educational Impact: Assessing the child's willingness to participate in classroom activities related to verbal communication.
- b. Social Impact: Assessing the child's verbal communication with others in non-academic contexts.

VII. Other Risk Factors

These risk factors are in addition to I through IV

- a. Positive family history
- b. Male
- c. Stuttering for more than 6 months
- d. Presence of other speech and language disorders

	No Impact	Mild Impact	Moderate Impact	Severe Impact
Impairment	Child never exhibits physical tension or secondary behaviors. Child only exhibits non-stuttering like disfluencies that are <5% of total stuttered words	Child exhibits mild physical tension and rarely to sometimes exhibits secondary behaviors. Child exhibits a disfluency rate between 5-10%	Child exhibits moderate physical tension and frequently exhibits secondary behaviors. Child exhibits a disfluency rate between 10-15%	Child exhibits severe physical tension and almost always exhibits secondary behaviors. Child exhibits a disfluency rate >15%
Child's Reactions	Child never exhibits stuttering-related negative thoughts,	Child rarely to sometimes exhibits stuttering-related negative	Child frequently exhibits stuttering-related	Child almost always exhibits stuttering-related negative

	feelings and emotions	thoughts, feelings and emotions	negative thoughts, feelings and emotions	thoughts, feelings and emotions
Others' Reactions	Others never react negatively toward the child's stuttering	Others rarely to sometimes react negatively toward the child's stuttering	Others frequently react negatively toward the child's stuttering	Others almost always react negatively toward the child's stuttering
Life impact	Stuttering never impacts the child's social or educational participation or life choices	Stuttering rarely to sometimes impacts the child's social or educational participation or life choices	Stuttering frequently impacts the child's social or educational participation or life choices	Stuttering almost always impacts the child's social or educational participation or life choices

Risk Factor Scale

Family History (1 point for every family member who stutters)

Male Gender (2 points)

Stuttering that begins after age 4 (1 point for every 6 months after 4)

Stuttering for more than 6 months (1 point for every 6 months since onset)

Other speech/language concerns (2 point for each)

Awareness (1 point)

Frustration (2 points)

Parent Concern (2 points)

Initial Behavioral Domain (1 point-mild; 2 points-moderate; 3 points-Severe) (this would include disfluency rate, physical tension and secondary behaviors).

Temperament (0-2 points based on perfectionism, sensitivity, etc)

Environment (0-2 pts based on competition, interruptions, speaking demand, etc)

Voice Rating Scale

Student _____

School _____

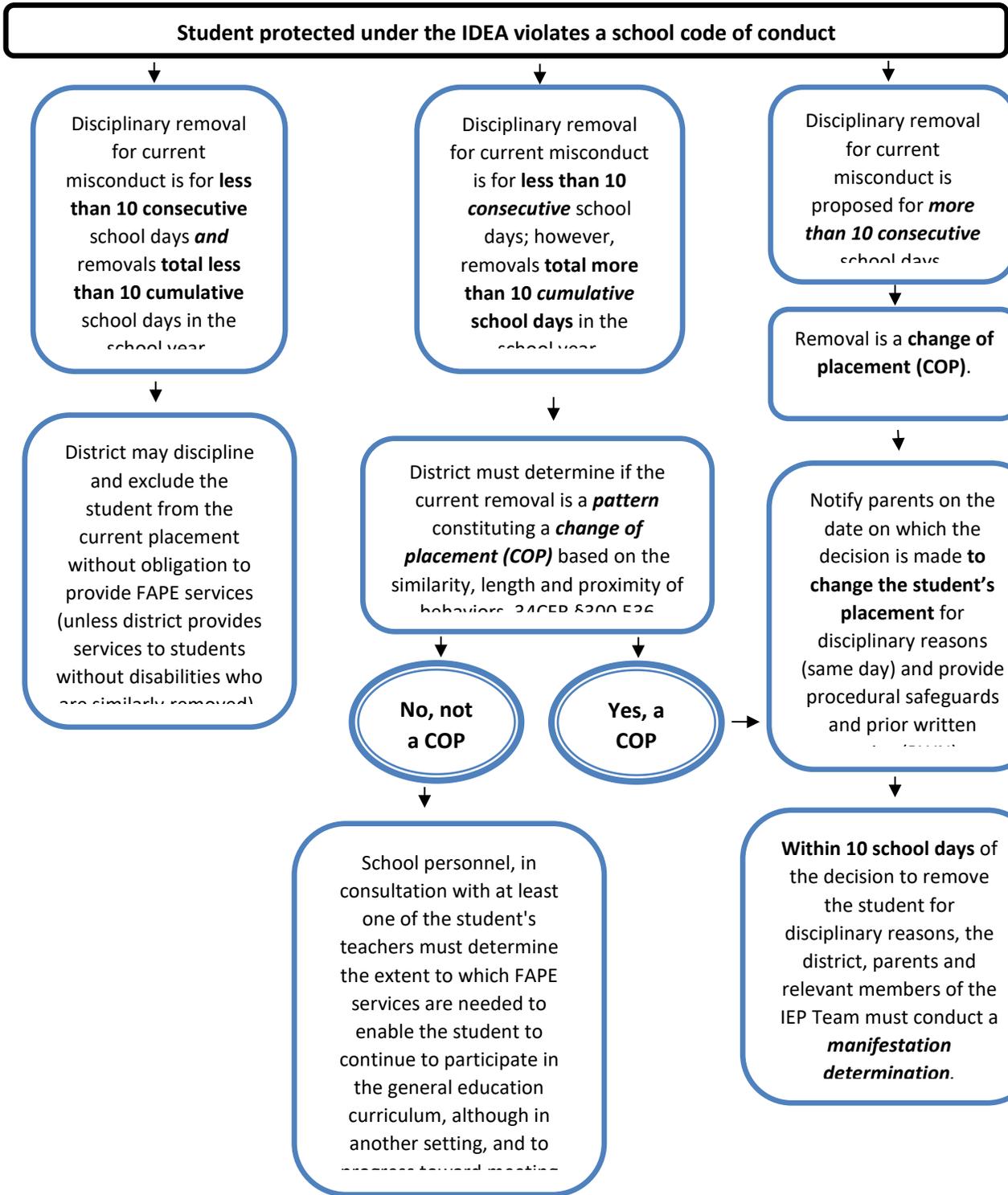
Date _____

	Nondisabling Condition	Mild Descriptive	Moderate Descriptive	Severe Wilson Voice Profile Scale
Pitch	Pitch is within normal limits.	There is a noticeable difference in pitch that may be intermittent.	There is a persistent, noticeable inappropriate raising or lowering of pitch for age and gender, or evidence of dysphonia.	+3 Pitch -3 Pitch -2 Pitch +2 Pitch
Intensity	Intensity is within normal limits.	There is a noticeable difference in intensity that may be intermittent.	There is a persistent, noticeable inappropriate increase or decrease in the intensity of speech, or the presence of aphonia.	-3 Intensity +2 Intensity -2 Intensity
Quality	Quality is within normal limits.	There is a noticeable difference in quality that may be intermittent.	There is a persistent, noticeable breathiness, glottal fry, harshness, hoarseness, tenseness, strident, or other abnormal vocal quality.	-2 Laryngeal +3 Laryngeal +2 Laryngeal - 3 Laryngeal
Resonance	Nasality is within normal limits.	There is a noticeable difference in nasality that may be intermittent.	There is a persistent noticeable cul-de-sac, hyper- or hypo-nasality, or mixed nasality.	-2 Resonance +3 Resonance +4 Resonance
Description of Current Physical Condition	No consistent laryngeal pathology; physical factors influencing quality, resonance, or pitch, if present at all, are temporary and may include allergies, colds, or abnormal tonsils and adenoids.	Laryngeal pathology may be present. Physical factors indicated in moderate and/or severe levels may be present.	Probable presence of laryngeal pathology. Physical factors may include nodules, polyps, ulcers, edema, partial paralysis of vocal folds, palatal insufficiency, enlarged/insufficient tonsils and/or adenoids, neuromotor involvement, or hearing impairment.	Physical factors may include: - unilateral or bilateral paralysis of vocal folds - laryngectomy - psychosomatic disorders - neuromotor involvement of larynx muscles, i.e., cerebral palsy

Comments:

West Virginia Department of Education

A Step by Step Guide to the Discipline Process for Students with Disabilities under the IDEA



West Virginia Department of Education

A Step by Step Guide to the Discipline Process for Students with Disabilities under the IDEA

Manifestation Determination Review

- 1. Is the conduct a direct result of the district's failure to implement the IEP?
2. Is the conduct caused by, or does the conduct have a direct and substantial relationship to the...

Yes to Either

No to Both

Student's conduct is a manifestation of his/her disability. 34CFR §300.530(a)

Student's conduct is not a manifestation of his/her disability. 34CFR §300.530(c)

If the conduct was a direct result of failure to implement the IEP, the district must take immediate steps to remedy those deficiencies.

School personnel may apply the relevant disciplinary procedures in the same manner and for the same duration as for students without disabilities.

34CFR §300.530(c)

The IEP Team must conduct a FBA and develop a BIP, or review and modify an existing BIP, to address the behavior. 34CFR §300.530(f)(1)(i-ii)

The IEP Team determines extent to which FAPE services are needed to enable the student to continue to participate in the general education curriculum, although

AND return the student to the placement from which he/she was removed, unless 1) the parent and district agree to a change of placement; 2) a hearing officer orders a new placement; or 3) the removal is for special circumstances (i.e., weapons, drugs or serious bodily

Provide, as appropriate, a FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34CFR 300.530(d)(2)

Special Circumstances (Weapons, Drugs, Serious Bodily Injury)

School personnel may remove a student to an Interim Alternative Educational Setting (IAES) for not more than 45 school days without regard to whether the behavior is a manifestation of the student's disability, if the student:

- 1. Carries a weapon to or possesses a weapon at school, on school premises or to or at a school function;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises or at a school function; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises or at a school function

- 1. Notify parents on the same day of decision to change the student's placement & provide procedural safeguards, including PWN 34CFR §300.530(h), and
2. Within 10 school days of the decision, conduct a manifestation determination. 34CFR §300.530(e)
3. The student's IEP Team determines the appropriate IAES for the student. 34CFR §300.530(d)(2)

*Taken from the Diagnostic and Statistical Manual of Mental Disorders
5th Edition (DSM-5) **Severity Levels for Adaptive Functioning**

Severity Level	Conceptual domain	Social domain	Practical domain
Mild	For preschool children, there may be no obvious conceptual differences. For school-age children and adults, there are difficulties in learning academic skills involving reading, writing, arithmetic, time or money, with support needed in one or more areas to meet age-related expectations. In adults, abstract thinking, executive function (i.e., planning, strategizing, priority setting and cognitive flexibility) and short-term memory, as well as functional use of academic skills (e.g., reading, money management), are impaired. There is somewhat concrete approach to problems and solutions compared with age-mates.	Compared with typically developing age-mates, the individual is immature in social interactions. For example, there may be difficulty in accurately perceiving peers' social cues. Communication, conversation and language are more concrete or immature than expected for age. There may be difficulties regulating emotion and behavior in age-appropriate fashion; these difficult are noticed by peers in social situations. There is limited understanding of risk in social situations; social judgement is immature for age and the person is at risk of being manipulated by others (gullibility).	The individual may function age-appropriately in personal care. Individuals need some support with complex daily living tasks in comparison to peers. In adulthood, supports typically involve grocery shopping, transportation, home and child-care organizing, nutritious food preparation and banking and money management. Recreational skills resemble those of age-mates, although judgement related to well-being and organization around recreation requires support. In adulthood, competitive employment is often seen in jobs that do not emphasize conceptual skills. Individuals generally need support to make health care decisions and legal decisions and to learn to perform a skilled vocation competently. Support is typically needed to raise a family.
Moderate	All through development, the individual's conceptual skills lag markedly behind those of peers. For preschoolers, language and pre-academic skills develop slowly. For school-age children, progress in reading, writing, mathematics and understanding of time and money occurs slowly across the school years	The individual shows marked differences from peers in social and communicative behavior across development. Spoken language is typically a primary tool for social communication but is much less complex than that of peers. Capacity for relationships is evident in ties to family and friends, and the individual may have successful	The individual can care for personal needs involving eating, dressing, elimination and hygiene as an adult, although an extended period of teaching and time is needed for the individual to become independent in these areas and reminders may be needed., Similarly, participation in all household tasks can be achieved by adulthood, although an extended period of teaching is needed, and ongoing supports will typically occur for adult-level

Continue Moderate	and is markedly limited compared with that of peers. For adults, academic skill development is typically at an elementary level, and support is required for all use of academic skills in work and personal life. Ongoing assistance on a daily basis is needed to complete conceptual tasks of day-to-day life, and other may take over these responsibilities fully for the individual.	friendships across life and sometimes romantic relations in adulthood. However, individuals may not perceive or interpret social cues accurately. Social judgment and decision-making abilities are limited, and caretakers must assist the person with life decisions. Friendships with typically developing peers are often affected by communication or social limitations. Significant social and communicative support is needed in work settings for success.	performance. Independent employment in jobs that require limited conceptual and communication skills can be achieved, but considerable support from co-workers, supervisors and others is needed to manage social expectations, job complexities and ancillary responsibilities such as scheduling, transportation, health benefits and money management. A variety of recreational skills can be developed. These typically require additional supports and learning opportunities over an extended period of time. Maladaptive behavior is present in a significant minority and causes social problems.
Severe	Attainment of conceptual skills is limited. The individual generally has little understanding of written language or of concepts involving numbers, quantity, time and money. Caretakers provide extensive supports for problem solving throughout life.	Spoken language is quite limited in terms of vocabulary and grammar, Speech may be single words or phrases and may be supplemented through augmentative means, Speech and communication are focused on the here and now within everyday events. Language is used for social communication more than for explication. Individuals understand simple speech and gestural communication. Relationships with family members and familiar others are a source of pleasure and help.	The individual requires support for all activities of daily living, including meals, dressing, bathing and elimination. The individual requires supervision at all times. The individual cannot make responsible decisions regarding well-being of self or others, In adulthood, participation in tasks at home, recreation and work requires ongoing support and assistance. Skill acquisition in all domains involves long-term teaching and ongoing support. Maladaptive behavior, including self-injury, is present in a significant minority.
Profound	Conceptual skills generally involve the physical world rather than symbolic processes. The individual may use objects in goal-directed fashion for self-care,	The individual has very limited understanding of symbolic communication in speech or gesture. He or she may understand some simple instructions or gestures. The individual	The individual is dependent on others for all aspects of daily physical care health and safety, although he or she may be able to participate in some of these activities as well. Individuals without severe physical

	<p>work and recreation. Certain visuospatial skills, such as matching and sorting based on physical characteristics, may be acquired. However, co-occurring motor and sensory impairments may prevent functional use of objects.</p>	<p>expresses his or her own desires and emotions largely through nonverbal, nonsymbolic communication. The individual enjoys relationships with well-known family members, caretakers and familiar others, and initiates and responds to social interactions through gestural and emotional cues. Co-occurring sensory and physical impairment may prevent many social activities.</p>	<p>impairment may assist with some daily work tasks at home, like carrying dishes to the table. Simple actions with objects may be the basis of participation in some vocational activities with high levels of ongoing support. Recreational activities may involve, for example, enjoyment in listening to music, watching movies, going out for walks or participating in water activities, all with the support of others. Co-occurring physical and sensory impairments are frequent barriers to participation (beyond watching) in home, recreational, and vocational activities. Maladaptive behavior is present in a significant minority.</p>
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WVBE Policy 2423
Health Promotion and Disease
Prevention

**TITLE 126
LEGISLATIVE RULE BOARD OF EDUCATION**

**SERIES 51
HEALTH PROMOTION AND DISEASE PREVENTION (2423)**

§126-51-1. General.

1.1. Scope. - The legislative rule requires establishment of county policies related to health promotion and prevention of communicable diseases.

1.2. Authority. - West Virginia Constitution, Article XII, §2, W. Va. Code §§16-3-4, 16-3-5, 16-3C-1 through 16-3C-9, 16-3D-1 through 16-3D-3, 18-2-5, 18-5-9, 18-5-17, 18-5-22, 18-5-34 and 18A-5-1.

1.3. Filing Date. - August 13, 2015.

1.4. Effective Date. - September 14, 2015.

1.5. Repeal of Former Rules. - This rule amends W. Va. 126CSR51 "Health Promotion and Disease Prevention (2423)," filed May 15, 2014 and effective July 1, 2014.

§126-51-2. Purpose.

2.1. Good health and safety are essential to student learning. This policy establishes the standards that must be placed in county policy ensuring student health, preventing disease and addressing issues and educating students and school personnel on communicable diseases. The knowledge of health promotion and disease prevention along with standard/universal precautions, transmission, prevention and treatment of communicable diseases will support student success.

2.2. The objective of this policy is to allow for procedures to be in place for detection of potential health barriers to learning and communicable diseases, inclusion and exclusion, standard/universal precautions and enhancement of knowledge to ensure preventative measures occur for students and school personnel. This policy will assist in developing a working relationship with school personnel, parents/guardians, the students' medical and dental home and the local health department while decreasing duplication of health services offered by the school and the medical and dental home and/or the community serving the students.

§126-51-3. Application.

3.1. County boards of education shall develop or amend communicable disease policies, hereinafter referred to as health promotion and disease prevention policies, to reflect understanding of health promotion and disease prevention in the school setting and of student/staff wellbeing. The goal of the policy is to protect individual students, staff

members and the school population in general and foster a healthy environment conducive to learning.

3.2. The potential for inability to learn, loss of school time for preventable diseases or unmanaged care and unnecessary exclusion from the school setting is cause for concern. This problem makes it necessary for counties to develop a policy that is proactive and protective of the educational process and the health and safety rights of students and staff.

3.3. Each county should seek the assistance of school nurses, school personnel, parents and guardians, public health, medical personnel and community leaders in developing the health promotion and disease prevention. The school nurse is qualified to lead the development and implementation of the county level policy.

3.4. The county school system will work cooperatively through public and private partnerships, including the local health department to enforce and adhere to the W. Va. Code §§18A-5-1, 16-3-4, 16-3D-1, 16-3-5, 16-3C-1 through 16-3C-9, 18-2-5, 18-5-9, 18-5-17, 18-5-22, and 18-5-34 for health promotion, disease prevention, control and containment of communicable disease in schools.

§126-51-4. Definitions.

4.1. ACIP is defined as the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention in the U.S. Department of Health and Human Services, which is the principal agency in the United States government for protecting the health and safety of all Americans and for providing essential human services, especially for those people who are least able to help themselves. CDC remains at the forefront of public health efforts to prevent and control infectious and chronic diseases, injuries, workplace hazards, disabilities and environmental health threats.

4.2. Airborne Pathogens are defined as the transmission of infectious agents through either airborne droplet nuclei (small-particle residue [five μm or smaller in size] of evaporated droplets that may remain suspended in the air for long periods of time) or dust particles containing infectious agents. These pathogens include but are not limited to tuberculosis (TB), rubella (measles) and varicella (chickenpox).

4.3. Airborne Precautions are not normally utilized in the school setting. It is defined as the isolation of an airborne pathogen to reduce the risk of airborne transmission of infectious agents. Airborne precautions entail wearing a respiratory protection mask (N95 respirator) when entering the room of a student receiving home/hospital instruction with known or suspected disease transmitted via airborne droplet nuclei, student placement in private hospital room with negative air pressure and placing a mask on the student for hospital transporting.

4.4. American Academy of Pediatrics also known as the AAP, is defined as a national organization of pediatricians, founded in 1930, committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults.

4.5. Blood Borne Pathogens means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), hepatitis B virus (HBV) and hepatitis C virus (HCV).

4.6. Bureau is defined as the Bureau for Public Health in the West Virginia Department of Health and Human Resources and is the state agency responsible for establishing vaccine requirements for students and best practices for health and wellness.

4.7. Casual Contact means day-to-day interaction between individuals and others in the home, at school or in the work place. It does not include intimate contact, such as sexual or drug use interactions, and it implies closer contact than chance passing in the hallway or sharing a lunch table.

4.8. Centers for Disease Control and Prevention also known as CDC, is defined as one of the eleven major operating divisions of the United States Department of Health and Human Services, which is the principal agency in the United States government for protecting the health and safety of all Americans and for providing essential human services, especially for those people who are least able to help themselves. CDC remains at the forefront of public health efforts to prevent and control infectious and chronic diseases, injuries, workplace hazards, disabilities and environmental health threats.

4.9. Commissioner is defined as the Bureau official who serves as State Health Officer as defined in W. Va. Code §16-1-2, or his or her designee.

4.10. Communicable Disease means a disease that may be transmitted directly or indirectly from one individual to another.

4.11. Direct Contact means a disease that is spread through the exposure of blood and/or body fluids to mucus membranes, open skin wounds, semen or intravenous transfusion. HIV/AIDS is spread by direct blood transmission into the blood stream of another and by semen or vaginal fluid contact. Hepatitis A can be spread by direct or indirect contact with feces while Hepatitis B and C can be spread by direct contact with semen and blood. These diseases do not pose a risk in school if body fluids such as blood and feces are handled using standard/universal precautions.

4.12. Droplet Contact means contact of the conjunctivae or the mucous membranes of the nose or mouth of a susceptible person with large-particle droplets (larger than five μm in size) containing microorganisms generated from a person who has a clinical disease or who is a carrier of the microorganism. Droplets are generated from the source person primarily during coughing, sneezing, or talking and during the performance of certain procedures such as suctioning. Transmission via large-particle droplets requires close contact between source and recipient persons, because droplets do not remain suspended in the air and generally travel only short distances, usually three feet or less, through the air. These pathogens include, but are not limited to, bacterial infections, such as Pertussis (whooping cough), streptococcal (group A) pharyngitis, pneumonia or scarlet fever, Diphtheria (pharyngeal), Haemophilus influenzae type b and Neisseria meningitis disease, including meningitis,

pneumonia and sepsis. Serious viral infections spread by droplet contact include but are not limited to adenovirus, influenza (flu), mumps and rubella (German measles).

4.13. Droplet Precautions is defined as droplet pathogen isolation utilized around individuals known or suspected to be infected with microorganisms transmitted by droplets (large-particle droplets [larger than five μm in size] that can be generated by the person during coughing, sneezing, talking, or the performance of procedures). Droplet precautions entail being in the a private environment, like the student's home, wearing a mask while within three feet of the individual infected and utilizing standard/universal precautions. Because droplets do not remain suspended in the air, special air handling and ventilation are not required to prevent droplet transmission. Masks may be worn to protect the health of a student who is immunocompromised.

4.14. HealthCheck is the name for West Virginia's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. The EPSDT Program is a child preventive health component of Medicaid for children under 21 years of age. An annual comprehensive exam is recommended for all children ages 3-20 and more frequently if less than three. HealthCheck meets the requirements for vision, hearing, developmental, including speech and language, and oral health or other comprehensive health screening comparable to the HealthCheck protocol. The HealthCheck screening form is the preferred documentation method of licensed health care providers to record screenings but forms and electronic documentation may vary.

4.15. Health or Safety Emergency Situation is determined on a case-by-case basis, and is defined as a specific situation that presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release of confidential medical information must be narrowly tailored considering the immediacy and magnitude of the emergency and must be made only to parties who can address the specific emergency in question. This exception is temporally limited to the period of the emergency and generally does not allow a blanket release of personally identifiable information from a student's education records to comply with general requirements under state law. Certainly an outbreak of diseases, but not limited to, chickenpox, whooping cough, herpes gladiatorum and flu, that not only pose threat of permanent disability or death for the individual, but have historically presented themselves as epidemic in nature. Thus, disclosure of personally identifiable information from students' education records to state health officials for an outbreak of a communicable disease is permitted under health or safety emergency provisions of the Family Educational Rights and Privacy Act of 1988 (FERPA) and FERPA: Final Regulations Part II, 34 CFR Part 99.

4.16. Immunocompromised is defined as reduced immune response due to immunosuppressive drugs, radiation, disease or malnutrition.

4.17. Legitimate Educational Reason is defined as school officials who have been determined to have genuine concern related to the student's educational achievement and performance allowing access and review pertinent educational records including medical and health information. A record of disclosure must be maintained and include: 1) the parties who

have requested the information from the education records, and 2) the legitimate interests the parties had in requesting or obtaining the information.

4.18. Occupational Safety and Health Administration (OSHA) is defined as a division of the United States Department of Labor that provides standards and guidelines for the health and safety of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

4.19. Oral Health Examination (referred to as an evaluation and coded to three main types Periodic, Comprehensive or Limited) means an evaluation performed on a student to determine the oral health of a student, the collection and recording of specific data intraoral and extra-oral hard and soft tissues, for diagnosis and treatment planning. This may include diagnostic services and must be completed by a dentist.

4.20. School Nurse is defined as a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses (W. Va. Code §30-7-1, et seq.), who has completed a West Virginia Department of Education (WVDE) approved program as defined in 126CSR114, West Virginia Board of Education (WVBE) Policy 5100, Approval of Educational Personnel Preparation Programs and meets the requirements for certification contained in 126CSR136, WVBE Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classification. The school nurse must be employed by the county board of education or as specified in W. Va. Code §18-5-22.

4.21. Standard/Universal Precautions is a body substance isolation approach to infection control. Standard Universal Precautions apply to 1) blood; 2) all body fluids, secretions, and excretions, except sweat, regardless of whether or not they contain visible blood; 3) non-intact skin; and 4) mucous membranes. According to the concept of standard/universal precautions, all human blood and all other human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens. There are three types of transmission: contact, airborne and droplet.

4.22. West Virginia Department of Health and Human Resources (WVDHHR) is the lead public health agency in West Virginia working to help shape the environments within which people and communities can be safe and healthy.

4.23. West Virginia Statewide Immunization Information System (WVSIIS) is a statewide electronic data system for reporting and tracking administrations of vaccines for use by health care practitioners. This system was created to consolidate individuals' immunization records, forecast recommended vaccinations, generate reminder notices due to overdue immunizations, identify improper vaccine administrations, conduct inventory management and systematic accountability, and provide general immunization practice management functions. Health care providers are required to report all administrations of vaccines as defined in W. Va. Code §16-3-4 and Bureau Rules, 64CSR7 and 64CSR95.

§126-51-5. Health Promotion through School Screenings/Examinations.

5.1. All schools support and assist students in being healthy learners through promoting annual well child examinations, biannual dental examinations by a licensed dentist, up-to-date immunizations, emergency information, preventive health care and enrollment for children and families into health care insurance. A public/private partnership is easily accomplished through school nursing services, local WVDHHR/Bureau services, school-based services (including medical, mental and oral health), non-profit services, private sector services, businesses, etc. The school nurse is the school health expert who is qualified to lead the coordination and monitoring of health promotion through school screenings and examinations.

5.2. HealthCheck: New enterers in West Virginia public school at first entry of either prekindergarten (Pre-K) or Kindergarten and all students progressing to grades 2, 7 and 12 should have on file within 45 days of enrollment/entry or prior to the first day of school attendance a record of a HealthCheck screening, or other comprehensive health screening comparable to the HealthCheck protocol. The following transition plan will require each new enterer in Pre-K and Kindergarten and all students entering grades 2, 7 and 12 to show proof of a HealthCheck screening: beginning the school year (SY) 2015/16 all new enterers in Pre-K and Kindergarten; beginning SY 2016/17 all students entering grade 2; beginning SY 2017/18 all students entering grade 7; and beginning SY 2018/19 all students entering grade 12. All screening forms shall be signed and dated by the child's licensed health care provider and completed within the prior 12 calendar months. If the student does not have proof of a HealthCheck the classroom teacher shall be informed to ensure any potential learning deficits (vision, hearing, speech and language, developmental, etc.) will be referred to the appropriate school personnel for screening as individually indicated. Counties can retain the right to conduct follow-up screening (W. Va. Code §18-5-17, W. Va. 126CSR28, WVBE Policy 2525, West Virginia's Universal Access to Early Education System, Governor's KidsFirst Initiative and Superintendent's Interpretation of June 29, 2007).

5.3. Oral Health: New enterers in West Virginia public school at first entry of either Pre-K or Kindergarten and all students progressing to grades 2, 7 and 12 should have on file within 45 days of enrollment/entry or prior to the first day of school attendance a record of an oral health examination. The following transition plan will request each new enterer in Pre-K and Kindergarten and all students entering grades 2, 7 and 12 to show proof of an oral health examination: beginning the school year (SY) 2015/16 all new enterers in Pre-K and Kindergarten; beginning SY 2016/17 all students entering grade 2; beginning SY 2017/18 all students entering grade 7; and beginning SY 2018/19 all students entering grade 12. All examination forms shall be signed and dated by the student's dentist and completed within the prior 12 calendar months. If the student does not have proof of an oral health examination during the grade of requirement, the student may be enrolled into the WVDHHR-Oral Health Program's (OHP) Oral Disease Prevention Project. The Oral Health Prevention Project will provide an oral health assessment from a dental provider regardless of the ability to pay if the parent/guardian provides approval/consent for the student to participate.

5.4. Tuberculin Skin Test: West Virginia continues to be a state with low incidence rates of tuberculosis hence the removal of tuberculosis skin testing for out-of-state student transfers and new school employees, including volunteers in W. Va. Code §16-3D-3 (2015). In order to ensure tuberculosis rates remain low, W. Va. Code §16-3D-3 requires students found or suspected to have active tuberculosis shall be temporarily removed from school while their case is reviewed and evaluated by their personal physician and the local health officer.

Students shall return to school when their personal physician and the local health officer, in consultation with the Commissioner, indicate that it is safe and appropriate for them to return. Also, school personnel found or suspected to have active tuberculosis shall have their employment suspended until the local health officer, in consultation with the Commissioner, approves a return to work. The Commissioner may require selective testing of students and school personnel for tuberculosis when there is reason to believe that they may have been exposed to the tuberculosis organism or they have signs and symptoms indicative of the disease. School nurses shall identify and refer any students or school personnel to the local health department in instances where they have reason to suspect that the individual has been exposed to tuberculosis or has symptoms indicative of the disease.

§126-51-6. Disease Prevention Measures through Immunizations.

6.1. Students must be in compliance with the required immunization schedule as set forth by the Bureau Commissioner. The Commissioner, or his/her designee Immunization Officer shall make determinations on request for a medical exemption to the compulsory immunization requirements set forth by the Bureau. A medical exemption request must be made by a licensed physician and state that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine. The Immunization Officer's decision on a request for an exemption to the compulsory immunization requirements of this section may be appealed to the State Health Officer. The final determination of the State Health Officer is subject to a right of appeal pursuant to the provisions of W. Va. Code §29A-5-1 et. seq. The immunization record shall be a public health record to be entered and reviewed annually into the WVSIS.

6.2. All children entering Pre-K, kindergarten or any West Virginia public school for the first time must have immunizations and show proof upon enrollment as defined by W. Va. Code §16-3-4 and W. Va. 64CSR95. All Pre-K students shall also meet requirements found in 126CSR28, WVBE Policy 2525, West Virginia's Universal Access to a Quality Early Education System.

6.3. Beginning in the school year 2012-2013, two additional vaccine requirements shall be added for students entering the 7th and the 12th grades, in accordance with the guidance from the Advisory Committee on Immunization Practices (ACIP) and the revised rule of the Bureau, (W. Va. 64CSR95). Proof of Tdap and Meningococcal vaccinations shall be presented upon entry to 7th and 12th grade as indicated in and W. Va. Code §16-3-4, W. Va. 64CSR95, Interpretive Rule, Immunization Requirements and Recommendations for New School Enterers. Immunization records for each student entering grades 7 and 12 shall be examined for the age appropriate doses of these two vaccines. The information shall be entered into WVSIS in order to ensure that updated immunization information is readily available to health officials in the event of a communicable disease outbreak that presents an imminent danger to students or other members of the community.

6.3.a. Tdap vaccine is recommended for children age 11-12 years who have completed the recommended childhood DTP/DTaP vaccine series and have not already received a tetanus and diphtheria (Td) booster dose at middle school entry. Proof of Tdap vaccination is required to be presented upon entry to the 7th grade.

6.3.b. Adolescents age 13-18 who missed the 11-12-year-old Tdap/Td dose and who have completed the primary DTP/DTaP series shall be required to get a dose of Tdap vaccine prior to entry to the 12th grade.

6.3.c. Meningococcal Vaccination shall be required in accordance with ACIP guidance. Current ACIP guidance for Meningococcal vaccine is to administer a first dose to children at 11 or 12 years old and a booster dose at 16-18 years of age. All children who receive a first dose of MCV vaccine before the age of 16 are recommended to receive a booster dose at 16-18 years of age. Proof of age appropriate MCV vaccination shall be presented upon entry to the 7th grade. Proof of the second dose of MCV shall be presented upon entry to the 12th grade for all children who received the 1st dose before 16 years of age. Only one dose of MCV is required if the first dose was administered after 16 years of age for 12th grade entry.

6.4. County boards of education should consider providing one credit hour of community service to students in high school for obtaining and showing proof of their annual influenza (flu) vaccination as a great way to support attendance rates, academic success, well workforce and overall wellness.

§126-51.7. Quality Assurance for School-Based Services.

7.1. All community services performed in the school setting should be regular and ongoing services that are evidence-based or a promising practice and follow best practices and guidelines. The terms regular and ongoing services as referenced refer to community services that are provided within the school in an agreed upon manner between the school and community partner(s) which work toward promoting both the academic, health and social service needs of students.

7.1.a. Immunizations shall incorporate the protocols set forth by CDC-Advisory Committee on Immunization Practices (ACIP) and WVDHHR/Bureau-Immunization Services.

7.1.b. HealthCheck exam, or comparable comprehensive well child exam, shall incorporate the protocols set forth by AAP-Bright Futures and WVDHHR-HealthCheck Program.

7.1.c. Oral Health services shall incorporate the protocols set forth by the WVDHHR-OHP.

7.1.d. Tuberculin Skin Test shall incorporate the Protocols of WVDHHR/Bureau-Tuberculosis Control Program.

7.1.e. Other services shall incorporate the protocols set forth by appropriate laws and regulations.

§126-51-8. Disease Prevention Measure Through Practice and Education.

8.1. All county boards of education must incorporate hand washing into the county board of education policy, as defined in W. Va. 126CSR25A, WVBE Policy 2422.7, Standards For Basic and Specialized Health Care Procedures, and as outlined in The Basic and Specialized Health Care Procedures Manual for West Virginia Public Schools. It is best practice to wash the hands with soap and clean running water for twenty seconds. However, if soap and clean water are

not available, use an alcohol-based product to clean the hands is acceptable practice. Alcohol-based hand rubs significantly reduce the number of germs on skin and are fast acting. Good hand hygiene is the single most effective procedure to prevent the spread of communicable disease in the school setting. An allowance for hand washing should be incorporated into the daily routine of all students in West Virginia public schools, especially before eating, after blowing the nose, coughing, or sneezing, after going to the bathroom and as deemed necessary by school.

8.2. Instruction on the principle modes by which communicable diseases, including, but not limited to, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS) are prevented, spread and transmitted shall be taught to students as outlined in W. Va. 126CSR44E, WVBE Policy 2520.5, Next Generation Health Education Content Standards and Objectives. An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of HIV/AIDS and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in such instruction. The parent or guardian may exempt such child from participation in such instruction by giving notice to that effect in writing to the school principal as set forth in W. Va. Code §18-2-9.

8.3. An educational in-service on the prevention, transmission and treatment of current communicable diseases shall include, but not limited to, AIDS, shall be provided to all school personnel every two years by the county boards of education, as specified in W. Va. Code §18-2-9 and §18-5-15d.

§126-51-9. Disease Control Measures.

9.1. Distinctions will be made related to diseases that are communicable in the school setting versus those known not to be spread by casual contact, e.g., AIDS, Hepatitis B, Hepatitis C and other like diseases.

9.2. Each reported case of disease known not to be spread by casual contact will be validated by a designated individual such as a school nurse (W. Va. Code §18A-5-1 and §18-5-22).

9.3. The administrator or school nurse shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease known to be spread by casual contact and is considered to be a health threat to the school population. The superintendent has the authority to exclude a staff member from school when reliable evidence or information from a qualified source confirms him/her of having a potential communicable disease that is known to be spread by any form of casual contact and is considered a health threat to the school population. Such a student or staff member shall be excluded in accordance with guidelines of AAP, CDC and WVDHHR unless his/her physician approves school attendance and the condition is no longer considered contagious. All reportable communicable diseases will be referred to the local health department, as set forth in West Virginia Bureau for Public Health Legislative Rule 64CSR7, Reportable Diseases, Events and Conditions. In the event of a suspected communicable disease outbreak as defined by the Commissioner, public schools and/or county boards of education shall release student personally identifiable information to appropriate public health officials as allowable by

FERPA's Health and Safety Emergency Disclosure and W. Va. 126CSR94, WVBE Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data. The local health department is able to provide reportable communicable disease guidance or go to <http://www.dhhr.wv.gov/oeps/disease/Pages/default.aspx>.

9.4. The West Virginia Bureau for Public Health Legislative Rule, Reportable Diseases, Events and Conditions, 64CSR7, establishes procedures governing the reporting of certain diseases and conditions, unusual health events and clusters or outbreaks of disease to the Bureau. It establishes the responsibility of school administrators, school nurses and other health care providers working in schools to report, assist with or manage the outbreak and any necessary contact investigation and management including implementation of control methods to limit the spread of communicable disease. This process frequently occurs as a simple surveillance report of possible communicable disease cases within the school facility without personal identifiable information as requested by the local public health department or regional Epidemiologist. After review of the information, in some cases (e.g. foodborne outbreak, respiratory outbreak, case or outbreak of a reportable condition such as vaccine preventable disease, hepatitis, meningitis and encephalitis) the state, regional and/or local public health department, along with the BPH Commissioner and staff, may request student or staff personal identifiable information (name, address, and phone number) for cases and contacts of cases based on surveillance data to fully investigate a case or outbreak of communicable disease, including the complete and accurate tracing of contacts for the purpose of recommending and/or providing appropriate post-exposure prophylaxis in an effort to prevent additional cases. The investigation of any communicable disease outbreak is based on scientific grounds and utilizes follow-up information to verify line list data and information on risk factors to protect the health and safety of the public including those currently experiencing the disease. Risk factors might include classroom, participation in school activities and transportation, behaviors and exposures to environmental sources or other persons. This release of personal identifiable information to public health officials is classified as a Health and Safety Emergency in the FERPA rule allowing schools to release the information needed for protection of public health.

9.5. Mandatory screening for communicable diseases that are known not to be spread by casual contact is not warranted as a condition for school entry or for employment or continued employment, nor is it legal based on W. Va. Code §16-3C-l. All screenings performed in the public-school setting should be age appropriate deemed effective and necessary through evidence-based and scientific researched-based practice utilizing standard procedures and with the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. §1232h. W. Va. Code §18-5-22 allows county boards to provide proper medical and dental inspections for all students attending school and gives authority to take any other necessary actions to protect students from infectious diseases.

9.6. Irrespective of the disease presence, standard/universal precautions shall be used, and adequate sanitation facilities will be available for handling blood or body fluids within the school setting or school buses. Blood and body fluids from any person in the school setting shall be treated with standard/universal precautions; no exception shall be made when handling blood and body fluids. School personnel will be trained in standard/universal precautions as set forth by the Occupational Safety and Health Administration recommendations and guidelines at <http://www.osha.gov/>.

§126-51-10. Confidentiality.

10.1. All school personnel privileged with any medical information that pertains to students or staff members shall be required to treat all proceedings, discussions and documents as confidential information. Before any medical information is shared with anyone in the school setting a “legitimate educational reason” or “health or safety emergency situation” must exist, all other releases of confidential medical and health information shall be released only with the consent of the parent/guardian, student if over 18, employee or their representative as outlined in W. Va. 126CSR94, WVBE Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data and FERPA. The only exception is immunizations as referenced in section 6.1.

10.2. Health information provided to or from the school, is part of the educational record and should be shared with the child’s parents/guardians and pass freely among the school and medical home/health care provider to enhance student health and prevent duplication of services, only after permission is obtained from the student’s parent/guardian.

§126-51-11. Severability.

11.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, such federal legislation or invalidity shall not affect other provisions or applications of this rule.

WVBE 2520.5

**West Virginia College- and Career-
Readiness Standards for Wellness
Education**

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 44E
WEST VIRGINIA COLLEGE- AND CAREER-READINESS STANDARDS FOR WELLNESS EDUCATION
(2520.5)**

§126-44E-1. General.

1.1. Scope. -- W. Va. 126CSR42, West Virginia Board of Education (WVBE) Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (Policy 2510), provides a definition of a delivery system for, and an assessment and accountability systems for, a thorough and efficient education for West Virginia public school students. Policy 2520.5 defines the wellness education content standards for the as required by Policy 2510.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, 18-2-9, and 18-9A-22.

1.3. Filing Date. -- June 15, 2018.

1.4. Effective Date. -- July 16, 2018.

1.5. Repeal of a Former Rule. -- This legislative rule repeals and replaces W. Va. 126CSR44E, WVBE Policy 2520.5, Next Generation Health Education 5-12 Content Standards and Objectives for West Virginia Schools, filed August 13, 2015, and effective September 14, 2015, and repeals W. Va. 126CSR44F, WVBE Policy 2520.6, 21st Century Physical Education 5-12 Content Standards and Objectives for West Virginia Schools, filed March 19, 2007, and effective July 1, 2008, and repeals W. Va. 126CSR44T, WVBE Policy 2520.55, 21st Century Wellness PreK-4 Content Standards and Objectives for West Virginia Schools, filed March 19, 2007, and effective July 1, 2018.

§126-44E-2. Purpose.

2.1. This rule defines the content standards for the program of study in health, physical education, and wellness as required by Policy 2510.

§126-44E-3. Incorporation by Reference.

3.1. A copy of the West Virginia College- and Career-Readiness Standards (WVCCRS) for wellness education is attached and incorporated by reference into this policy. Copies may be obtained from the Office of the Secretary of State or the West Virginia Department of Education (WVDE).

§126-44E-4. Summary of the Content Standards.

4.1. The WVBE is responsible for establishing high quality standards pertaining to all education programs (W. Va. Code §18-2-5). The content standards provide a focus for teachers to teach and students to learn those skills and competencies essential for future success in

the workplace and further education. The document includes content standards for wellness education and an explanation of terms.

§126-44E-5. Severability.

5.1. If any provisions of this rule or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of this rule.

Introduction

WVCCRS have been developed with the goal of preparing students for a wide range of high-quality postsecondary opportunities. Specifically, college- and career-readiness refers to the knowledge, skills and dispositions needed to be successful in higher education and/or training that lead to gainful employment. The WVCCRS establish a set of knowledge and skills that all individuals need to transition into higher education or the workplace, as both realms share many expectations. All students throughout their educational experience, should develop a full understanding of the career opportunities available, the education necessary to be successful in their chosen pathway, and a plan to attain their goals.

WVCCRS for Wellness Education promote wellness concepts that build the foundation for health literacy and an appreciation for lifelong physical fitness. Students will learn to adopt healthy behaviors. This is a life-long process of enhancing the components of health education (physical, intellectual, emotional, social, spiritual and environmental), physical education (movement forms, motor skill development and fitness) and physical activity, an important factor in brain development and learning. The WVCCRS for Wellness Education identify what students should know, understand, and be able to do in practicing skills and behaviors that apply to healthy lifestyles. College- and career-readiness is supported in wellness education as students acquire and further develop self-responsibility, motivation, and excellence in learning as well as life-long commitment to wellness.

Committees of educators from across the state convened to revise the standards. The overarching goal was to build rigorous, relevant and challenging wellness education programming that would prepare students for college- and career-readiness. West Virginia educators and representatives from higher education institutions played a key role in shaping the standards to align with research and best practice in the field of wellness education. The contribution of these professionals was critical in creating a policy that is meaningful to classroom teachers and appears in a format that can easily be used and understood.

Explanation of Terms

Domains are the broad components that make up a content area; e.g., health education and physical education make up wellness education.

Health Education - The goal of health education is to provide students with the knowledge and skills needed to lead healthy lifestyles; this is often referred to as health literacy. Health literacy is an important measure of the effectiveness of health education and is critical to ensuring that students have the ability to be healthy throughout their lives. Health-literate people are able to address their own health needs along with the needs of others. They are able to obtain and apply knowledge and skills to enhance their own health and the health of others now and in the future as their needs change throughout their lives.

Physical Education - Physical education provides students with planned, sequential, K-12 standards-based instruction designed to develop motor skills, knowledge and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence.

Clusters are groups of standards that define the expectations students must demonstrate to be college- and career-ready.

Standards are the expectations for what students should know, understand, and be able to do; standards represent educational goals.

Wellness Education – Kindergarten – 5th

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. Students in grades K-5 are introduced to wellness concepts that build the foundation for health literacy and an appreciation for lifelong physical fitness. It is critical that children learn to adopt healthy behaviors at an early age, so they can develop sound habits before being faced with health concerns later in life. This is a life-long process of enhancing the components of health education (physical, intellectual, emotional, social, spiritual, and environmental), physical education (movement forms, motor skill development and fitness) and physical activity, an important factor in early brain development and learning. The K-5 wellness content standards identify what students should know, understand and be able to do in practicing skills and behaviors that apply to healthy lifestyles. The goal of these standards is to promote self-responsibility, motivation and excellence in learning as well as life-long commitment to wellness. The following chart represents the components of health and physical education that will be developed throughout grades K-5:

Health Education	Physical Education
Wellness Promotion and Disease Prevention	Development of Movement Forms/Motor Skills
<ul style="list-style-type: none"> acquire basic wellness concepts and functional wellness knowledge 	<ul style="list-style-type: none"> develop foundational movement forms and motor skills establish a foundation to facilitate continued motor skill acquisition
Wellness Information and Services	Physical Fitness
<ul style="list-style-type: none"> identify valid wellness information and health promoting products and services apply analysis and comparison of health resources to develop health literacy 	<ul style="list-style-type: none"> develop knowledge of fitness principles, accept responsibility for personal fitness understand fundamentals of how to lead an active, healthy lifestyle develop higher levels of basic fitness and physical competence endeavor to improve components cardiorespiratory endurance, muscular strength and endurance, flexibility, and body composition
Wellness Behaviors	Responsible, Personal, and Social Behaviors
<ul style="list-style-type: none"> understand that wellness enhancing behaviors can contribute to a positive quality of life understand many disease and injuries can be prevented by reducing harmful and risk-taking behaviors accept personal responsibility for health identify and practice healthy behaviors 	<ul style="list-style-type: none"> understand that personal fitness is impacted by a variety of positive and negative influences within society identify and understand the diverse internal and external factors that influence wellness practices and behaviors

- In accordance with WV Code §18-2-7(a) in grades K-5, not less than 30 minutes of physical education, including physical exercise and age appropriate physical activities, for not less than three days a week shall be provided. Schools that do not currently have the number of certified physical education teachers or required physical setting may develop alternate programs to enable current staff and physical settings to be used to meet this requirement. Alternate programs shall be submitted to the WVDE for approval.
- In accordance with Policy 2510 at least 50 percent of class time for physical education will be spent in moderate to vigorous-intensity physical activity.
- In accordance with WV Code §18-2-7(a), the FitnessGram® shall be administered to all students in grades four through eight and the required high school course.

FitnessGram® - Begins in Grade 4

The FitnessGram® test battery assesses health-related fitness components: aerobic capacity, muscular strength and endurance, flexibility and body composition. FitnessGram® tests all students regardless of age, gender, or ability. Students are encouraged to be self-aware of health-related fitness and take responsibility by setting personal fitness goals. When students focus on the process of doing their personal best, a more positive lifelong impact is achieved. The FitnessGram® is composed of the following six fitness areas, with test options provided for most areas:

Aerobic Capacity

- PACER (Progressive Aerobic Cardiovascular Endurance Run)
- One-Mile Run

Upper Body Strength and Endurance*

- Push-Up
- Modified Pull-Up
- Flexed Arm Hang

Abdominal Strength and Endurance

- Curl-Up

Flexibility

- Trunk Lift
- Back-Saver Sit and Reach
- Shoulder Stretch

Body Composition

- Body Mass Index
- Bioelectric Impedance Analyzer

Wellness Education – Kindergarten

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. Kindergarten health education standards focus on the development of social skills, a basic understanding of personal health issues, injury prevention, and the exploration of nutritious foods. Kindergarten physical education standards focus on the development of motor skills, movement concepts, and physical fitness which are critical to future learning.

Health Education

Cluster Wellness Promotion and Disease Prevention

- WE.K.1 Identify and discuss the functions of sensory organs.
- WE.K.2 Identify proper personal hygiene skills (e.g., brushing teeth, hand washing).
- WE.K.3 Identify healthy foods.

Cluster	Wellness Information and Services
WE.K.4	Identify healthcare/safety professionals (e.g., teachers, policemen, school nurses, dentists, doctors).
WE.K.5	Demonstrate when and how to call 9-1-1 emergency services.
WE.K.6	Identify healthy and unhealthy household products and recognize danger symbols (e.g., Mr. Yuck, skull and crossbones).

Cluster	Wellness Behaviors
WE.K.7	Identify proper clothing to wear for different weather conditions and activities.
WE.K.8	Describe the function of safety equipment used during play (e.g., helmets, knee pads, elbow pads).
WE.K.9	Demonstrate safety procedures (e.g., street crossing, fire drills, transportation safety).
WE.K.10	Explain medication should be avoided without supervised use.
WE.K.11	Identify unsafe actions that might lead to injuries.
WE.K.12	Explain that all people, including children, have the right to tell others not to touch their body.
WE.K.13	Identify adults to notify when uncomfortable with certain touches.
WE.K.14	Recognize tobacco, alcohol, and other drugs as harmful substances.
WE.K.15	Identify feelings and ways to deal with difficult emotions.
WE.K.16	Recognize potentially harmful or dangerous situations and explore appropriate refusal skills (e.g., meeting strangers, using harmful substances).

Physical Education

Cluster	Development of Motor Skills/Movement Forms
WE.K.17	Develop a beginning movement vocabulary for body and spatial awareness (e.g., general/self-space, left, right, up, down, high, low).
WE.K.18	Distinguish between personal space and general space.
WE.K.19	Distinguish between and perform locomotor movements of running, hopping, jumping, galloping, and sliding.

WE.K.20	Travel in straight, curved, and zigzag pathways.
WE.K.21	Perform movements that promote cross lateral development.
WE.K.22	Make wide, narrow, round, and twisted body shapes.
WE.K.23	Move the body at high, medium, and low levels.
WE.K.24	Move to a variety of beats, tempos, and rhythms.
WE.K.25	Transfer weight to balance on different body parts or combinations of body parts (e.g., beginner gymnastics, yoga).
WE.K.26	Develop spatial awareness of an object or person (e.g., beside, under, near, far).

Cluster	Physical Fitness
WE.K.27	Recognize body responses to physical activities (e.g., increased heart rate, faster breathing, perspiration).
WE.K.28	Discuss the need for proper rest and exercise.
WE.K.29	Locate and identify a variety of body parts.

Cluster	Responsible, Personal, and Social Behaviors
WE.K.30	Demonstrate appropriate interactions with others (e.g., partners, small groups and large groups).
WE.K.31	Identify and participate in physical activities outside of school that enhance health.

Wellness Education – Grade 1

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. First grade health education standards provide concrete concepts and opportunities to practice and begin to master a variety of physical, social, emotional, and cognitive skills to promote personal health and wellness, prevent injuries, and develop lifetime interpersonal relationships and health habits. First grade physical education standards continue to develop motor skills, movement concepts, and physical fitness that will enable students to learn to enjoy physical activity and enhance future participation in recreational lifetime activities.

Health Education

Cluster	Wellness Promotion and Disease Prevention
WE.1.1	Identify ways germs enter the body and how to prevent the spread of illnesses.
WE.1.2	Describe the effects of healthy and less healthy foods on the body.
WE.1.3	Explain the need for medical checkups and other health-care procedures (e.g., eye, dental exams).

Cluster	Wellness Information and Services
WE.1.4	Identify which “safety” helpers (e.g., police and teachers) to contact for different problems.
WE.1.5	Demonstrate when and how to use 9-1-1 emergency services.

WE.1.6	Classify household products (e.g., harmful, safe).
Cluster	Wellness Behaviors
WE.1.7	Identify the proper safety equipment for different activities (e.g., rollerblading, bicycling, skateboarding, seatbelts and positioning when riding in a car).
WE.1.8	Discuss and follow safety rules (e.g., sharp objects, bodily fluids, playground, water, electrical).
WE.1.9	Identify escape routes at home and school.
WE.1.10	Explain why medication should be avoided without adult supervision.
WE.1.11	Recognize tobacco, alcohol, and other drugs as harmful substances.
WE.1.12	Discuss how using televisions, computers, video games and other technology can affect personal health.
WE.1.13	Identify a variety of feelings and demonstrate healthy ways to act on feelings and stressful situations (e.g., coping skills).
WE.1.14	Discuss appropriate refusal skills in potentially harmful or dangerous situations (e.g., meeting strangers, using harmful substances).
WE.1.15	Understand it is acceptable to tell parents and/or other trusted adults when feeling uncomfortable about being touched.

Physical Education

Cluster	Development of Motor Skills/Movement Forms
WE.1.16	Develop a beginning movement vocabulary for body and spatial awareness (e.g., general/self-space, zig-zag, curve, straight, diagonal).
WE.1.17	Distinguish and perform locomotor movements of skip and leap.
WE.1.18	Demonstrate directional movements of forward, backward, sideways, up, down, left, and right.
WE.1.19	Balance an object on various body parts (e.g., ball on hand, bean bag on foot).
WE.1.20	Bounce and catch a ball.
WE.1.21	Combine locomotor skills with pathways (e.g., straight, zigzag, and curved).
WE.1.22	Create expressive movement sequences to a variety of beats, tempos, and rhythms.
WE.1.23	Recognize basic movement concepts of personal and general space (e.g., directional movements of forward, backward, sideways, up and down).

Cluster	Physical Fitness
WE.1.24	Recognize the body responses to physical activity (e.g., increased heart/breathing rate, muscle fatigue, exhaustion levels).
WE.1.25	Explain the importance of proper rest and exercise.
WE.1.26	Identify and explore large muscle groups.

Cluster	Responsible, Personal and Social Behaviors
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WE.1.27	Describe and participate in appropriate physical activities during recess and outside of school.
WE.1.28	Demonstrate appropriate interactions with others (e.g., partners, small groups, and large groups).

Wellness Education – Grade 2

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. Second grade health education standards actively engage students in practicing and developing basic health behaviors and skills. Second grade physical education standards continue to build on the development of motor skills, movement concepts, and physical fitness from previous grades to enhance enjoyment and proficiency.

Health Education

Cluster	Wellness Promotion and Disease Prevention
WE.2.1	Identify foods in each food group.
WE.2.2	Explain the importance of good dental care and demonstrate good dental hygiene.
WE.2.3	Discuss how community agencies work to prevent and control diseases.
WE.2.4	Describe how immunizations and medicines help fight disease.

Cluster	Wellness Information and Services
WE.2.5	Explore basic first aid.
WE.2.6	Demonstrate when and how to use 9-1-1 emergency services.
WE.2.7	Identify symptoms of poisoning and how to get help.

Cluster	Wellness Behaviors
WE.2.8	Demonstrate knowledge of appropriate safety skills and equipment for recreational activities.
WE.2.9	Describe behaviors and habits which may be dangerous at home, on the playground, or in the community.
WE.2.10	Demonstrate proper food handling techniques (e.g., washing apples, washing hands, using clean utensils).
WE.2.11	Describe the harmful effects of tobacco, alcohol, and other drugs.
WE.2.12	Describe the importance of following directions for taking medicine and only taking medication under adult supervision.
WE.2.13	Understand the influence digital and print media can have on health behavior.
WE.2.14	Describe how to plan a healthy family meal.
WE.2.15	Practice positive communication skills (e.g., healthy ways to express needs, wants, and feelings).
WE.2.16	Demonstrate how to respond appropriately when being touched in an uncomfortable manner.
WE.2.17	Discuss possible risky situations in various environments.

WE.2.18	Identify situations resulting in hurt feelings and demonstrate appropriate coping skills.
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Physical Education

Cluster	Development of Motor Skills/Movement Forms
WE.2.19	Combine locomotor skills with pathways (e.g., straight, zigzag, and curved) and levels (e.g., high, medium, and low).
WE.2.20	Practice chasing, fleeing, and evading in a variety of physical activities.
WE.2.21	Combine balance, transfer of weight, and rolling movements in a repeatable sequence (e.g., beginner gymnastics, animal movements, yoga).
WE.2.22	Perform dance sequences to a variety of beats, tempos, and rhythms.
WE.2.23	Demonstrate directional movements of forward, backward, sideways, up, down, left, and right.
WE.2.24	Kick, throw, catch, and strike an object from a stationary position.

Cluster	Physical Fitness
WE.2.25	Identify and discuss the components associated with health-related fitness (e.g., cardiovascular endurance, muscular strength and endurance, flexibility and body composition) and participate in activities to improve fitness.
WE.2.26	Locate and discuss large muscle groups.

Cluster	Responsible Personal and Social Behaviors
WE.2.27	Follow rules, procedures, and safe practices individually and when in a group.
WE.2.28	Participate in two physical activities that bring personal enjoyment during recess or outside of the school environment.

Wellness Education – Grade 3

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. Third grade health education standards will explore the effects of health habits on wellness through decision making and problem-solving techniques. Hands-on health activities provide experiences that are easily integrated with other third grade subject matter. Third grade physical education standards stress the application of motor skills, movement forms, and physical fitness which will lead to enjoyment in more complex skills and activities. Social skills and lifetime wellness principles promote continued participation in regular physical activity.

Health Education

Cluster	Wellness Promotion and Disease Prevention
WE.3.1	Identify the major organs of the body systems.
WE.3.2	Explain the importance of preventing the spread of germs, bacteria, and diseases.

WE.3.3	Demonstrate good dental hygiene and discuss potential consequences of poor oral health.
WE.3.4	Identify the food groups and recognize food provides energy and nutrients for growth and development.

Cluster	Wellness Information and Services
WE.3.5	Define and demonstrate basic first aid procedures.
WE.3.6	Distinguish between situations that warrant contacting emergency services and situations that do not.

Cluster	Wellness Behaviors
WE.3.7	Explain the importance of using appropriate protective gear for self and others (e.g., helmets, goggles, sunscreen, seatbelts and other safety protocols in various modes of transportation including seat positioning).
WE.3.8	Discuss and practice personal responsibility for hygiene.
WE.3.9	Demonstrate decision-making skills to avoid unhealthy risk-taking behaviors (e.g., swimming alone, talking with strangers, taking medicines without adult supervision).
WE.3.10	Model and practice ways to reduce stress (e.g., deep breathing, mindfulness).
WE.3.11	Discuss appropriate and inappropriate uses of over the counter (OTC) and prescription medication.
WE.3.12	Compare food choices based on nutritional value, recommended portion, and serving size.
WE.3.13	Demonstrate appropriate refusal skills (e.g., clear "no" statement, walk away, repeat refusal).
WE.3.14	Assess factors that contribute to achieving and maintaining a healthy body (e.g., food choices, physical activity).
WE.3.15	Understand how overall health is affected by different levels of passive technology use (e.g., minimal, moderate, or excessive screen time, video games).

Physical Education

Cluster	Development of Motor Skills/Movement Form
WE.3.16	Throw an object in an underhand and overhand method.
WE.3.17	Catch a moving object.
WE.3.18	Dribble a ball with hands from a stationary and a moving position.
WE.3.19	Direct an object to a target (e.g., kick, roll, throw, and strike).
WE.3.20	Jump to an established rhythm continuously.
WE.3.21	Perform simple sequences in time to music.
WE.3.22	Continuously strike an object (e.g., balloon with hand, ball with foot).
WE.3.23	Demonstrate strategies for chasing, fleeing, and evading.

Cluster	Physical Fitness
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WE.3.24	Practice proper form when performing the following muscular strength and endurance exercises (e.g., curl up, sit up, plank, push up).
WE.3.25	Practice proper form when developing flexibility (e.g., trunk lift, sit and reach, shoulder stretch).
WE.3.26	Practice proper pacing technique when running for various periods of time or distance (e.g., sprint, jog, mile-run).
WE.3.27	Demonstrate a procedure for monitoring heart rate.
WE.3.28	Distinguish between physical activities that are moderate-to-vigorous in intensity.
WE.3.29	Identify personally enjoyable physical activities.
WE.3.30	Explain the benefits of different kinds of fitness (e.g., cardiovascular endurance, muscular strength and endurance, flexibility, and body composition) and demonstrate exercises/activities for each.
WE.3.31	Explore the components of the F.I.T.T. Principle: Frequency, Intensity, Time, and Type.

Cluster	Responsible Personal and Social Behaviors
WE.3.33	Work cooperatively, productively, and safely with a partner or small group.
WE.3.33	Use specific feedback to improve performance.
WE.3.34	Explain the importance of rules and etiquette in physical activities.

Wellness Education – Grade 4

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. Fourth grade health education standards focus on developing plans for wellness behaviors, practice health-enhancing skills and become advocates for personal health. Students will propose wellness strategies to develop independence, self-motivation and critical thinking skills. Fourth grade physical education standards focus on continued advancements of motor skills, movement concepts, and physical fitness allowing for greater exploration of lifetime physical activities. Fourth grade incorporates vigorous activity to enhance physical development, social skills, and foster participation in enjoyable physical activity outside the classroom.

Health Education

Cluster	Wellness Promotion and Disease Prevention
WE.4.1	Identify responsible health behaviors to avoid the spread of contagious diseases.
WE.4.2	Describe the functions of the circulatory, respiratory, nervous, endocrine systems of the human body.
WE.4.3	Describe the harmful effects of excessive sun exposure and identify ways to reduce overexposure.

Cluster	Wellness Information and Services
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WE.4.4	Identify specific community resources providing health care, health information, and health enhancing activities.
WE.4.5	Explore how the media attempts to influence thoughts, feelings, and health behaviors.

Cluster	Wellness Behaviors
WE.4.6	Develop and practice a personal hygiene plan.
WE.4.7	Recognize and accept individual differences in others (e.g., skills, appearance, gender).
WE.4.8	Discuss the improper use and abuse of drugs.
WE.4.9	Examine food labels and nutritional value.
WE.4.10	Discuss examples for food advertising and influences on personal health.
WE.4.11	Identify and discuss TV and other media programs exemplifying healthy family relationships.
WE.4.12	Examine the consequences of not using appropriate safety skills and equipment for recreational purposes.
WE.4.13	Plan a balanced meal using proper nutrition guides.
WE.4.14	Define risk-taking behaviors and resulting consequences.
WE.4.15	Explain the physical, social, and emotional changes that occur during puberty and adolescence.

Physical Education

Cluster	Development of Motor Skills/Movement Forms
WE.4.16	Demonstrate critical elements or components for the kick, catch, throw, dribble with hands and feet, and jump/land.
WE.4.17	Strike, toss, and catch objects using short and long-handled implements.
WE.4.18	Volley an object to self.
WE.4.19	Jump a single rope continuously using a variety of jump skills.
WE.4.20	Apply strategies for chasing, fleeing, and evading in a variety of activities.
WE.4.21	Perform rhythmic sequences using equipment.
WE.4.22	Dribble and kick an object while moving.

Cluster	Physical Fitness
WE.4.23	Demonstrate proper form when performing the following muscular strength and endurance exercises (e.g., curl up, sit up, plank, push up).
WE.4.24	Demonstrate proper form when developing flexibility (e.g., trunk lift, sit and reach, shoulder stretch).
WE.4.25	Demonstrate proper pacing technique when running for various periods of time or distance (e.g., sprint, jog, mile-run).
WE.4.26	Use fitness assessment results to identify personal strengths and weaknesses and plan for personal improvement.
WE.4.27	Match various exercises to the appropriate fitness components (e.g., push-up to upper body strength, curl up to abdominal strength).

WE.4.28	Identify the components of the F.I.T.T. principle of exercise: frequency, intensity, time, and type.
WE.4.29	Identify the characteristics of activities needed to maintain health-related fitness.

Cluster	Responsible Personal and Social Behaviors
WE.4.30	Work cooperatively, productively, and safely with a partner or small group.
WE.4.31	Demonstrates the importance of rules and etiquette in physical activities.
WE.4.32	Define fair play and provide examples of fair play in a variety of activities.
WE.4.33	Identify examples of appropriate feedback.

Wellness Education – Grade 5

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. Fifth grade health education standards focus on promoting positive behaviors as societal norms, critically examining the influence of media, peers, and society on individual decisions and actions. Students will explore the relationship of varying growth and development patterns, self-acceptance, and the effects of physical activity and nutrition on personal health, growth, and self-concept. Students will examine non-use attitudes toward tobacco, alcohol and other drugs. Fifth grade physical education standards encourage life-long wellness habits and include the components of the F.I.T.T. principle, as well as health and skill related fitness.

Health Education

Cluster Wellness Promotion and Disease Prevention

- WE.5.1 Identify seven dimensions of total wellness (e.g., physical, emotional, social, intellectual, spiritual, environmental, and occupational).
- WE.5.2 Describe the importance of proper nutrition and appropriate food choice.
- WE.5.3 Recognize potentially dangerous situations (e.g., bullying, harassment, drug use, criminal activities) and know how to obtain help.
- WE.5.4 Identify environmental hazards (e.g., poisonous plants, insect bites/stings, pollution).
- WE.5.5 Describe precautions and reactions to extreme weather conditions.

Cluster	Wellness Information and Service
WE.5.6	Describe how family, peers, community, and culture influence and support personal health practices and behaviors.
WE.5.7	Identify legal and illegal drugs.
WE.5.8	Discuss ways that technology can have a positive and negative influence on personal health.
WE.5.9	Discuss how media may influence future behaviors (e.g., tobacco and alcohol use, violence, relationships).

Cluster Wellness Behaviors

- WE.5.10 Analyze and interpret nutritional value food labels.
- WE.5.11 Identify effective verbal and non-verbal communication skills (e.g., body language, restating, listening).
- WE.5.12 Demonstrate refusal skills to avoid risky behaviors or situations (e.g., drug use, criminal activity, being alone with a stranger, inappropriate digital communication).
- WE.5.13 Demonstrate assertive responses when asking for help in an emergency.
- WE.5.14 Set a personal health goal, identify resources to assist in achieving the goal, and track progress toward its achievement.
- WE.5.15 Distinguish between safe, risky, or harmful relationships and list strategies to reduce threatening situations (e.g., anger management, positive peer-pressure).
- WE.5.16 Demonstrate techniques for managing stress (e.g., exercising, meditation).
- WE.5.17 Identify strategies to change unhealthy behaviors.

Physical Education

Cluster	Development of Movement Forms / Motor Skills
WE.5.18	Perform various motor skill techniques to independently develop/improve coordination.
WE.5.19	Perform simple dance sequences using smooth transitions in speed, level, and direction in time to music.
WE.5.20	Perform jump sequences with partner(s) using equipment.
WE.5.21	Throw overhand with force and accuracy.
WE.5.22	Dribble with hands or feet while evading an opponent.
WE.5.23	Utilize critical elements or components for dribbling with feet and hands and striking with short and long-handled implements to improve performance in a game setting.
WE.5.24	Use an implement to strike an object with force and accuracy.

Cluster	Physical Fitness
WE.5.25	Demonstrate proper form when performing the following muscular strength and endurance exercises (e.g., curl up, sit up, plank, push up).
WE.5.26	Demonstrate proper form when developing flexibility (e.g., trunk lift, sit and reach, shoulder stretch).
WE.5.27	Demonstrate proper pacing technique when running for various periods of time or distance (e.g., sprint, jog, mile-run).
WE.5.28	Use fitness assessment results to identify personal strengths and weaknesses and plan for personal improvement.
WE.5.29	Participate in warm-up and cool-down procedures before and after vigorous activities.
WE.5.30	Describe the health benefits of regular participation in physical activity.
WE.5.31	Define the components of the F.I.T.T. principle of exercise (e.g., frequency, intensity, time, and type).

WE.5.32	Demonstrate knowledge of the five health related fitness components (e.g., cardiovascular fitness, muscular strength, muscular endurance, body composition, flexibility).
WE.5.33	Demonstrate knowledge of skill related fitness (e.g., speed, agility, balance, reaction time, power, coordination).
WE.5.34	Identify school and community programs promoting lifelong physical activity.
WE.5.35	Engage in lifestyle behaviors to increase physical activity outside of the physical education setting.
WE.5.36	Record physical activity participation (e.g., in and outside physical education).

Cluster	Responsible Personal and Social Behavior
WE.5.37	Work collaboratively, productively, and safely with a partner or small group.
WE.5.38	Participate appropriately with those having different skills and abilities.
WE.5.39	Demonstrate fair play in competitive settings regardless of the outcome.
WE.5.40	Respectfully provide appropriate feedback to others.

Wellness Education Grades 6-8

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. Students in grades sixth through eighth continue to develop wellness concepts which build upon the foundation for health literacy and an appreciation for lifelong physical fitness. It is critical that students continue to understand and practice healthy, active lifestyle behaviors before being faced with health concerns later in life. This is a life-long process of enhancing the components of health education (physical, intellectual, emotional, social, spiritual, and environmental), physical education (movement forms, motor skill development and fitness) and physical activity. The 6-8 wellness content standards identify what students should know, understand, and be able to do in practicing skills and behaviors that apply to healthy lifestyles. The goal of these wellness content standards is to promote self-responsibility, motivation, and excellence in learning as well as life-long commitment to wellness. The following chart represents the components of health and physical education - based on the skill progressions from K-5 - that will be developed throughout grades 6-8:

Health Education	Physical Education
<p>Health Promotion and Disease Prevention</p> <ul style="list-style-type: none"> • acquire basic health concepts and functional health knowledge • understand essential concepts of established health behavior theories and models • apply strategies to promote health and reduce risk 	<p>Development of Motor Skills/Movement Forms</p> <ul style="list-style-type: none"> • master movement fundamentals • improve motor skills
<p>Culture, Media, and Technology</p> <ul style="list-style-type: none"> • identify and understand diverse internal and external factors that influence health practices and behaviors 	<p>Physical Activity</p> <ul style="list-style-type: none"> • develop self-confidence • promote positive self-image through physical activity • encourage the concept of life-long participation in physical activity
<p>Health Information and Services</p> <ul style="list-style-type: none"> • identify and access valid health resources and health-promoting products and services • reject unproven sources • apply analysis, comparison and evaluation of health resources 	
<p>Decision Making</p> <ul style="list-style-type: none"> • identify, implement and sustain health enhancing behaviors • apply decision-making process to make healthy decisions 	<p>Physical Fitness</p> <ul style="list-style-type: none"> • understand fitness principles • accept responsible for personal fitness • lead an active, healthy life

- collaborate with others to improve quality of life
- develop higher levels of basic fitness and physical competence

Communication

- communicate to enhance personal, family, and community health
- use verbal and non-verbal skills to develop and maintain healthy personal relationships
- organize and convey information and feelings to strengthen interpersonal interactions

Goal Setting

- set goals to identify, adopt, and maintain healthy behaviors
- implement critical steps to achieve both short-term and long-term health goals.

Health Behaviors

- reduce harmful and risk-taking behaviors
- accept personal responsibility for health

Advocacy

- advocate for promote healthy norms and healthy behaviors
- target health enhancing messages
- encourage others to adopt healthy behaviors

- endeavor to improve cardiorespiratory endurance, muscular strength and endurance, flexibility, and body composition

Responsible Personal and Social Behavior

- achieve self-initiated behaviors that promote personal and group success in activity settings
- apply safe practices
- adhere to rules, procedures, and etiquette
- foster cooperation and teamwork
- demonstrate ethical behavior in sport
- encourage positive social interaction
- develop respect for individual similarities and differences

West Virginia Code and Policy Requirements

In accordance with W. Va. Code §18-2-9:

- The WVDE shall provide a standardized health education assessment to be administered in sixth and eighth grade health education classes in order to measure student health knowledge and program effectiveness.
- All public schools must include instruction in any of grades six through twelve in the prevention, transmission and spread of HIV/AIDS and other sexually transmitted diseases, and infections (STDs/STIs).
- An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of AIDS and other STD/STI to examine the course curriculum requirements and materials to be used in such instruction. The parent or guardian may exempt such child from participation in such instruction by giving notice to that effect in writing to the school principal.
- In the subject of health education in any of the grades six through twelve as considered appropriate by the county board shall include at least sixty minutes of instruction for each student on the dangers of opioid use, the additive characteristics of opioids, and safer alternatives to treat pain.

In accordance with Policy 2510 at least 50 percent of class time for physical education will be spent in moderate to vigorous-intensity physical activity.

In accordance with WV Code §18-2-7a, the FitnessGram® shall be administered to all students in grades four through eight and the required high school course,

FitnessGram® - Grades 6 -8

The FitnessGram® test battery assesses health-related fitness components: aerobic capacity, muscular strength and endurance, flexibility and body composition. FitnessGram® tests all students regardless of age, gender, or ability. Students are encouraged to be self-aware of health-related fitness and take responsibility by setting personal fitness goals. When students focus on the process of doing their personal best, a more positive lifelong impact is achieved. The *FitnessGram®* is composed of the following six fitness areas, with test options provided for most areas:

Aerobic Capacity

- PACER (Progressive Aerobic Cardiovascular Endurance Run)
- One-Mile Run

Upper Body Strength and Endurance*

- Push-Up
- Modified Pull-Up
- Flexed Arm Hang

Abdominal Strength and Endurance

- Curl-Up

Flexibility

- Trunk Lift
- Back-Saver Sit and Reach
- Shoulder Stretch

Body Composition

- Body Mass Index
- Bioelectric Impedance Analyzer

Wellness Education – Grade 6

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. The goal of sixth grade health education program of study is to address many important social, emotional and physical changes of young adolescents. Decision making steps and application are integrated into all topics of discussion as students examine potential long- and short-term consequences of decisions and their impact on all aspects of health (e.g., physical, emotional, social, mental/intellectual, spiritual, environmental and occupational). Students critically examine concepts related to personal health; injury prevention; and alcohol, tobacco and other drugs; and recognize the impact of positive health decisions on personal goal attainment. The goal of the physical education program of study at the sixth-grade level is to improve students' understanding of the connections between physical activity and lifetime wellness. Movement is critical to proper growth and development at this age; physical education assists students in developing a

healthy body and self-image. Social and emotional development is enhanced as students begin to use motor skills in team building situations.

Health Education

Cluster Health Promotion and Disease Prevention

- WE.6.1 Investigate personal diet, create an understanding of serving size versus portion size, and analyze nutritional needs of adolescents.
- WE.6.2 List short-term and long-term effects of alcohol, drugs, and tobacco.
- WE.6.3 List short-term and long-term effects of sedentary lifestyle.
- WE.6.4 Examine healthy behaviors and practices beneficial to each body system and help lead to a healthy lifestyle.
- WE.6.5 Describe how family health history, hereditary factors, and personal lifestyle choices impact personal health.
- WE.6.6 Analyze the seven dimensions of wellness and how to maintain or improve them (e.g., physical, emotional, social, intellectual, spiritual, environmental, and occupational).
- WE.6.7 Recognize medical terminology, anatomical landmarks, and functions of the reproductive system.

Cluster Culture, Media, and Technology

- WE.6.8 Analyze how media messages influence choices on health behaviors (e.g., tobacco, drugs, alcohol, eating disorders, etc.).
- WE.6.9 Analyze advertiser influences on consumer choices (e.g., brand names, fads).
- WE.6.10 Explain how families influence the health of adolescents (e.g., family time, meal preparation, religious practices, weight control).
- WE.6.11 Explain the influence of personal values, beliefs, and culture on health practices and behaviors.
- WE.6.12 Explain how peers, school, and community can impact personal health practices and behaviors.
- WE.6.13 Explain how technology has advanced health promotion and disease prevention.
- WE.6.14 Discuss the importance of respecting individual differences (e.g., race, religion, size, age, sex, gender identity).

Cluster Health Information and Service

- WE.6.15 Analyze the validity of health information, products, and services.
- WE.6.16 Identify sources of valid health information.
- WE.6.17 Describe situations that may require professional health services (e.g., drug addiction, suicide prevention, sudden illness, accidents).
- WE.6.18 Recognize the dangers of opioid use, the addictive characteristics of opioids, and safer alternatives to treat pain.

Cluster	Communication
WE.6.19	Demonstrate effective verbal and non-verbal communication skills (e.g., refusal skills, body language, restating).
WE.6.20	Describe a variety of positive coping mechanisms and conflict resolution skills to deal with difficult situations.
WE.6.21	Use positive communication skills to build and maintain healthy relationships.
WE.6.22	Explain refusal and negotiation skills to avoid or reduce risks of dangerous situations.

Cluster Decision Making

- WE.6.23 List the steps of the decision-making process to solve problems.
- WE.6.24 Select healthy options that benefit health-related issues or problems.
- WE.6.25 Describe potential outcomes when making health-related decisions (obesity, alcoholism, drug dependence) for self and others.
- WE.6.26 Select decision-making skills that protect against communicable and non-communicable diseases.
- WE.6.27 Examine multiple options and differentiate between healthy and unhealthy choices when making decisions.

Cluster Goal Setting

- WE.6.28 Explain how the goal setting process is important in designing strategies to avoid risky behaviors.
- WE.6.29 Select a personal health goal and track progress toward achievement.
- WE.6.30 Describe how personal health goals and practices can change (e.g., maturity, peer influences, environment).

Cluster Health Behaviors

- WE.6.31 Differentiate between safe and risky behaviors in relationships.
- WE.6.32 Discuss healthy lifestyle practices to improve personal and family health.
- WE.6.33 List protective behaviors used to avoid and reduce threatening situations (e.g., be with a group, confide in trusted adults).
- WE.6.34 Identify appropriate strategies used to reduce stress, anxiety, and depression.
- WE.6.35 Contrast the differences between safe and risky behaviors for preventing pregnancy and STDs/STIs.
- WE.6.36 Demonstrate CPR, hands only CPR, AED, and basic first aid.

Cluster Advocacy

- WE.6.37 Advocate for healthy lifestyles.
- WE.6.38 Discuss ways health messages can be altered depending on the audience.
- WE.6.39 Explain how to influence others to make positive health choices.
- WE.6.40 Discuss results of national or state youth risk behavior survey information.

Physical Education

Cluster Movement Forms / Motor Skills

- WE.6.41 Perform independently in physical activity to improve skills and fitness.
- WE.6.42 Perform basic skills necessary to participate in individual, dual, team, and lifetime activities.
- WE.6.43 Perform social and/or multicultural dances.

Cluster Physical Activity

- WE.6.44 Participate in physical activity in addition to physical education class.
- WE.6.45 Identify lifelong physical activity opportunities (e.g., walk/run, bike, hike, dance, strength training).

Cluster Physical Fitness

- WE.6.46 Demonstrate proper form when performing the following muscular strength and endurance exercises (e.g., curl up, sit up, plank, push up).
- WE.6.47 Demonstrate proper form when developing flexibility (e.g., trunk lift, sit and reach, shoulder stretch).
- WE.6.48 Demonstrate proper pacing technique when running for various periods of time or distance (e.g., sprint, jog, mile-run).
- WE.6.49 Use fitness assessment results to identify personal strengths and weaknesses and plan for personal improvement.
- WE.6.50 Describe the fitness benefits of a variety of physical activities (e.g., stretching, cardio, strength training).
- WE.6.51 Describe the importance of warm-up and cool-down activities when participating in physical fitness.

Cluster Responsible Personal and Social Behavior

- WE.6.52 Work cooperatively and productively in a group to accomplish a set goal/task.
- WE.6.53 Follow rules, procedures, etiquette for safety and fair play.
- WE.6.54 Practice behaviors that are supportive and inclusive in physical activity.

Wellness Education – Grade 7

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. The goal of the seventh-grade health education program of study is to address many important social, emotional, and physical changes adolescents face. Topics of discussion provide opportunities for students to practice decision

making, communication skills, and goal setting. Students develop strategies to reduce risks and enhance personal health and wellness. The goal of the physical education program of study at the seventh-grade level is to continue to develop specialized skills, offer new opportunities to explore recreational activities and lifetime fitness activities, and build on lifetime wellness and social skills previously introduced. During this critical time period, changes due to maturation and growth affect the students' skill level as they adjust to physical changes. Social development is an important part of the physical education curriculum.

Health Education

Cluster Health Promotion and Disease Prevention

- WE.7.1 List the six essential nutrients; determine their sources and functions.
- WE.7.2 Analyze the effects of risky lifestyle behaviors on body systems and general wellness.
- WE.7.3 Describe the anatomy and functions of the reproductive system.
- WE.7.4 Identify general symptoms and potentially long-term health consequences of STDs/STIs.
- WE.7.5 Explain short-term and long-term effects of alcohol, drug, and tobacco use.
- WE.7.8 Research the dangers of opioid use, the addictive characteristics of opioids, and safer alternatives to treat pain.

Cluster Culture, Media, and Technology

- WE.7.9 Compare and contrast the influence of peers, community, and cultural beliefs on health behaviors.
- WE.7.10 Debate how messages from the media and advertising can influence health behaviors.
- WE.7.11 Describe the impact of different types of bullying and identify necessary coping skills.
- WE.7.12 Explain the importance of respecting individual differences (e.g., race, religion, size, age, sex, gender identity).
- WE.7.13 Determine the intent of media messages about alcohol, tobacco, and other drugs (e.g., alcoholic beverage commercials, prescription, and OTC drugs).
- WE.7.14 Analyze the food industry and how it affects the health of society.
- WE.7.15 Examine the influence of the family on the health of adolescents (e.g., smoking, drinking, drug use, meal plans).

Cluster Health Information and Service

- WE.7.16 Research the costs of health information, insurance, products, and services.
- WE.7.17 Identify valid health information from a variety of sources (e.g., home, community, internet).
- WE.7.18 Explain why a situation might require professional and community health services.
- WE.7.19 Identify misinformation and stereotyping associated with food industries and/or health service.

Cluster Communication

- WE.7.20 Analyze effective verbal and non-verbal communication skills (e.g., body language, restating, individual/group conversation).
- WE.7.21 Analyze the effectiveness of a variety of positive coping mechanisms/conflict resolution skills (e.g., peer mediation, non-violent strategies to deal with upset feelings and difficult situations).
- WE.7.22 Give examples of refusal and negotiation skills to avoid health risks.
- WE.7.23 Discuss ways to develop and maintain healthy family relationships.

Cluster Decision Making

- WE.7.24 Apply established dietary guidelines in meal planning.
- WE.7.25 Discuss the consequences of poor nutritional choices.
- WE.7.26 Role-play situations and practice positive decision-making concerning alcohol, tobacco and other drugs.
- WE.7.27 Apply the steps of a decision-making process to solve a problem.

Cluster	Goal Setting
WE.7.28	Develop a personal health plan to address strengths and weaknesses (e.g., diet, exercise, sleep, relationships).
WE.7.29	Explain the importance of the goal setting process when planning future events.
WE.7.30	Discuss the impact of multiple factors on personal health goals (e.g., change of schools, getting older, new interests, family alteration).

Cluster	Health Behaviors
WE.7.31	Recognize risky or harmful behaviors that may occur in relationships (e.g., abuse, date rape, sexual activity).
WE.7.32	Analyze the differences between safe and risky behaviors, including methods for preventing pregnancy and STDs/STIs, including Hepatitis B virus (HBV), HIV/AIDS, (e.g., abstinence, birth control, disease control).

WE.7.33	Role-play protective behaviors used to avoid and reduce threatening situations (e.g., anger, bullying, harassment).
WE.7.34	Identify strategies to reduce stress, anxiety, and depression.
WE.7.35	Demonstrate CPR, hands only CPR, AED and basic first aid procedures.

Cluster	Advocacy
WE.7.36	Advocate to work cooperatively with family for healthy lifestyles (e.g., exercise together, diet plans, food preparation, spend time together).
WE.7.37	Explain why making positive health choices will influence others.
WE.7.38	Analyze results of national or state youth risk behavior survey information.

Physical Education

Cluster Movement Forms/Development of Motor Skills

- WE.7.39 Participate in a variety of individual, dual, and team sports.
- WE.7.40 Participate in a variety of non-competitive individual activities.
- WE.7.41 Create and perform a dance sequence in time to music.

Cluster Physical Activity

- WE.7.42 Identify opportunities for physical activity available in the community and/or state (e.g., bicycling, golfing, white water rafting, kayaking, hunting, fishing, skiing, mountain biking, hiking, rock climbing).
- WE.7.43 Participate in physical activities both in and outside school.

Cluster Physical Fitness

- WE.7.44 Demonstrate proper form when performing the following muscular strength and endurance exercises (e.g., curl up, sit up, plank, push up).
- WE.7.45 Demonstrate proper form when developing flexibility (e.g., trunk lift, sit and reach, shoulder stretch).
- WE.7.46 Demonstrate proper pacing technique when running for various periods of time or distance (e.g., sprint, jog, mile-run).
- WE.7.47 Use fitness assessment results to identify personal strengths and weaknesses and plan for personal improvement.
- WE.7.48 Identify personal fitness needs and participate in physical activities to improve individualized goals.
- WE.7.49 Explain how the principles of progression and overload improve personal fitness performance.

WE.7.50 Differentiate between health-related fitness (e.g. cardiovascular fitness, muscular strength, muscular endurance, body composition, flexibility) and skill related fitness (e.g. speed, agility, balance, reaction time, power, coordination).

Cluster Responsible Personal and Social Behavior

WE.7.51 Demonstrate cooperative team building skills appropriate for physical activity (e.g., equal opportunity for participation).

WE.7.52 Demonstrate appropriate conflict resolution skills (e.g., peer mediation).

WE.7.53 Demonstrate knowledge of rules, etiquette, and safety while participating in various physical activities (e.g. sportsmanship, fair play).

Wellness Education – Grade 8

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. The goal of the eighth-grade health education program of study is to provide opportunities for students to practice decision making, communication skills, and goal setting in role-played or simulated situations that outline the importance of taking responsibility for individual actions. Students examine violence prevention and develop strategies to promote safety for themselves and others. Students learn to access, use, critically evaluate, and apply health information and services. The goal of the eighth-grade physical education program of study is to allow students to further explore individual interests in lifetime physical activities and gain the knowledge and skills for future participation. A strong emphasis on lifetime wellness, physical activity, and social skills supports the goal of becoming a physically-active adults.

Health Education

Cluster Health Promotion and Disease Prevention

WE.8.1 Apply sound nutritional principles to healthy food choices (e.g., whole foods, menu preparation, nutrition labels).

WE.8.2 Analyze the effects of risky behaviors on body systems and wellness (e.g., substance abuse, processed and high sugar foods).

WE.8.3 Label and explain the functions of the body systems (e.g., circulatory, skeletal, reproductive, digestive).

WE.8.4 Determine the risk factors that lead to teen pregnancy, HIV/AIDS, HBV, and other STDs/STIs.

WE.8.5 Recognize behaviors that protect and keep the male and female reproductive systems healthy.

Cluster Culture, Media, and Technology

- WE.8.6 Identify cultural influences on health behaviors (e.g., nutrition, hygiene, relationships, medical, drug use).
- WE.8.7 Discuss the use of technology and its positive and negative impact on health (e.g., video games, computers, cell phones, medical information and advancements).
- WE.8.8 Describe how bullying can have a negative impact on quality of life.
- WE.8.9 Discuss the importance of respecting individual differences (e.g., race, religion, size, age, sex, gender identity).

Cluster Health Information and Service

- WE.8.10 Research how health information, products, and services are financed (e.g., government, consumers, trusts).
- WE.8.11 Research products advertised to enhance health and analyze the accuracy of information provided (e.g., vitamins, supplements, dietary aids).
- WE.8.12 Evaluate the dangers of opioid use, the addictive characteristics of opioids, and safer alternatives to treat pain.

Cluster Communication

- WE.8.13 Demonstrate ways to exhibit care, consideration, and respect for self and others.
- WE.8.14 Develop a variety of positive coping mechanisms/conflict resolution skills (e.g., negotiation, peer-mediation, non-violent strategies).
- WE.8.15 Compare and contrast various refusal and negotiation skills to avoid or reduce risky and harmful health behaviors (e.g., pregnancy, drunk driving, STDs/STIs, dating violence, harassment, alcohol, tobacco, and other drugs).
- WE.8.16 Practice communication skills necessary for healthy relationships (e.g., courtesy, manners, respect, conflict resolution).

Cluster Decision Making

- WE.8.17 Develop healthy practices regarding health-related issues (e.g., nutrition, weight control, exercise, prescription drugs).
- WE.8.18 Predict potential outcomes of health-related decisions (e.g., alcohol, tobacco, and other drug use, nutrition, seatbelts and positioning in various modes of transportation).

- WE.8.19 Develop decision-making skills needed to protect against communicable and non-communicable diseases.
- WE.8.20 Distinguish between options that are healthy and unhealthy.
- WE.8.21 Apply the steps to the decision-making process to solve problems.

Cluster	Goal Setting
WE.8.22	Assess personal health practices (e.g., safety, diet, exercise, sleep, alcohol, tobacco, and other drug use).
WE.8.23	Discuss the importance of the goal setting process in designing strategies to quit unhealthy and risky behaviors.
WE.8.24	Design a personal health goal and track progress toward its achievement (e.g., exercise, weight control, dental care).
WE.8.25	Determine how personal health goals and practices can vary as priorities change (e.g., family illness, death of close friend, personal tragedy, maturity).

Cluster	Health Behaviors
WE.8.26	Distinguish between safe and risky or harmful behaviors in relationships (e.g., abuse, date rape, peer pressure, gang membership).
WE.8.27	Examine the differences between safe and risky behaviors, including methods for preventing pregnancy and STDs/STIs (e.g., abstinence, birth control).
WE.8.28	Explain protective behaviors used to avoid and reduce threatening situations (e.g., anger, bullying, harassment, gang membership, eating disorders).
WE.8.29	Design strategies to reduce stress, anxiety, and depression.
WE.8.30	Create good health practices to improve personal and family health (e.g., hygiene, nutrition, food preparation, family time).
WE.8.31	Demonstrate hands only CPR, AED, and first aid procedures.

Cluster	Advocacy
WE.8.32	Work cooperatively to advocate for healthy individuals, families, communities, and schools (e.g., health organizations, local health fairs).
WE.8.33	Identify ways in which health messages and communication techniques can be altered for different audiences (e.g., age, gender, life experiences).
WE.8.34	Explain how to encourage others to make positive health choices
WE.8.35	Explain the need for legislation to protect and promote personal safety and health (e.g., traffic laws, health departments).
WE.8.36	Recognize and promote environmental practices that will preserve natural resources for personal and community health.
WE.8.37	Analyze results of national or state youth risk behavior survey information.

Physical Education

Cluster Movement Forms/Development of Motor Skills

- WE.8.38 Demonstrate basic offensive and defensive strategy while participating in individual, dual, and team sports (e.g., lead-up games/activities)

- WE.8.39 Practice basic techniques and safety procedures while participating in non-competitive lifetime physical activity (e.g., wear helmet and other protective gear, practice safe use of equipment).
- WE.8.40 Participate in a variety of rhythm and movement skills (e.g., social dance, line dance).
- WE.8.41 Identify characteristics of skilled performance in a sport or activity (e.g., rubric, self/peer assessment).

Cluster Physical Activity

- WE.8.42 Evaluate the health benefits of two or more physical activities.
- WE.8.43 Develop and implement a personal physical activity plan (e.g., where, when, cost, equipment, procedures).

Cluster Physical Fitness

- WE.8.44 Demonstrate proper form when performing the following muscular strength and endurance exercises (e.g., curl up, sit up, plank, push up).
- WE.8.45 Demonstrate proper form when developing flexibility (e.g., trunk lift, sit and reach, shoulder stretch).
- WE.8.46 Demonstrate proper pacing technique when running for various periods of time or distance (e.g., sprint, jog, mile-run).
- WE.8.47 Use fitness assessment results to identify personal strengths and weaknesses and plan for personal improvement.
- WE.8.49 Implement personal fitness goals related to health-related fitness (e.g., cardiovascular fitness, muscular strength, muscular endurance, body composition, flexibility) and skill related fitness (e.g., speed, agility, balance, reaction time, power, coordination).
- WE.8.50 Apply knowledge of progression and overload (e.g., gradual increase in F.I.T.T.) in the development of a personal fitness program.

Cluster Responsible Personal and Social Behavior

- WE.8.51 Demonstrate appropriate, responsible behaviors in physical activity settings including proper rules, etiquette and safety (e.g., sportsmanship, fair play, use of safety equipment-goggles, helmets).
- WE.8.52 Discuss situations that may lead to conflict and practice mediation skills (e.g., compromise, “I” messages).
- WE.8.53 Discuss the effects of peer pressure on physical activity participation and

performance.

Health Education – High School

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. Health literacy for all students is the fundamental goal of a comprehensive school health education curriculum. The health literate student is a critical thinker and problem solver, a self-directed learner, an effective communicator, and a responsible, productive citizen. Students must have the capacity to obtain, interpret, and understand basic health information and services and the competence to use such information and services in ways that enhance a healthy lifestyle. The intent of the health education standards is to provide a consistent target for both educators and students in West Virginia. It is intended to show what students should know and be able to do at certain grade levels. Teachers and policy-makers can use the health standards to design curricula, to allocate instructional resources, and to provide a basis for assessing student achievement and progress. The following chart represents the components of health education - based on the skill progressions from K-8 - that will be developed in high school:

HEALTH EDUCATION	
Health Promotion and Disease Prevention	Health Behaviors
<ul style="list-style-type: none"> • acquire basic health concepts and functional health knowledge • develop foundation for promoting health-enhancing behaviors 	<ul style="list-style-type: none"> • research and apply health enhancing behaviors • reduce harmful and risk-taking behaviors • accept personal responsibility for health • encourage the practice of healthy behaviors
Health Information and Services	Culture, Media, and Technology
<ul style="list-style-type: none"> • identify and access valid health information and health-promoting products and services • reject unproven sources • apply analysis, comparison, and evaluation of health resources • develop health literacy 	<ul style="list-style-type: none"> • understand that health is impacted by a variety of positive and negative influences within society • identify and understand the diverse internal and external factors that influence health practices and behaviors
Decision Making	Communication
<ul style="list-style-type: none"> • identify, implement, and sustain health enhancing behaviors • make healthy decisions • collaborate with others to improve quality of life 	<ul style="list-style-type: none"> • communicate effectively to enhance personal, family, and community health • use verbal and non-verbal skills to develop and maintain healthy personal relationships • convey information and feelings appropriately to strengthen interpersonal interactions and reduce or avoid conflict
Goal Setting	Advocacy

- set goals to adopt and maintain healthy behaviors
- implement critical steps needed to achieve both short-term and long-term health goals
- advocate to promote healthy norms and healthy behaviors
- develop important skills to target health enhancing messages
- encourage others to adopt healthy behaviors

West Virginia Code and Policy Requirements

In accordance with W. Va. Code §18-2-9:

- The WVDE shall provide a standardized health education assessment to be administered in sixth grade health education classes in order to measure student health knowledge and program effectiveness.
- All public schools must include instruction in any of grades six through twelve in the prevention, transmission and spread of HIV/AIDS and other STDs/STIs.
- An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of AIDS and other STDs/STIs to examine the course curriculum requirements and materials to be used in such instruction. The parent or guardian may exempt such child from participation in such instruction by giving notice to that effect in writing to the school principal.
- In the subject of health education in any of the grades six through twelve as considered appropriate by the county board shall include at least sixty minutes of instruction for each student on the dangers of opioid use, the additive characteristics of opioids, and safer alternatives to treat pain.
- County Boards of Education are required to provide at least thirty minutes of instruction on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform CPR to all students prior to high school graduation.

Cluster: Health Promotion and Disease Prevention

- HE.1 Compare and contrast components of total wellness (e.g., physical, mental, emotional, social, spiritual, occupational, intellectual).
- HE.2 Differentiate between the positive and potentially negative effects of local and global environmental health problems (e.g. pollution/hazards, food production, energy, disease, public health issues).
- HE.3 Analyze and interpret ways public health and social policies, along with government regulations, influence health promotion and disease prevention (e.g., local, state, federal, and world health organizations).

- HE.4 Differentiate between the causes of communicable and non-communicable diseases and identify/apply skills to prevent them (e.g. STDs/STIs, HIV/AIDS, bacteria/viral infections, universal precaution).
- HE.5 Analyze the impact of genetics and family history on personal health (e.g. genetic disease/disorders, body composition, mental/emotional health).
- HE.6 Explain how the environment (e.g., cultural, community, physical, social, etc.) affects and interacts with growth and development.
- HE.7 Analyze how personal health behaviors/choices affect the function of body systems in preventing premature death (e.g. lifestyle choices, chronic disease).

Cluster: Culture, Media, and Technology

- HE.8 Evaluate how media of all forms can impact personal, family, community and national health (e.g. validation of sources, technology's impact on modern communication).
- HE.9 Debate the potential influences of technology on personal, family, and community health (e.g. smartphone technology, apps, fitness trackers, personal appropriate uses of technology, responsible reporting of misuse).
- HE.10 Identify factors in the community that influence health (e.g. such as schools, resources, socioeconomic factors, geography, values, culture).
- HE.11 Analyze the impact peer influences have on healthy and unhealthy behaviors.
- HE.12 Analyze the influence of friends, family, media, society and culture on the expression of gender, sexual orientation, and identity.

Cluster: Health Information and Services

- HE.13 Analyze and interpret health information/data to promote healthy decision making (e.g. quackery, food labels, websites, media).
- HE.14 Use information systems to locate and utilize health care services that provide optimal health care.

Cluster: Communication

- HE.15 Utilize effective communication skills in a variety of situations.
- HE.16 Describe healthy ways to express emotions, needs, and desires in different situations (e.g. sportsmanship, relationships, death, dying and grief).
- HE.17 Demonstrate a variety of communication skills (e.g. verbal, non-verbal, listening, writing, technology, workplace).

HE.18 Identify potentially harmful situations and devise strategies and develop skills to avoid such situations through refusal, negotiation, and collaboration skills (e.g., violence and abuse situations, peer mediation, conflict resolution, support groups, “I” statements).

Cluster: Decision Making

HE.19 Apply and practice a decision-making process for various life situations (e.g., DECIDE process, SMART goals, goods and services purchases, relationships).

HE.20 Identify and discuss health concerns that require collaborative decision-making (e.g. sex, STDs/STIs, contraception).

HE.21 Analyze the effects of potentially harmful decisions that impact health and the effect these decisions have on family, community, and self (e.g., drugs, STDs/STIs, teen pregnancy/parenting).

HE.22 Evaluate mechanisms and decision-making processes to formulate alternatives to health-related issues or problems (e.g., refusal skills, defense/coping mechanisms).

HE.23 Evaluate the effectiveness of health-related decisions (e.g., risk behavior inventories, Youth Risk Behavior Survey- YRBS data).

HE.24 Construction of personal boundaries as related to intimacy and sexual behaviors and effective communication skills concerning boundary invasion.

Cluster: Goal Setting Standards

HE.25 Assess personal health practices and overall health status.

HE.26 Develop a plan to attain a personal health goal that addresses strengths, needs, and risks (e.g., SMART Goals, F.I.T.T).

HE.27 Implement strategies and monitor progress in achieving a personal health goal.

HE.28 Design an effective long-term personal health plan (e.g., individualized/group projects).

Cluster: Health Behaviors

HE.29 Recognize and demonstrate the positive effects of nutrition and physical activity on health.

HE.30 List examples and explain short and long-term impacts of health decisions on the individual, family and community.

HE.31 Identify signs of stress and common stressors and develop effective stress management techniques.

- HE.32 Identify causes, warning signs, and prevention strategies for depression and suicide.
- HE.33 Identify causes, preventions, and treatments for injuries and list responsible actions to create a safe and healthy environment.
- HE.34 Demonstrate basic first aid skills.
- HE.35 Complete training on the proper administration of CPR through hands-on practice that is based on an instructional program established by the American Heart Association, Red Cross or another program that is nationally recognized and used the most current national evidence-based CPR guidelines that incorporates psychomotor skills development.

Cluster: Advocacy

- HE.36 Present on the dangers of opioid use, the addictive characteristics of opioids, and explore safer alternatives to treat pain.
- HE.37 Use written, audio/visual, and technology communication methods to express health messages.
- HE.38 Demonstrate the ability to adapt health messages to characteristics of a particular audience (e.g. peer education, projects, role play).
- HE.39 Promote the use of personal, family and community resources in health care situation. (e.g. general practitioners, medical facilities, internet).
- HE.40 Identify school support staff and community health services and describe the impact this service has on individual school and community (e.g. school nurse, civic organizations, volunteering opportunities).
- HE.41 Interpret the relationship between acts of responsible and productive citizenship and the health, safety, and security of a community.
- HE.42 Analyze the results of national youth risk behavior surveys.

Physical Education – High School

All West Virginia teachers are responsible for classroom instruction that integrates content standards, learning skills, and technology. High school physical education programs should focus on fitness, offer diverse movement patterns, develop motor skills and emphasize lifetime activities. Students need to be exposed to a wide variety of activities; both competitive and non-competitive, that bring them enjoyment and challenge, thus enabling them to maintain an active lifestyle for a lifetime. The following chart represents the components of physical education - based on the skill progressions from K-8 - that will be developed in high school:

PHYSICAL EDUCATION	
Development of Movement Forms/Motor Skills	Physical Activity
<ul style="list-style-type: none"> • develop the movement forms and motor skills essential to participation in physical activities • establish a foundation to facilitate continued motor skill acquisition 	<ul style="list-style-type: none"> • develop an awareness of the intrinsic values and benefits of participation in physical activity that provides personal meaning • develop an appreciation for the opportunities for self-expression and social interaction provided by physical activity • develop self-confidence • promote positive self-image
Physical Fitness	Responsible Personal and Social Behavior
<ul style="list-style-type: none"> • accept responsibility for personal fitness • lead an active, healthy life • develop higher levels of basic fitness and physical competence • develop a foundation to support healthy habits in the areas of: cardiorespiratory endurance, muscular strength and endurance, flexibility, and body composition. 	<ul style="list-style-type: none"> • achieve self-initiated behaviors that promote personal and group success in activity settings • apply safe practices • adhere to rules, procedures, and etiquette • foster cooperation and teamwork • demonstrate ethical behavior in sport • encourage positive social interaction • respect individual similarities and differences through positive interaction among participants in physical activity

West Virginia Code and Policy Requirements

In accordance with W. Va. Code §18-2-7a, the FITNESSGRAM® shall be administered to all students.

In accordance with Policy 2510 at least 50 percent of class time for physical education will be spent in moderate to vigorous-intensity physical activity.

FitnessGram® - High School

The FitnessGram® test battery assesses health-related fitness components: aerobic capacity, muscular strength and endurance, flexibility and body composition. FitnessGram® tests all students regardless of age, gender, or ability. Students are encouraged to be self-aware of

health-related fitness and take responsibility by setting personal fitness goals. When students focus on the process of doing their personal best, a more positive lifelong impact is achieved. The *FitnessGram*® is composed of the following six fitness areas, with test options provided for most areas:

Aerobic Capacity

- PACER (Progressive Aerobic Cardiovascular Endurance Run)
- One-Mile Run

Upper Body Strength and Endurance*

- Push-Up
- Modified Pull-Up

Abdominal Strength and Endurance

- Curl-Up

Flexibility

- Trunk Lift
- Back-Saver Sit and Reach
- Shoulder Stretch

Body Composition

- Body Mass Index
- Bioelectric Impedance Analyzer

Cluster	Development of Movement Forms/Motor Skills
PE.1	Identify, practice and apply general skills and activity-specific skills to enhance motor proficiency.
PE.2	Participate in a variety of competitive/non-competitive individual, dual, and team sports/activities.
PE.3	Demonstrate offensive and defensive strategies while participating in individual, dual, and team sports/activities.
PE.4	Perform a variety of dance and rhythmic activities.

Cluster	Physical Activity
PE.5	Identify physical activities that increase fitness levels in addition to physical education class.
PE.6	Explain how physical activity participation patterns are likely to change throughout one's life span.
PE.7	Identify a variety of regional outdoor adventure activities.
PE.8	Identify and describe local, state, national and/or international fitness and recreational resources and organizations.
PE.9	Assess the social, economic, cultural and environmental factors that impact physical activity.

Cluster	Physical Fitness
PE.10	Demonstrate proper form when performing the following muscular strength and endurance exercises (e.g., curl up, sit up, plank, push up).
PE.11	Demonstrate proper form when developing flexibility (e.g., trunk lift, sit and reach, shoulder stretch).
PE.12	Demonstrate proper pacing technique when running for various periods of time or distance (e.g., sprint, jog, mile-run).

PE.13	Use fitness assessment results to identify personal strengths and weaknesses and plan for personal improvement.
PE.14	Practice principles of training in the design and implementation of a personal fitness program (e.g. F.I.T.T. Principle, Progressive Overload, Muscle Recovery).
PE.15	Compare and contrast the fitness values of various physical activities.

Cluster	Responsible Personal and Social Behavior
PE.16	Examine potential risks of physical activity and determine how to minimize those risks.
PE.17	Utilize responsible, considerate personal behaviors in physical activity settings.
PE.18	Practice proper procedures and demonstrate etiquette and fair play in physical activity settings.
PE.19	Explain the influence of peers on physical activity participation and performance.

WVBE Policy 2525
**West Virginia's Universal Access to a
Quality Early Education System**

**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

**SERIES 28
WEST VIRGINIA'S UNIVERSAL ACCESS TO A QUALITY EARLY EDUCATION SYSTEM (2525)**

§126-28-1. General.

1.1. Scope. -- This procedural rule establishes the criteria for approving and operating programs for four-year-old children and three-year-old children as mandated under federal law and is referred to as West Virginia Universal Pre-K (WV Pre-K).

1.2. Authority. -- W. Va. Constitution, Article XII, §2 and W. Va. Code §§16-3-4, 18-2-5, 18-2E-1 et seq., 18-5-17, 18-5-18c, and 18-5-44.

1.3. Filing Date. -- October 12, 2017.

1.4. Effective Date. -- July 1, 2018.

1.4.1. Unless specified otherwise within the policy.

1.5. Repeal of Former Rule. -- This rule amends W. Va. 126CSR28, West Virginia Board of Education (WVBE) Policy 2525, West Virginia's Universal Access to a Quality Early Education System (Policy 2525), filed July 14, 2016, and effective August 15, 2016.

§126-28-2. Guidelines.

2.1. WV Pre-K classrooms shall:

2.1.a. be voluntary;

2.1.b. be readiness programs designed to meet the needs of all eligible children through a holistic approach, including key developmental domains of health and physical development, social and emotional development, language development and communication, cognition and general knowledge, and a child's individual approaches to learning;

2.1.c. maximize existing community, state and federal resources;

2.1.d. be inclusive of all children;

2.1.e. incorporate meaningful ways of communicating with and involving parents/guardians;

2.1.f. be an integral part of a comprehensive West Virginia birth to kindergarten system of education and care;

2.1.g. take place in safe and healthy environments;

2.1.h. establish staffing patterns and class size according to requirements;

2.1.i. deliver content through the chosen approved curricular framework and the West Virginia Early Learning Standards Framework W. Va. 126CSR440, WVBE Policy 2520.15, West Virginia Pre-Kindergarten Standards (ages 3-5) (Policy 2520.15);

2.1.j. utilize state approved curricular frameworks and assessments to inform and individualize instruction;

2.1.k. build on what children already know in order to consolidate their learning and foster acquisition of new concepts and skills through hands-on active exploration of their learning environment, problem solving, communication, creativity, and use of their imaginations;

2.1.l. view children within the context of their family;

2.1.m. employ staff with strong professional education preparation in child development and early childhood education; and

2.1.n. utilize a comprehensive continuous quality improvement process that includes the compiled classroom observational measurements and aggregated child outcome data, to evaluate program success and develop school readiness goals.

§126-28-3. School Readiness.

3.1. School readiness is a process of assuring children have access to the best available resources prior to entering first grade. Available resources support children and their families and focus on maximizing children's holistic development from birth. Acknowledging that each child's development is significantly impacted by previous experiences, school readiness also entails the capacity of schools and programs to welcome families and be prepared to serve all children effectively within the developmental domains of health and physical development, social and emotional development, language and communication, cognition and general knowledge, and individual approaches to learning.

3.2. To support school readiness efforts and assure the use of developmentally effective methods for children prior to entering first grade, the Ready, Set, Go! West Virginia Comprehensive Framework for School Readiness is utilized in West Virginia. This comprehensive framework includes an approach that focuses on how the state and local communities, schools, and programs can offer support and resources for families and children prior to and during their transition into school. Programs serving children in Early Learning Readiness grades (WV Pre-K and kindergarten) also provide opportunities for children to build solid foundations and positive dispositions to learning.

§126-28-4. County Collaborative Early Childhood Team.

4.1. Each county must establish a county collaborative early childhood team, which includes a core team with, at a minimum, representation from the county school system preschool program, the county school system preschool special needs program, a licensed community child care program in that county not operated by the county school system, and the Head Start program in that county. A representative from the local department of health and human resources and/or child care resource and referral agency shall be included in the core team when there is no licensed community child care-representative. The licensed child care programs in the county will elect a representative to serve on the county collaborative early childhood core team.

4.2. The county collaborative early childhood core team shall annually assess the composition of the full county collaborative early childhood team, which should include a parent/guardian of a preschool child, representative(s) from the West Virginia Birth to Three System Regional Administrative Unit, local department of health and human resources, child care resource and referral agency, school health representative, classroom teachers, Family Resource Networks, Parent Education Resource Center, Starting Points, faith based early childhood program providers, and/or other community organizations and persons interested in, knowledgeable of, or who provide support or education to young children and their families. Due to the nature of child care, every licensed child care program in the county must be extended an invitation to participate on the collaborative team. The county must keep on file a list of invitees.

4.3. Each county early childhood collaborative team shall meet regularly throughout the year to ensure that the following outcomes are met:

4.3.a. Joint decisions are made about the location of WV Pre-K classrooms including Preschool Special Education classes;

4.3.b. Joint decisions are made about responsibilities for sharing resources and information for each classroom, including but not limited to staffing, facilities, food service and transportation;

4.3.c. Joint decisions are made concerning program availability, including hours of instruction per day, days of operation, and a WV Pre-K school calendar, which must be approved by the county board of education annually.

4.3.d. Joint decisions are made to maintain a county wide universal enrollment process and attendance guidelines;

4.3.e. Services for children with identified special needs are provided in a least restrictive environment according to the requirements of that child's Individualized Education Program (IEP);

4.3.f. Joint decisions are made concerning adoption and implementation of a WV Pre-K Approved Curricular Framework and, if applicable, selection and use of supplemental materials/curricula enhancement;

4.3.g. Joint decisions are made to design and implement a continuous quality improvement process that includes annual plans for data collection to assist in developing school readiness goals;

4.3.h. Joint decisions are made to design and implement school readiness goals and transition plans;

4.3.i. Joint decisions are made to establish and maintain a dispute resolution process to ensure a mechanism for resolving disputes in order to support WV Pre-K program outcomes.

4.4. All programs participating in universal pre-k who provide services to eligible children must follow all rules and regulations as outlined in this policy.

4.4.a. Each pre-k classroom, including preschool special needs classrooms, must provide at least fifteen hundred minutes of instruction per week and forty-eight thousand minutes of instruction annually. The pre-k instructional day is inclusive of all required elements of the daily schedule. Programs must operate no fewer than four days per week to meet annual and weekly operational requirements. Programs must ensure that federal regulations addressing classroom operations are met in collaborative classrooms. The pre-k school calendar must be approved by the county boards of education annually.

4.4.b. A collaborative contract must be completed and signed annually by the local education agency and each collaborative partner to illustrate agreement of terms for pre-k program implementation. The collaborative contract between agencies must address how the collaborative partner will assure compliance with all applicable regulations and standards. Each collaborative contract must include provisions for impasse resolution among partners. It is the responsibility of the collaborative partners to ensure that the staff and administrators receive professional development related to the policies and regulations of all the collaborative partners.

4.4.c. A budget and cost allocation worksheet must be completed for each collaborative pre-k classroom as part of the collaborative contract to illustrate specific costs and allocations of contracts.

4.4.d. In collaborative classrooms where community partners have regulations such as the Head Start Performance Standards or West Virginia Department of Health and Human Resources (WVDHHR) Child Care Centers Licensing, these regulations shall apply in addition to Policy 2525.

4.4.e. Community programs that are exempt from child care center licensing under W. Va. Code §49-2-113 must be licensed in order to participate in WV Pre-K unless they are located in an approved county board of education site.

4.5. Counties must maximize early childhood resources by collaborating with existing programs within the county before opening new classrooms operated solely by the county board of education as required by W. Va. Code §18-5-44. No less than 50% of the classrooms for eligible children must be provided through contractual agreements with community programs, including but not limited to Head Start and child care, unless the county

collaborative early childhood team can document that those programs do not exist in that county, cannot meet the mandates of this policy, or choose not to participate.

4.5.a. In an instance when the county board of education is the Head Start grantee, those settings are considered part of the mandate for collaboration; however, the collaboration does not fulfill these requirements for collaboration with community partners if those partners are available.

4.5.b. Each county board of education must have on file at the West Virginia Department of Education (WVDE) verified universal pre-k program data, which has been approved by the Secretary of WVDHHR and WVBE that reflects meaningful involvement of the county collaborative early childhood team.

4.5.c. All changes of substance to the verified universal pre-k program data must be submitted as an addendum to the WVDE with signatures of all the required county collaborative early childhood core team members for review and approval 30 days prior to the implementation of the changes. Changes of substance refer to program changes including, but not limited to classroom locations, operation, curriculum, staffing, and resources. Failure to do so may result in the non-approval of the change.

4.5.d. The WVDE, in collaboration with the WVDHHR, has the responsibility of convening a committee to review the quality and content of the changes. This committee, designated as the WV Pre-K Steering Team, is comprised of representatives from the WVDE, WVDHHR, and the Head Start State Collaboration Office. State collaborative participation on the committee will ensure the maximization of resources as related to (1) federal and other available funds, and (2) Head Start programs and other public and private programs approved by the State Superintendent of Schools.

§126-28-5. Eligibility and Enrollment.

5.1. WV Pre-K shall be a voluntary program. Eligible child shall mean any child, regardless of ability, who is four years old prior to September 1 of the year the child is to enroll. Beginning with the 2018-2019 school year, an eligible child must be four years old prior to July 1 of the year the child is to enroll.

5.1.a. Three-year-old children can be enrolled in the WV Pre-K System if they have an IEP. Three-year old's without IEPs may be present in the collaborative classroom if they qualify

under the community program's enrollment guidelines. Children may not be excluded based on developmental delays.

5.1.b. Children who are age eligible for kindergarten in accordance with W. Va. Code §18-5-18 shall be enrolled in kindergarten, instead of WV Pre-K, unless assessment data can determine that kindergarten placement for that child is not in the child's best interest. The WV Pre-K Child Assessment System data can be utilized for five-year-old children previously enrolled in WV Pre-K; alternative assessment data will be necessary for five year old children who are new enterers.

5.1.c. A child may remain in the WV Pre-K classroom for longer than one year if the decision is in the best interest of the child and based on child assessment data.

5.2. Programs will be designed to minimize the number of settings in which a child receives education and care services. Parent/guardian should be given options to enroll their child in a program that meets the needs of the family and supports consistency and continuity for the child. Placement shall not be limited to the local school district in which the child lives if openings are available in participating programs within that county that better meet the child and family's needs.

5.3. A county wide universal enrollment process must be maintained that includes:

5.3.a. a universal application that includes the necessary information to identify eligibility, services, and family need for Head Start, child care, and other community programs, including but not limited to income identification, residency, child care needs, and family characteristics;

5.3.b. a universal system for collection and review of universal applications; and

5.3.c. selection criteria and placement processes that are transparent and available to the public.

5.4. Upon enrollment, children entering an approved WV Pre-K classroom must have age appropriate immunizations as defined by the Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices (ACIP) and recommended by WVDHHR. Children who are not fully immunized may be provisionally enrolled, providing a plan has been developed to assure full immunization, but may not enter WV Pre-K classrooms until they have received the first dose of each required vaccine.

5.5. All children entering an approved WV Pre-K classroom should have on file within 45 days of enrollment or prior to the first day of school attendance a record of a HealthCheck screening, or other comprehensive health screening comparable to the HealthCheck protocol. All screening forms shall be signed and dated by the child's licensed health care provider and completed within the past 12 calendar months. Counties can retain the right to conduct follow-up screening.

5.6. All children entering an approved WV Pre-K classroom should have on file within 45 days of enrollment/entry or prior to the first day of school attendance a record of an oral health examination.

5.7. W. Va. Code §16-3D-3 requires that students found or suspected to have active tuberculosis shall be temporarily removed from school while their case is reviewed and evaluated by their personal physician and the local health officer. Students shall return to school when their personal physician, and the local health officer, in consultation with the Commissioner for the Bureau of Public Health (Commissioner), indicates it is safe and appropriate for them to return. School personnel found or suspected to have active tuberculosis shall have their employment suspended until the local health officer, in consultation with the Commissioner, approves a return to work. The Commissioner may require selective testing of students and personnel for tuberculosis when there is reason to believe that they may have been exposed to the tuberculosis organism or they have signs and symptoms indicative of the disease. School nurses shall identify and refer any students or school personnel to the local health department in instances where they have reason to suspect that the individual has been exposed to tuberculosis or has symptoms indicative of the disease.

§126-28-6. Attendance.

6.1. Enrollment in an approved participating WV Pre-K program is voluntary; however, once the child is enrolled, attendance must follow W. Va. Code §18-8-1 et seq., which allows the program administrator (i.e., principal, director, executive director), teacher and parent/guardian to pursue disenrollment of the child if they concur that requiring further attendance for that school year is not in the best interest of the child. Once a child is disenrolled, re-enrollment is not guaranteed for that school year.

6.2. Each county must establish and implement procedures to ensure that the parent/guardian and other family members, as appropriate, understand the availability of services, the attendance policy and the benefits of childhood education.

6.3. Each county must establish and implement a provision for working with families whose children are chronically absent and/or tardy that does not penalize the family for acting in the best interest of the child. Provisions for children with documented chronic medical conditions must be included as defined in W. Va. 126CSR81, WVBE Policy 4110, Attendance (Policy 4110).

§126-28-7. Transportation.

7.1. In WV Universal Pre-K programs, transportation is considered a support, not a mandated service, unless it is a related service for children with disabilities in accordance with state and federal requirements. When transportation is provided:

7.1.a. bus drivers are trained in the supervision of young children (in addition to any other staff development received);

7.1.b. children transported by a school bus who attend a WV Pre-K classroom and are not yet enrolled in kindergarten will sit in a segregated area of the vehicle with other WV Pre-K children;

7.1.c. staff shall be available to assist children on and off buses at the WV Pre-K site. If a parent/guardian is unable to meet the bus, there shall be a person designated by the parent/guardian to assist the child;

7.1.d. bus drivers must inspect the bus at all final drop off points to assure that no children are left on the bus and these inspections must be charted. A log of daily inspections shall be maintained on file with the supervisor; and

7.1.e. at each WV Pre-K site where bus transportation is provided, a designated person must follow-up within the first hour of arrival time with the family of any child who is not present or accounted for each day.

§126-28-8. Inclusive Settings.

8.1. Verified universal pre-k program data will outline the county's process for providing fully inclusive early childhood classrooms with appropriate supports for children with identified special education needs. Proximity does not guarantee inclusion.

8.2. Children with identified special needs must be served in the least restrictive environment which includes utilizing approved participating partners in WV Pre-K.

8.3. Socioeconomic level, ability, and/or funding streams should not be viewed as deterrents to providing fully inclusive programs.

8.4. The IEP placement determination identifies the setting where the IEP will be implemented. Placement decisions must be made consistent with W. Va. Code §18-20-1 et seq. and W. Va. 126CSR16, WVBE Policy 2419, Regulations for the Education of Students with Exceptionalities (Policy 2419) that requires:

8.4.a. the student's placement decision to be made by the student's IEP Committee;

8.4.b. the placement be in the least restrictive environment based on and consistent with the IEP; and

8.4.c. that unless the student's IEP requires some other setting, the child be educated in the early childhood setting where the child would have received services if he/she had not been disabled and as close as possible to their home school.

8.5. Placement in separate settings designed for students with disabilities should only be used when a child's IEP cannot be implemented in a less restrictive environment as determined by the IEP team and documented through multiple formal and informal assessment processes.

§126-28-9. Family Engagement.

9.1. WV Pre-K classrooms must incorporate meaningful ways of communicating with and involving parents/guardians that includes at a minimum:

9.1.a. opportunities for parents/guardians to participate in decision making about their child's education through a minimum of two documented face to face conferences annually with each child's parents/guardians. Home visits are recommended for these conferences;

9.1.b. documented methods of communicating with parents/guardians such as newsletters, child activity reports, phone calls, home visits, e-mail and conferences;

9.1.c. services to children and their families necessary to support children as they transition into, participation in, and transition out of the program;

9.1.d. services for children who come from homes where languages other than English are spoken, support services including communication that is comprehensible and supportive of both the native language and English language development are provided;

9.1.e. support services pursuant to Policy 2419 are provided in accordance with the needs specified in the child's IEP for preschool children with disabilities who are integrated into the program; and

9.1.f. classrooms that are open to parents/guardians and where parents/guardians are encouraged to participate in classroom activities.

§126-28-10. Transitions.

10.1. Each county collaborative early childhood team must have a written plan for transitioning children into WV Pre-K and out of WV Pre-K into kindergarten. At a minimum the plan will include:

10.1.a. opportunities for children and their family to visit the setting into which the child is transitioning;

10.1.b. the provision of written information to parent/guardian as appropriate about WV Pre-K or kindergarten registration and what to expect in WV Pre-K or kindergarten;

10.1.c. an opportunity for teachers/providers in the WV Pre-K system and the kindergarten program in that county to meet at least annually to discuss how to facilitate successful transition and support the reciprocity of readiness practices;

10.1.d. a county system for transferring assessment data, including but not limited to the WV Pre-K Child Assessment System Kindergarten Transition Report, for each child who has participated in an eligible program to the kindergarten teacher to assist the kindergarten teacher in identifying areas of development and areas for growth to meet the individual needs of each child; and

10.1.e. policies and procedures for the transition of children with IEPs into and out of the WV Pre-K to ensure compliance with state and federal requirements.

10.2. County collaborative early childhood team transition plans shall utilize best practices for successful transitions, including the Ready, Set, Go! WV School Readiness Framework.

§126-28-11. Meals.

11.1. For children enrolled in a WV Pre-K classroom, breakfast and lunch must be provided. Any meal provided during the WV Pre-K hours must be in compliance with the nutrition guidelines set forth in the WVDE National School Meals Program. Meals in community programs may include lunch and snack, rather than breakfast and lunch if a classroom's regular operation times occur when breakfast is not required. Collaborative pre-k classrooms have the option of following the meal pattern and serving size requirements for either the Child and Adult Care Food Program (CACFP) or National School Lunch Program/School Breakfast Program; however, all snacks must meet CACFP meal pattern and serving size requirements.

11.2. WV Pre-K programs that are required to serve breakfast and lunch, may choose to serve a snack during the WV Pre-K day. This decision should be based on the needs of the child and the number of hours the child is enrolled in the program. Collaborative WV Pre-K programs that participate in the CACFP may claim this snack for federal reimbursement if it meets the requirements of the program.

11.3. Meals shall be served in a setting that encourages socialization and self-help skills, where the children and staff members are seated together when eating, and classroom staff members provide supervision and encourage positive eating habits and conversation.

11.4. Special dietary needs shall be provided in accordance with federal guidelines as defined by the WVDE Office of Child Nutrition and in W. Va. 126CSR25A, WVBE Policy 2422.7, Standards for Basic and Specialized Health Care Procedures (Policy 2422.7) under oral feeding of student.

§126-28-12. Health and Safety.

12.1. Recognizing that all children within the WV Pre-K System shall be in safe and healthy environments, and that all of the collaborative partners within the WV Pre-K System have rules and regulations governing various aspects of their programming, this policy sets forth a core set of common health and safety standards that must be followed in addition to any existing rules and regulations based on funding sources for individual programs.

12.2. WV Pre-K classrooms must provide 35 square feet of useable space per child. Classrooms shall be limited to no more than 20 children, with no less than two adults, one of whom is a teacher.

12.2.a. When children with IEPs are enrolled in the WV Pre-K classroom, ratios shall be met as set forth in Policy 2419, Section 4.

12.3. The children shall have adequate supervision at all times. When children are on the premises, a WV Pre-K participating program shall ensure that two adults are present with children. The county shall establish policies and procedures for ensuring adequate supervision and safety of children.

12.4. A WV Pre-K classroom shall provide appropriate daily opportunities for children to have supervised practice of brushing teeth while maintaining proper oral health hygiene procedures with special consideration to technique, replacement of toothbrushes, cross contamination, and proper storage.

12.5. A WV Pre-K classroom shall provide the opportunity for children to rest. A regular rest period shall be included in the daily schedule and include provisions for quiet play for children who are unable to sleep during the rest period.

12.5.a. The rest area shall be set up to reduce distraction or disturbances from other activities. Appropriate sleeping equipment shall be provided by the program. Children are not permitted to sleep on the floor, in a sleeping bag, or on linens without mats or cots.

12.6. The education and monitoring of communicable diseases during the school year are necessary to keep students healthy and learning. W. Va. 126CSR51, WVBE Policy 2423, Health Promotion and Disease Prevention (Policy 2423), establishes standards that must be in place for addressing issues and educating staff, students, and families on communicable diseases. The knowledge of standard/universal precautions, transmission, prevention, and treatment of communicable diseases will enhance health education, prevention, and equality for all.

12.6.a. Children in WV Pre-K classrooms shall be observed by staff daily for changes that may indicate injury, infestation, fever, or illness. Staff should record any observed changes in the child's file and notify the family.

12.6.b. Staff members shall utilize universal precautions when exposed to blood and body fluids that might contain blood, as specified in Policy 2423.

12.6.c. Staff members and children shall follow best hand washing practices incorporated throughout the day, including washing with soap and warm, running water for at least 20 seconds. All WV Pre-K classrooms must incorporate best practices for hand washing and disease prevention measures, as specified in Policy 2423.

12.7. Basic health care procedures, such as toileting, oral feeding, mobility etc. should be requested and noted by the parent. Specialized health care procedures shall be prescribed by a medical provider with parent/guardian permission to be performed under the delegation and management of the certified school nurse based on Policy 2422.7. This information should be provided to the WV Pre-K classroom staff through the HealthCheck screening form or other school health care procedure forms and shared with the school nurse to ensure training, clarification of medical orders, individualized health care plan development, and coordination of health care in the WV Pre-K program.

12.8. Due to allergies and the potential dangers associated with having animals in the classroom, animals can only be in WV Pre-K classroom with prior parent awareness and approval. A WV Pre-K classroom shall not have on the premise's ferrets, birds, reptiles, including snakes, lizards and turtles, or any wild or dangerous animals.

12.9. A WV Pre-K classroom shall ensure that products containing potentially hazardous chemicals, such as identified poisons, certain cleaning supplies, and nontoxic art supplies are properly handled and stored. These items should be stored in a locked cabinet away from food and in their original containers. These chemicals shall be used according to manufacturers' instructions, and in a manner that will not contaminate play surfaces or articles.

12.10. A WV Pre-K classroom shall ensure potentially hazardous materials to young children, such as plastic bags, expanded polystyrene, such as Styrofoam™, or balloons, be stored out of reach of children and utilized with adequate supervision.

12.11. Student information related to all health and medical conditions and documented on the HealthCheck form or any other comparable information must be treated as confidential information and be maintained according to the Family Educational Rights and Privacy Act

(FERPA) (20 U.S.C.§1232g; 34 CFR Part 99) and in such a manner that no one could view these records without proper authorization as specified in W. Va. 126CSR94, WVBE Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data (Policy 4350). Failure of school personnel to comply with the above rules shall result in personnel disciplinary actions based on W. Va. 126CSR142, WVBE Policy 5310, Performance Evaluation of School Personnel (Policy 5310), and W.Va. 126CSR162, WVBE Policy 5902, Employee Code of Conduct (Policy 5902).

12.12. A WV Pre-K program shall implement and maintain policies and procedures for the reporting of child abuse and neglect that include:

12.12.a. the definition of child abuse and neglect; and

12.12.b. the requirement to report immediately, in accordance with W. Va. Code § 49-2-803 et seq., any suspected incident of child abuse and neglect to Child Protective Services.

§126-28-13. Environmental Design.

13.1. Each WV Pre-K classroom shall provide a minimum of 35 square feet per child of usable classroom space. A WV Pre-K program shall not provide activity space in a basement area unless the basement area is approved by the State Fire Marshal.

13.2. The WV Pre-K program shall provide one flush toilet and one lavatory per 15 children, excluding children in diapers who are not receiving toilet training. Toilets will be easily accessible to the children and provisions must be made so that children have adequate supervision during toileting.

13.3. A WV Pre-K classroom shall be designed and equipped as a learning environment that supports the curricular framework and allows children of all abilities to make choices, discover, explore, and solve problems; while

13.3.a. assuring children's health and safety;

13.3.b. clearly defining learning centers and incorporating them into the classroom;

13.3.c. organizing and labeling materials and equipment and making them accessible to all children;

13.3.d. incorporating non-stereotypical images in all elements of the environment;

13.3.e. supplying a sufficient quantity and variety of appropriate materials;

13.3.f. rotating the availability of materials;

13.3.g. supporting a child's needs for privacy and a safe place to be alone; and

13.3.h. introducing children to the unfamiliar.

13.4. A WV Pre-K classroom shall provide equipment and materials for indoor activities that are clearly organized within activity areas that support programming goals and allow for adequate supervision. Program components must include learning centers, incorporated within the classroom, designed to support literacy, early numeracy, and language, such as blocks and construction, books, manipulative materials, science and nature, writing materials, dramatic play and role playing, physical activity, art, and music.

13.5. A WV Pre-K program shall provide an outdoor activity area that includes a minimum of 75 square feet of space per child, or if the outdoor play area has less than that, a WV Pre-K program shall establish an outdoor play schedule for rotating groups of children to meet the minimum space requirement and to ensure that each child has an opportunity to play outdoors each day, weather permitting.

13.6. Outdoor activity shall be considered an extension of the classroom. Daily outdoor activity shall support the implementation of the approved WV Pre-K curriculum and Policy 2520.15. A WV Pre-K classroom operating more than four hours per day shall provide a minimum of one hour of outdoor activity daily as a part of the curriculum, weather permitting. Programs operating less than four hours per day must provide a minimum of 30 minutes of daily outdoor activity, weather permitting. A combination of indoor and outdoor time may be utilized when weather conditions are conducive.

13.7. A WV Pre-K program shall ensure that the outdoor play area for a child under school age:

13.7.a. is enclosed on all sides by a natural barrier or secure fence that is at least four feet high with a bottom edge that is less than three and one-half inches from the ground;

13.7.b. if it has a fence, the fence has no openings greater than three and one-half inches;

13.7.c. if it has a natural barrier, the barrier has the strength and density to prevent humans and animals from entering or exiting the playground;

13.7.d. if it is attached to a building, the barrier or fence provides at least two exits from the play area, including one exit that is at a distance from the building;

13.7.e. when it has an exit that does not lead directly indoors, it is protected by a gate equipped with a closure mechanism that is out of the reach of a small child and prevents the child from leaving the play area, but can be easily opened by an adult; and

13.7.f. has age appropriate equipment to support the curriculum and the children's development.

§126-28-14. Child Guidance.

14.1. Staff shall ensure that all guidance, behavior management, and discipline practices are constructive and educational in nature, appropriate to each child's age and circumstances, and in keeping with the WV Pre-K program's policies and procedures;

14.2. At all times, staff members are responsible for providing positive guidance that is appropriate to each child's age, understanding, and circumstances. When a behavior problem arises, qualified staff members shall:

14.2.a. redirect the child to alternative behavior or other activities;

14.2.b. encourage the child to control their own behavior, cooperate with others, and solve problems by talking through the issues;

14.2.c. speak so the child understands that feelings are acceptable, but inappropriate behaviors and actions are not; and/or

14.2.d. take action that relates to inappropriate behavior and ensure that any action that is taken is without bias and in proportion to the child's act.

14.3. Staff members and other adults in a WV Pre-K classroom shall not handle behavior problems by:

14.3.a. subjecting a child to physical punishment of any kind;

14.3.b. putting anything in or on a child's mouth as punishment;

14.3.c. restraining a child physically or by placing the child in confining equipment or using any other restrictive means such as straps or ties. A staff person may, in extreme

circumstances to protect the child or other persons around him or her, use a gentle method of physically holding the child. The staff person must be an experienced staff member who is known to the child and shall only restrain the child for as long as is necessary for the child to regain control;

14.3.d. subjecting a child to psychological punishment of any kind, including but not limited to, shaming, ridicule, humiliation, or negative remarks about the child or the child's family, including remarks about race, gender, religion, or cultural background;

14.3.e. using harsh or profane language, yelling, screaming, or actual or implied threats of physical punishment;

14.3.f. punishing or threatening a child in association with food, rest, or toilet training;

14.3.g. isolating a child without supervision or placing the child in a dark area;

14.3.h. permitting a child to discipline other children;

14.3.i. punishing an entire group for the actions of one child or a few children;

14.3.j. seeking or accepting parental permission to use physical punishment or other actions prohibited by this rule; or

14.3.k. use of any other practice that is not appropriate for the ages/stages of the children or is harmful psychologically or physically.

14.4. Staff shall develop program provisions that prohibit or severely limit the use of suspension in pre-k due to a child's behavior. A temporary suspension may be used only as a last resort in extraordinary circumstances where there is a safety threat that cannot be eliminated without reasonable modifications. Program provisions must include the following criteria:

14.4.a. guidance for a multidisciplinary team to determine when no other reasonable option is appropriate;

14.4.b. a written plan to guide actions and supports needed;

14.4.c. efforts to engage parents and appropriate community resources.

§126-28-15. Curriculum and Assessment.

15.1. Curriculum is part of the inter-related approach of using curriculum, assessment, and approved content standards to facilitate the individualization and direction of classroom programming.

15.2. The WV Pre-K classroom must implement Policy 2520.15, which is aligned with Head Start Early Learning Outcomes Framework and the West Virginia College- and Career-Readiness Kindergarten Standards. The approved content standards for programs serving eligible children are written to reflect a developmental continuum that enhances successful transitions into kindergarten. Utilizing the formative assessment process, evidence of children's individual development along the developmental continuum is used to personalize learning and share progress with families.

15.3. Only comprehensive curricular systems and comprehensive assessment systems that are included on the approved list shall be used by WV Pre-K classrooms, including classrooms that serve children with identified special needs. The West Virginia Early Learning Reporting System: Pre-K (WV ELRS: Pre-K), inclusive of the Early Learning Scale, focuses on the formative assessment process, which is utilized with all children enrolled in WV Pre-K programs, as per Policy 2520.15.

15.4. Selection and use of supplemental materials/curricular enhancements that address core content areas such as language and literacy acquisition or numeracy, must be based on scientifically-based research and support the philosophy and techniques of the comprehensive curriculum and the requirements of this section. Guidance provided by the WVDE will provide assistance to county collaborative early childhood teams regarding the collaborative, local decision-making processes pertaining to supplemental materials/curricula enhancement.

15.4.a. Instructional practices such as worksheets, extended periods of sitting, seat work at desks or tables, flashcards, prescribed sequence of content, content areas taught in isolation, requiring all children to be working on the same skill, lack of individualization, or a high level of teacher directed instruction are not permissible.

15.5. Comprehensive curricular systems are approved following a process similar to the process established by the WVDE, including preschool special education, for adoption of instructional materials. The approval process includes review and recommendations from local early childhood stakeholders across systems and the WV Universal Pre-K Steering Team.

15.6. A comprehensive curriculum system must meet the following standards:

15.6.a. include a philosophy, goals, and objectives based on current knowledge of child development and learning styles and reflect an understanding of how children learn and develop by:

15.6.a.1. addressing the developmental needs of eligible children through practices that are consistent with current, nationally recognized, most effective practice;

15.6.a.2. valuing exploration, creativity, and construction as the child's primary learning approaches;

15.6.a.3. engaging children actively in the learning process and providing them with opportunities to make meaningful choices;

15.6.a.4. responding to individual children's interest, strengths, and needs based on ongoing observation and assessment; and

15.6.a.5. supporting children so they view themselves as part of a larger community.

15.6.b. be balanced and designed to achieve the long-range goals for social, emotional, physical, cognitive, and academic (early literacy, early numeracy, and language) achievement by:

15.6.b.1. incorporating a wide variety of learning experiences, materials and equipment, and instructional strategies that are responsive to the differences in prior learning experiences, maturation rates, and learning styles young children bring to the classroom;

15.6.b.2. supporting a balance of large and fine motor activities, quiet and active times, individual and small and large group activities, child-initiated and adult-initiated activities, planned and spontaneous activities, and indoor and outdoor opportunities; and

15.6.b.3. addressing the development of knowledge and understanding, processes and skills, dispositions, and attitudes.

15.6.c. integrate development of all domains, abilities, and content that are relevant, engaging, and meaningful to young children by:

15.6.c.1. meeting the developmental continuum contained in the approved content standards for eligible children as prescribed by the WVBE;

15.6.c.2. building on what children already know in order to consolidate their learning and foster the acquisition of new concepts and skills;

15.6.c.3. reflecting the needs and interests of individual children in the group by including the immediate environment and world with which the children are acquainted;

15.6.c.4. supporting integration of curriculum content through use of various forms of documentation (such as themes, projects, key experiences, or webs); and

15.6.c.5. including materials and activities that reflect a variety of cultures, languages, ages, abilities, and beliefs.

15.6.d. emphasize the development of thinking, reasoning, and problem-solving skills through strategies such as open-ended questions, investigation, imaginative and dramatic play, and peer interactions;

15.6.e. promote flexibility and adaptation to unique needs of children and families where ongoing observation and assessment are used to determine appropriate planning and adaptations for varied learning styles, temperaments, abilities, and languages or modes of communication; by:

15.6.e.1. integrating curriculum and the formative assessment process to benefit the child; and

15.6.e.2. making opportunities for all children, regardless of ability, to participate in all activities through appropriate adaptations or modifications of activities, assistive technology, materials and/or learning environments.

15.6.f. support the importance of learning during routine times of the day and meeting the physiological needs of children; by:

15.6.f.1. promoting consistency in schedules and routines and facilitating smooth transitions;

15.6.f.2. supporting continuity between home and school;

15.6.f.3. encouraging children's participation in routines to develop responsibility and independence;

15.6.f.4. recognizing the integral role of adults during routine times;

15.6.f.5. allowing for flexibility and adaptations for individual children;

15.6.f.6. supporting positive health and nutrition practices; and

15.6.f.7. providing daily opportunities for children to rest in an area set up to reduce distraction or disturbance from other activities.

15.6.g. promote, through a variety of strategies, the essential role of families as partners in planning and implementing their child's care and education;

15.6.h. emphasize the value of social interaction to learning in all domains and promote frequent, responsive, respectful interactions between children, staff and children, and staff and families;

15.6.i. recognize the role of children's psychological safety in learning and include guidance techniques that support children;

15.6.j. promote the use of developmentally appropriate curriculum and formative assessment principles to determine how technology is incorporated into the classroom environment as a resource, rather than a substitute, for effective teaching or quality curriculum.

15.7. When a WV Pre-K classroom plans an activity that involves active media, the center shall ensure that:

15.7.a. the active media supplements but does not replace traditional early childhood materials or experiences;

15.7.b. a child has a choice of other activities and materials;

15.7.c. staff members are available to support the activity by discussing the use of the active media with the child;

15.7.d. Active media chosen is developmentally appropriate and supports creative play and learning.

15.7.e. Screen time, whether through active or passive media, should be limited.

15.8. If passive media is used, a WV Pre-K classroom shall ensure that:

15.8.a. passive media is not routinely part of the daily schedule;

15.8.b. staff members are available to support the use of the passive media by discussing with the child what is viewed with the child; and

15.8.c. the contents of passive media are developmentally appropriate and designed to benefit the child, with limited viewing time and the child who does not wish to watch has a choice of other activities.

15.9. In classrooms where specialists are incorporated into daily routines, environments and experiences must be reflective of the approved county adopted comprehensive curricular system and support integration of Policy 2520.15.

15.10. The WV ELRS: Pre-K focuses on the formative assessment process which is utilized with all children enrolled in WV Pre-K programs, per Policy 2520.15. The assessment system is designed to inform classroom instruction, assist with integration of personalized learning, and to foster interactions, competencies, experiences, and skills of children participating in WV Pre-K programs through appropriate measures. Comprehensive assessment systems must address how the curriculum:

15.10.a. supports the whole child across multiple learning domains as they progress developmentally;

15.10.b. supports family engagement and relationships with their children's educational experiences;

15.10.c. demonstrates the child's overall strengths and progress;

15.10.d. encourages self-evaluation by the child;

15.10.e. relies on demonstrated performance of real, not contrived, activities;

15.10.f. utilizes a variety of tools and processes;

15.10.g. allows for differences in learning style and rate; and

15.10.h. provides a comprehensive reporting system on children's individual accomplishments, as well as aggregated data to inform classroom, site or district decision making.

15.11. Time shall be set aside for joint planning by the teacher, co-teacher, and/or other personnel working with the children.

§126-28-16. Personnel.

16.1. Teacher Credentials:

16.1.a. Teachers employed in a WV Pre-K classroom and hired by the county board of education must hold an appropriate license issued by the WVDE.

16.1.b. To fully maximize resources, community partners may choose to hire their own personnel for the WV Pre-K collaborative classroom. Teachers employed in a WV Pre-K classroom operated by a community program may hold a Professional Teaching Certificate endorsed in Early Education, Preschool Education, or Preschool Special Needs; OR

16.1.c. When no fully certified teacher is available within or for hire by the community program, the person employed by a community program shall hold the minimum of a bachelor's degree in child development, early childhood, or occupational development with an emphasis in child development/early childhood, have a minimum overall grade point average of 2.5 for all college/university coursework attempted, and meet the requirements specified in W. Va. 126CSR136, WVBE Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications (Policy 5202), Section 11., for the Permanent Authorization, endorsed for Community Programs; OR

16.1.d. When no fully certified teacher or individual eligible for the Permanent Authorization endorsed for Community Programs is available within or for hire by the community program, the newly hired person employed by the community program shall hold the minimum of a bachelor's degree in child development, early childhood, or occupational development with an emphasis in child development/early childhood, have a minimum overall grade point average of 2.5 for all college/university coursework attempted, and meet additional requirements to be eligible for a Temporary Authorization for Community Programs as specified in Policy 5202, Section 11.

16.2. Early Childhood Classroom Assistant Teacher Authorization

16.2.a. Any person previously employed and newly employed as an aid/assistant in a WV Pre-K classroom (refer to W. Va. Code §18-5-44m), including those employed by the county board of education and collaborating Head Start and child care programs, shall hold the position of either Early Childhood Classroom Assistant Teacher Temporary Authorization or Early Childhood Classroom Assistant Teacher Permanent Authorization, as specified in Policy 5202, Section 12.

16.2.b. Conditions of the initial Early Childhood Classroom Assistant Teacher-Temporary Authorization:

16.2.b.1. The applicant for authorization must hold a minimum of a high school diploma, high school equivalency diploma, or degree if applicable, through an accredited institution of higher education as defined in Policy 5202, Section 4.

16.2.b.2. Submission of commitment, verifying the applicant's agreement to complete coursework, approved by the WVDE, in the areas of preschool special education,

child development, and early childhood language and literacy as defined in Policy 5202, Section 12.

16.2.b.3. Applicants employed by the county board of education must meet the formal state academic assessment requirements as defined in Policy 5202, pursuant to W. Va. Code §18A-4-8e or hold a valid or expired Initial Professional or Professional Teaching Certificate or its equivalent, as a condition of hire. Applicants employed by a collaborating child care or Head Start program are not required to meet the formal state academic assessment requirements.

16.2.b.4. Complete the application process for Early Childhood Classroom Assistant Teacher Authorization as described in Policy 5202, Section 12.

16.2.b.5. Applicants must select an authorization pathway when completing the initial Early Childhood Classroom Assistant Teacher-Temporary Authorization. Authorization pathways include Child Development Associate (CDA), West Virginia Apprenticeship for Child Development Specialists (ACDS), or WVDE approved course work.

16.2.c. Conditions for Renewal of the Early Childhood Classroom Assistant Teacher-Temporary Authorization:

16.2.c.1. The initial Early Childhood Classroom Assistant Teacher-Temporary Authorization is valid for one school year and may be renewed twice in accordance with WVBE Policy 5202, Section 12.

16.2.c.2. Any Early Childhood Classroom Assistant Teachers employed in a WV Pre-K classroom collaborating with Head Start must complete required coursework of the Early Childhood Classroom Assistant Teacher authorization pathway within two years upon hire in accordance with Head Start regulation.

16.2.d. Conditions of the Early Childhood Classroom Assistant Teacher-Permanent Authorization:

16.2.d.1. A first-time applicant for Early Childhood Classroom Assistant Teacher-Permanent Authorization must be currently employed as an Early Childhood Classroom Assistant Teacher, must provide verification of state competency exam for applicants

employed by a county board of education, and must hold a minimum of a high school diploma, high school equivalency diploma, or degree if applicable, through an accredited institution of higher education as defined in Policy 5202, Section 4 and

16.2.d.2. Demonstrate completion of the minimum coursework requirements to meet or exceed the requirements for a child development associate. Equivalency is determined as the Child Development Associate (CDA), West Virginia Apprenticeship for Child Development Specialists (ACDS), or WVDE approved course work.

16.2.e. Any person employed as an aide in a WV Pre-K classroom on or before July 1, 2014, and eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and, upon application, shall be granted an Early Childhood Classroom Assistant Teacher Permanent Authorization. Any Early Childhood Classroom Assistant Teacher employed in a collaborative setting with Head Start must complete coursework required to obtain permanent authorization in accordance with Head Start regulations.

§126-28-17. Staff Training.

17.1. An orientation for new staff in a WV Pre-K classroom will be provided within the first 30 days of employment that includes a review of: Policies 2525 and 2520.15; classroom operational requirements; policies and procedures for confidentiality and information disclosure; behavior management; reporting child abuse and neglect and emergencies; policies and procedures for basic sanitation and infection control; policies and procedures for safety; including prevention of injury both indoors and outdoors; and fire safety; including the use of fire extinguishers; and training in abuse recognition and prevention. Existing staff members shall be knowledgeable of the above policies and procedures.

17.1.a. Staff, volunteers and student teachers shall follow the required communicable disease educational in-services, tuberculosis skin testing for new employees and W. Va. 64CSR7, WVDHHR Reportable Disease, Events and Conditions Rule.

17.2. All county WV Pre-K staff, including teachers and teacher assistants/aides/paraprofessionals, shall participate in 15 hours of professional learning annually, based on needs determined in the county continuous quality improvement process. The county collaborative early childhood team should utilize county program assessment data, along with other professional learning needs assessment data and the West Virginia Core Knowledge and Competencies for Early Care and Education Professionals when developing WV Pre-K staff development plans.

17.3. Professional learning information shall be made available to collaborative partners to facilitate the registration of training sessions on the West Virginia State Training and Registry System (WV STARS) for collaborative program staff.

§126-28-18. Program Assessment and Continuous Quality Improvement.

18.1. County collaborative early childhood teams will develop and maintain a continuous quality improvement process, (CQI Process), which includes an annual plan for collecting and analyzing program assessment data to establish school readiness goals, assuring children have the best available resources prior to entering first grade. The continuous quality improvement process must include annual results from county aggregated child outcome and classroom observation data to determine staff development planning and recommendations and objectives for county strategic plans.

18.2. The West Virginia Universal Pre-K Health and Safety Checklist must be completed annually in each WV Pre-K classroom within the first forty-five days of school for students, as part of the CQI process. Results from each West Virginia Universal Pre-K Health and Safety Checklist must be electronically housed in an online platform provided by the WVDE. Other observational measurement tools are to be utilized as data sources for the CQI process. Guidance is provided by the WVDE through the Continuous Quality Improvement Process Guidance document to assist in the selection and use of additional observational measurements.

18.2. The county board of education, in collaboration with county collaborative partners, is required to submit WV Pre-K program data to the WVDE Office of Early Learning annually. The WVDE Office of Early Learning will compile the information and provide a summary report to the Secretary of WVDHHR and the State Superintendent of Schools. The WV Pre-K program data will include at a minimum:

18.2.a. program data verification, including classroom information, submitted annually by October 15;

18.2.b. a comprehensive WV Pre-K fiscal report submitted annually by October 15; and

18.2.c. verification of the annual collaborative contracts and budgets signed and filed at the local county board of education, noting collaborative WV Pre-K classrooms for the

upcoming school year to continue to document maximization of resources through the collaborative model, submitted prior to the first day of children's attendance;

18.3. The WVDE, in collaboration with the WVDHHR and Head Start State Collaboration Office, will conduct a WV Pre-K Program Review at a minimum of once every three years.

18.3.a. The program review will consist of a desktop review, site-visits, and county collaborative team interviews. The purpose of the program review is to ensure counties continue to implement WV Pre-K programs in alignment to policy and assist with each county's continuous quality improvement process within the comprehensive collaborative model. The program review will provide individualized technical assistance to county collaborative early childhood teams. The WVDE will provide guidance and procedures for completion of the program review.

18.3.b. A summary of the WV Pre-K Program Reviews will be provided annually to the WVBE.

18.4. The WVDE shall develop and institute a system of longitudinal, scientifically based research to track learner outcomes, family satisfaction, program continuity, and related variables in order to evaluate program impact, as funds become available. The system shall be designed in such a way to be of benefit on both the county and state level and improve the quality of programming available for eligible children.

§126-28-19. Finance.

19.1. Each county board of education shall enroll WV Pre-K children in community classrooms and generate funding through the school aid funding formula. Funding generated through community classrooms should be invested into those programs providing quality early education services and local infrastructure to support WV Pre-K classrooms. Guidance is provided by the WV Pre-K Steering Team on collaborating with community programs and includes information on funding, contracts, and budgets.

19.2. The county board of education shall provide sufficient assistance/funding to a collaborative community partner to enable the partner to offer services that meet this policy at no cost to parents and at no deficit to the program. In calculating costs and resources, the county collaborative team should consider a number of issues and costs, such as personnel, facilities, materials and equipment, curriculum, needed improvements, and professional development.

19.3. WV Pre-K classrooms that provide services to eligible children who can be counted in the school aid funding formula, must provide those services at no cost to the parent/guardian of the

children. Support for community programs to offer free public education shall be a part of the contract between the community partner and county board of education.

19.3.a. In child care, WV Pre-K is an enhancement to the regular program during the designated WV Pre-K hours. Since WV Pre-K under this policy is part of a free public education, parents/guardians shall only be charged for those hours outside the WV Pre-K designated time.

19.4. In addition to the resources provided to a WV Pre-K collaborative program, community programs participating as partners shall continue using federal and state funding available for these services such as Head Start and child care Development Fund monies supporting eligible children.

§126-28-20. Program Oversight.

20.1. County boards of education have direct responsibility for all WV Pre-K classrooms in their county. Local program oversight for contracted community programs must be defined in the contracts between the community program and the county board of education. These include, but are not limited to, staff evaluation and discipline, which must be specified within collaborative agreements of each participating WV Pre-K program.

20.2. Collaborative Head Start classrooms will be monitored for compliance with the Head Start Performance Standards in partnership with local and federal Head Start personnel. Classrooms operated by or in collaboration with licensed child care will be licensed under W. Va. 78CSR1, WVDHS Child Care Centers Licensing.

20.3. The WVBE or its designee and the Secretary of the WVDHHR or his/her designee will maintain state oversight.

§126-28-21. Glossary.

21.1. *Active media* means materials that the child can control while participating in an activity such as taking pictures with cameras, making audio or video recordings or working with technology.

21.2. *Adequate supervision* means the observation, oversight, and guidance of the individual child or groups of children by the staff member taking responsibility for the ongoing activity of each child so that the staff member is close enough to intervene, if necessary, to protect the child from harm. Adequate supervision requires the staff member's physical presence with the children, knowledge of the child's program of activities, individual needs,

habits, interests and special problems, if any, and the acceptance of accountability for the child's or groups of children's care.

21.3. *Approved funding sources* means any funds used directly to support WV Pre-K classrooms for eligible children including West Virginia State Aid Funding Formula, Head Start funds, Temporary Assistance to Needy Families, Child Care Development Funds, funds under the Every Student Succeeds Act (ESSA), funds provided by the School Building Authority of West Virginia, funds under the Public Law 108-446, Individuals with Disabilities Education Improvement Act of 2004, and any other private or public funds.

21.4. *Approved WV Pre-K participating programs* includes public school preschool, preschool special education, and any community provider that contracts with the county board of education including, but not limited to, child care, private preschool, Head Start, and community-based programs that meet or exceed all of the requirements of this policy and are a part of a county's verified Universal Pre-K program data. Children participating in approved WV Pre-K participating programs can be counted in the school aid funding formula and the participating programs are eligible to receive funds through contractual agreements with or direct administration by the county school system.

21.5. *Collaborative contract* is the legally binding agreement made between the local education agency and approved early childhood community program to delineate roles, responsibilities, and resources of each partner to meet or exceed program requirements for implementation of WV Universal Pre-K and community partner regulations.

21.6. *Collaborative setting* means a classroom of WV Pre-K children operated jointly by a community program and county board of education or by a community program with resource support from the state through the county board of education.

21.7. *Continuous Quality Improvement Process* is the ongoing program assessment process implemented by county teams utilizing classroom observations and aggregated child outcome data to make informed decisions for program improvement.

21.8. *Contracted community program* shall mean any provider of early childhood services that meets all of the requirements of this policy and has a collaborative contract with the county school system to operate a WV Pre-K classroom.

21.9. *Core knowledge and core competencies for early care and education professionals* shall mean the sets of skills and knowledge that represent common standards of satisfactory practice in the early childhood field as defined in WV STARS Core Knowledge and Core Competencies for Early Care and Education Professionals.

21.10. *Developmentally appropriate* means early childhood programming, curricula, and activities that address the stages of each child's cognitive, physical, social/emotional, and cultural development and utilizes a balanced approach of both child initiated and teacher directed instruction. Children should be actively engaged in hands-on, interactive activities for learning for a substantial portion of the day.

21.11. *Direct supervision* means that a qualified staff member is physically present in the same room, area, or vehicle with the child or group of children, visually monitoring the interactions of the children.

21.12. *HealthCheck* is the screening/surveillance protocol recommended for the licensed health care providers to be used for all children entering WV Pre-K. HealthCheck meets the requirements for vision, hearing, developmental, including speech and language, and oral health. The HealthCheck screening form is the preferred documentation method of licensed health care providers to record screenings.

21.13. *Passive media* means materials the child cannot control while participating in an activity such as watching television, DVDs, or device streamed content.

21.14. *School readiness goals* are programmatic goals based on data collection and analysis over time as part of the continuous quality improvement process to support the growth and development of children.

21.15. *Staff-to-child ratio* means a relationship which describes the number of children qualified staff members or substitutes are permitted to supervise.

21.16. *Staff member* means any paid personnel, including substitutes.

21.17. *Universal access* shall mean that every eligible child in the county has access to a high-quality WV Pre-K classroom that meets or exceeds all of the requirements of this policy.

21.18. *Universal application* means an enrollment form that must be used for all classrooms identified as part of the county's WV Pre-K system to determine placement and enrollment of eligible children.

21.19. *Universal precautions* mean procedures to be followed for infection control in all situations to prevent the transmission of blood borne germs that may be spread through blood or body fluids that might contain blood.

21.20. *Usable space* is the actual indoor classroom areas that are utilized for children's activities. Usable space includes all areas of the classroom that children may access. Usable space excludes areas that children do not access such as staff areas, staff-only furniture, storage spaces, or adjacent offices.

21.21. *Verified universal pre-k program data* is county pre-k information that illustrates the program structure, including classroom location, collaborative partners, operation information, and available support services, such as meals and transportation. Each county Pre-K Coordinator is required to complete WV Pre-K program data verification by October 15 annually.

21.22. *West Virginia Universal Pre-K Instructional Day* is the duration of time that pre-k children are present at school. This includes all required elements of the daily schedule.

21.23. *West Virginia Early Learning Reporting System: Pre-K, or ELRS: Pre-K*, is the section of the Early Learning Reporting System (ELRS) web-based platform utilized for housing and reporting WV Universal Pre-K program and formative assessment data. The ELRS: Pre-K is a located within a secured site that requires registration and account login by all users.

§126-28-22. Severability.

22.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule.

WVBE Policy 4321.1
Standards for School Nutrition

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 86
STANDARDS FOR SCHOOL NUTRITION (4321.1)**

§126-86-1. GENERAL.

1.1. Scope. -- This legislative rule establishes and affirms nutrition standards for child nutrition programs.

1.2. Authority. -- W. Va. Constitution, Article XII, §2 and W. Va. Code §§18-2-5, 18-5D-1, 18-5D-2, 18-5D-3, 18-5D-4, §§10, 204, 210, 215, 220, 235 of the Healthy, Hunger-Free Kids Act (42 U.S.C. 1779, et seq.), W. Va. §126CSR136, West Virginia Board of Education (WVBE) Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications, and W. Va. §126CSR27, WVBE Policy 2422.8, Medication Administration (Policy 2422.8).

1.3. Filing Date. -- August 10, 2017.

1.4. Effective Date. -- January 2, 2018.

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W. Va. §126CSR86, WVBE Policy 4321.1, Standards for School Nutrition, filed August 15, 2014, and effective September 15, 2014.

§126-86-2. PURPOSE.

2.1. In West Virginia public schools, federally-funded school nutrition programs are available to provide nutritious food to all students. It is intended that these child nutrition programs remain the main source of foods and beverages available at school. These federal programs have specific requirements to ensure that adequate nutrients are offered to promote health. The Office of Child Nutrition (OCN) is the administering state agency in West Virginia for the United States Department of Agriculture's (USDA) Child Nutrition Programs. The West Virginia Department of Education (WVDE) will maintain a federal-state agreement with the USDA to operate child nutrition programs, through the OCN. Within the WVDE, the OCN will be tasked with the implementation, oversight, monitoring, provision of technical assistance, and related duties as they pertain to child nutrition programs. WVDE will abide by statutory regulations set forth by USDA and the federal government as it relates to the operation of federally-funded child nutrition programs. In order to preserve high standards of health and wellness for West Virginia students, the Office of Child Nutrition will review any federal changes to child nutrition programs and identify areas to maintain or strengthen standards. This policy also provides guidelines and best practices supporting good nutrition and food safety that will help schools take a comprehensive approach toward health and wellness in their school community.

§126-86-3. OPERATIONAL DEFINITIONS.

3.1. “Bottled Water” or “Water” is defined as plain natural water with or without carbonation and containing no additives.

3.2. “Beverages” and allowable limits will be determined and defined by USDA Smart Snacks guidelines, with the exception of caffeine. Caffeine is prohibited from being sold, served, or distributed in West Virginia public schools.

3.3. “Child Nutrition Director” is defined as the person responsible for administering, planning, directing, assessing, implementing, and evaluating child nutrition programs in order to meet the nutritional and educational needs of students, as they relate to the child nutrition program; may also be titled as “Food Service Director” or “School Nutrition Director”.

3.4. “Competitive Foods” is defined as any food item that is sold in competition to the reimbursable school meal.

3.5. “Food Service Area” is defined as any area on school premises where reimbursable meals are served and/or consumed by students.

3.6. “School Day” for nutritional purposes, is defined by USDA guidelines as the period from midnight before, to 30 minutes after the end of the official school day.

3.7. “School Campus” is defined as a collection of buildings and grounds that belong to a given academic institution.

§126-86-4. NUTRITION STANDARDS FOR CHILD NUTRITION PROGRAMS.

4.1. Nutrition standards for federally-funded school and child nutrition programs are determined at the federal level. The WVDE is responsible for technical assistance and compliance monitoring related to program implementation at the local level.

§126-86-5. NUTRITION STANDARDS FOR COMPETITIVE FOODS AND BEVERAGES.

5.1. The Smart Snacks in School nutrition standards apply to any foods sold to students during the school day on the school campus, including foods sold as fundraisers. Foods that do not meet these federal standards cannot be sold to students on the school campus during the school day. Standards do not apply during non-school hours, on weekends, and at off school campus fundraising events, though local wellness policies may still apply. These standards apply to foods sold outside the National School Lunch Program (NSLP) and the School Breakfast Program (SBP).

5.2. Food and beverage contracts must comply with W. Va. §126CSR202, WVBE Policy 8200, Purchasing Policies and Procedures Manual for Local Educational Agencies.

5.3. Except for foods served in the school nutrition programs, no food or beverage shall be sold, served, or distributed to students on elementary school campuses from the time the first child arrives at school until 20 minutes after all students are served lunch.

5.4. Foods and beverages may not be sold, served, or distributed in competition with the federal child nutrition programs in school campus food service areas during the meal service periods.

5.5. In addition to caffeine, the sale, service, or distribution of any foods or beverages containing non-nutritive/artificial sweeteners is prohibited.

§126-86-6. A La CARTE SALES.

6.1. To operate school-based nutrition programs as efficiently as possible, while maximizing federal reimbursement and minimizing the overall cost to the county, all meals must be priced and served as a unit. Only fluid milk and bottled water may be sold as a la carte items for breakfast and lunch at any grade level.

§126-86-7. AVAILABILITY OF DRINKING WATER.

7.1. Schools participating in the NSLP must make potable water available to children at no charge where meals are served during the meal service. Schools shall make available water throughout the school day at no charge.

§126-86-8. ADEQUATE TIME FOR STUDENT MEAL CONSUMPTION.

8.1. Adequate time is necessary for student meal consumption. Each student shall be allowed a minimum of ten minutes for breakfast and 20 minutes for lunch after the student received the meal.

§126-86-9. STAFFING.

9.1. School Nutrition Directors are those individuals directly responsible for the management of the day-to-day operations of school food service for all participating schools under the jurisdiction of the school food authority (Local Educational Agency (LEA) participating in school nutrition programs). Requirements for certification include the following:

9.1.a. Initial Temporary Authorization for School Nutrition Director. – The applicant for licensure must provide evidence of satisfying the following:

9.1.a.1. Degree. – At a minimum, hold a bachelor’s degree and a minimum 2.5 GPA including six semester hours of coursework related to nutrition, food, and/or food service management or WVDE approved training as provided by the OCN. The six semester hours or approved training must be completed within 90 days of the start date; AND

9.1.a.2. Food Safety Training. – The applicant for licensure must provide evidence of at least eight hours of food safety training obtained no more than five years prior to or within 30 days of start date; AND

9.1.a.3. Recommendation of the County Superintendent. – Receive the recommendation of the county superintendent in the county in which the applicant is employed verifying that the applicant is the most qualified candidate for the position.

9.1.a.4. Validity Period. – The Temporary Authorization for School Nutrition Director shall be valid for three years.

9.1.b. Renewal of the Temporary Authorization for School Nutrition Director. – The applicant for licensure must provide evidence of satisfying the following:

9.1.b.1. Professional Development Activities. – Completion of 12 clock hours of job-specific training each year related to child nutrition programs; AND

9.1.b.2. USDA Required Food Safety Training. – School Nutrition Director must maintain a valid food safety certification while employed in the school meal program.

§126-86-10. LOCAL WELLNESS POLICY.

10.1. Each LEA must establish a local wellness policy for all schools participating in the NSLP and/or SBP under the jurisdiction of the LEA. The LEA local school wellness policy is a federal requirement that must include methods to promote student wellness, prevent and reduce childhood obesity, and provide assurance that school meals and other foods and beverages sold and otherwise made available on the school campus during the school day are consistent with applicable federal and state standards. Local wellness policies must include specific goals for nutrition promotion and education, physical activity, and other school-based activities that are designed to promote student wellness; standards and nutrition guidelines for all foods and beverages sold to students on the school campus during the school day that are consistent with federal regulations; standards for all foods and beverages provided, but not sold to students during the school day; policies for food and beverage marketing that allow marketing and advertising of only those foods and beverages that meet federal nutrition standards; and, a description of the public involvement, public updates, policy leadership, and evaluation plan. Provisions in the final federal rule regulate that LEAs must establish wellness policy leadership of one or more LEA and/or school official(s) who have the authority and responsibility to ensure each school complies with the policy. Every school or county participating in the NSLP and/or SBP will inform the public about the content and implementation of the local school wellness policy. At a minimum LEAs must permit participation by the general public and the school community (including parents, students, and representatives of the school food authorities, teachers of physical education, school health professionals, the school board and school administrators) in the wellness policy process. The final rule requires state agencies to assess compliance with the wellness policy requirements as part of the general areas of the administrative review every three years. LEAs must conduct an assessment of the wellness policy every three years, at a minimum. This assessment will determine compliance with the wellness policy, how the wellness policy compares to model wellness policies, and progress made in attaining the goals of the wellness policy. The USDA does not specify the frequency of updates to the local school wellness policy, as the need to update will vary based upon the content and structure of each LEA's policy.

§126-86-11. SPECIAL DIETARY CONSIDERATIONS AND FOOD ALLERGIES.

11.1. Special care and consideration must be taken regarding any and all scenarios where students with special dietary needs and food allergies are present.

11.2. Only a parent, guardian, or designee for the parent/guardian as provided in writing to the school, may deliver outside foods and beverages to their own student at school. This does not apply to food that is provided for a special event inclusive of all students in the class.

11.3. Local wellness policies that are set and maintained at the local county level are a federal requirement. Snacks provided to students during the school day will meet standards set by the county in accordance with their local wellness policies. If the county chooses to allow outside foods to be made available for the general student population, they will communicate with parents/guardians' acceptable foods and beverages that meet nutrition and safety standards for classroom snacks and celebrations. Students with special dietary needs and food allergies must be considered at all times when outside foods are provided in a general setting. Schools should operate with the utmost care and caution when allowing outside foods to be provided to students. Counties must use their local wellness policies to identify their plan to accommodate students with special dietary needs and food allergies when choosing to allow outside snacks to be provided. School health teams can serve as resources.

11.4. Students with disabilities who have chronic conditions, including but not limited to asthma, diabetes, gastrointestinal disorders, cardiac disorders, and known food allergies are eligible for a locally developed Individualized Health Care Plan (IHCP) developed by the certified school nurse; a Section 504 Plan; or an Individualized Education Program (IEP) inclusive of a Medical Statement for Special Dietary Needs.

11.5. As directed in Policy 2422.8, all public schools are required to report any reactions resulting in the administration of epinephrine injections and administration of naloxone in their county. Other food safety concerns including contaminants such as drugs, chemicals, microorganisms and unknown substances, allergic reactions, medication incidents, etc. shall also be reported. The incidents shall be reported to the West Virginia Poison Center by calling 1-800-222-1222 after emergency medical services has transported the student or staff member to acute care. The notification should include the name of the student, the student's age and gender, date and the approximate time the incident occurred, symptoms observed, who administered the injection, the name of the school the student attends, a contact telephone number, if appropriate the rationale for administering the injection, the response to the epinephrine administration, the dose of epinephrine administered, and any other necessary elements to provide a complete report for the individual situation. The West Virginia Poison Center will provide the expertise during a potential concern and will work collaboratively with schools and parents/guardians and provide data upon request to the public schools, local boards of education, and annually to the State Superintendent of Schools.

§126-86-12. ACCOUNTABILITY AND COMPLIANCE.

12.1. As required by the Healthy and Hunger-Free Kids Act of 2010, the administrative review process in the NSLP and SBP has been established to utilize a unified accountability system designed to ensure that school food authorities offering school meals comply with program requirements. Additionally, this act requires state agencies to publicly disclose a summary of the administrative review results. These elements are expected to strengthen program integrity through a more robust, effective, and transparent process for monitoring school nutrition programs.

§126-86-13. FEED TO ACHIEVE – INNOVATIVE BREAKFAST DELIVERY STRATEGIES.

13.1. Each county board of education shall establish and operate school nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made available to all students enrolled in the schools of the county in accordance with WVBE standards. All West Virginia public schools are required to collaborate with the OCN to develop strategies and methods to increase the percentage of students participating in the school breakfast and lunch nutrition programs and adopt a delivery system approved by the OCN to ensure that all students are given an opportunity to eat breakfast. These approved systems shall include but are not limited to: Grab-and-Go Breakfasts, Breakfast in the Classroom, or Breakfast After First Period.

§126-86-14. REWARDS AND PENALTIES.

14.1. Counties are prohibited from penalizing students due to unpaid and/or outstanding meal debt. This includes, but is not limited to denial of meals, prohibition of participating in extra-curricular activities, the denial of participation in graduation, and/or the refusal of transcript requests. Students shall not be denied a meal or served an alternative meal as a result of unpaid meal debt. All communication addressing financial matters shall be directed to parents/guardians. Practices, including but not limited to, putting stickers or wristbands on children to remind parents/guardians to pay unpaid fees are prohibited. Schools are prohibited from identifying or stigmatizing students with meal debt or require them to complete chores or work in exchange for meals.

14.2. Food and beverages shall not be offered as a reward and/or used as a means of punishment or disciplinary action for any student during the school day.

§126-86-15. WEST VIRGINIA DEPARTMENT OF EDUCATION NUTRITION ADVISORY COUNCIL.

15.1. The WVDE Nutrition Advisory Council, comprised of state and local administrators, educators, health professionals, food service personnel, and lay citizens, will remain apprised of current research findings in nutrition and assessing potential implications of findings for program development and implementation.

§126-86-16. SEVERABILITY.

16.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule.

WVBE Policy 4350

**Procedures for the Collection,
Maintenance and Disclosure of Student
Information**

**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

**SERIES 94
PROCEDURES FOR THE COLLECTION, MAINTENANCE AND DISCLOSURE OF STUDENT DATA (4350)**

§126-94-1. General.

1.1. Scope. -- These procedures are applicable to all education agencies and institutions that are under the general supervision of the West Virginia Board of Education (WVBE).

1.2. Authority. -- W. Va. Constitution, Article XII, Section 2; W. Va. Code § 18-2-5; the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99); the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400); the Every Student Succeeds Act (20 U.S.C. § 6301 et seq.); the National Defense Authorization Act for the Fiscal Year 2002 (Public Law 107-107); and their respective regulations.

1.3. Filing Date. -- September 8, 2016.

1.4. Effective Date. -- October 11, 2016.

1.5. Repeal of Former Rule. -- This procedural rule amends W. Va. 126CSR94, West Virginia Board of Education Policy 4350, "Procedures for the Collection, Maintenance and Disclosure of Student Data", filed March 12, 2015 and effective April 13, 2015.

§126-94-2. Purpose.

2.1. The WVBE is committed to protecting the privacy of student data while also ensuring the availability of high-quality information about West Virginia's public schools to guide and inform local and statewide decision-making. The availability of high-quality information for decision-making is a crucial need, given the WVBE's responsibility to ensure that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. The WVBE is committed to ensuring the security of education records and the privacy of student and family information across the state of West Virginia. To fulfill its commitments and meet the information needs of stakeholders, the WVBE establishes standards and procedures to guide agencies and institutions under its general supervision as staff collect and manage information about students. The purpose of these procedures is to establish standards governing the collection, maintenance, disclosure, and final disposition of education data and records and to set forth the conditions governing privacy protections and access rights for parents and students.

§126-94-3. General Responsibilities.

3.1. Responsibilities of the WVBE. The WVBE has primary responsibility for defining and assuring the collection of data elements necessary for assessing the quality, efficiency, and efficacy of the state education system. Given this responsibility, the WVBE shall:

3.1.a. establish, maintain, and make publicly available policies concerning the collection, protection, maintenance, and disposition of student data, including:

3.1.a.1. policies protecting student privacy and outlining parent and student rights of access and control;

3.1.a.2. policies setting guidelines for the destruction, archiving, or other final disposition of student data after an appropriate period of time following the student's graduation or other permanent cessation of enrollment in West Virginia public schools;

3.1.b. monitor compliance with state and federal laws and policies concerning student data privacy and related individual or familial rights;

3.1.c. periodically review elements within the data system to ensure their continued (individual and collective) relevance and comprehensiveness for assessing the quality, efficiency, and efficacy of the state education system and its various programs; and

3.1.d. serve as an advocate for high-quality, timely, accurate, and secure data collection and use.

3.2. Responsibilities of the WVDE. The West Virginia Department of Education (WVDE) has a primary leadership role in defining data elements; developing frameworks and procedures for efficient data collection and reporting; monitoring and advising local education agencies in the collection and maintenance of education data; and assuring the WVBE, the Governor, the Legislature, and the public that education data in the state are accurate, useful, and secure. It is the further responsibility of the WVDE to:

3.2.a. establish, maintain, and make publicly available standards, procedures, and guidance concerning the collection, protection, maintenance, and disposition of student data, including:

3.2.a.1. standards and best practices for quality, accuracy, utility, and security in education data collection and reporting;

3.2.a.2. guidance, plans, and procedures for protecting student data and complying with all relevant state and federal privacy laws and policies, including, but not limited to, FERPA; and

3.2.a.3. procedures and best practices for the destruction, archiving, or other final disposition of student data after an appropriate period of time following the student's graduation or other permanent cessation of enrollment in West Virginia public schools;

3.2.b. maintain, update, and make publicly available the inventory and dictionary of individual student data elements in the student data system, complete with definitions and reasons for inclusion, including, but not limited to, statutory requirements;

3.2.c. assist the WVBE in the review of elements within the data system to ensure their continued (individual and collective) relevance and comprehensiveness for assessing the

quality, efficiency, and efficacy of the state education system and its various programs, and support the addition or exclusion of elements including:

3.2.c.1. releasing for public review reasons for excluding any currently- or historically-collected data elements from future data collections; and

3.2.c.2. releasing for public review and comment any new data elements proposed for inclusion in the student data system, including the purposes and legal authority for inclusion of the new data element;

3.2.d. manage, support, and provide technical assistance for high-quality, timely, accurate, and secure data collection and use throughout the state, including:

3.2.d.1. developing, maintaining, and supporting appropriate data collection and management systems and tools for use at the local level, including, but not limited to, the West Virginia Education Information System (WVEIS) and associated tools and applications;

3.2.d.2. developing, monitoring, and supporting appropriate data collection processes and protocols to be implemented at the local level, including, but not limited to, certified data collections;

3.2.d.3. providing technical assistance and guidance to Regional Education Service Agencies (RESAs), districts, and schools to ensure that data submitted through WVEIS are accurate, complete, and compliant with relevant laws and regulations;

3.2.d.4. maintaining and implementing an appropriate reporting infrastructure for required and ad hoc reports and data requests; and

3.2.d.5. offering outreach, training, and technical assistance to WVDE staff, RESAs, districts, schools, and other entities regarding federal and state requirements respecting the privacy of education records and conditions for disclosure, as well as best practices for data security;

3.2.e. ensure compliance with applicable privacy and security policies and regulations at the state, regional, and local levels through routine monitoring;

3.2.f. ensure that appropriate data are available for different stakeholders to assess the quality, performance, and progress of students and the education system, including:

3.2.f.1. establishing, maintaining, and monitoring implementation of guidelines for granting access to data systems, including WVEIS and education data reporting tools, based on potential users' informational needs and legitimate educational interest in accessing the data; and

3.2.f.2. maintaining and publishing current and historical reports of information required for assessing and determining state, district, and school performance, progress, and accountability;

3.2.g. pursuant to the Student Data Accessibility, Transparency and Accountability Act

(W. Va. Code §18-2-5h, the Student DATA Act), make information about agreements between the WVDE and other state agencies concerning access to student data available to the public, including explanations of:

- 3.2.g.1. the purposes and uses for such agreements; and
- 3.2.g.2. how parents may withdraw their consent for their child(ren)'s information to be made available to other state agencies as detailed in the agreements;
- 3.2.h. develop and implement a detailed plan for managing and maintaining data security within the state's data system and for responding to privacy or security incidents and breaches; and
- 3.2.i. report annually to the WVBE, Governor, Legislature, and public about the state and security of the student data system.

3.3. Responsibilities of RESAs. RESAs provide to districts and schools services and support for areas in which they can best assist the WVBE in providing high-quality education programs. Because the services and support offered by the RESAs include administrative and operations functions, such as operating and maintaining computer information systems for their regions and assisting with the local maintenance of WVEIS (see W. Va. Code §18-2-26), RESAs share responsibility for protecting student data. Given their services and responsibilities, RESAs shall:

- 3.3.a. ensure that staff are familiar with and adhere to all applicable data security and privacy policies including, but not limited to, these procedures; 126CSR41, WVBE Policy 2460, *Educational Purpose and Acceptable Use of Electronic Resources, Technologies and the Internet* (Policy 2460); the Student DATA Act; WVDE's *Data Access and Management Guidance*; FERPA; relevant local policies; and other applicable regulations relating to security and acceptable use of education records and information systems;
- 3.3.b. support necessary computer infrastructure for data collection, management, and security, as appropriate given their responsibilities, including
 - 3.3.b.1. providing training and technical support, as needed, to district and school staff responsible for operating data management and reporting systems, to include WVEIS and ZoomWV;
- 3.3.c. assist the WVDE in the dissemination of training and professional development regarding federal and state requirements respecting the privacy of education records and conditions for disclosure, as well as best practices for data security; and
- 3.3.d. provide technical assistance to districts and schools to ensure that data submitted through WVEIS are accurate, complete, timely, and compliant with relevant laws and regulations.

3.4. Responsibilities of Districts and Schools. Districts and schools bear primary responsibility for collecting, recording, and protecting student data. As front-line leaders of data collection, maintenance, and use in the state education system, it is the responsibility of

districts and schools to:

3.4.a. designate a staff member within the district to serve as the data governance point of contact whose responsibilities will include (a) serving as the primary local expert with regard to data privacy and other data governance issues and (b) maintaining regular contact with WVDE to receive training, information, and updates to support data governance and privacy practices within the district;

3.4.b. ensure that staff are familiar with and adhere to all applicable data security and privacy policies including, but not limited to, these procedures, Policy 2460, the Student DATA Act, WVDE's *Data Access and Management Guidance*, FERPA, relevant local policies, and other applicable regulations relating to security and acceptable use of education records and information systems; in accordance with such regulations, districts and schools will, among other activities:

3.4.b.1. ensure that student data are accessible only to authorized parties with a legitimate educational interest, provided that:

3.4.b.1.A. individuals authorized to access student data on behalf of an educational agency or institution for the purpose of data entry or editing must be older than 18 years of age and must not be currently enrolled as a student in any West Virginia pre-K through grade 12 school, including public and non-public education options;

3.4.b.1.B. all parties authorized to access student data on behalf of an educational agency or institution must have a current data access agreement on file in which they have agreed to their responsibilities with respect to protecting privacy and using data appropriately pursuant to the requirements of all applicable federal, state, and local regulations, including these procedures;

3.4.b.1.C. nothing in this section prevents districts and schools from using appropriate mechanisms to provide parents and eligible students access to review their own or their child(ren)'s individual education records pursuant to these procedures, the Student DATA Act, FERPA, relevant local policies, and other applicable regulations; and

3.4.b.2. ensure that appropriately rigorous protocols and procedures are in place to secure both electronic and physical records, including protocols for terminating access for (a) parties who no longer have a legitimate educational interest, (b) disclose student data, (c) use student data in inappropriate or unauthorized ways, or (d) in other ways violate federal, state, and/or local regulations relating to student data access and privacy;

3.4.b.3. provide annual notification of rights, pursuant to Section 126-94-7;

3.4.b.4. as required by law (Sections 126-94-17 and 126-94-18), obtain consent from parents or eligible students prior to the release of information from students' education records; and

3.4.b.5. immediately respond to any data privacy or security incidents or breaches and report such incidents to the appropriate authorities, including data governance staff at the WVDE, for further response and investigation;

3.4.c. adhere to applicable standards and procedures for data collection and quality assurance and, to the extent possible, implement related best practices as identified by the WVDE, including:

3.4.c.1. ensuring that all required data are entered into WVEIS in a timely and efficient manner and certified or verified in accordance with timelines established by the WVDE;

3.4.c.2. ensuring that all data entered into WVEIS are complete and accurate as of the date of entry; and

3.4.c.3. refraining from the collection or reporting of certain individual student data, as prohibited by the Student DATA Act (W. Va. Code §18-2-5h(d) and (e));

3.4.d. regularly offer and/or encourage staff participation in training, professional development, or informational sessions, including sessions offered by the WVDE, to refresh staff members' knowledge of policies and best practices concerning data collection, privacy, and security.

§126-94-4. Definitions.

4.1. As used in these procedures:

4.1.a. "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.

4.1.b. "Consent" means that (a) 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; (b) 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 (c) the parent understands that the granting of consent is voluntary on the part of the parent.

4.1.c. "Destruction" means purposeful elimination or removal of personal identifiers so that the information is no longer personally identifiable.

4.1.d. "Directory information" includes the following individual student information: student name, address, telephone number, email address, photograph, date and place of birth, major field of study, dates of attendance, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, indication of "graduate" or "non-graduate," degrees and awards received, and the most recent previous educational agency or institution attended.

4.1.e. "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

4.1.f. “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.

4.1.g. “Educational institution” or “educational agency or institution” means any public or private agency or institution under the general supervision of the WVBE.

4.1.h. “Education records” means those records that are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution. The term does not include:

4.1.h.1. Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other individual except a temporary substitute.

4.1.h.2. Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Section 126-94-8.

4.1.h.3. Records relating to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business, relate exclusively to the individual in that individual’s capacity as an employee, and are not available for use for any other purpose. However, 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 are education records and are not excepted.

4.1.h.4. Records relating to an eligible student that are:

4.1.h.4.A. Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or assisting in a paraprofessional capacity;

4.1.h.4.B. Created, maintained, or used only in connection with the provision of treatment to the student; and

4.1.h.4.C. Disclosed only to 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 that are a part of the program of instruction at the educational agency or institution.

4.1.h.5. Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution (e.g., information collected by an educational agency or institution pertaining to the accomplishments of its alumni).

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

4.1.j. “Exceptional student” means a student having been determined to have an exceptionality in accordance with eligibility criteria under W. Va. 126CSR16, WVBE Policy 2419, *Regulations for the Education of Students with Exceptionalities*, (Policy 2419) who receives services under an Individualized Education Program (IEP).

4.1.k. “Financial Aid” means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual’s attendance at an educational agency or institution.

4.1.l. “Institution of post-secondary education” means an institution that provides education to students beyond the level at which secondary education is provided, as determined under state law.

4.1.m. “Parent” includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian.

4.1.n. “Party” means an individual, agency, institution, or organization.

4.1.o. “Personally identifiable” means that the data or information includes, but is not limited to, (a) the name of a student, the student’s parent, or other family member, (b) the address of the student or student’s family, (c) a personal identifier such as the student’s social security number, or student number, (d) a list of personal characteristics that would make the student’s identity easily traceable, or (e) other information that would make the student’s identity easily traceable.

4.1.p. “Record” means any information or data recorded in any medium including, but not limited to: handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.

4.1.q. “Secretary” means the Secretary of the U.S. Department of Education or an official or employee of the U.S. Department of Education acting for the Secretary under a delegation of authority.

4.1.r. “Student” includes any individual who is or has been in attendance at an educational agency or institution, and regarding whom the educational agency or institution collects, maintains, or discloses educational records.

§126-94-5. Parent Rights.

5.1. An educational agency or institution shall give full rights to either parent unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation or custody, that specifically revokes those rights.

§126-94-6. Student Rights.

6.1. 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 parents transfer to the student.

6.2. This policy does not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

6.3. If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission but has never been in attendance.

§126-94-7. Annual Notification of Rights.

7.1. Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under this policy.

7.2. The notice must inform parents or eligible students that they have the right to:

7.2.a. Inspect and review the student's education records;

7.2.b. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

7.2.c. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that Section 126-94-18 authorizes disclosure without consent; and

7.2.d. File with the WVDE or the U.S. Department of Education a complaint as described in Section 126-94-29 concerning alleged failures by the educational agency or institution to comply with the requirements of this policy.

7.3. The notice must include all of the following:

7.3.a. The procedure for exercising the right to inspect and review education records;

7.3.b. The procedure for requesting amendment of records under Section 126-94-13;

7.3.c. A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest;

7.3.d. Types of information designated as directory information and procedures in Section 126-94-25 for refusing to allow information to be so designated; and

7.3.e. The procedure for disclosure of education records without consent to officials of another school district in which the student seeks to enroll.

7.4. An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

7.4.a. An educational agency or institution shall effectively notify parents or eligible students who are disabled.

7.4.b. An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

7.5. Parents of students with exceptionalities, and eligible students who are exceptional, shall receive notice of rights under IDEA, included in the procedural safeguards notice.

§126-94-8. Law Enforcement Units.

8.1. Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to:

8.1.a. Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or

8.1.b. Maintain the physical security and safety of the agency or institution

8.2. A component of an education agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

8.3. Records of a law enforcement unit means those records, files, documents, and other materials that are:

8.3.a. Created by a law enforcement unit;

8.3.b. Created for a law enforcement purpose; and

8.3.c. Maintained by the law enforcement unit.

8.4. Records of a law enforcement unit does not mean:

8.4.a. Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

8.4.b. Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

8.5. Nothing in this policy prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate

a possible violation of, or to enforce, any local, state, or federal law.

8.5.a. Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to this policy including the disclosure provisions of Section 126-94-17 while in the possession of the law enforcement unit.

8.5.b. Disclosure by an educational agency or institution of its law enforcement unit records is neither required nor prohibited by this policy.

§126-94-9. Right to Inspect and Review Education Records.

9.1. Each educational agency or institution or state educational agency (SEA) and its components shall permit the parent or an eligible student to inspect and review the education records of the student.

9.2. The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 30 days after it has received the request.

9.3. The educational agency or institution, or SEA or its component, shall respond to reasonable requests for explanations and interpretations of the records.

9.4. When a request is being made regarding records of an exceptional student:

9.4.a. The agency shall comply with Section 126-94-9.2 and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the student, or the provision of free appropriate public education to the student;

9.4.b. The right to inspect and review education records of an exceptional student includes the right to have a representative of the parent inspect and review the records; and

9.4.c. The participating agency shall provide parents, upon request, a list of the types and locations of education records collected, maintained, or used by the agency.

9.5. If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall:

9.5.a. Provide the parent or eligible student with a copy of the records requested; or

9.5.b. Make other arrangements for the parent or eligible student to inspect and review the requested records.

9.6. The educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

9.7. While an educational agency or institution is not required to give an eligible student

access to treatment records as defined in Section 126-94-4.1.h.4., the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

§126-94-10. Fees.

10.1. An educational agency or institution may charge a fee for copies of educational records, which are made for the parent or eligible student, provided that the fee does not effectively prevent the parent and/or eligible student from exercising the right to inspect and review those records.

10.2. An educational agency or institution may not charge a fee to search for or retrieve the education records of a student.

§126-94-11. Limitations on Right to Inspect and Review Education Records.

11.1. 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 about that student.

11.2. A post-secondary institution does not have to permit a student to inspect and review education records that are:

11.2.a. Financial records, including any information those records contain, of his or her parents;

11.2.b. Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

11.2.c. Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if the student has waived his or her right to inspect and review these letters and statements and the letters and statements are related to the student's admission to an educational institution, application for employment, or receipt of an honor or honorary recognition. Provided that a waiver is valid only if:

11.2.c.1. The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

11.2.c.2. The waiver is made in writing and signed by the student, regardless of age.

11.2.d. If a student has waived his or her rights under this section, the educational institution shall:

11.2.d.1. Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

11.2.d.2. Use the letters and statements of recommendation only for the purpose for which they were intended.

11.2.e. A waiver under this section may be revoked in writing with respect to any actions occurring after the revocation.

§126-94-12. Maintenance and Destruction of Education Records.

12.1. An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

12.1.a. The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under Section 126-94-9;

12.1.b. Explanations placed in the education record under Section 126-94-14 shall be maintained as long as the record or the contested portion is maintained;

12.1.c. The record of access required under Section 126-94-20 shall be maintained for as long as the education record to which it pertains is maintained; and

12.1.d. For records collected for students with exceptionalities under Policy 2419: (a) the public agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child; (b) the information must be destroyed at the request of the parents; (c) however, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

12.2. The following guidelines and requirements apply to the length of time and special consideration for maintaining student records:

12.2.a. Directory information may be maintained in perpetuity;

12.2.b. Academic grades and attendance records may be maintained in perpetuity;

12.2.c. Records to verify implementation of federally funded programs and services and to demonstrate compliance with program requirements must be maintained for five years after the activity is completed;

12.2.d. Other personally identifiable data which is no longer needed to provide education services may be destroyed;

12.2.e. Parents and eligible students must be informed through public notice of any timelines established by the educational agency or institution for maintenance and destruction of student records; and

12.2.f. Files must be maintained in a secured location. Inclusive in securing files, electronic files must be protected through the use of individual user identification and/or passwords. When user identification and/or passwords have been established, an individual is permitted to use only his or her designated identification and password to gain access to education records.

§126-94-13. Request to Amend Education Records.

13.1. The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate, misleading, or violates the privacy rights of the student may request the educational agency or institution to amend the record.

13.2. 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 after it receives the request.

13.3. If the educational agency or institution decides not to amend the record as requested, it shall inform the parent of the student or the eligible student of the refusal and of the right to a hearing under Section 126-94-14.

§126-94-14. Right to a Hearing.

14.1. An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of a student's education records on the grounds that information contained in the education records of the student is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.

14.2. If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

14.3. If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting on the contested information in the record and/or stating why he or she disagrees with the decision of the agency or institution.

14.4. Any explanation placed in the education records of the student under Section 126-94-14.3 shall:

14.4.a. Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution; and

14.4.b. Be disclosed if the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party.

§126-94-15. Conduct of the Hearing.

15.1. The hearing required to be held by Section 126-94-14.1 shall be conducted according to procedures that shall include at least the following elements:

15.1.a. The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request;

15.1.b. The parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

15.1.c. The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

15.1.d. 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 126-94-13, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

15.1.e. The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

15.1.f. The decision of the 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 reason(s) for the decision.

§126-94-16. Disclosure of Student Education Records to Certain Parties.

16.1. Any and all public reports and/or releases of student data when necessary to fulfill the requirements of state and/or federal laws, rules, and regulations will be presented in aggregate.

16.2. Student education records will never be authorized to be sold.

16.3. Student education records, including personally identifiable information, will not be shared with any federal government agency. Pursuant to the requirements of Section 126-94-23, limited information may be provided to offices in specific situations to comply with federal audits or evaluations of federal or state supported education programs, for the enforcement of or compliance with federal legal requirements which relate to these programs, or to provide for the health/safety needs of students.

16.4. The WVDE may grant research requests for educational purposes, given the following circumstances:

16.4.a. Researchers must complete the WVDE's multi-step process to submit any and all research requests.

16.4.b. The WVDE Research Review Committee will review all requests and grant approval only if all four of the following criteria are satisfied:

16.4.b.1. the proposed research study meets specific criteria related to scientific merit and feasibility;

16.4.b.2. the proposed research study is research the WVDE would have otherwise conducted itself;

16.4.b.3. appropriate privacy, confidentiality, and security are ensured throughout the proposed research plan; and

16.4.b.4. all necessary legal documentation is signed and in place prior to the start of any work.

16.4.c. All researchers authorized to conduct studies on behalf of the WVDE must sign a comprehensive Data Disclosure Agreement that embodies the relevant security components and includes 11 major sections, as follows:

16.4.c.1. specific data elements provided for the purposes of the study as described in the Research Proposal Application;

16.4.c.2. information subject to the agreement;

16.4.c.3. individuals who may have access to the data;

16.4.c.4. limitations on disclosure;

16.4.c.5. procedural requirements;

16.4.c.6. security requirements;

16.4.c.7. termination of the agreement;

16.4.c.8. miscellaneous provisions;

16.4.c.9. signature page;

16.4.c.10. Research Proposal Application; and

16.4.c.11. acknowledgement of and agreement with confidentiality requirements

16.4.d. The Data Disclosure Agreement is a legally binding document that authorizes the researcher, as an agent of the WVDE, to conduct research on its behalf and which: (a) details the researcher's responsibilities with respect to protecting the privacy of the students or staff whose information are being provided as part of the study; (b) includes a signed Acknowledgement of Confidentiality Requirements for all individuals who will have access to the data provided; (c) is an assurance from the researcher that he or she will not use, reveal, or in any other manner disclose any personally identifiable information furnished, acquired, retrieved, derived, or assembled by themselves or others for any purpose other than those purposes specified in the Research Proposal Application for the research project; and (d) is an assurance from the researcher that he or she must and will comply with FERPA and these procedures.

16.4.e. The release of student data to researchers outside the agency is considered a loan of data (i.e., the recipients do not have ownership of the data).

16.4.f. Researchers are required to validate destruction of the data through the submission of the Data Destruction Assurance Form once the research is completed as part of their signed legal agreements.

16.5. Pursuant to FERPA, personally identifiable information about students may be released only to researchers authorized by the WVDE to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction with the proper legal documentation in place, including contracts, memoranda of understanding, and statements of nondisclosure and confidentiality.

16.6. Contractors, consultants, and partnering entities will never be authorized to sell or share student information.

16.7. Contractors, consultants, and partnering entities will only be provided with student information pursuant to their specific contracts, memoranda of understanding, and statements of nondisclosure and confidentiality as determined by the purpose for which the WVDE, RESAs, districts, or schools have contracted their services.

16.8. Contracts, memoranda of understanding, and statements of nondisclosure and confidentiality must require compliance with FERPA and these procedures, thereby prohibiting sale, redisclosure, or alternate use of the student information.

§126-94-17. Prior Consent for Disclosure Required.

17.1. An educational agency or institution shall obtain 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 126-94-18.

17.2. 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.

17.3. The written consent required by Section 126-94-17.1 must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

17.3.a. A specification of the records to be disclosed;

17.3.b. The purpose of the disclosure; and

17.3.c. The party or class of parties to whom the disclosure may be made.

17.4. If a parent or eligible student so requests, the educational agency or institution shall provide a copy of the records disclosed.

17.5. If the parent of a student who is not an eligible student so requests, the educational agency or institution shall provide the student with a copy of the records disclosed.

§126-94-18. Prior Consent for Disclosure Not Required.

18.1. 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:

18.1.a. To other school officials, including teachers, within the educational agency or institution who have been determined by the agency or institution to have legitimate educational interest; and

18.1.b. To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements of Section 126-94-22.

18.1.c. Subject to the conditions set forth in Section 126-94-23, to authorized representatives of:

18.1.c.1. The Comptroller General of the United States;

18.1.c.2. The Secretary of the U.S. Department of Education (Secretary); or

18.1.c.3. State and local educational authorities.

18.1.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:

18.1.d.1. to determine the eligibility of the student for financial aid;

18.1.d.2. to determine the amount of the financial aid;

18.1.d.3. to determine the conditions which will be imposed regarding the financial aid; and

18.1.d.4. to enforce the terms or conditions of the financial aid.

18.1.e. To state and local officials or authorities to whom this information is specifically:

18.1.e.1. Allowed to be reported or disclosed pursuant to state statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

18.1.e.2. Allowed to be reported or disclosed pursuant to state statute adopted after November 19, 1974, subject to the requirements of Section 126-94-26.

18.1.f. To organizations conducting studies for, or on behalf of, educational agencies or institutions as described in Section 126-94-16 for the purpose of: (a) developing, validating or administering predictive tests; (b) administering student aid programs; or (c) improving

instruction; provided, that the studies are conducted in a manner that 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.

18.1.g. To accrediting organizations in order to carry out their accrediting functions.

18.1.h. To parents of a dependent student.

18.1.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, so that the parent or eligible student may seek protective action; unless the disclosure is in compliance with:

18.1.i.1. A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

18.1.i.2. Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

18.1.i.3. A judicial order or subpoena issued in a court proceeding involving child abuse and neglect or dependency matters in which the parent of the student is a party.

18.1.i.4. If the educational agency or institution initiates legal action against a parent or student and has complied with Section 126-94-18.1.i, it may disclose education records that are relevant to the action to the court without a court order or subpoena.

18.1.j. To appropriate parties in health or safety emergency subject to the conditions set forth in Section 126-94-24.

18.1.k. To an agency caseworker or other representative of a state or local child welfare agency who has the right to access a student’s case plan when such agency or organization is legally responsible in accordance with state law for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student’s education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the state laws and regulations applicable to protecting the confidentiality of a student’s education records.

18.1.l. The disclosure is information the educational agency or institution has designated as “directory information”.

18.1.m. The disclosure is to the parent of a student who is not an eligible student or to the student.

18.1.n. The disclosure is to an alleged victim of any crime of violence, as that term is defined in 18 U.S.C. § 16, of the results of any disciplinary proceeding conducted by an institution of post-secondary education against the alleged perpetrator of that crime with respect to that crime.

18.2. This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under this section, with the exception that parents of a student who is not an eligible student and the student must have access.

18.3. For records of special education students, each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may access personally identifiable information.

§126-94-19. Disciplinary Information.

19.1. If a student transfers to another school in the state, the principal of the school from which the student transfers shall provide an official record of any disciplinary action taken against the student to the principal of the school to which the student transfers, (W. Va. Code §18A-5-1a) subject to requirements of Section 126-94-22.

19.2. The educational agency includes in the records of a student with a disability under Policy 2419 a statement of any current or previous disciplinary action that has been taken against the student and transmits the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of non-disabled students.

19.2.a. The statement may include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information related to the safety of the student and other individuals involved with the student.

19.2.b. If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.

19.3. A public agency reporting a crime committed by a student with a disability under Policy 2419 shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime, but only to the extent permitted by this policy's provisions regarding disclosure of education records.

§126-94-20. Record of Disclosure Required to be Maintained.

20.1. An educational agency or institution shall for each request for access to 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 that indicates:

20.1.a. The parties who have requested or obtained personally identifiable information from the education records of the student;

20.1.b. The date access was given; and

20.1.c. The legitimate interest these parties had in requesting or obtaining the information.

20.2. If an educational agency or institution discloses information with the understanding that the party receiving the information may make further disclosures, the record of disclosure must include the names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution and the legitimate educational interests each of the additional parties has in requesting the information.

20.3. Section 126-94-20.1 does not apply to: (a) disclosures to a parent of a student or an eligible student, (b) 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, (c) disclosures to school officials, (d) disclosures of directory information, or (e) disclosures to a party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

20.4. The record of disclosures may be inspected:

20.4.a. By the parent of the student or the eligible student;

20.4.b. By the school official and his or her assistants who are responsible for the custody of the records; and

20.4.c. For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in Section 126-94-18.1.a. and Section 126-94-18.1.c.

§126-94-21. Limitation on Redisclosure.

21.1. 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:

21.1.a. 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.

21.1.b. An educational agency or institution may disclose personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if the parties meet the requirements of Section 126-94-18 and required records of disclosure under Section 126-94-20.

21.2. Section 126-94-21.1 does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas, to disclosures of directory information or to disclosures to a parent or student. Except for these disclosures, an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

21.3. If the WVDE or the Family Policy Compliance Office of the U.S. Department of Education determines that a third party improperly rediscloses personally identifiable information from education records, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

21.4. Researchers, contractors, and other parties who violate the terms of the contracts, memoranda of understanding, and/or statements of nondisclosure and confidentiality with respect to the redisclosure or sale of student education records, including personally identifiable information, will be subject to legal action.

§126-94-22. Conditions for Disclosure to Officials of Other Schools and School Systems.

22.1. An educational agency or institution transferring the education records of a student to officials of another school, school system or institution of post-secondary education where the student seeks to enroll shall:

22.1.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, unless:

22.1.a.1. The transfer of records is initiated by the parent or eligible student at the sending agency or institution, or

22.1.a.2. The agency or institution includes in its annual notice that it forwards education records on request to other agencies or institutions in which a student seeks or intends to enroll;

22.1.b. Provide the parent of the student or the eligible student, upon request, a copy of the record that was transferred; and

22.1.c. Provide the parent of the student or the eligible student, upon request, an opportunity for a hearing under these procedures.

22.2. 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 Section 126-94-22.1.

§126-94-23. Disclosure to Certain Federal and State Officials for Federal Program Purposes.

23.1. The Comptroller General, Secretary or state and local educational authorities may have access to education records in connection with the audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements which relate to these programs.

23.2. Except when written consent of the parent of a student or an eligible student has been obtained for disclosure, or when the collection of personally identifiable information is specifically authorized by federal or state law, any information collected under Section 126-94-23.1 shall be protected in a manner that does 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.

§126-94-24. Conditions for Disclosure in Health and Safety Emergencies.

24.1. 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.

24.2. 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:

24.2.a. The seriousness of the threat to the health or safety of the student or other individuals;

24.2.b. The need for the information to respond to the emergency;

24.2.c. Whether the parties to whom the information is disclosed are in a position to address the emergency; and

24.2.d. The extent to which time is of the essence in addressing the emergency.

24.3. Nothing in this policy shall prevent an educational agency or institution from:

24.3.a. Including in the educational records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

24.3.b. Disclosing appropriate information maintained under Section 126-94-24.3.a. to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

24.3.c. Disclosing appropriate information maintained under Section 126-94-24.3.a. to teachers and school officials in other schools who have been determined to have legitimate educational interests in behavior of the student.

24.4. Sections 126-94-24.1 and 126-94-24.3 shall be strictly construed.

§126-94-25. Conditions for Disclosure of Directory Information.

25.1. 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 it has given notice that information has been designated as directory information.

25.2. 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 Section 126-94-25.3.

25.3. In order to designate directory information, an educational agency or institution shall give public notice of the following:

25.3.a. The categories of personally identifiable information the institution has designated as directory information;

25.3.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, including the right of the parent to refuse to permit the designation of names, addresses, and telephone numbers of their children as directory information for purposes of providing the information to military recruiters as set forth in Section 126-94-32; and

25.3.c. The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

25.4. All county boards of education shall, at a minimum, establish that the names, addresses, and telephone numbers of secondary school students are designated as directory information for the purposes of providing the information to military recruiters as set forth in Section 126-94-32. Further all county boards of education shall, at a minimum, establish that a student's name, address, grade level, date of birth, and photograph be designated and maintained as directory information for each student.

25.5. Once the county board of education establishes directory information, it shall provide access to established directory information to any person or group which makes students aware of educational, occupational, and career opportunities available in the armed services.

25.6. The county board of education may provide access to established directory information to other persons or groups as determined by board action.

§126-94-26. Juvenile Justice System.

26.1. If reporting or disclosure allowed by state statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Section 126-94-18.1.e.

26.2. The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent of

the student.

§126-94-27. Safeguards for Students with Exceptionalities, Information Collected under Policy 2419.

27.1. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

27.2. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information collected under Policy 2419 and IDEA.

27.3. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under this policy and Policy 2419.

27.4. Each participating agency shall maintain for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information of identified special education students.

27.5. A complaint may be filed with the WVDE office charged with overseeing and administering special education programs, if it is alleged that the confidentiality of personally identifiable information regarding a student with an exceptionality in accordance with the requirements of this policy and Policy 2419 has been violated. This is in addition to the right to file a complaint with appropriate officials at the WVDE and/or the U.S. Department of Education, as described in Section 126-94-28.

§126-94-28. Enforcement Authority.

28.1. The state superintendent of schools designates data governance staff at the WVDE to:

28.1.a. provide guidance and technical assistance to all educational agencies and institutions to ensure understanding and compliance with applicable state and federal privacy regulations and guidance, to include these procedures (126CSR94); the Student DATA Act; WVDE's *Data Access and Management Guidance*; FERPA; and other applicable regulations;

28.1.b. provide regular training to key staff at educational agencies and institutions within the state to ensure understanding of data privacy requirements and responsibilities under applicable state and federal regulations;

28.1.c. act as the primary review entity in the state to monitor and enforce privacy regulations with respect to all programs for which the WVDE has administrative responsibility, including:

28.1.c.1. conducting routine audits to ensure ongoing compliance with laws and regulations and state security policies and procedures as required by the Student DATA Act;

28.1.d. investigate, process, and review complaints and violations related to student data privacy under these procedures and other applicable laws and regulations;

28.1.d.1. as warranted by investigations or reviews conducted in accordance with these procedures, and as deemed appropriate by the state superintendent of schools or designee, refer allegations of FERPA violations to the Family Policy Compliance Office, U.S. Department of Education, for federal review; and

28.1.e. prepare such reports and publications as may be necessary and expedient to monitor and ensure compliance with applicable laws regarding student data collection, management, maintenance, and disclosure.

28.2. WVDE data governance staff may require educational agencies or institutions to submit reports or other evidence containing information necessary to resolve complaints of privacy violations under applicable laws and regulations.

28.3. For issues relating to compliance with federal laws and regulations, the Secretary designates:

28.3.a. the Family Policy Compliance Office to provide technical assistance to ensure compliance with FERPA and applicable federal regulations and to investigate and review complaints and violation under FERPA

28.3.b. the Office of Administrative Law Judges to act as the Review Board required under FERPA to enforce it with respect to all “applicable programs” as defined in the General Education Provisions Act, 20 U.S.C. § 1221(c).

28.4. The Family Policy Compliance Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under FERPA and applicable federal regulations.

28.4.a. Such reports may be in addition to information requested by WVDE personnel for investigating complaints at the state level.

§126-94-29. Complaint Procedure.

29.1. A parent, eligible student, or school official may file a complaint with WVDE data governance staff at regarding an alleged violation under applicable privacy regulations. Complaints may be submitted via email (ZoomWV@help.k12.wv.us), fax (304-558-1613), or postal mail (WVDE Data Governance Team, 1900 Kanawha Boulevard East, Building 6, Charleston, WV 25305-0330).

29.2. A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of applicable regulations has occurred. The complaint shall be submitted on the prescribed form and signed by the person making the complaint.

29.3. WVDE personnel will investigate each timely complaint to determine whether the educational agency or institution, contractor, researcher, or other party has failed to comply with applicable privacy regulations.

29.3.a. A timely complaint is defined as an allegation of a violation of applicable student data privacy regulations that is submitted to the WVDE within 180 days of the alleged

violation or the date that the complainant knew or reasonably should have known of the alleged violation.

29.3.b. This time limit may be extended if the complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limit, or for other reasons considered sufficient by the WVDE data governance staff.

29.4. If a complaint does not meet the requirements of Section 126-94-29.2 or Section 126-94-29.3, the WVDE will notify the complainant that no investigation will be initiated.

29.4.a. If appropriate, a complainant may be referred to other avenues of relief more suitable to his or her stated concerns, such as the citizens' conflict resolution process (126CSR188, WVBE Policy 7211, *Conflict Resolution Process for Citizens*) or the system for resolving disputes related to the implementation of state and federal special education laws and regulations (as described in Policy 2419).

29.5. If a complaint is determined to have merit, the WVDE data governance staff will begin an investigation and will notify the educational agency or institution, contractor, researcher, or other party suspected to be in violation, and the complainant accordingly. Notices will:

29.5.a. include the substance and key facts of the alleged violation;

29.5.b. request a response from the educational agency or institution, contractor, researcher, or other party via telephone or web-enabled conference, email, or formal letter, dependent on the severity of the allegation; and

29.5.c. insofar as possible, respect the confidentiality of the complainant.

29.6. WVDE data governance staff, in conjunction with other WVDE personnel, as appropriate, will review all available evidence pertaining to the allegation, including the complaint and the response, and may request additional information or evidence from the parties.

29.7. Following the investigation, WVDE data governance staff will provide to the complainant and the respondent a written notification of the findings and the relevant evidence forming the basis for the findings. Telephone, email, or web-enabled conference notification may also accompany notifications to respondents, as appropriate.

29.8. If the WVDE personnel reviewing the complaint find that the educational agency or institution, contractor, researcher, or other party did not comply with applicable regulations, the notice under Section 126-94-29.7 will:

29.8.a. include specific instructions that will enable the party to comply;

29.8.b. offer specific training, coaching, resources, and other technical assistance from the WVDE to support compliance;

29.8.c. provide a reasonable period of time, given all the circumstances of the situation, during which the party may work toward voluntary compliance; and

29.8.d. establish interim dates within the period of time established under Section 126-94-29.8.c. for reporting and verifying progress toward voluntary compliance.

29.9. If the WVDE personnel reviewing the complaint find that the educational agency or institution, contractor, researcher, or other party has willfully disregarded or exhibited a pattern of noncompliance with FERPA or other applicable federal regulations, the WVDE may refer the issue to the Family Policy Compliance Office, U.S. Department of Education, for investigation and enforcement.

29.10. A parent or eligible student may also file a written complaint with the Family Policy Compliance Office regarding an alleged violation under FERPA and applicable federal regulations. Complaint forms may be obtained online at <http://familypolicy.ed.gov/complaint-form> or by calling 202-260-3887. Completed forms should be emailed to FERPA.Complaints@ed.gov or mailed to Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-8520.

29.11. A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA or applicable federal regulations has occurred.

29.12. All resultant reviews or investigations, notifications of findings, and instructions for remedying noncompliance will adhere to the standard procedures and practices of the Family Policy Compliance Office, as established by FERPA.

§126-94-30. Enforcement Procedures.

30.1. If an educational agency or institution, contractor, researcher, or other party fully complies during the period of time established under Section 126-94-29.8.c, WVDE data governance staff will provide a notice of compliance after reports and/or verification of voluntary compliance have been confirmed by WVDE personnel.

30.2. If an educational agency or institution, contractor, researcher, or other party does not comply during the period of time established under Section 126-94-29.8.c, the WVDE, may, in accordance with state laws and policies:

30.2.a. file a report with the West Virginia Office of Education Performance Audits (OEPA) detailing an educational agency or institution's failure to comply with mandatory privacy regulations and recommending that the OEPA consider such failure in reviews of the agency or institution's performance;

30.2.b. include an indicator on school performance score cards designating noncompliance with privacy regulations for the year in which the violation(s) occurred and until the agency brings itself into compliance

30.2.c. seek legal action against contractors, researchers, or other parties found to be in violation of contract provisions, or nondisclosure and confidentiality agreements;

30.2.d. refer the issue to the state superintendent of schools for consideration of potential action against a teaching license for egregious or repeated violations; and/or

30.2.e. refer the issue to the Family Policy Compliance Office, as applicable, for investigation and enforcement.

30.3. If the Family Policy Compliance Office determines that an educational agency or institution has failed to comply with FERPA and/or other applicable federal regulations, failure to comply voluntarily in a timely manner may result in repercussions from the Secretary, in accordance with the General Education Provisions Act, 20 U.S.C. § 1234:

30.3.a. withholding further payments under any applicable program;

30.3.b. issuance of a complaint to compel compliance through a cease and desist order;
or

30.3.c. termination of eligibility to receive funding under any applicable program.

§126-94-31. Collection and Use of Student Social Security Numbers.

31.1. A social security number is personally identifiable information and, therefore, its use must comply with the provisions of this policy, FERPA, and W. Va. Code §18-2-5f.

31.1.a. No public or private elementary or secondary school shall display any student's social security number for identification purposes on class rosters or other lists provided to teachers, on student identification cards, in student directories or other listings, on public postings or listings of grades, or for any other public identification purpose unless specifically authorized or required by law.

31.1.a.1. Compliance will be required of Exemption B private, parochial, or other approved schools for county board of education approval, W. Va. Code §18-8-1(b).

31.1.b. The student social security number may be used for internal record keeping purposes or studies.

31.1.c. The student social security number or alternative number is required for enrollment or attendance in public schools.

31.1.c.1. The county board of education must request from the parent, guardian, or responsible person the social security number of each child who is currently enrolled in the county school system.

31.1.c.2. Prior to admittance to a public school in the state, the county board of education must request from the parent, guardian, or responsible person the social security number of each child who is to be enrolled.

31.1.c.3. The county board of education must inform the parent, guardian, or other responsible person that, if he or she declines to provide the student social security number, the county board of education will assign the student an alternate nine-digit number as designated by the WVBE.

31.1.d. For any student who is attending a public school and for whom a social security number has not been provided, the county board shall make a request annually to the parent, guardian, or other responsible person to furnish the social security number.

§126-94-32. Release of List of High School Students to Military Recruiters.

32.1. Pursuant to federal law, 20 U.S.C. § 7908, *Armed Forces Recruiter Access to Student and Student Recruiting Information*, and 10 U.S.C. § 503, *Enlistments: Recruiting Campaigns; Compilation of Directory Information*, all county boards of education are required to provide military recruiters, upon request, with the names addresses and telephone numbers of secondary school students unless the parents/guardians have advised the county board of education that they do not want their students' information disclosed without prior written consent as set forth in Section 126-94-25.

32.2. Each county board of education shall provide military recruiters the same access to secondary school students as is provided generally to post-secondary educational institutions or to prospective employers of those students.

§126-94-33. Severability.

33.1. If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this rule.

WVBE Policy 4350
**Procedures for the Collection,
Maintenance and Disclosure of Student
Data**

**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

**SERIES 94
PROCEDURES FOR THE COLLECTION, MAINTENANCE AND DISCLOSURE OF STUDENT DATA (4350)**

§126-94-1. General.

1.1. Scope. -- These procedures are applicable to all education agencies and institutions that are under the general supervision of the West Virginia Board of Education (WVBE).

1.2. Authority. -- W. Va. Constitution, Article XII, Section 2; W. Va. Code § 18-2-5; the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99); the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400); the Every Student Succeeds Act (20 U.S.C. § 6301 et seq.); the National Defense Authorization Act for the Fiscal Year 2002 (Public Law 107-107); and their respective regulations.

1.3. Filing Date. -- September 8, 2016.

1.4. Effective Date. -- October 11, 2016.

1.5. Repeal of Former Rule. -- This procedural rule amends W. Va. 126CSR94, West Virginia Board of Education Policy 4350, "Procedures for the Collection, Maintenance and Disclosure of Student Data", filed March 12, 2015 and effective April 13, 2015.

§126-94-2. Purpose.

2.1. The WVBE is committed to protecting the privacy of student data while also ensuring the availability of high-quality information about West Virginia's public schools to guide and inform local and statewide decision-making. The availability of high-quality information for decision-making is a crucial need, given the WVBE's responsibility to ensure that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. The WVBE is committed to ensuring the security of education records and the privacy of student and family information across the state of West Virginia. To fulfill its commitments and meet the information needs of stakeholders, the WVBE establishes standards and procedures to guide agencies and institutions under its general supervision as staff collect and manage information about students. The purpose of these procedures is to establish standards governing the collection, maintenance, disclosure, and final disposition of education data and records and to set forth the conditions governing privacy protections and access rights for parents and students.

§126-94-3. General Responsibilities.

3.1. Responsibilities of the WVBE. The WVBE has primary responsibility for defining and assuring the collection of data elements necessary for assessing the quality, efficiency, and efficacy of the state education system. Given this responsibility, the WVBE shall:

3.1.a. establish, maintain, and make publicly available policies concerning the collection, protection, maintenance, and disposition of student data, including:

3.1.a.1. policies protecting student privacy and outlining parent and student rights of access and control;

3.1.a.2. policies setting guidelines for the destruction, archiving, or other final disposition of student data after an appropriate period of time following the student's graduation or other permanent cessation of enrollment in West Virginia public schools;

3.1.b. monitor compliance with state and federal laws and policies concerning student data privacy and related individual or familial rights;

3.1.c. periodically review elements within the data system to ensure their continued (individual and collective) relevance and comprehensiveness for assessing the quality, efficiency, and efficacy of the state education system and its various programs; and

3.1.d. serve as an advocate for high-quality, timely, accurate, and secure data collection and use.

3.2. Responsibilities of the WVDE. The West Virginia Department of Education (WVDE) has a primary leadership role in defining data elements; developing frameworks and procedures for efficient data collection and reporting; monitoring and advising local education agencies in the collection and maintenance of education data; and assuring the WVBE, the Governor, the Legislature, and the public that education data in the state are accurate, useful, and secure. It is the further responsibility of the WVDE to:

3.2.a. establish, maintain, and make publicly available standards, procedures, and guidance concerning the collection, protection, maintenance, and disposition of student data, including:

3.2.a.1. standards and best practices for quality, accuracy, utility, and security in education data collection and reporting;

3.2.a.2. guidance, plans, and procedures for protecting student data and complying with all relevant state and federal privacy laws and policies, including, but not limited to, FERPA; and

3.2.a.3. procedures and best practices for the destruction, archiving, or other final disposition of student data after an appropriate period of time following the student's graduation or other permanent cessation of enrollment in West Virginia public schools;

3.2.b. maintain, update, and make publicly available the inventory and dictionary of individual student data elements in the student data system, complete with definitions and reasons for inclusion, including, but not limited to, statutory requirements;

3.2.c. assist the WVBE in the review of elements within the data system to ensure their continued (individual and collective) relevance and comprehensiveness for assessing the quality, efficiency, and efficacy of the state education system and its various programs, and

support the addition or exclusion of elements including:

3.2.c.1. releasing for public review reasons for excluding any currently- or historically-collected data elements from future data collections; and

3.2.c.2. releasing for public review and comment any new data elements proposed for inclusion in the student data system, including the purposes and legal authority for inclusion of the new data element;

3.2.d. manage, support, and provide technical assistance for high-quality, timely, accurate, and secure data collection and use throughout the state, including:

3.2.d.1. developing, maintaining, and supporting appropriate data collection and management systems and tools for use at the local level, including, but not limited to, the West Virginia Education Information System (WVEIS) and associated tools and applications;

3.2.d.2. developing, monitoring, and supporting appropriate data collection processes and protocols to be implemented at the local level, including, but not limited to, certified data collections;

3.2.d.3. providing technical assistance and guidance to Regional Education Service Agencies (RESAs), districts, and schools to ensure that data submitted through WVEIS are accurate, complete, and compliant with relevant laws and regulations;

3.2.d.4. maintaining and implementing an appropriate reporting infrastructure for required and ad hoc reports and data requests; and

3.2.d.5. offering outreach, training, and technical assistance to WVDE staff, RESAs, districts, schools, and other entities regarding federal and state requirements respecting the privacy of education records and conditions for disclosure, as well as best practices for data security;

3.2.e. ensure compliance with applicable privacy and security policies and regulations at the state, regional, and local levels through routine monitoring;

3.2.f. ensure that appropriate data are available for different stakeholders to assess the quality, performance, and progress of students and the education system, including:

3.2.f.1. establishing, maintaining, and monitoring implementation of guidelines for granting access to data systems, including WVEIS and education data reporting tools, based on potential users' informational needs and legitimate educational interest in accessing the data; and

3.2.f.2. maintaining and publishing current and historical reports of information required for assessing and determining state, district, and school performance, progress, and accountability;

3.2.g. pursuant to the Student Data Accessibility, Transparency and Accountability Act (W. Va. Code §18-2-5h, the Student DATA Act), make information about agreements between

the WVDE and other state agencies concerning access to student data available to the public, including explanations of:

- 3.2.g.1. the purposes and uses for such agreements; and
- 3.2.g.2. how parents may withdraw their consent for their child(ren)'s information to be made available to other state agencies as detailed in the agreements;
- 3.2.h. develop and implement a detailed plan for managing and maintaining data security within the state's data system and for responding to privacy or security incidents and breaches; and
- 3.2.i. report annually to the WVBE, Governor, Legislature, and public about the state and security of the student data system.

3.3. Responsibilities of RESAs. RESAs provide to districts and schools services and support for areas in which they can best assist the WVBE in providing high-quality education programs. Because the services and support offered by the RESAs include administrative and operations functions, such as operating and maintaining computer information systems for their regions and assisting with the local maintenance of WVEIS (see W. Va. Code §18-2-26), RESAs share responsibility for protecting student data. Given their services and responsibilities, RESAs shall:

3.3.a. ensure that staff are familiar with and adhere to all applicable data security and privacy policies including, but not limited to, these procedures; 126CSR41, WVBE Policy 2460, *Educational Purpose and Acceptable Use of Electronic Resources, Technologies and the Internet* (Policy 2460); the Student DATA Act; WVDE's *Data Access and Management Guidance*; FERPA; relevant local policies; and other applicable regulations relating to security and acceptable use of education records and information systems;

3.3.b. support necessary computer infrastructure for data collection, management, and security, as appropriate given their responsibilities, including

3.3.b.1. providing training and technical support, as needed, to district and school staff responsible for operating data management and reporting systems, to include WVEIS and ZoomWV;

3.3.c. assist the WVDE in the dissemination of training and professional development regarding federal and state requirements respecting the privacy of education records and conditions for disclosure, as well as best practices for data security; and

3.3.d. provide technical assistance to districts and schools to ensure that data submitted through WVEIS are accurate, complete, timely, and compliant with relevant laws and regulations.

3.4. Responsibilities of Districts and Schools. Districts and schools bear primary responsibility for collecting, recording, and protecting student data. As front-line leaders of data collection, maintenance, and use in the state education system, it is the responsibility of districts and schools to:

3.4.a. designate a staff member within the district to serve as the data governance point of contact whose responsibilities will include (a) serving as the primary local expert with regard to data privacy and other data governance issues and (b) maintaining regular contact with WVDE to receive training, information, and updates to support data governance and privacy practices within the district;

3.4.b. ensure that staff are familiar with and adhere to all applicable data security and privacy policies including, but not limited to, these procedures, Policy 2460, the Student DATA Act, WVDE's *Data Access and Management Guidance*, FERPA, relevant local policies, and other applicable regulations relating to security and acceptable use of education records and information systems; in accordance with such regulations, districts and schools will, among other activities:

3.4.b.1. ensure that student data are accessible only to authorized parties with a legitimate educational interest, provided that:

3.4.b.1.A. individuals authorized to access student data on behalf of an educational agency or institution for the purpose of data entry or editing must be older than 18 years of age and must not be currently enrolled as a student in any West Virginia pre-K through grade 12 school, including public and non-public education options;

3.4.b.1.B. all parties authorized to access student data on behalf of an educational agency or institution must have a current data access agreement on file in which they have agreed to their responsibilities with respect to protecting privacy and using data appropriately pursuant to the requirements of all applicable federal, state, and local regulations, including these procedures;

3.4.b.1.C. nothing in this section prevents districts and schools from using appropriate mechanisms to provide parents and eligible students access to review their own or their child(ren)'s individual education records pursuant to these procedures, the Student DATA Act, FERPA, relevant local policies, and other applicable regulations; and

3.4.b.2. ensure that appropriately rigorous protocols and procedures are in place to secure both electronic and physical records, including protocols for terminating access for (a) parties who no longer have a legitimate educational interest, (b) disclose student data, (c) use student data in inappropriate or unauthorized ways, or (d) in other ways violate federal, state, and/or local regulations relating to student data access and privacy;

3.4.b.3. provide annual notification of rights, pursuant to Section 126-94-7;

3.4.b.4. as required by law (Sections 126-94-17 and 126-94-18), obtain consent from parents or eligible students prior to the release of information from students' education records; and

3.4.b.5. immediately respond to any data privacy or security incidents or breaches and report such incidents to the appropriate authorities, including data governance staff at the WVDE, for further response and investigation;

3.4.c. adhere to applicable standards and procedures for data collection and quality assurance and, to the extent possible, implement related best practices as identified by the WVDE, including:

3.4.c.1. ensuring that all required data are entered into WVEIS in a timely and efficient manner and certified or verified in accordance with timelines established by the WVDE;

3.4.c.2. ensuring that all data entered into WVEIS are complete and accurate as of the date of entry; and

3.4.c.3. refraining from the collection or reporting of certain individual student data, as prohibited by the Student DATA Act (W. Va. Code §18-2-5h(d) and (e));

3.4.d. regularly offer and/or encourage staff participation in training, professional development, or informational sessions, including sessions offered by the WVDE, to refresh staff members' knowledge of policies and best practices concerning data collection, privacy, and security.

§126-94-4. Definitions.

4.1. As used in these procedures:

4.1.a. "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.

4.1.b. "Consent" means that (a) 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; (b) 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 (c) the parent understands that the granting of consent is voluntary on the part of the parent.

4.1.c. "Destruction" means purposeful elimination or removal of personal identifiers so that the information is no longer personally identifiable.

4.1.d. "Directory information" includes the following individual student information: student name, address, telephone number, email address, photograph, date and place of birth, major field of study, dates of attendance, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, indication of "graduate" or "non-graduate," degrees and awards received, and the most recent previous educational agency or institution attended.

4.1.e. "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

4.1.f. "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.

4.1.g. “Educational institution” or “educational agency or institution” means any public or private agency or institution under the general supervision of the WVBE.

4.1.h. “Education records” means those records that are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution. The term does not include:

4.1.h.1. Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other individual except a temporary substitute.

4.1.h.2. Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Section 126-94-8.

4.1.h.3. Records relating to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business, relate exclusively to the individual in that individual’s capacity as an employee, and are not available for use for any other purpose. However, 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 are education records and are not excepted.

4.1.h.4. Records relating to an eligible student that are:

4.1.h.4.A. Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or assisting in a paraprofessional capacity;

4.1.h.4.B. Created, maintained, or used only in connection with the provision of treatment to the student; and

4.1.h.4.C. Disclosed only to 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 that are a part of the program of instruction at the educational agency or institution.

4.1.h.5. Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution (e.g., information collected by an educational agency or institution pertaining to the accomplishments of its alumni).

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

4.1.j. “Exceptional student” means a student having been determined to have an exceptionality in accordance with eligibility criteria under W. Va. 126CSR16, WVBE Policy 2419, *Regulations for the Education of Students with Exceptionalities*, (Policy 2419) who receives services under an Individualized Education Program (IEP).

4.1.k. “Financial Aid” means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual’s attendance at an educational agency or institution.

4.1.l. “Institution of post-secondary education” means an institution that provides education to students beyond the level at which secondary education is provided, as determined under state law.

4.1.m. “Parent” includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian.

4.1.n. “Party” means an individual, agency, institution, or organization.

4.1.o. “Personally identifiable” means that the data or information includes, but is not limited to, (a) the name of a student, the student’s parent, or other family member, (b) the address of the student or student’s family, (c) a personal identifier such as the student’s social security number, or student number, (d) a list of personal characteristics that would make the student’s identity easily traceable, or (e) other information that would make the student’s identity easily traceable.

4.1.p. “Record” means any information or data recorded in any medium including, but not limited to: handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.

4.1.q. “Secretary” means the Secretary of the U.S. Department of Education or an official or employee of the U.S. Department of Education acting for the Secretary under a delegation of authority.

4.1.r. “Student” includes any individual who is or has been in attendance at an educational agency or institution, and regarding whom the educational agency or institution collects, maintains, or discloses educational records.

§126-94-5. Parent Rights.

5.1. An educational agency or institution shall give full rights to either parent unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation or custody, that specifically revokes those rights.

§126-94-6. Student Rights.

6.1. 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 parents transfer to the student.

6.2. This policy does not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

6.3. If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

§126-94-7. Annual Notification of Rights.

7.1. Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under this policy.

7.2. The notice must inform parents or eligible students that they have the right to:

7.2.a. Inspect and review the student's education records;

7.2.b. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

7.2.c. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that Section 126-94-18 authorizes disclosure without consent; and

7.2.d. File with the WVDE or the U.S. Department of Education a complaint as described in Section 126-94-29 concerning alleged failures by the educational agency or institution to comply with the requirements of this policy.

7.3. The notice must include all of the following:

7.3.a. The procedure for exercising the right to inspect and review education records;

7.3.b. The procedure for requesting amendment of records under Section 126-94-13;

7.3.c. A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest;

7.3.d. Types of information designated as directory information and procedures in Section 126-94-25 for refusing to allow information to be so designated; and

7.3.e. The procedure for disclosure of education records without consent to officials of another school district in which the student seeks to enroll.

7.4. An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

7.4.a. An educational agency or institution shall effectively notify parents or eligible students who are disabled.

7.4.b. An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

7.5. Parents of students with exceptionalities, and eligible students who are exceptional, shall receive notice of rights under IDEA, included in the procedural safeguards notice.

§126-94-8. Law Enforcement Units.

8.1. Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to:

8.1.a. Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or

8.1.b. Maintain the physical security and safety of the agency or institution

8.2. A component of an education agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

8.3. Records of a law enforcement unit means those records, files, documents, and other materials that are:

8.3.a. Created by a law enforcement unit;

8.3.b. Created for a law enforcement purpose; and

8.3.c. Maintained by the law enforcement unit.

8.4. Records of a law enforcement unit does not mean:

8.4.a. Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

8.4.b. Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

8.5. Nothing in this policy prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, state, or federal law.

8.5.a. Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to this policy including the disclosure provisions of Section 126-94-17 while in the possession of the law enforcement unit.

8.5.b. Disclosure by an educational agency or institution of its law enforcement unit records is neither required nor prohibited by this policy.

§126-94-9. Right to Inspect and Review Education Records.

9.1. Each educational agency or institution or state educational agency (SEA) and its components shall permit the parent or an eligible student to inspect and review the education records of the student.

9.2. The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 30 days after it has received the request.

9.3. The educational agency or institution, or SEA or its component, shall respond to reasonable requests for explanations and interpretations of the records.

9.4. When a request is being made regarding records of an exceptional student:

9.4.a. The agency shall comply with Section 126-94-9.2 and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the student, or the provision of free appropriate public education to the student;

9.4.b. The right to inspect and review education records of an exceptional student includes the right to have a representative of the parent inspect and review the records; and

9.4.c. The participating agency shall provide parents, upon request, a list of the types and locations of education records collected, maintained, or used by the agency.

9.5. If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall:

9.5.a. Provide the parent or eligible student with a copy of the records requested; or

9.5.b. Make other arrangements for the parent or eligible student to inspect and review the requested records.

9.6. The educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

9.7. While an educational agency or institution is not required to give an eligible student access to treatment records as defined in Section 126-94-4.1.h.4., the student may have those

records reviewed by a physician or other appropriate professional of the student's choice.

§126-94-10. Fees.

10.1. An educational agency or institution may charge a fee for copies of educational records, which are made for the parent or eligible student, provided that the fee does not effectively prevent the parent and/or eligible student from exercising the right to inspect and review those records.

10.2. An educational agency or institution may not charge a fee to search for or retrieve the education records of a student.

§126-94-11. Limitations on Right to Inspect and Review Education Records.

11.1. 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 about that student.

11.2. A post-secondary institution does not have to permit a student to inspect and review education records that are:

11.2.a. Financial records, including any information those records contain, of his or her parents;

11.2.b. Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

11.2.c. Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if the student has waived his or her right to inspect and review these letters and statements and the letters and statements are related to the student's admission to an educational institution, application for employment, or receipt of an honor or honorary recognition. Provided that a waiver is valid only if:

11.2.c.1. The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

11.2.c.2. The waiver is made in writing and signed by the student, regardless of age.

11.2.d. If a student has waived his or her rights under this section, the educational institution shall:

11.2.d.1. Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

11.2.d.2. Use the letters and statements of recommendation only for the purpose for which they were intended.

11.2.e. A waiver under this section may be revoked in writing with respect to any actions

occurring after the revocation.

§126-94-12. Maintenance and Destruction of Education Records.

12.1. An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

12.1.a. The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under Section 126-94-9;

12.1.b. Explanations placed in the education record under Section 126-94-14 shall be maintained as long as the record or the contested portion is maintained;

12.1.c. The record of access required under Section 126-94-20 shall be maintained for as long as the education record to which it pertains is maintained; and

12.1.d. For records collected for students with exceptionalities under Policy 2419: (a) the public agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child; (b) the information must be destroyed at the request of the parents; (c) however, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

12.2. The following guidelines and requirements apply to the length of time and special consideration for maintaining student records:

12.2.a. Directory information may be maintained in perpetuity;

12.2.b. Academic grades and attendance records may be maintained in perpetuity;

12.2.c. Records to verify implementation of federally funded programs and services and to demonstrate compliance with program requirements must be maintained for five years after the activity is completed;

12.2.d. Other personally identifiable data which is no longer needed to provide education services may be destroyed;

12.2.e. Parents and eligible students must be informed through public notice of any timelines established by the educational agency or institution for maintenance and destruction of student records; and

12.2.f. Files must be maintained in a secured location. Inclusive in securing files, electronic files must be protected through the use of individual user identification and/or passwords. When user identification and/or passwords have been established, an individual is permitted to use only his or her designated identification and password to gain access to education records.

§126-94-13. Request to Amend Education Records.

13.1. The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate, misleading, or violates the privacy rights of the student may request the educational agency or institution to amend the record.

13.2. 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 after it receives the request.

13.3. If the educational agency or institution decides not to amend the record as requested, it shall inform the parent of the student or the eligible student of the refusal and of the right to a hearing under Section 126-94-14.

§126-94-14. Right to a Hearing.

14.1. An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of a student's education records on the grounds that information contained in the education records of the student is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.

14.2. If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

14.3. If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting on the contested information in the record and/or stating why he or she disagrees with the decision of the agency or institution.

14.4. Any explanation placed in the education records of the student under Section 126-94-14.3 shall:

14.4.a. Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution; and

14.4.b. Be disclosed if the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party.

§126-94-15. Conduct of the Hearing.

15.1. The hearing required to be held by Section 126-94-14.1 shall be conducted according to procedures that shall include at least the following elements:

15.1.a. The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request;

15.1.b. The parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

15.1.c. The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

15.1.d. 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 126-94-13, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

15.1.e. The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

15.1.f. The decision of the 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 reason(s) for the decision.

§126-94-16. Disclosure of Student Education Records to Certain Parties.

16.1. Any and all public reports and/or releases of student data when necessary to fulfill the requirements of state and/or federal laws, rules, and regulations will be presented in aggregate.

16.2. Student education records will never be authorized to be sold.

16.3. Student education records, including personally identifiable information, will not be shared with any federal government agency. Pursuant to the requirements of Section 126-94-23, limited information may be provided to offices in specific situations to comply with federal audits or evaluations of federal or state supported education programs, for the enforcement of or compliance with federal legal requirements which relate to these programs, or to provide for the health/safety needs of students.

16.4. The WVDE may grant research requests for educational purposes, given the following circumstances:

16.4.a. Researchers must complete the WVDE's multi-step process to submit any and all research requests.

16.4.b. The WVDE Research Review Committee will review all requests and grant approval only if all four of the following criteria are satisfied:

16.4.b.1. the proposed research study meets specific criteria related to scientific merit and feasibility;

16.4.b.2. the proposed research study is research the WVDE would have otherwise conducted itself;

16.4.b.3. appropriate privacy, confidentiality, and security are ensured throughout the proposed research plan; and

16.4.b.4. all necessary legal documentation is signed and in place prior to the start of any work.

16.4.c. All researchers authorized to conduct studies on behalf of the WVDE must sign a comprehensive Data Disclosure Agreement that embodies the relevant security components and includes 11 major sections, as follows:

16.4.c.1. specific data elements provided for the purposes of the study as described in the Research Proposal Application;

16.4.c.2. information subject to the agreement;

16.4.c.3. individuals who may have access to the data;

16.4.c.4. limitations on disclosure;

16.4.c.5. procedural requirements;

16.4.c.6. security requirements;

16.4.c.7. termination of the agreement;

16.4.c.8. miscellaneous provisions;

16.4.c.9. signature page;

16.4.c.10. Research Proposal Application; and

16.4.c.11. acknowledgement of and agreement with confidentiality requirements

16.4.d. The Data Disclosure Agreement is a legally binding document that authorizes the researcher, as an agent of the WVDE, to conduct research on its behalf and which: (a) details the researcher's responsibilities with respect to protecting the privacy of the students or staff whose information are being provided as part of the study; (b) includes a signed Acknowledgement of Confidentiality Requirements for all individuals who will have access to the data provided; (c) is an assurance from the researcher that he or she will not use, reveal, or in any other manner disclose any personally identifiable information furnished, acquired, retrieved, derived, or assembled by themselves or others for any purpose other than those purposes specified in the Research Proposal Application for the research project; and (d) is an assurance from the researcher that he or she must and will comply with FERPA and these procedures.

16.4.e. The release of student data to researchers outside the agency is considered a loan of data (i.e., the recipients do not have ownership of the data).

16.4.f. Researchers are required to validate destruction of the data through the

submission of the Data Destruction Assurance Form once the research is completed as part of their signed legal agreements.

16.5. Pursuant to FERPA, personally identifiable information about students may be released only to researchers authorized by the WVDE to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction with the proper legal documentation in place, including contracts, memoranda of understanding, and statements of nondisclosure and confidentiality.

16.6. Contractors, consultants, and partnering entities will never be authorized to sell or share student information.

16.7. Contractors, consultants, and partnering entities will only be provided with student information pursuant to their specific contracts, memoranda of understanding, and statements of nondisclosure and confidentiality as determined by the purpose for which the WVDE, RESAs, districts, or schools have contracted their services.

16.8. Contracts, memoranda of understanding, and statements of nondisclosure and confidentiality must require compliance with FERPA and these procedures, thereby prohibiting sale, redisclosure, or alternate use of the student information.

§126-94-17. Prior Consent for Disclosure Required.

17.1. An educational agency or institution shall obtain 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 126-94-18.

17.2. 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.

17.3. The written consent required by Section 126-94-17.1 must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

17.3.a. A specification of the records to be disclosed;

17.3.b. The purpose of the disclosure; and

17.3.c. The party or class of parties to whom the disclosure may be made.

17.4. If a parent or eligible student so requests, the educational agency or institution shall provide a copy of the records disclosed.

17.5. If the parent of a student who is not an eligible student so requests, the educational agency or institution shall provide the student with a copy of the records disclosed.

§126-94-18. Prior Consent for Disclosure Not Required.

18.1. 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:

18.1.a. To other school officials, including teachers, within the educational agency or institution who have been determined by the agency or institution to have legitimate educational interest; and

18.1.b. To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements of Section 126-94-22.

18.1.c. Subject to the conditions set forth in Section 126-94-23, to authorized representatives of:

18.1.c.1. The Comptroller General of the United States;

18.1.c.2. The Secretary of the U.S. Department of Education (Secretary); or

18.1.c.3. State and local educational authorities.

18.1.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:

18.1.d.1. to determine the eligibility of the student for financial aid;

18.1.d.2. to determine the amount of the financial aid;

18.1.d.3. to determine the conditions which will be imposed regarding the financial aid; and

18.1.d.4. to enforce the terms or conditions of the financial aid.

18.1.e. To state and local officials or authorities to whom this information is specifically:

18.1.e.1. Allowed to be reported or disclosed pursuant to state statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

18.1.e.2. Allowed to be reported or disclosed pursuant to state statute adopted after November 19, 1974, subject to the requirements of Section 126-94-26.

18.1.f. To organizations conducting studies for, or on behalf of, educational agencies or institutions as described in Section 126-94-16 for the purpose of: (a) developing, validating or administering predictive tests; (b) administering student aid programs; or (c) improving instruction; provided, that the studies are conducted in a manner that 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.

18.1.g. To accrediting organizations in order to carry out their accrediting functions.

18.1.h. To parents of a dependent student.

18.1.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, so that the parent or eligible student may seek protective action; unless the disclosure is in compliance with:

18.1.i.1. A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

18.1.i.2. Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

18.1.i.3. A judicial order or subpoena issued in a court proceeding involving child abuse and neglect or dependency matters in which the parent of the student is a party.

18.1.i.4. If the educational agency or institution initiates legal action against a parent or student and has complied with Section 126-94-18.1.i, it may disclose education records that are relevant to the action to the court without a court order or subpoena.

18.1.j. To appropriate parties in health or safety emergency subject to the conditions set forth in Section 126-94-24.

18.1.k. To an agency caseworker or other representative of a state or local child welfare agency who has the right to access a student’s case plan when such agency or organization is legally responsible in accordance with state law for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student’s education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the state laws and regulations applicable to protecting the confidentiality of a student’s education records.

18.1.l. The disclosure is information the educational agency or institution has designated as “directory information”.

18.1.m. The disclosure is to the parent of a student who is not an eligible student or to the student.

18.1.n. The disclosure is to an alleged victim of any crime of violence, as that term is

defined in 18 U.S.C. § 16, of the results of any disciplinary proceeding conducted by an institution of post-secondary education against the alleged perpetrator of that crime with respect to that crime.

18.2. This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under this section, with the exception that parents of a student who is not an eligible student and the student must have access.

18.3. For records of special education students, each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may access personally identifiable information.

§126-94-19. Disciplinary Information.

19.1. If a student transfers to another school in the state, the principal of the school from which the student transfers shall provide an official record of any disciplinary action taken against the student to the principal of the school to which the student transfers, (W. Va. Code §18A-5-1a) subject to requirements of Section 126-94-22.

19.2. The educational agency includes in the records of a student with a disability under Policy 2419 a statement of any current or previous disciplinary action that has been taken against the student and transmits the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of non-disabled students.

19.2.a. The statement may include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information related to the safety of the student and other individuals involved with the student.

19.2.b. If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.

19.3. A public agency reporting a crime committed by a student with a disability under Policy 2419 shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime, but only to the extent permitted by this policy's provisions regarding disclosure of education records.

§126-94-20. Record of Disclosure Required to be Maintained.

20.1. An educational agency or institution shall for each request for access to 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 that indicates:

20.1.a. The parties who have requested or obtained personally identifiable information from the education records of the student;

20.1.b. The date access was given; and

20.1.c. The legitimate interest these parties had in requesting or obtaining the information.

20.2. If an educational agency or institution discloses information with the understanding that the party receiving the information may make further disclosures, the record of disclosure must include the names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution and the legitimate educational interests each of the additional parties has in requesting the information.

20.3. Section 126-94-20.1 does not apply to: (a) disclosures to a parent of a student or an eligible student, (b) 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, (c) disclosures to school officials, (d) disclosures of directory information, or (e) disclosures to a party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

20.4. The record of disclosures may be inspected:

20.4.a. By the parent of the student or the eligible student;

20.4.b. By the school official and his or her assistants who are responsible for the custody of the records; and

20.4.c. For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in Section 126-94-18.1.a. and Section 126-94-18.1.c.

§126-94-21. Limitation on Redisclosure.

21.1. 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:

21.1.a. 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.

21.1.b. An educational agency or institution may disclose personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if the parties meet the requirements of Section 126-94-18 and required records of disclosure under Section 126-94-20.

21.2. Section 126-94-21.1 does not apply to disclosures made pursuant to court orders or

lawfully issued subpoenas, to disclosures of directory information or to disclosures to a parent or student. Except for these disclosures, an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

21.3. If the WVDE or the Family Policy Compliance Office of the U.S. Department of Education determines that a third party improperly rediscloses personally identifiable information from education records, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

21.4. Researchers, contractors, and other parties who violate the terms of the contracts, memoranda of understanding, and/or statements of nondisclosure and confidentiality with respect to the redisclosure or sale of student education records, including personally identifiable information, will be subject to legal action.

§126-94-22. Conditions for Disclosure to Officials of Other Schools and School Systems.

22.1. An educational agency or institution transferring the education records of a student to officials of another school, school system or institution of post-secondary education where the student seeks to enroll shall:

22.1.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, unless:

22.1.a.1. The transfer of records is initiated by the parent or eligible student at the sending agency or institution, or

22.1.a.2. The agency or institution includes in its annual notice that it forwards education records on request to other agencies or institutions in which a student seeks or intends to enroll;

22.1.b. Provide the parent of the student or the eligible student, upon request, a copy of the record that was transferred; and

22.1.c. Provide the parent of the student or the eligible student, upon request, an opportunity for a hearing under these procedures.

22.2. 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 Section 126-94-22.1.

§126-94-23. Disclosure to Certain Federal and State Officials for Federal Program Purposes.

23.1. The Comptroller General, Secretary or state and local educational authorities may have access to education records in connection with the audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements which relate to these programs.

23.2. Except when written consent of the parent of a student or an eligible student has been obtained for disclosure, or when the collection of personally identifiable information is specifically authorized by federal or state law, any information collected under Section 126-94-23.1 shall be protected in a manner that does 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.

§126-94-24. Conditions for Disclosure in Health and Safety Emergencies.

24.1. 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.

24.2. 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:

24.2.a. The seriousness of the threat to the health or safety of the student or other individuals;

24.2.b. The need for the information to respond to the emergency;

24.2.c. Whether the parties to whom the information is disclosed are in a position to address the emergency; and

24.2.d. The extent to which time is of the essence in addressing the emergency.

24.3. Nothing in this policy shall prevent an educational agency or institution from:

24.3.a. Including in the educational records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

24.3.b. Disclosing appropriate information maintained under Section 126-94-24.3.a. to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

24.3.c. Disclosing appropriate information maintained under Section 126-94-24.3.a. to teachers and school officials in other schools who have been determined to have legitimate educational interests in behavior of the student.

24.4. Sections 126-94-24.1 and 126-94-24.3 shall be strictly construed.

§126-94-25. Conditions for Disclosure of Directory Information.

25.1. 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 it has given notice that information has been designated as directory information.

25.2. 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 Section 126-94-25.3.

25.3. In order to designate directory information, an educational agency or institution shall give public notice of the following:

25.3.a. The categories of personally identifiable information the institution has designated as directory information;

25.3.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, including the right of the parent to refuse to permit the designation of names, addresses, and telephone numbers of their children as directory information for purposes of providing the information to military recruiters as set forth in Section 126-94-32; and

25.3.c. The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

25.4. All county boards of education shall, at a minimum, establish that the names, addresses, and telephone numbers of secondary school students are designated as directory information for the purposes of providing the information to military recruiters as set forth in Section 126-94-32. Further all county boards of education shall, at a minimum, establish that a student's name, address, grade level, date of birth, and photograph be designated and maintained as directory information for each student.

25.5. Once the county board of education establishes directory information, it shall provide access to established directory information to any person or group which makes students aware of educational, occupational, and career opportunities available in the armed services.

25.6. The county board of education may provide access to established directory information to other persons or groups as determined by board action.

§126-94-26. Juvenile Justice System.

26.1. If reporting or disclosure allowed by state statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Section 126-94-18.1.e.

26.2. The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent of the student.

§126-94-27. Safeguards for Students with Exceptionalities, Information Collected under Policy 2419.

27.1. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

27.2. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information collected under Policy 2419 and IDEA.

27.3. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under this policy and Policy 2419.

27.4. Each participating agency shall maintain for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information of identified special education students.

27.5. A complaint may be filed with the WVDE office charged with overseeing and administering special education programs, if it is alleged that the confidentiality of personally identifiable information regarding a student with an exceptionality in accordance with the requirements of this policy and Policy 2419 has been violated. This is in addition to the right to file a complaint with appropriate officials at the WVDE and/or the U.S. Department of Education, as described in Section 126-94-28.

§126-94-28. Enforcement Authority.

28.1. The state superintendent of schools designates data governance staff at the WVDE to:

28.1.a. provide guidance and technical assistance to all educational agencies and institutions to ensure understanding and compliance with applicable state and federal privacy regulations and guidance, to include these procedures (126CSR94); the Student DATA Act; WVDE's *Data Access and Management Guidance*; FERPA; and other applicable regulations;

28.1.b. provide regular training to key staff at educational agencies and institutions within the state to ensure understanding of data privacy requirements and responsibilities under applicable state and federal regulations;

28.1.c. act as the primary review entity in the state to monitor and enforce privacy regulations with respect to all programs for which the WVDE has administrative responsibility, including:

28.1.c.1. conducting routine audits to ensure ongoing compliance with laws and regulations and state security policies and procedures as required by the Student DATA Act;

28.1.d. investigate, process, and review complaints and violations related to student data privacy under these procedures and other applicable laws and regulations;

28.1.d.1. as warranted by investigations or reviews conducted in accordance with

these procedures, and as deemed appropriate by the state superintendent of schools or designee, refer allegations of FERPA violations to the Family Policy Compliance Office, U.S. Department of Education, for federal review; and

28.1.e. prepare such reports and publications as may be necessary and expedient to monitor and ensure compliance with applicable laws regarding student data collection, management, maintenance, and disclosure.

28.2. WVDE data governance staff may require educational agencies or institutions to submit reports or other evidence containing information necessary to resolve complaints of privacy violations under applicable laws and regulations.

28.3. For issues relating to compliance with federal laws and regulations, the Secretary designates:

28.3.a. the Family Policy Compliance Office to provide technical assistance to ensure compliance with FERPA and applicable federal regulations and to investigate and review complaints and violation under FERPA

28.3.b. the Office of Administrative Law Judges to act as the Review Board required under FERPA to enforce it with respect to all “applicable programs” as defined in the General Education Provisions Act, 20 U.S.C. § 1221(c).

28.4. The Family Policy Compliance Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under FERPA and applicable federal regulations.

28.4.a. Such reports may be in addition to information requested by WVDE personnel for investigating complaints at the state level.

§126-94-29. Complaint Procedure.

29.1. A parent, eligible student, or school official may file a complaint with WVDE data governance staff at regarding an alleged violation under applicable privacy regulations. Complaints may be submitted via email (ZoomWV@help.k12.wv.us), fax (304-558-1613), or postal mail (WVDE Data Governance Team, 1900 Kanawha Boulevard East, Building 6, Charleston, WV 25305-0330).

29.2. A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of applicable regulations has occurred. The complaint shall be submitted on the prescribed form and signed by the person making the complaint.

29.3. WVDE personnel will investigate each timely complaint to determine whether the educational agency or institution, contractor, researcher, or other party has failed to comply with applicable privacy regulations.

29.3.a. A timely complaint is defined as an allegation of a violation of applicable student data privacy regulations that is submitted to the WVDE within 180 days of the alleged violation or the date that the complainant knew or reasonably should have known of the

alleged violation.

29.3.b. This time limit may be extended if the complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limit, or for other reasons considered sufficient by the WVDE data governance staff.

29.4. If a complaint does not meet the requirements of Section 126-94-29.2 or Section 126-94-29.3, the WVDE will notify the complainant that no investigation will be initiated.

29.4.a. If appropriate, a complainant may be referred to other avenues of relief more suitable to his or her stated concerns, such as the citizens' conflict resolution process (126CSR188, WVBE Policy 7211, *Conflict Resolution Process for Citizens*) or the system for resolving disputes related to the implementation of state and federal special education laws and regulations (as described in Policy 2419).

29.5. If a complaint is determined to have merit, the WVDE data governance staff will begin an investigation and will notify the educational agency or institution, contractor, researcher, or other party suspected to be in violation, and the complainant accordingly. Notices will:

29.5.a. include the substance and key facts of the alleged violation;

29.5.b. request a response from the educational agency or institution, contractor, researcher, or other party via telephone or web-enabled conference, email, or formal letter, dependent on the severity of the allegation; and

29.5.c. insofar as possible, respect the confidentiality of the complainant.

29.6. WVDE data governance staff, in conjunction with other WVDE personnel, as appropriate, will review all available evidence pertaining to the allegation, including the complaint and the response, and may request additional information or evidence from the parties.

29.7. Following the investigation, WVDE data governance staff will provide to the complainant and the respondent a written notification of the findings and the relevant evidence forming the basis for the findings. Telephone, email, or web-enabled conference notification may also accompany notifications to respondents, as appropriate.

29.8. If the WVDE personnel reviewing the complaint find that the educational agency or institution, contractor, researcher, or other party did not comply with applicable regulations, the notice under Section 126-94-29.7 will:

29.8.a. include specific instructions that will enable the party to comply;

29.8.b. offer specific training, coaching, resources, and other technical assistance from the WVDE to support compliance;

29.8.c. provide a reasonable period of time, given all the circumstances of the situation, during which the party may work toward voluntary compliance; and

29.8.d. establish interim dates within the period of time established under Section 126-94-29.8.c. for reporting and verifying progress toward voluntary compliance.

29.9. If the WVDE personnel reviewing the complaint find that the educational agency or institution, contractor, researcher, or other party has willfully disregarded or exhibited a pattern of noncompliance with FERPA or other applicable federal regulations, the WVDE may refer the issue to the Family Policy Compliance Office, U.S. Department of Education, for investigation and enforcement.

29.10. A parent or eligible student may also file a written complaint with the Family Policy Compliance Office regarding an alleged violation under FERPA and applicable federal regulations. Complaint forms may be obtained online at <http://familypolicy.ed.gov/complaint-form> or by calling 202-260-3887. Completed forms should be emailed to FERPA.Complaints@ed.gov or mailed to Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-8520.

29.11. A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA or applicable federal regulations has occurred.

29.12. All resultant reviews or investigations, notifications of findings, and instructions for remedying noncompliance will adhere to the standard procedures and practices of the Family Policy Compliance Office, as established by FERPA.

§126-94-30. Enforcement Procedures.

30.1. If an educational agency or institution, contractor, researcher, or other party fully complies during the period of time established under Section 126-94-29.8.c, WVDE data governance staff will provide a notice of compliance after reports and/or verification of voluntary compliance have been confirmed by WVDE personnel.

30.2. If an educational agency or institution, contractor, researcher, or other party does not comply during the period of time established under Section 126-94-29.8.c, the WVDE, may, in accordance with state laws and policies:

30.2.a. file a report with the West Virginia Office of Education Performance Audits (OEPA) detailing an educational agency or institution's failure to comply with mandatory privacy regulations and recommending that the OEPA consider such failure in reviews of the agency or institution's performance;

30.2.b. include an indicator on school performance score cards designating noncompliance with privacy regulations for the year in which the violation(s) occurred and until the agency brings itself into compliance

30.2.c. seek legal action against contractors, researchers, or other parties found to be in violation of contract provisions, or nondisclosure and confidentiality agreements;

30.2.d. refer the issue to the state superintendent of schools for consideration of potential action against a teaching license for egregious or repeated violations; and/or

30.2.e. refer the issue to the Family Policy Compliance Office, as applicable, for investigation and enforcement.

30.3. If the Family Policy Compliance Office determines that an educational agency or institution has failed to comply with FERPA and/or other applicable federal regulations, failure to comply voluntarily in a timely manner may result in repercussions from the Secretary, in accordance with the General Education Provisions Act, 20 U.S.C. § 1234:

30.3.a. withholding further payments under any applicable program;

30.3.b. issuance of a complaint to compel compliance through a cease and desist order;
or

30.3.c. termination of eligibility to receive funding under any applicable program.

§126-94-31. Collection and Use of Student Social Security Numbers.

31.1. A social security number is personally identifiable information and, therefore, its use must comply with the provisions of this policy, FERPA, and W. Va. Code §18-2-5f.

31.1.a. No public or private elementary or secondary school shall display any student's social security number for identification purposes on class rosters or other lists provided to teachers, on student identification cards, in student directories or other listings, on public postings or listings of grades, or for any other public identification purpose unless specifically authorized or required by law.

31.1.a.1. Compliance will be required of Exemption B private, parochial, or other approved schools for county board of education approval, W. Va. Code §18-8-1(b).

31.1.b. The student social security number may be used for internal record keeping purposes or studies.

31.1.c. The student social security number or alternative number is required for enrollment or attendance in public schools.

31.1.c.1. The county board of education must request from the parent, guardian, or responsible person the social security number of each child who is currently enrolled in the county school system.

31.1.c.2. Prior to admittance to a public school in the state, the county board of education must request from the parent, guardian, or responsible person the social security number of each child who is to be enrolled.

31.1.c.3. The county board of education must inform the parent, guardian, or other responsible person that, if he or she declines to provide the student social security number, the county board of education will assign the student an alternate nine digit number as designated by the WVBE.

31.1.d. For any student who is attending a public school and for whom a social security

number has not been provided, the county board shall make a request annually to the parent, guardian, or other responsible person to furnish the social security number.

§126-94-32. Release of List of High School Students to Military Recruiters.

32.1. Pursuant to federal law, 20 U.S.C. § 7908, *Armed Forces Recruiter Access to Student and Student Recruiting Information*, and 10 U.S.C. § 503, *Enlistments: Recruiting Campaigns; Compilation of Directory Information*, all county boards of education are required to provide military recruiters, upon request, with the names addresses and telephone numbers of secondary school students unless the parents/guardians have advised the county board of education that they do not want their students' information disclosed without prior written consent as set forth in Section 126-94-25.

32.2. Each county board of education shall provide military recruiters the same access to secondary school students as is provided generally to post-secondary educational institutions or to prospective employers of those students.

§126-94-33. Severability.

33.1. If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this rule.

WVBE Policy 4373
Expected Behavior in Safe and
Supportive Schools

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 99
EXPECTED BEHAVIOR IN SAFE AND SUPPORTIVE SCHOOLS (4373)

§126-99-1. General.

1.1. Scope. -- This rule sets the requirements for the development of safe and supportive schools that provide optimal learning conditions for both students and staff. Safety and order is the foundation of a positive school climate/culture that supports student academic achievement and personal-social development. This rule also establishes disciplinary guidelines for student conduct in West Virginia schools in order to assure an orderly, safe, drug-free, violence- and harassment-free learning environment.

1.1.a. County/Counties. -- For purposes of this rule, county includes county boards of education, West Virginia Schools for the Deaf and the Blind, and secure juvenile predispositional, postdispositional facilities.

1.2. Authority. -- West Virginia Constitution, Article XII, §2, W. Va. Code §§16-9A-4, 16-9A-9, 18-2-5, 18-2-7b, 18-2-9, 18-2C-1, 18-2C-2, 18-2C-3, 18-2-41 18-5A-2, 18-8-8, 18-16-1, 18A-1-1, 18A-5-1, 18A-5-1a, 18-9F-9, 18-9F-1, et seq., 49-2-803(a-b), 49-4-701 60A-1-101, 61-2-15, 61-3-13, 61-7-2, 61-7-11a, 20 U.S.C. § 1400 et seq. and 20 U.S.C. § 6301 et seq.

1.3. Filing Date. -- March 14, 2019.

1.4. Effective Date. -- July 1, 2019.

1.5. Repeal of Former Rule. -- This rule repeals and replaces W. Va. 126CSR99, WVBE Policy 4373, Expected Behavior in Safe and Supportive Schools (Policy 4373) filed October 12, 2017, and effective November 13, 2017.

§126-99-2. Purpose.

2.1. The West Virginia Board of Education (WVBE) recognizes the need for students, teachers, administrators, and other school personnel to have a safe and supportive educational environment. Public schools should undertake proactive, preventive approaches to ensure a positive school climate and culture that fosters learning and personal-social development. This rule requires county boards of education to design and implement procedures to create and support continuous school climate and culture improvement processes within all schools that will ensure an orderly and safe environment that is conducive to learning.

§126-99-3. Incorporation by Reference.

3.1. The West Virginia Procedures Manual for Expected Behavior in Safe and Supportive Schools is attached and incorporated by reference into this rule. Copies may be obtained in the Office of the Secretary of State and from the West Virginia Department of Education (WVDE).

§126-99-4. Application.

4.1. The expectations outlined in these regulations apply in public schools in West Virginia during any education-sponsored event, whether in a classroom, elsewhere on school premises, on a school bus or other vehicle used for a school-related event, or at a school-sponsored activity or event, whether or not it is held on school premises, in a building or other property used or operated by a county board of education, WVDE, WVBE, or in another facility or upon any other property being used by any of these agencies. These expectations apply to students, staff, and public guests respectively as noted within the policy. School staff will be subject to disciplinary and licensure action in accordance with W. Va. Code §§18-17-8, 18A-3-2a, 18A-3-3, and 18A-3-6.

§126-99-5. Severability.

5.1. If any provision of this policy or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.

**WEST VIRGINIA MANUAL FOR
EXPECTED BEHAVIOR IN SAFE AND SUPPORTIVE SCHOOLS (4373)**

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WEST VIRGINIA MANUAL FOR EXPECTED BEHAVIOR IN SAFE AND SUPPORTIVE SCHOOLS (4373)

Introduction

The West Virginia Manual for Expected Behavior in Safe and Supportive Schools provides guidance to assist all public schools to design and implement procedures to create and support positive school climate and culture improvement processes that will ensure an orderly and safe environment that is conducive to teaching and learning.

Chapter 1

STUDENT PROTECTIONS

School officials are responsible for student safety, welfare, and behavior from the time a student boards the school bus or arrives at school until the student returns home or to his/her designated bus stop. It is a student's responsibility to follow school rules and regulations and to cooperate with school authorities who enforce these rules and regulations.

Section 1. Student Inquiry and Expression

Schools may not conduct, sponsor, or endorse religious activities during school time. Individual students have the right to practice their own religion in a manner that does not interfere with the orderly conduct of classes and may form student groups with a religious focus that meet after school. Students have the right to be absent from school, on a reasonable basis, for religious instruction and/or for participation in religious activities. An opportunity must be provided for students to make up any work missed; however, it is the student's responsibility to make up such work pursuant to the rules established by the school or county.

Students are entitled to exercise appropriate speech while at school. Freedom of speech includes forms of expression other than vocal, provided this activity does not materially or substantially disrupt the work and discipline of the school or impinge upon the rights of other students. Schools shall limit vulgar or offensive speech inconsistent with the school's responsibility for teaching students the boundaries of socially appropriate behavior. Students' off-campus conduct that would reasonably be expected to cause disruption in the school may be prohibited or disciplined. This includes, but is not limited to, blogs and social media postings created for the purpose of inviting others to indulge in disruptive and hateful conduct towards a student or staff member.

Students have the right not to be compelled to participate in certain types of speech, such as reciting the Pledge of Allegiance. Students who choose not to participate in these ceremonies have the responsibility to respect the rights of those who do participate and must remain respectfully silent.

School-sponsored student publications that are a part of the curriculum are subject to teacher editorial control and therefore student speech may be regulated in a manner reasonably related to educational purposes.

Section 2. Non-curriculum Related Student Groups

When high schools allow one or more student groups whose purpose is not directly related to any class taught at the school to meet at the school, this meeting is referred to as a limited open forum. If a school is a limited open forum for any purpose, the school must allow religious, political, and/or philosophical group meetings as long as the meetings are voluntary, monitored by the school, and do not interfere with the conduct of school activities.

Section 3. Protection from Unreasonable Searches and Seizures and Self-Incrimination

Federal and state constitutions and statutes provide protection for all citizens from unreasonable searches and seizures. Although school personnel have more latitude than police officers in this regard, because they do not need search warrants, search and seizures of lockers or students by school officials must be reasonable and based upon the information known by them at the time of the search. Personal property may be searched by those authorized where there is reasonable suspicion to believe that student property contains stolen articles, illegal items, or other contraband as defined by law or by local board or school policy.

Students also have a right under federal and state constitutions not to incriminate themselves about a crime when questioned on school grounds by an individual acting in the capacity of a law enforcement official. The students are entitled to be informed of their right against self-incrimination if they are in a custodial setting, in other words, the students are not at liberty to terminate the interrogation and leave. Students do not have a constitutional right against self-incrimination when being questioned by school officials or Prevention Resource Officers (PRO) acting under the supervision of school officials who are investigating school-related misconduct.

Section 4. Child Abuse and Neglect Prevention

This section sets forth when the West Virginia Department of Health and Human Resources and law enforcement must be notified about child abuse and neglect. Victims of abuse may

seek the advice or assistance of a teacher, counselor, nurse, or other school professional. The school professional will assist students in getting needed help to prevent the abuse from recurring.

24 Hour Notice Requirement

Mandatory reporters, such as teachers, school personnel, counselors, nurses, coaches, or volunteers who provide organized activities for children, or other professionals within a school who suspect that a student is being abused or neglected, shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources (DHHR). Mandatory reporters shall also inform their immediate supervisor immediately following and not more than 24 hours after reporting suspected abuse or neglect to (DHHR). In any case, where the reporter believes that the child suffered serious physical abuse, sexual abuse, or sexual assault, the reporter shall immediately report same to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint.

Mandatory reporters who are also staff or volunteers of an entity or organization that provides services to a school or otherwise organizes activities at a school or on school premises, must immediately notify the person in charge of the entity or organization providing services or activities to a school. The mandatory reporter must follow any additional reporting requirements established by such entity or organization.

In determining whether conduct falls within the exception to the mandatory reporting requirement, mandatory reporters are encouraged to err on the side of caution and report the conduct within the mandatory reporting time frame.

State law contains criminal penalties for failure to meet the reporting requirements outlined in this section. For more information on those penalties, refer to W. Va. Code §49-2-802.

Section 5. Age-appropriate Body Safety Information

Beginning July1, 2019, children in grades K-12 shall receive body age-appropriate safety information at least once per academic school year, with a preference for four times per academic year, addressing education and prevention of the sexual abuse of children.

To facilitate this process, the WVDE will provide resources and guidance that address the following:

- developmentally appropriate education and resources;
- social media usage and content;
- implementation of best practices;
- resources that support differing county and school sizes, demographics, etc., for implementation strategies;
- strategies for dealing with disclosures of sexual abuse;
- processes to include community shareholders and inclusion of family voice; and
- offender dynamics and child-on-child scenarios.

Standards will be developed and shared on the WVDE website for supplementary materials, and will include posting of the child abuse hotline in schools. Protocols for local crisis response will be provided to school systems and posted on the WVDE website.

Section 6. Preventing Child Sexual Abuse

WVDE shall establish standards, effective July 1, 2019, for Preventing Child Sexual Abuse (PCSA) training requirements of all public school employees focused on developing skills, knowledge, and capabilities related to preventing child sexual abuse and recognizing and responding to suspected abuse and neglect.

The required PCSA training shall include comprehensive instruction and information to better equip schools and their employees to recognize and prevent child sexual abuse, including:

- recognizing sexually offensive behaviors in adults, questionable behaviors such as boundary violations, and signs in adults that might indicate they pose a sexual risk to children;
- recognizing, and appropriately responding to, sexually inappropriate, coercive, or abusive behaviors among children and youth served by schools;
- recognizing behaviors and verbal cues that might indicate a child or youth has been a victim of abuse or neglect;
- supporting the healthy development of children and youth and the building of protective factors to mitigate against their sexual victimization by adults or peers;
- recognizing and appropriately responding to student infatuations and flirtations with adults in schools;
- recognizing appropriate and inappropriate social media usage by adults and children;
- providing consistent and standard protocols for responding to disclosures of sexual abuse or reports of boundary-violating behaviors by adults or children in a supportive and appropriate manner which meet mandated reporting requirements;
- providing adequate understanding of the age-appropriate, comprehensive, evidence-

- informed child sexual abuse prevention education which will be offered to their students; and
- recognizing effects of Adverse Childhood Experiences (ACEs) and providing trauma-informed care.

Public school employees shall be required to complete a PCSA training beginning July 1, 2019. The training shall be at least a cumulative four hours of instruction on the elements identified in this section and shall occur during non-instructional time. Training will not be assigned during teachers' planning time. A skills renewal training is required every two years thereafter. The mode of delivery for the trainings may include in-person or e-learning instruction and may include a series of trainings or modules. The WVBE will provide e-learning modules that cover the required standards and certificates of satisfactory completion. Should the county boards of education choose to provide in-person training, the standards stated above shall be covered, and the county boards of education shall provide the WVBE with a list of employees who have completed the required training. The WVBE shall provide certificates of satisfactory completion for the employee and the employer documenting that the employee completed the required training.

Section 7. Dress Codes Requiring School Uniforms for Students

County boards of education may implement a dress code requiring students to wear school uniforms. The uniforms may be required by the county board of education for either the entire county or for certain schools within the county.

County boards of education considering the option of adopting a dress code requiring the wearing of school uniforms shall create an advisory committee consisting of parents or guardian, school employees, and students. The advisory committee shall consider whether the county board of education should adopt a dress code requiring school uniforms for students in the county or for certain schools within the county. If the advisory committee recommends to the county board of education a dress code requiring school uniforms, then the county board of education may adopt a dress code requiring school uniforms for students. The advisory committee shall make recommendations on methods of paying for the school uniforms. However, nothing in this policy shall require any level of funding from the Legislature, state, or county boards of education, or any other agency of the government.

This policy does not require county boards of education to adopt dress codes requiring students to wear school uniforms nor prevent a county board of education from adopting a dress code policy.

Chapter 2
INAPPROPRIATE BEHAVIOR AND MEANINGFUL
INTERVENTIONS AND CONSEQUENCES

Section 1. Addressing Inappropriate Behavior with Meaningful Interventions and Consequences

The purpose of this policy is to provide schools with guidance that creates and ensures an orderly and safe environment that is conducive to teaching and learning. Inappropriate behaviors include but are not limited to harassment, intimidation, bullying, substance abuse, and/or violence. All interventions and consequences are in effect on all school property and at all school-sanctioned events, including extracurricular activities. Each county will implement proactive, preventative, and responsive programs, outline investigatory and reporting procedures, and delineate meaningful interventions and consequences in response to inappropriate behavior.

This policy defines disciplinary levels and provides definitions (see Appendices) for common inappropriate student behaviors. County policies may provide additional guidance in the implementation and classification for specific offenses and/or levels provided the treatment of the inappropriate behavior is consistent with W. Va. Code.

County and school policies should identify appropriate and meaningful interventions and consequences. The interventions and consequences in this policy serve as examples, with the exception of Level 4 offenses. It is not a requirement that all schools offer every intervention and consequence listed in this policy. School administrators and staff should exhaust all available school and community resources to provide appropriate school-based intervention strategies designed to keep students in school and engaged in instruction.

Out-of-school suspension strategies should be used sparingly and shall never deny students access to instructional material and information necessary to maintain their academic progress. Out-of-school suspension should only be considered when all other interventions and consequences have not proven to correct the behavior. The determination of interventions and consequences is at the discretion of the school administrator, with input considered from teachers/service personnel. W. Va. Code requires that the principal shall suspend a student who commits a behavior classified as Level 4 in this policy. Level 3 and 4 behaviors are to be referred directly to the appropriate administrator because of the serious and/or unlawful nature of the misconduct.

Any student suspended or expelled from school is also suspended from extracurricular activities for the duration of the out-of-school suspension or expulsion.

When administering interventions and consequences, it is required to determine if a student warrants protection under the Individuals with Disabilities Education Act (IDEA), W. Va. 126CSR16, WVBE Policy 2419, Regulations for the Education of Students with Exceptionalities (Policy 2419), and/or Section 504 of the Rehabilitation Act.

Section 2. Inappropriate Behavior Levels:

Level 1: Minimally Disruptive Behaviors disrupt the educational process and the orderly operations of the school but do not pose a direct danger to self or others.

Level 2: Disruptive and Potentially Harmful Behaviors disrupt the educational process and/or pose potential harm, danger, or educational detriment to self and/or others. The behavior is committed willfully but not in a manner that is intended maliciously to cause harm or danger to self and/or others.

Level 3: Severely Disruptive, Imminently Dangerous, Illegal, and/or Aggressive Behaviors are willfully committed and are known to be illegal and/or harmful to people and/or property. (Specific level 3 behaviors are outlined in W. Va. Code §18A-5-1a (c) and the principal shall address these inappropriate behaviors accordingly.)

Level 4 Behaviors	
LEVEL 4: Safe Schools Act Behaviors are defined in W. Va. Code §18A-5-1 and §18A-5-1a. These laws require that the principal, county superintendent, and county board of education address Level 4 behaviors in a specific manner as outlined in W. Va. Code §18A-5-1a and paraphrased in this chapter.	
W. Va. Code §§18A-5-1 and 18A-5-1a require mandatory out-of-school suspension by the principal and mandatory expulsion for a period of not less than twelve (12) consecutive months by the county board of education for possession of a deadly weapon, battery on a school employee, or sale of a narcotic drug.	
Battery on a School	A student will not commit a battery by unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee or causing physical harm to a school

Level 4 Behaviors

Employee	employee as outlined in W. Va. Code §61-2-15(b). A student who violates this code section will <u>may</u> be suspended and expelled.
Felony	A student will not commit an act or engage in conduct that would constitute a felony under the laws of this state if committed by an adult as outlined in W. Va. Code §18A-5-1a(b)(i). Such acts that would constitute a felony include, but are not limited to, arson as outlined in W. Va. Code §61-3-1; malicious wounding and unlawful wounding, as outlined in W. Va. Code §61-2-9; bomb threat, as outlined in W. Va. Code §61-6-17; sexual assault, as outlined in West Virginia Code §61-8B-3; terrorist act or false information about a terrorist act, hoax terrorist act, as outlined in W. Va. Code §61-6-24; and grand larceny, as outlined in W. Va. Code §61-3-13. The principal shall suspend a student from school or from transportation if the principal determines the student committed an act or engaged in conduct that would constitute a felony. If a student is suspended, the principal may request that the superintendent recommend to the board the student be expelled.
Illegal Substance Related Behaviors	<p>A student will not sell or distribute a narcotic drug as defined in W. Va. Code §60A-1-101 on the premises of an educational facility, at a school-sponsored function, or on a school bus. A student guilty of this behavior shall be suspended and expelled.</p> <p>A student will not unlawfully possess, use, be under the influence of, distribute, or sell any substance containing alcohol, over-the-counter drugs, prescription drugs, any other substance included in the Uniform Controlled Substances Act as described in W. Va. Code §60A-1-101, et seq., or any paraphernalia intended for the manufacture, sale, and/or use of illegal substances in any building/area under the control of a county school system, including all activities or events sponsored by the county school district. This includes violations of W. Va. 126CSR25A, WVBE Policy 2422.7, Standards for Basic and Specialized Health Care Procedures, and instances of prescription drug abuse. The principal shall suspend a student from school or from transportation for possession of a controlled substance governed by the Uniform Controlled Substance Act. The principal determines consequences for other violations listed herein.</p>
Possession and/or Use of Dangerous Weapon	According to W. Va. Code §18A-5-1a(a), a student will not possess a firearm or deadly weapon as defined in W. Va. Code §61-7-2, on any school bus, on school property, or at any school-sponsored function as defined in W. Va. Code §61-7-11a.

Level 4 Behaviors

As defined in W. Va. Code §61-7-2, a “dangerous weapon” means any device intended to cause injury or bodily harm, any device used in a threatening manner that could cause injury or bodily harm, or any device that is primarily used for self-protection. Dangerous weapons include, but are not limited to, blackjack, gravity knife, knife, knife-like implement, switchblade knife, nunchaku, metallic or false knuckles, pistol, revolver, or other firearm. A dangerous weapon may also include the use of a legitimate tool, instrument, or equipment as a weapon including, but not limited to, pens, pencils, compasses, or combs, with the intent to harm another. The student shall be suspended and expelled for violating W. Va. Code §61-7-11a.

Section 3. Classification of Persistently Dangerous Schools

The following criteria are set forth to determine whether a school will be classified as a Persistently Dangerous School. Data indicating the number of substantiated inappropriate behaviors will be collected using the West Virginia Education Information System (WVEIS) in order to identify and classify a school as persistently dangerous. A West Virginia public school will be classified as a Persistently Dangerous School on or before August 1 of each year if the school has for two consecutive years substantiated Level 4 behaviors that exceed 5% of the total number of students enrolled in the school based on the school’s second month enrollment:

- battery on a school employee as defined in W. Va. Code §61-2-15;
- commission of an act that would constitute a felony under the laws of the state on the premises of an educational facility, at a school-sponsored function, or on a school bus;
- possession of a firearm or deadly weapon as defined in W. Va. Code §61-7-2 on the premises of an educational facility, at a school-sponsored function, or on a school bus;
- or
- sale of a narcotic drug as defined in W. Va. Code §60A-1-101 on the premises of an educational facility, at a school-sponsored function, or on a school bus.

WVDE Requirements Related to Persistently Dangerous Schools:

- provide targeted technical assistance to any school that has for two consecutive years substantiated Level 4 behaviors that exceed 3.75% of the total number of students enrolled in the school, based on the school’s second month enrollment.

A student attending a school identified as persistently dangerous or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public school that the student attends or while attending a school-sponsored activity, shall be

allowed to attend an alternative setting as determined by the county school system.

Section 4. Use of Physical Punishment Prohibited

W. Va. Code §18A-5-1(e) prohibits school employees from using corporal (bodily) punishment on any student. No physical punishment of any kind can be inflicted upon a student. This includes:

- hitting or striking a student on their physical person;
- requiring physical activity as a punishment (this does not apply to physical activity within the structure and context of extracurricular activities);
- use of noxious stimuli (e.g., pepper spray), denial of food or water, or other negative physical actions to control behavior; and
- seclusion - a removal in which a student is left unsupervised in any space as an intervention or consequence to inappropriate behavior.

Section 5. Use of Restraint

Restraint, reasonable force, may be used to prevent a student from hurting himself/herself or any other person or property. Behavior interventions and support practices must be implemented in such a way as to protect the health and safety of the student and others. When the use of physical restraint is necessary, the following guidelines must be followed:

- shall be limited to the use of such reasonable force as is necessary to address the emergency;
- shall not restrict breathing (e.g. prone restraint); place pressure or weight on the chest, lungs, sternum, diaphragm, back, neck, or throat; or cause physical harm;
- shall be discontinued at the point at which the emergency no longer exists;
- shall be implemented in such a way as to protect the health and safety of the student and others; and
- shall not deprive the student of basic human necessities.

Appropriate (intended use) utilization of mechanical restraints, such as seat belts or feeding tables, when applied for their intended purpose is not prohibited. The application of mechanical restraint is prohibited as an intervention or consequence for inappropriate behavior.

A core team of personnel in each school, including an administrator designee and any

general or special education personnel likely to use restraint, must be trained annually in the use of:

- nationally recognized restraint process, and
- current professionally accepted practices and standards regarding behavior interventions and supports including prevention and de-escalation techniques.

Any non-trained personnel called upon to use restraint in an emergency must receive training within 30 days following the use of restraint if the principal determines the situation is likely to reoccur.

Comprehensive documentation and immediate notification of restraint usage is required.

Time Requirement	Documentation/Notification
Within one hour following the use of restraint	The principal/designee must be provided verbal and written description of the restraint process used on a given student.
Same day	A good faith effort shall be made to verbally notify the parent or guardian of the restraint process used.
Within one school day	<p>Written notification of the use of restraint must be:</p> <ul style="list-style-type: none"> • provided to the parent or guardian, and • included in the student's official school record. <p>The written notification includes:</p> <ul style="list-style-type: none"> • name of the student; • name of the staff member(s) administering the restraint; • date of the restraint and the time the restraint began and ended; • location of the restraint; • narrative that describes antecedents, triggers, problem behavior(s), rationale for application of the restraint, and the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and • documentation of all parental/guardian contact and notification efforts. <p>This notification must be available to determine if the student's behavior impacts the student's learning and/or the creation of or revision to a behavior plan.</p>

Section 6. Collaboration with Law Enforcement

Police can enter schools if they suspect a crime has been committed, have a warrant for an arrest or search, or if their assistance has been requested by school officials. It is the duty of the school officials, teachers, and students to cooperate with the police and each other to ensure that the rights of all involved persons are respected.

Prevention Resource Officers (PRO). PRO are certified police officers, working fulltime within a public school. The PRO duties, salary, and responsibilities should be determined through an agreement with the county board of education and the authorized police department. The principal is the immediate supervisor while the PRO officer is present in the school. There may be a time during the course of PRO duties when the officer's position as law enforcement would take precedence.

Police Conducting an Investigation in the School. When a student is questioned by the police or by school officials in the presence of the police, the school administration and police must cooperate to ensure the privacy of the student is protected. It is the police officer's responsibility to ensure the student's constitutional rights are not violated and to determine if the student's parent or guardian, or lawyer should be contacted prior to questioning. The officer must also determine when the use of restraints is necessary to control an unruly student to prevent the student from harming him/herself or others during questioning.

W. Va. Code §49-4-701 specifies that statements made by a student under the age of fourteen, while being questioned by law enforcement officials, cannot be used in a court proceeding unless his/her lawyer is present. Statements made by students who are fourteen or fifteen years old cannot be used in a court proceeding unless their lawyers are present or a parent or guardian is present and, the parent or guardian has been informed of the student's rights.

Chapter 3

PROCEDURES FOR ADDRESSING ALLEGATIONS OF INAPPROPRIATE BEHAVIORS

Section 1. Procedures for Reporting Complaints of Inappropriate Behavior

School employees are responsible for assuring a safe and supportive school climate and culture. When incidents of inappropriate behavior are witnessed by school staff, the behavior shall be addressed consistently as outlined in this policy.

Inappropriate behaviors observed by students or guests must be reported to the appropriate personnel for action to be taken according to county policy.

County boards of education shall develop procedures to assure that any person who believes he or she is a victim or witness to a violation of Policy 4373 has an identified mechanism to report the alleged acts immediately to the appropriate official(s) designated by the county. These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action, or seeking redress under the state criminal statutes and/or federal law.

County boards of education shall develop appropriate procedures for investigating, reporting, responding, and determining consequences for the failure of an employee to appropriately respond to violations of Policy 4373, in accordance with W. Va. §126CSR142, Policy 5310, Performance Evaluation of School Personnel, in a manner that promotes understanding and respect.

County boards of education and the WVDE shall develop procedures to assure that any person who believes he or she has been the victim or a witness of religious, ethnic, racial or sexual harassment, or violence by a student, teacher, administrator, or other school personnel toward a student, teacher, administrator, or other school personnel has an identified mechanism to report the alleged acts immediately to an appropriate official(s) designated in county policy. These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action, or seeking redress under the state criminal statutes and/or federal law.

All alleged incidents of harassment or violence observed by faculty or staff must be reported to the appropriate official(s) and appropriate action should be taken as specified in Section 2 of this chapter.

Section 2. Procedures for Investigating Allegations of Inappropriate Behavior

The county designee shall immediately undertake or authorize an investigation upon receipt of a report or complaint. The investigation may be conducted by school/county officials, or by a third party designated by the county school system.

The investigation must, at a minimum, consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances within the complaint. The investigation may also consist of any other methods and review of circumstances deemed pertinent by the investigator.

When a student is to be interviewed pursuant to a Level 3 or 4 behavior, a reasonable effort shall be made to contact the student's parent or guardian, and invite them to be present during the interview, provided such notification does not compromise overall school/student safety. Parental/guardian notification is encouraged at Level 2 and discretionary at Level 1.

The principal shall:

- determine whether the alleged conduct constitutes a violation of this policy;
- take immediate and reasonable steps to protect the complainant, students, teachers, administrators, or other personnel pending completion of an investigation; and
- assure that the investigation will be completed as soon as practicable but no later than ten school days following the reported violation.

Upon completion of the investigation:

- a report shall be provided to the principal which includes a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy;
- the report shall be recorded and filed at the county/school level as determined in county policy; and
- the conclusion of the investigation will be reported in writing to the complainant or his/her legal guardian by the principal or his/her designee.

Confidentiality of the filing of complaints, the identity of subjects and witnesses, and any action taken as a result of such complaint is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution shall be provided information. Violations of confidentiality may itself be grounds for disciplinary action.

County boards of education and the WVDE shall develop procedures following the above guidelines to investigate complaints of religious/ethnic, racial or sexual harassment or violence by a student, teacher, administrator or other school personnel of the county board of education. For the WVDE, the State Superintendent of Schools shall take the place of the Principal.

Section 3. Procedures to Prevent Reprisal

The county board of education shall develop discipline procedures to take appropriate action against any student or employee who retaliates against any person who reports alleged violations or any person who testifies, assists, or participates in an investigation, or who testifies, assists, or participates in a proceeding or hearing relating to such violations. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment. Likewise, the county board of education shall develop a disciplinary process to take appropriate action against any student, administrator, or other school employee who falsely reports violations of this policy.

Chapter 4

PROCEDURES FOR TAKING ACTION ON SUBSTANTIATED INAPPROPRIATE BEHAVIORS

Section 1. Interventions and Consequences of Inappropriate Behavior

Inappropriate behavior should be addressed with meaningful interventions and consequences that strive to improve future behavior. School administrators and staff shall exhaust all available school and community resources to provide appropriate school-based interventions designed to keep students in school and engaged in instruction. Out-of-school suspension strategies should be used sparingly and shall never deny a student access to instructional material and information necessary to maintain academic progress. Out-of-school suspension is not a recommended consequence or intervention for Level 1 and 2 behaviors; however, the determination of interventions and consequences is at the discretion of the school administrator, with input considered from teachers/service personnel, for Levels 1, 2 and 3. Specific Level 3 behaviors mentioned in code shall be referred directly to the appropriate administrator because of the serious/unlawful nature of the misconduct.

In determining the appropriate intervention and/or consequence in response to a Level 1 or 2 ~~or 3~~ behavior, the principal, county superintendent, and/or local county board of education should consider:

- the surrounding circumstances;
- the nature of the behavior;
- past incidents or continuing patterns of behavior; and

- the relationships between the parties involved and the context in which the alleged incidents occurred.

Section 2. Guidelines for Specific Responses to Inappropriate Behavior

Exclusion. According to W. Va. Code §18A-5-1, a teacher or bus driver may exclude from a classroom or bus any student who is guilty of disorderly conduct; interferes with the orderly educational process; threatens, abuses, or otherwise intimidates a school employee or student; willfully disobeys a school employee; or directs abusive or profane language at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee.

The excluded student may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent or guardian.

When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher and, if possible, the parent or guardian of the student have held a conference to discuss the student's disruptive behavior patterns and agree on a course of action. If they are not present at the conference then the parent or guardian must be notified of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting.

Bus drivers must follow the guidelines outlined in W. Va. §126CSR92, Policy 4336, West Virginia School Bus Transportation Policy and Procedures Manual. When the bus driver excludes a student from the school bus, the driver shall notify the student and the student's principal. The principal/designee shall notify the student's parent or guardian. All students shall be transported until the parent or guardian has been properly notified of the exclusion. The principal/designee shall notify the parent or guardian when the child may resume riding the bus. If the inappropriate behavior persists, the student may have his/her rights to transportation services suspended for the remainder of the year, to the extent feasible.

Suspension. The purpose of suspension is to protect the students, school personnel and property, the educational environment, and the orderly process of the school. Suspension is

considered a temporary solution to an inappropriate behavior until the problem that caused the suspension is corrected. The length of a suspension should be short, usually one to three school days, but may extend to ten school days.

Suspension typically takes one of two forms:

- In-School Suspension. Student is temporarily removed from the classroom(s) for disciplinary reasons but remains under the direct supervision of school personnel and continues to receive instructional support. Direct supervision means school personnel are physically in the same location as the student(s) under their supervision. Settings may include other locations within the school building or removal to another school, such as an alternative school, provided the student remains under direct supervision of school personnel.
- Out-of-School Suspension. Student is temporarily removed from the school for disciplinary reasons to another setting pursuant to W. Va. Code §18A-5-1a (e.g., home, community setting). This includes both removals in which no Individual Education Plan (IEP) services are provided because the removal is 10 days or less, as well as removals in which the student continues to receive services according to his/her IEP. The student is not under direct supervision of school personnel as defined under in-school suspension.

A student is entitled to an informal hearing when faced with an out-of-school suspension of 10 days or less. At this hearing, the principal must explain why the student is being suspended, and the student must be given the opportunity to present reasons why she/he should not be suspended. However, a student whose conduct is detrimental to the safety of the school may be suspended immediately and a hearing held as soon as practical after the suspension. Other procedures the school must follow when dealing with out-of-school suspensions are outlined in W. Va. Code §18A-5-1 and §18A-5-1a and include:

- parent or guardian must be notified promptly in all cases of suspension;
- county superintendent or designee must be notified, preferably in writing, of the time and conditions pertaining to the suspension;
- student may not participate in any school-sponsored activities and is not permitted on school grounds during the period of suspension; or
- student may not be suspended from school solely for not attending class.

An out-of-school suspension of more than 10 days requires a formal hearing before the county board of education. The school and county must adhere to the following procedures as outlined in W. Va. Code §18A-5-1 and §18A-5-1a when dealing with suspensions of more than 10 days:

- parents or guardian must be informed in writing of the charges against their child, including a summary of the evidence upon which the charges are based;
- upon the student's parent or guardian's request, a formal hearing must be scheduled before the county board of education;

- students are entitled to be represented or advised during the proceedings by a person or persons of their choosing, including legal counsel; and
- students are entitled to be given reasonable time to prepare for the hearing.

Expulsion. The county superintendent, upon recommendation by the principal, may recommend that a county board of education expel a student from school if the student's conduct is judged to be detrimental to the progress and general conduct of the school. In all cases involving expulsion, the student is entitled to formal due process procedures. These procedures are outlined in W. Va. Code §18A-5-1 and §18A-5-1a.

W. Va. Code §18A-5-1 and §18A-5-1a requires mandatory out-of-school suspension by the principal and mandatory expulsion for a period of not less than twelve consecutive months by the county board of education for: possession of a deadly weapon, battery of a school employee, or sale of a narcotic drug. Procedures that must be followed when dealing with an expulsion include:

- the student and parent or guardian must be given a written statement of the specific charges against the student;
- the county board of education must hold a hearing regarding the recommended expulsion;
- the student and parent or guardian must be given a written notice of the time and place of the county board of education hearing at which the expulsion will be considered. This notice must be given far enough in advance for the student to have time to prepare an adequate defense against the charges;
- the student and parent or guardian have the right to be present at the county board of education hearing and to defend against the charges;
- the student has the right to be represented by an attorney at the hearing at his/her own expense;
- the student has the right to present witnesses on his/her behalf, to hear the testimony of witnesses against him/her, and to question the witnesses against him/her;
- if the board of education decides that the charges against a student do not warrant his/her expulsion from school, the student may remain in school or return to school without being subjected to punishment or harassment;
- in all expulsion hearings, facts shall be found by a preponderance of the evidence;
- expulsion by the board of education is final. However, if a student or parent or guardian believes that the student was not given procedural due process, he/she may appeal to the State Superintendent of Schools. If the State Superintendent of Schools finds that the board's decision to expel the student was properly made, then the expulsion will stand unless overturned by a court.

Section 3. Considerations for Transferring Students with Expulsions

Students who have been suspended or expelled from a public or private school in West

Virginia or another state, currently residing within the county, may not be denied enrollment in the county school system unless determined to be a “dangerous student” under the procedures set forth in W. Va. Code §18A-5-1a. County superintendents may, in their discretion, determine the appropriate educational placement, including alternative education services, for these students (State Superintendent of Schools’ Interpretation of January 26, 2007).

Section 4. Considerations for Students with Disabilities, Students not yet Determined Eligible for Special Education, and Students with 504 Plans

Refer to Policy 2419, Chapter 7 for specific guidelines related to protections which may be warranted for students with disabilities, students not yet determined eligible for special education (i.e., students currently engaged in the eligibility process beginning with a Student Assistance Team referral), or students with 504 plans.

Section 5. Procedures for Reporting Action on Substantiated Incidents

Schools shall accurately track incidents of inappropriate behavior in order to utilize data for school climate/culture improvement efforts and to create documentation to support actions taken to intervene in inappropriate behavior patterns. The WVEIS provides schools with the platform to report all incidents of inappropriate behavior at the classroom level and above. The primary value of this data rests at the school and county level and is necessary for development and monitoring of Policy 4373. All inappropriate behaviors as described in Chapter 2 Section 2, Levels 1, 2, 3, and 4 shall be reported through:

- teacher-level documentation of inappropriate behavior leading to interventions, consequences, and/or referrals to the principal;
- Principal-level WVEIS data entry of teacher level documentation and administrative disciplinary actions. This data shall be entered by the principal and/or other authorized staff; or
- county superintendent-level WVEIS data entry of county board of education actions resulting from expulsion hearings. This data shall be entered by the county superintendent and/or other authorized staff.

Incidents of inappropriate behaviors reported into WVEIS in accordance with this policy will be used by the WVDE to comply with federal and state reporting requirements.

Section 6. Conflict Resolution Process

If someone believes that a county board of education has violated the procedural rights set forth in this policy, the person may follow the appeal procedures outlined in W. Va. 126CSR188, WVBE Policy 7211, [Conflict Resolution Process for Citizens \(Policy 7211\)](#). The procedures set forth in this policy are not deemed to be a precondition to seeking relief in some other forum, nor do they address personal complaints against a school employee.

Chapter 5

ALTERNATIVE EDUCATION REQUIREMENTS FOR DISRUPTIVE STUDENTS

W. Va. Code §18-5-19 provides for the creation of alternative education programs to allow for the provision of a free and appropriate education to students whose disruptive behavior has caused them to be removed from the regular classroom/school setting. Nothing in this manual precludes county boards of education from operating alternative education programs for non-disruptive students. The guidelines in this manual apply solely to alternative education programs for disruptive students. The State Superintendent of School's approval of the county alternative education policies and procedures is required for authorization to operate an alternative education program under these regulations.

Alternative education program is a temporarily authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions. These programs provide a safe and orderly learning environment for the education of all students in West Virginia public schools and meet the educational needs of disruptive students.

Alternative education programs for disruptive students encompass a range of program options such as:

- in-school suspension;
- a separate part-time or full-time alternative education classroom;
- a school-within-a-school;
- a school at an alternative site;
- an afterschool class/night school program; or
- a combination academic/work-based program.

County boards of education shall have flexibility in developing the type or types of alternative education program options needed to meet the needs of disruptive students in the county. County boards of education may request a waiver of State Board of Education policies and regulations in the development and operation of alternative education programs. Such a waiver request does not have to be submitted in accordance with the

procedures for requesting waivers stipulated under W. Va. Code §18-5A-3, but may be submitted directly to the State Superintendent of Schools.

Program flexibility does not extend to modifying the provisions of Policy 2419 in providing alternative education programs for students with exceptionalities or Section 504 of the Rehabilitation Act of 1973.

Section 1. Policies and Procedure

County boards of education policies and procedures shall include, but are not limited to the:

- goals of the program;
- eligibility criteria and process for placement of students in the program as determined by Student Assistance Team as defined by W. Va. 126CSR42, WVBE Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (Policy 2510);
- involvement of parent or guardian and community agencies;
- length and time of day the after-hours/night school program operates, if applicable;
- plan for awarding of grades and/or credits;
- behavioral management plan as an alternative to the county's discipline policy, if applicable;
- staffing plan, personnel qualifications, and class size limits;
- criteria for completion of the alternative education program or re-entry into general education; and
- performance measures and process for program evaluation.

Section 2. Eligibility and Placement

A student may be placed in alternative education programs for:

- violations of the W. Va. Code §18A-5-1a;
- repeated violations of the county's discipline policy following documented multiple behavioral interventions by the Student Assistance Team at the referring school; or
- continuation of educational services during periods of suspension.

A student who has been expelled must be placed in an alternative education program unless found to be a “dangerous student” under the procedures set forth in W. Va. Code §18A-5-1a.

A student who has been suspended or expelled from a public or private school in West Virginia or another state, currently residing within the county, may not be denied enrollment unless determined to be a “dangerous student” under the procedures set forth in W. Va. Code

§18A-5-1a.

Upon placement, the Student Assistant Team shall develop a student's written plan which includes academic courses and behavioral components, criteria for re-entry to the regular school program, and provisions for periodic review of the student's progress at least on an annual basis. The team for all students with disabilities shall be the IEP team and the written plan shall be the IEP.

Section 3. County Alternative Education Requirements

Curriculum. The curriculum will be based upon state-approved standards and include a component for teaching responsible behavior in a climate/culture conducive to teaching and learning.

Instruction. The instruction shall be personalized in a developmentally and age appropriate delivery.

Units of Credit. Units of credit are granted based upon proficiency of state-approved content standards.

Program Completion. A student may complete an alternative education program in one of the following manners:

1. fulfillment of the criteria for re-entry into the referral school;
2. completion of high school graduation requirements and awarding of a high school diploma from the referral school; or
3. completion of a high school equivalency exam in accordance with W. Va. 126CSR32, WVBE Policy 2444.4, Issuance of the State of West Virginia High School Equivalency Diploma and Option Pathway.

State Assessment. A student shall participate in the appropriate assessment according to W. Va. 126CSR14, WVBE Policy 2340, West Virginia Measures of Academic Progress Program. The test scores for these students shall be counted in the results of the referral school.

Support Services. A student shall receive counseling and/or other support services as indicated in the student's written plan.

Special Education. A student's IEP shall comply with applicable state and federal laws and regulations.

Licensure. A teacher assigned to deliver the state-approved content standards within an alternative education program must possess a West Virginia professional teaching certificate in any area. A Temporary Authorization valid for one year shall be granted to the successful candidate for the alternative education program position. The employing county superintendent must verify that the applicant possesses the required competencies. The Temporary Authorization may be renewed each year based on the applicant's continued employment in an alternative education program.

Personnel Selection Criteria. A certified classroom teacher shall be selected on the basis of the teacher's demonstration of competence in meeting the following standards:

- ability to effect positive behavior in disruptive students;
- effective leadership and/or mentoring skills in working with youth;
- successful experience in providing education to troubled or disruptive youth;
- specialized training or experience in non-traditional programs; and
- specialized training in behavior management skills.

Section 4. Optional Alternative Education Settings

Day-School Programs. Absent expulsion, a student attending an alternative education day school program shall have the opportunity to receive a full-time instructional program and full instructional day.

After-Hours/Night School Classes. County boards of education are authorized to provide alternative education programs after regular school hours for expelled students and for students who have repeated serious violations of the county's discipline policy following documented multiple behavioral interventions and out-of-school suspensions. After-hour/night school programs shall include the provision of academic coursework and development of social skills/and appropriate behavior. Unless otherwise required by law, regulation, or court order, transportation services for such programs are at the discretion of the county board of education.

Home-Based Programs for Disruptive Students. County boards of education may provide home-based programs solely for students expelled under the Productive and Safe Schools Act (W. Va. Code §18A-5-1a) or for disruptive students who meet the eligibility criteria for home/hospital instruction under Policy 2510.

Program Evaluation. County boards of education shall conduct an annual evaluation of the effectiveness of the programs. The evaluation shall focus upon the impact on student performance and results using indicators such as:

- academic gains;
- reduction in dropout rates;
- reduction in incidences requiring disciplinary action;
- improvement in attendance rates;
- rates of successful program completion and return to the regular school program;
- rates of successful completion of career and technical training programs;
- rates of successful completion of high school graduation or attainment of a high school equivalency diploma; and
- rates of successful job placement and job retention.

The WVDE shall review compliance with alternative education requirements and the effectiveness of alternative education programs through monitoring and review of the application received annually. The alternative education program shall be evaluated on the basis of its stated goals and the provisions of this policy.

Appendix A: Behaviors and Definitions

Behaviors	Definitions
Battery Against a Student	Injuring another student unlawfully and intentionally.
Cheating	Plagiarizing or copying the work of others or breaking rules to gain advantage in a competitive situation. Interventions could result in academic sanctions.
Defacing School Property/ Vandalism	Defacing or damaging property of the school or others. Actions such as writing in school textbooks or library books, writing on desks or walls, carving into woodwork, desks, or tables, and spray painting surfaces are acts of defacement. Examples of damage to school property include, but are not limited to, ruining bulletin boards, intentionally clogging the plumbing system, breaking light bulbs or fixtures, and damaging school equipment to the point where repair is necessary.
Deceit	Deliberately concealing or misrepresenting the truth, deceiving another, or causing another to be deceived by false or misleading information.
Disruptive/ Disrespectful Conduct	Exhibiting behavior that violates classroom/school rules, results in distraction and obstruction of the educational process or that is discourteous, impolite, bad mannered, and/or rude. Behavior is considered disruptive and/or disrespectful if a teacher is prevented from starting an activity or lesson or has to stop instruction to address the disruption.
Failure to Serve Detention	Failing to serve an assigned detention of which student and/or parent or guardian have been notified.
False Fire Alarm	Setting-off a fire alarm knowingly and willingly without cause.
Falsifying Identity	Providing false identification to any school official with intent to deceive school personnel or falsely obtain money or property.
Fraud/Forgery	Deceiving another or causing another to be deceived by false or misleading information or signing the name of another person in order to obtain anything of value or defraud authorities.
Gambling	Engaging in any game of chance or contest wherein money or other items of monetary value are awarded to the winner, except for those games and contests authorized as official school functions.
Gang-Related Activity	Using violence, force, coercion, threat of violence or gang activity that causes disruption or obstruction to the educational process. Gangs are defined as

	<p>organized groups of students and/or adults who engage in activities that threaten the safety of the general populace, compromise the general community order, and/or interfere with the school district's educational mission.</p> <p>Gang activity includes:</p> <ul style="list-style-type: none"> • Wearing or displaying any clothing, jewelry, colors, or insignia that intentionally identifies the student as a member or otherwise symbolizes support of a gang. • Using any word, phrase, written symbol, or gesture that intentionally identifies a student as a member, or otherwise symbolizes support of a gang. • Gathering of two or more persons for purposes of engaging in activities or discussions promoting gangs. • Recruiting student(s) for gangs.
<p>Habitual Violation of School Rules or Policies</p>	<p>Persistently refusing to obey the reasonable and proper orders or directions of school employees, school rules, or policies. Student must have had one or more previous discipline referrals.</p>

<ul style="list-style-type: none"> • Racial Harassment • Religious/Ethnic Harassment • Sexual Violence • Racial Violence 	<p>obtaining an education; or submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education; or that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's education by creating an intimidating, hostile, or offensive employment or educational environment.</p> <p>Amorous relationships between county board of education employees and students are prohibited.</p> <p>Physical, verbal or written conduct relating to an individual's race when the conduct has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment; or otherwise adversely affects an individual's academic opportunities.</p> <p>Physical, verbal, or written conduct related to an individual's religion or ethnic background when the conduct has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment.</p> <p>Physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks or breast, as well as the clothing covering these areas. Sexual violence may include, but is not limited to: touching, patting, grabbing, or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex; coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts; coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another; threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another; or; threatening or forcing exposure of intimate apparel or body parts by removal of clothing.</p> <p>Physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.</p>
<p>Hazing</p>	<p>Hazing or conspiring to engage in the hazing of another person. Hazing means to cause any action or situation</p>

	which recklessly or intentionally endangers the mental or physical health or safety of another person or persons, to destroy or remove public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any activity or organization, including both co-curricular and extra-curricular activities.
Imitation Drugs: Possession, Use, Distribution, or Sale	Possessing, using, distributing, or selling any substance that is expressly represented or implied to be a controlled substance or simulate the effect and/or the appearance (color, shape, size, and markings) of a controlled substance.
Improper or Negligent Operation of a Motor Vehicle	Operating a motor vehicle intentionally and recklessly on the grounds of any educational facility, parking lot, or at any school-sponsored activity, which endanger the safety, health, or welfare of others.
Inappropriate Appearance	Dressing or is grooming in a manner that disrupts the educational process or is detrimental to the health, safety, or welfare of others. Distractive or indecent dress that interferes with the teaching and learning process, including wearing any apparel that displays or promotes behavior and/or items prohibited by this policy.
Inappropriate Display of Affection	Engaging in inappropriate displays of intimate affection, such as kissing or embracing.
Inappropriate Language	Using profanity in general context whether verbally or in writing, with or without photographs or drawings. (not directed toward any individual or group).
Inhalant Abuse	Deliberately inhaling or sniffing common products found in homes, schools, and communities with the purpose of intoxication. The action may be referred to as huffing, sniffing, dusting, and/or bagging.
Insubordination	Ignoring or refusing to comply with directions or instructions given by school authorities. Refusing to open a book, complete an assignment, work with another student, work in a group, take a test or do any other class- or school-related activity not listed herein, refusing to leave a hallway when requested by a school staff member, or running away from school staff when told to stop, all constitute insubordination/unruly conduct.
Larceny	Taking another person's property or having another person's property in his/her possession without permission. Property valued at \$1,000 or more will increase this behavior to a Level 4 because it is considered a felony in accordance with W. Va. Code §61-3-13.

Leaving School without Permission	Leaving the school building, campus, or school activity without permission from authorized school personnel.
Physical Fight without Injury	Engaging in a physical altercation using blows with intent to harm or overpower another person or persons.
Possession of Imitation Weapon	Possesses any object fashioned to imitate or look like a weapon.
Possession of Inappropriate Personal Property	Possessing personal property that is prohibited by school rules or that is disruptive to teaching and learning.
Possession of Knife not meeting Dangerous Weapon Definition (W. Va. Code §61-7-2)	Possessing a knife or knife-like implement under 3½ inches in length. W. Va. Code §61-7-2 clarifies that a pocket knife with a blade 3½ inches or less in length, a hunting or fishing knife carried for sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term knife as defined as a deadly weapon unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.
Possession/Use of Substance Containing Tobacco and/or Nicotine	Possessing, use, or be under the influence of any substance containing tobacco and/or nicotine or any paraphernalia intended for the manufacture, sale, and/or use of tobacco/nicotine products in any building/area under the control of a county school system, including all activities or events sponsored by the county school district.
Profane Language/ Obscene Gesture/ Indecent Act Toward an Employee or a Student	Directing profane language, obscene gestures or indecent acts towards a school employee or a fellow student. This includes but is not limited to verbal, written, electronic and/or illustrative communications intended to offend and/or humiliate.
Sexual Misconduct	Exposing himself/herself publicly and indecently, displaying or transmitting any drawing or photograph of a sexual nature, or committing an indecent act of a sexual nature on school property, on a school bus, or at a school-sponsored event.
Skipping Class*	Failing to report to the school's assigned class or activity without prior permission, knowledge, or excuse by the school or by the parent or guardian. W. Va. 126CSR81, WVBE Policy 4110
Tardiness*	Failing to be in his/her place of instruction at the assigned time without a valid excuse.
Technology Misuse	Violating W. Va. 126CSR41, WVBE Policy 2460, Educational Purpose and Acceptable Use of Electronic Resources, Technologies and the Internet.
Threat of Injury/Assault against an employee/student	Threatening (verbal or written) or attempting to injure another student, teacher, administrator, or other

	school personnel. (This includes assault on a school employee defined in W. Va. Code §61-2-15.)
Trespassing	Entering the premises of county school system property, other than the assigned time and the location without authorization from proper school authorities.
Vehicle Parking Violation	Engaging in improper parking of a motor vehicle on school property.

Appendix B: Sample Interventions and Consequences

Interventions
Administrator/student conference or reprimand
Administrator and teacher-parent or guardian conference
Counseling referrals to support staff or agencies
Notification of appropriate Health and Human Resources
Daily/weekly academic and/or behavioral progress reports
Referral to Student Assistance Team (SAT)
Behavioral contracts
Change in the student's class schedule, locker assignment, or seat assignment
School service assignment
*W. Va. Code §18A-5-1(d) prohibits the use of suspension solely for not attending class.
The selection of appropriate interventions and consequences for substance abuse must be considered very carefully depending upon the severity of the behavior and potential safety concern for others in the school. The first action must be to conference with the parent or guardian and appropriate law enforcement representatives in an effort to direct the student to appropriate addiction services. Referral to tobacco cessation services/treatment and substance abuse treatment services shall be a priority intervention strategy for these behaviors.

Consequences
Academic sanctions may be used to deny credit for work resulting from cheating; however, previously earned grades/credits may not be reduced, if cheating did not occur on the earned grades and credits.
Confiscation of inappropriate item
Revocation of privileges
Detention (lunch, before and/or after school)
Denial of participation in class and/or school activities
Restitution/restoration
Immediate exclusion by teacher from the classroom with a recommended duration of one period/subject of the school day for the first exclusion (W. Va. Code §18A-5-1)
Voluntary weekend detention (State Superintendent of Schools' Interpretation of May 12, 2006)
In-school suspension
While out-of-school suspension is not recommended for Level 1 Inappropriate Behavior, if used at the discretion of the school administrator, it should be limited to a maximum of three (3) days.
Out-of-school suspension with a recommended maximum of five (5) days (See guidelines in Chapter 4, Section 2) W. Va. Code §18A-5-1(d) prohibits the use of suspension solely for not attending class.
Out-of-school suspension for up to ten (10) days. (See guidelines in W. Va. Code §18A-5-1(d).)
The principal and/or county superintendent may recommend placement in an Alternative Education program as described in Section 5 of this chapter.
Expulsion (See guidelines in W. Va. Code §18A-5-1(d).) innocent
Law enforcement notification, if warranted. Absent a real and immediate threat to school or public safety, incidents involving public order offenses shall be considered school

discipline issues to be handled by school officials rather than criminal law issues warranting formal law enforcement intervention.

Upon receipt of a complaint of racial, sexual, and/or religious/ethnic harassment or violence that has been substantiated through investigation, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed above. Actions for staff may include but not be limited to, warning, suspension, termination, revocation of licensure, notification of law enforcement and/or human services. Actions for public guests may include but not be limited to removal from school property and school-sponsored functions, notification of law enforcement and/or human services.

Appendix C: Requirements

W. Va. Code	WVBE and WVDE Requirements
§18-2-7b Programs in drug prevention and violence reduction	<ul style="list-style-type: none"> • Prescribe programs within the existing health and physical education program which involve teachers, counselors, and other staff in the teaching of resistance and life skills to counteract societal and peer pressure to use drugs, alcohol, and tobacco. • Prescribe programs to coordinate violence reduction efforts in schools and between schools and their communities and to train students, teachers, counselors, and staff in conflict resolution skills. The program shall be comprehensive, interdisciplinary, and shall begin in elementary school.
§18-2C-1, et seq. Prohibiting harassment, intimidation, or bullying	<ul style="list-style-type: none"> • Compile WVEIS incident data for harassment, intimidation, and bullying and report it annually to the Legislative Oversight Committee on Education Accountability.
§18-9F-9 School Crisis Prevention and Response Plan	The WVBE, in conjunction with the Division of Homeland Security and Emergency Management, has developed a School Crisis Prevention and Response Plan Template containing the requirements for school specific School Crisis Prevention and Response Plans. The School Crisis Prevention and Response Plan Template to be used by schools may be found on the WVDE website. This template aligns with the safe schools initiatives of the School Building Authority and Homeland Security and Emergency Management. Additionally, those portions of a school's access safety plan may be included in the School Crisis Prevention and Response Plan if there are any overlapping requirements.
§61-7-11a Possessing deadly weapons	The WVBE shall keep and maintain reports received by the State Superintendent of Schools from school principals that discover the unlawful possession of firearms on school premises or school buses. The WVBE may establish procedures for making and delivering such reports, entering into WVEIS, and notifying the State Superintendent of Schools via email and telephone as soon as possible, per W. Va. Code §61-7-11a, after the principal becomes aware of such unlawful or unauthorized possession.
W. Va. Code	County Board of Education Requirements
§18-2C-1, et seq. Prohibiting harassment, intimidation, or bullying	<ul style="list-style-type: none"> • Establish a policy prohibiting harassment, intimidation, or bullying using a process that includes representation of parent or guardian, school employees, school volunteers, students, and community members. • Include the following minimum policy components: <ul style="list-style-type: none"> • Effective on school property, school bus, school bus stop, and school-sponsored events; • Defined with all components of the definition set forth in W. Va. Code §18-2C-3 and this policy; • Procedures for reporting incidents; • Requirement that school personnel report incidents of which they are aware; • Requirement that parent or guardian of any student involved in an incident be notified;

W. Va. Code	County Board of Education Requirements
	<ul style="list-style-type: none"> • Procedures for responding to and investigating reported incidents; • Strategies for protecting a victim from additional harassment, intimidation, or bullying and from retaliation following a report; • Discipline procedures for any student guilty of harassment, intimidation, or bullying; • Procedures to ensure confidentiality of any information relating to a reported incident; and • Requirement that each incident be reported within the WVEIS. • When/if the county policy is revised, submit a copy to the State Superintendent of Schools. • Post notice of the county policy in any student handbook, and in any county board of education publication that sets forth the comprehensive rules, procedures, and standards of conduct for the school. • Incorporate into each school’s current employee training program Information regarding the county board of education policy prohibiting harassment, intimidation, and/or bullying. • Provide training, to the extent state or federal funds are appropriated, on the harassment, intimidation, or bullying policy to school employees and volunteers who have direct contact with students and develop a process for educating students on the same.
<p>§18-5A-2 Local School Improvement Councils (LSIC)</p>	<ul style="list-style-type: none"> • Annually, the LSIC shall develop and deliver a report, adhering to all applicable student privacy regulations, to the county superintendent (council on productive and safe schools) that includes: <ul style="list-style-type: none"> • Guidelines for the instruction and delivery of interventions for students who have been excluded from the classroom, suspended from the school, or expelled from the school. The guidelines shall include descriptions/recommendations for in-school programs with alternative settings and/or schedules, a system to provide effective communication and coordination between school and local emergency services agencies, preventive discipline strategies, and student involvement strategies. • Findings from an examination of school discipline procedures including disciplinary measures used at the school along with a documented assessment of fairness and consistency of disciplinary actions. • The county superintendent or designee shall respond to the LSIC in writing within 10 days of receiving the report. • The county board of education shall retain and file all such correspondence for public review.
<p>§18-9F-1, et seq. School Access Safety Act</p>	<p>Each county board of education seeking funds for school access safety projects during a fiscal year shall submit to the School Building Authority (SBA) a school access safety plan or annual plan update that addresses the school access safety needs of each school facility in the county. The safety plan shall include at least the following:</p> <ul style="list-style-type: none"> • A prescribed countywide inventory of each school facility's means of ingress to and egress from the school for students, school employees, parent or guardian, visitors, and emergency personnel; • The recommendations and guidelines developed by the Countywide Council on Productive and Safe Schools together with the county board

W. Va. Code	County Board of Education Requirements
	<p>of education assessment of the recommendations and guidelines;</p> <ul style="list-style-type: none"> • Recommendations for effective communication and coordination between school facilities, local law-enforcement agencies, and local emergency service agencies in the county; • An assessment of the current status of crime committed on school campuses and at school-related functions; • A projected school access safety repair and renovation schedule for all school facilities in the county; • A prioritized list of all projects contained in the plan, including the projected cost of each project; • A description of how the plan addresses the school access safety goals and guidelines established by the SBA and how each project furthers the county board of education safety plan, facilities plan, and school major improvement plan; • Notation of the funds available for allocation and disbursement to the county board of education from the School Access Safety Fund; • A description of any source of local funds that the county board of education intends to contribute to the safety projects, or an approved financial hardship waiver, to satisfy the local contribution requirements; and • Any other element considered appropriate by the SBA or required by other regulations.
<p>§18-9F-9 Crisis Response Plan</p>	<p>County board of education is required to:</p> <ul style="list-style-type: none"> • Keep the current School Crisis Prevention and Response Plans for each school in the county on file and, unless otherwise provided for, provide a copy of each school's crisis prevention and response plan to each local emergency response agency that has a role in the plan. Local emergency response agencies that maintain a copy of the plan shall provide the same necessary safeguards for the information in the plan; • Employ the approved safeguards put in place by the school to protect information contained in each crisis prevention and response plan that may be considered protected critical infrastructure information, law enforcement sensitive information, or for official use; and • Make available to the public, upon request, a redacted copy of a school crisis prevention and response plan with any information removed that is necessary for compliance with the necessary safeguards. <p>The county board of education should support schools in the development and updating of school crisis prevention and response plans by providing the following guidance and support:</p> <ul style="list-style-type: none"> • Standardized procedures, developed in collaboration with local emergency agencies and service providers, that can be used in each school crisis prevention and response plan as appropriate when one agency or service provider serves all schools within the county; • Standardized lists of existing county board of education policies that support the requirements of the school crisis prevention and response plan; • Standardized local procedures for document safeguards and technical support to schools regarding the appropriate filing of the school crisis prevention and response plan;

W. Va. Code	County Board of Education Requirements
	<ul style="list-style-type: none"> • Standardized procedures for the annual review/update of each school crisis prevention and response plan; and • Resources for training school personnel on school specific school crisis prevention and response plans.
<p>§18A-5-1 Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished</p>	<ul style="list-style-type: none"> • The county board of education shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct disruptive student behaviors so disruptive students can return to a regular classroom without engaging in further disruptive behavior. • Corporal punishment of any student by a school employee is prohibited. • The county board of education is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with state laws to govern disciplinary actions. These policies shall encourage the involvement of parent or guardian in the maintenance of school discipline. • The county board of education shall provide for the implementation of a preventive discipline program including student involvement. • The county board of education shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. • The county board of education also may establish cooperatives with private entities to provide middle educational programs which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management, and decision making for students and any other program related to preventive discipline.
<p>§18A-5-1a Possessing deadly weapon; possessing a controlled substance; assaults and batteries upon teachers or other school personnel; sale of narcotic; expulsion; exception; alternative education</p>	<p>Students are not permitted to engage in the following conduct on school premises, on school buses or school transportation, or at school-sponsored functions:</p> <p>GROUP A</p> <ul style="list-style-type: none"> • Intentionally making physical contact of an insulting or provoking nature with a school employee while he or she is performing job duties; is commuting to or from work; or in retaliation to the school employee's action to supervise or discipline students • Possessing a firearm or other deadly weapon • Participating in the sale of a narcotic drug <p>GROUP B</p> <ul style="list-style-type: none"> • Committing an act or engaging in conduct that would constitute a felony in West Virginia if committed by an adult • Possessing a controlled substance governed by the Uniform Controlled Substance Act <p>GROUP C</p> <ul style="list-style-type: none"> • Injuring, or threatening to injure, a student, teacher, administrator, or other school personnel • Willfully disobeying a teacher • Possessing alcohol

W. Va. Code	County Board of Education Requirements
	<ul style="list-style-type: none"> • Using profane language directed at a school employee or student intentionally defacing school property • Participating in a physical altercation with another person while under the authority of school personnel • Habitually violating school rules or policies <p>When a principal has notified the county superintendent of a student's suspension for conduct described in Group A above and makes the mandatory request to the county superintendent that the student be expelled, the county superintendent shall recommend to the county board of education that the student be expelled. Upon receiving the county superintendent's recommendation, the county board of education shall hold a hearing following the procedures outlined below. If it is determined the student did commit the alleged conduct, the county board of education shall expel the student in accordance with Level 4, Chapter 2, Section 2. When a principal has notified the county superintendent of a student's suspension for conduct described in Groups B and C above and submits a request to the county superintendent that the student be expelled, the county superintendent may recommend to the county board of education that the student be expelled. If the county superintendent makes such recommendation, the county board of education may hold a hearing following the procedures outlined below. If it is determined the student did commit the alleged conduct, the county board of education may expel the student.</p> <p>Hearing Procedure</p> <ul style="list-style-type: none"> • Prior to a hearing, the county board of education shall issue written notice which states the charges and the recommended disposition to be served upon the student and his/her parent, guardian or custodian(s). The notice shall include: <ul style="list-style-type: none"> ○ The date and time at which the hearing shall be held (within ten days of the beginning of the suspension); and ○ If there will be an attempt to establish the student as a "dangerous student," the notice must state this intention and include any evidence which will be used to assert this claim. • At the hearing, the county board of education shall determine: (1) if the student should be reinstated; or (2) if the student should be expelled from school. If the county board of education determines the student should be expelled from school, it may also determine whether the student is a dangerous student. If the written notice for the hearing did not clearly articulate that evidence would be presented to establish the student as a dangerous student, the county board of education shall schedule a second hearing within 10 days to decide that issue. A second hearing attempting to establish a student as a dangerous student may be postponed for good cause shown by the student; such student shall remain under suspension until after the second hearing. • At any hearing before a county board of education, the student may be represented by counsel, may call his/her own witnesses to verify his/her version of the incident, and may confront and cross-examine witnesses

W. Va. Code	County Board of Education Requirements
	<p>supporting the charge against him or her.</p> <ul style="list-style-type: none"> • All hearings before the county board of education shall be recorded by electronic means unless recorded by a certified court reporter. • In all hearings, facts shall be found by a preponderance of the evidence. • A hearing before the county board of education may be postponed for good cause shown by the student but he or she shall remain under suspension until after the hearing. • At the conclusion of the hearing, the county board of education shall either: (1) order the student reinstated immediately at the end of his/her initial suspension; (2) suspend the student for a further designated number of days; or (3) expel the student from the public schools of the county. • A county board of education that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. <ul style="list-style-type: none"> ○ A hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. ○ During such hearings, the county board of education may consider the history of the student's conduct as well as any improvements made subsequent to the expulsion. ○ If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period. • In connection with proceedings related to a recommended student expulsion or dangerous student determination, the superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents. Upon written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents, or both following the subpoena requirements set forth in W. Va. Code §29A-5-1. • Any hearing may be postponed: (1) For good cause shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A student remains under suspension until after the hearing in any case where a postponement occurs. • Students may be expelled for a period not to exceed one school year, except that if a student is determined to have committed conduct described in Group A above the student shall be expelled for a period of not less than twelve consecutive months. <ul style="list-style-type: none"> ○ The county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the student if the circumstances of the student's case warrant. Upon the reduction of the period of expulsion, the county superintendent shall prepare a

W. Va. Code	County Board of Education Requirements
	<p>written statement setting forth the circumstances of the student's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board of education, the principal, the faculty senate, and the local school improvement council. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:</p> <ul style="list-style-type: none"> ▪ the extent of the student's malicious intent; ▪ the outcome of the student's misconduct; ▪ the student's past behavior history; ▪ the likelihood of the student's repeated misconduct; and ▪ if applicable, successful completion of satisfactory progress towards successful completion of Juvenile Drug Court. <ul style="list-style-type: none"> • All actions taken with regard to this section of law must be in compliance with the federal provisions of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 <i>et seq.</i> • Each suspension or expulsion imposed upon a student under the authority of this section shall be recorded in WVEIS.
<p>W. Va. Code §49-2-803 Persons mandated to report suspected abuse and neglect; requirements.</p>	<p>County boards of education are responsible for providing all of its employees with a written document setting forth the notification requirements when child abuse or neglect is suspected. The statement must contain the following information:</p> <ul style="list-style-type: none"> • teachers, school personnel, volunteers, counselors, nurses, or other professional mandatory reporters within a school who suspect that a student is being abused or neglected shall report the circumstances to the West Virginia Department of Health and Human Resources immediately, and within no more than 24 hours; • if a mandatory reporter suspects a student has suffered serious physical abuse or sexual abuse or sexual assault, the West Virginia State Police and the local law enforcement entity must also be notified immediately; • mandatory reporters that are also staff or volunteers of an entity or organization that provides services to a school or otherwise organizes activities at a school or on school premises must immediately notify the person in charge of the entity or organization providing services or activities to a school. The mandatory reporter must follow any additional reporting requirements established by such entity or organization; • in instances where a mandatory reporter personally witness any of the following acts, or receives credible information from a witness of any of the following acts, he or she must notify the West Virginia State Police and the local law enforcement entity immediately: <ul style="list-style-type: none"> ○ sexual contact of a child on school premises, on a school bus, or on transportation used in furtherance of a school purpose. Sexual contact is further defined in W. Va. Code §61-8B-1(6); ○ sexual intercourse of a child on school premises, on a school bus, or on transportation used in furtherance of a school purpose. Sexual intercourse is further defined in W. Va. Code §61-8B-1(7); or ○ sexual intrusion of a child on school premises, on a school bus,

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	<p>or on transportation used in furtherance of a school purpose. Sexual intrusion is further defined in W. Va. Code §61-8B-1(8). There is a <i>limited</i> exception to the mandatory reporting requirement when a mandatory reporter receives information or observes <i>consensual</i> sexual contact, intercourse, or intrusion between students. This exception does not apply, and thus the immediate and within no more than 24 hour notification requirement must be followed, when the consensual sexual contact, intercourse, or intrusion involves:</p> <ul style="list-style-type: none"> • a student who is 14 or older and a student who is less than 12; • a mentally or physically incapacitated students; or • a student who is 16 or older and a student who is less than 16 when there is at least a 4 year age difference between the students. <p>County boards of education must secure a written acknowledgment from every employee indicating the employee has received and understands the statement of reporting requirements provided by the county board of education.</p>
<p>§61-7-11a Possessing deadly weapons on premises of educational facilities</p>	<ul style="list-style-type: none"> • It is unlawful for any person, excepting the individuals and classes of individuals listed below, to possess a firearm or other deadly weapon on school premises, on school buses, or at school-sponsored functions. • Approval of the county board of education is necessary for certain individuals and classes of individuals to lawfully possess a firearm or other deadly weapon on school premises, on school buses, or at school-sponsored functions, which include specific areas that are owned, rented, or leased by WV Department of Education, West Virginia Secondary School Activities Commission, county board of education, or local public school for the actual period a function is occurring. • The prohibition against possessing firearms or other deadly weapons on school premises, on school buses, or at school-sponsored functions does not apply to: <ul style="list-style-type: none"> ○ law-enforcement officers employed by federal, state, county, or municipal law-enforcement agencies; ○ probation officers appointed to their position by the West Virginia Supreme Court of Appeals, or otherwise pursuant to W. Va. Code §62-12-5 or Chapter 49 of said Code, in the performance of his/her duties; ○ retired law-enforcement officers who are (1) employed by a state, county, or municipal law-enforcement agency; (2) covered for liability purposes by the law-enforcement agency; (3) authorized by the county board of education and the school principal to serve as security for the school; (4) qualified to carry a firearm as a retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. §926C(c); and (5) qualified with his/her firearm to his/her employer’s requirements for handling and using a firearm; ○ individuals specifically authorized by the county board of education or school principal to conduct programs with valid educational purposes; ○ individuals who are otherwise lawfully permitted to possess a firearm or deadly weapon may possess an unloaded firearm or deadly weapon in a motor vehicle on school premises;

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	<ul style="list-style-type: none"> ○ individuals who are otherwise lawfully permitted to possess a firearm or deadly weapon may leave an unloaded firearm or deadly weapon in a locked motor vehicle on school premises; ○ programs or raffles, approved by the county board of education or school, that include the display of unloaded firearms; ○ individuals 21 years and older may possess a concealed handgun in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school if: (1) while occupying the vehicle, the handgun is stored out of view from persons outside the vehicle; or (2) when not occupying the vehicle, the vehicle as a whole is locked and the handgun is stored in a locked trunk, locked glove box, locked interior compartment, or locked container securely fixed to the vehicle; ○ West Virginia University's official mascot, commonly known as the Mountaineer, when acting in his/her official capacity; and ○ Parkersburg South High School's official mascot, commonly known as the Patriot, when acting in his/her official capacity.

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§18-5A-2 Local School Improvement Councils (LSIC)	<ul style="list-style-type: none"> ● The LSIC shall schedule any meeting that involves the issue of student discipline outside the regularly scheduled working hours of any school employee member of the council. ● The LSIC shall conduct a meeting to engage parent or guardian, students, school employees, and other interested parties in a positive and interactive dialogue regarding effective discipline policies. ● The LSIC shall develop and deliver a report (adhering to all applicable student privacy regulations) to the county superintendent (council on productive and safe schools) that includes: <ul style="list-style-type: none"> ○ Guidelines for the instruction and delivery of interventions for students who have been excluded from the classroom, suspended from the school or expelled from the school. The guidelines shall include descriptions/recommendations for in-school programs with alternative settings and/or schedules, a system to provide effective communication and coordination between school and local emergency services agencies, preventive discipline strategies and student involvement strategies. ○ Findings from an examination of school discipline procedures including disciplinary measures used at the school along with a documented assessment of fairness and consistency of disciplinary actions. ○ The superintendent (or designee) shall respond to the LSIC in writing within 10 days of receiving the report and the county board of education shall retain and file all such correspondence for public review.
§18-9F-9 School crisis response plan	Each school shall create a comprehensive School Crisis Prevention and Response Plan Template model developed by the WVBE. In developing the School Crisis Prevention and Response Plan, schools shall employ

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	<p>necessary safeguards to protect information contained in each Plan that may be considered protected critical infrastructure information, law enforcement sensitive information or for official use only. The safeguards employed to protect sensitive information must have the approval of the Division of Homeland Security and Emergency Management. School Crisis Prevention and Response Plans, and updates to such Plans, are to be filed with the school's county board of education.</p> <p>The Crisis Prevention and Response Plans must be developed under the following requirements:</p> <ul style="list-style-type: none"> • each school within the state shall form a crisis prevention and response planning team consisting of either: (1) the school's Local School Improvement Council, or (2) a team consisting of the principal, two teachers, one service person, and two parents or guardians of children attending the school. The school crisis prevention and response planning team may include one member of the county board of education, a school counselor, a member from local law-enforcement authorities, the local county emergency services director, and one student in grade ten or higher if the school has those grades; • each school within the state, through the school's crisis prevention and response planning team, shall develop a school specific crisis prevention and response plan using the state/county template, and with consultation from local social services agencies and local first response agencies including police, fire, emergency medical services (EMS), emergency management, and any other local entities the school's crisis prevention and response planning team determines should be consulted; • each school's crisis prevention and response planning team shall annually review its crisis prevention and response plan and shall update the Plan as necessary. Each school shall file either an updated School Crisis Prevention and Response Plan or a memorandum stating that no update to the Plan was necessary with the county board of education and the Division of Homeland Security and Emergency Management no later than August 1 of each year; • each school shall make a redacted copy of its school crisis prevention and response plan available, upon request, for inspection by the public with any information removed, that is necessary for compliance, with the necessary safeguards developed by the state. • each school shall annually send notice home to all parents and guardians of students, at the school, alerting the parents and guardians to the existence of the crisis prevention and response plan and the ability to review a redacted copy at the offices of the county board of education; and • each School Crisis Prevention and Response Plan shall include at least the following: <ul style="list-style-type: none"> • the school employee in charge during a crisis and a designated substitute; • a communication plan to be used during a crisis; • protocols for responding to immediate physical harm of students, faculty or staff, and to traumatic events, including the period after

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	<p>the event(s) have concluded;</p> <ul style="list-style-type: none"> • disaster and emergency procedures to respond to earthquakes, fire, flood, other natural disasters, explosions, or other events or conditions in which death or serious injury is likely; • crisis procedures for safe entrance to and exit from the school by students, parent or guardian, and employees, including an evacuation and lock down plan; and • policies for enforcing school discipline and maintaining a safe and orderly environment during the crisis.
<p>§18-2-40 Jamie's Law Suicide Prevention</p>	<p>A public middle and high school administrator shall disseminate and provide opportunities to discuss suicide prevention awareness information to all middle and high school students</p>
<p>§18A-5-1 Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished</p>	<ul style="list-style-type: none"> • The teacher shall stand in the place of the parent or guardian in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of students is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the students while they are in transit to and from the school. • Subject to W. Va. 126CSR51, WVBE Policy 2423, Health Promotion and Disease Prevention, the school administrator or school nurse shall exclude from the school any student known to have or suspected of having any infectious disease, or any student who has been exposed to any infectious disease. • The teacher or bus driver may exclude from his/her classroom or school bus any student who is guilty of inappropriate behavior as outlined in Chapter 2, Section 2, Levels 1, 2, 3 or 4 of this policy. • Any student excluded, shall be placed under the control of the principal of the school or a designee. • The excluded student may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. • If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of the action to the parent or guardian. • When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher and, if possible, the parent or guardian of the student have held a conference to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student, and inform the parent or guardian of the course of action. • If the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting.

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	<ul style="list-style-type: none"> • A student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class, time or alternative class settings. • Corporal punishment of any student by a school employee is prohibited.
<p>§18A-5-1a Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.</p>	<ul style="list-style-type: none"> • Students are not permitted to engage in the following conduct on school premises, on school buses, or school transportation, or at school-sponsored functions; such conduct is grounds for suspension: <ul style="list-style-type: none"> GROUP A <ul style="list-style-type: none"> ○ Intentionally make physical contact of an insulting or provoking nature with a school employee while he or she is performing job duties; is commuting to or from work; or in retaliation to the school employee's action to supervise or discipline students ○ Possessing a firearm or other deadly weapon ○ Participating in the sale of a narcotic drug GROUP B <ul style="list-style-type: none"> ○ Committing an act or engaging in conduct that would constitute a felony in West Virginia if committed by an adult ○ Possessing a controlled substance governed by the Uniform Controlled Substance Act GROUP C <ul style="list-style-type: none"> ○ Injuring, or threatening to injure, a student, teacher, administrator, or other school personnel ○ Willfully disobeying a teacher ○ Possessing alcohol ○ Using profane language directed at a school employee or student ○ Intentionally defacing school property ○ Participating in a physical altercation with another person while under the authority of school personnel ○ Habitually violating school rules or policies • School personnel that receive information or witness student(s) committing conduct described above must immediately report such student(s) and conduct to the school principal. • Prior to suspending a student, the principal must hold an informal hearing immediately after the conduct. The hearing must take place before a student is suspended. However, a student may be suspended without first holding a hearing if the principal believes the continued presence of the student in the school poses a continuing danger or presents a continuing threat of disrupting academic progress. In such situations, an informal hearing must be held as soon as practically possible following the suspension. • The student and his/her parent or guardian must be given telephonic notice, if possible, of the informal hearing. This notice shall include a brief statement of the grounds for suspension. • Informal Hearing Procedure: <ul style="list-style-type: none"> ○ At the beginning of the hearing, the principal must ask the

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	<p>student if he or she admits or denies the charges.</p> <ul style="list-style-type: none"> ○ If student denies charges, he or she must be provided with an explanation of the principal's evidence supporting the charges. ○ The student must be given an opportunity to present his/her version of the incident. <ul style="list-style-type: none"> ● At the conclusion of an informal hearing or upon the failure of the noticed student to appear, if the principal finds the student to have committed the alleged conduct, the disciplinary action to be taken by the principal is as follows: <ul style="list-style-type: none"> ○ For students found to have committed the conduct described in Groups A and B above, the principal shall suspend the student for up to 10 days, including any time the student was suspended prior to the hearing. ○ For students found to have committed the conduct described in Group C above, the principal may suspend the student for up to 10 days, including any time the student was suspended prior to the hearing. ● The principal shall report any suspension the same day it is determined, in writing, to the parent or guardian of the student by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension. All suspensions must also be recorded in WVEIS within 24 hours. ● For any student suspended as the result of the conduct described in Group A above, the principal must make a request, within 24 hours of the suspension, to the county superintendent that he or she recommend to the county board of education that such student be expelled. ● For any student suspended as the result of the conduct described in Groups B and C above, the principal may make a request to the county superintendent that he or she recommends to the county board of education that such student be expelled. ● Each expulsion imposed upon a student shall be recorded in WVEIS. ● Principals may exercise any other authority and perform any other duties to discipline students consistent with state and federal law, including policies of the State Board of Education.
<p>W. Va. Code §49-2-803 Persons mandated to report suspected abuse and neglect; requirements.</p>	<ul style="list-style-type: none"> ● Teachers, school personnel, volunteers, counselors, nurses, or other professional mandatory reporters within a school, who suspect that a student is being abused or neglected, to report the circumstances to the West Virginia Department of Health and Human Resources immediately, and within no more than 24 hours. ● If a mandatory reporter suspects a student has suffered sexual abuse, sexual assault or serious physical abuse, the West Virginia State Police and the local law enforcement entity must also be notified immediately. ● Mandatory reporters, that are also staff or volunteers of an entity or organization that provides services to a school or otherwise organizes activities at a school or on school premises, must immediately notify the person in charge of the entity or organization providing services or activities to a school. The mandatory reporter must follow any

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	<p>additional reporting requirements established by such entity or organization.</p>
<p>§61-7-11a Possessing deadly weapons on premises of educational facilities; reports by school principals...</p>	<ul style="list-style-type: none"> • It is unlawful for any person, excepting the individuals and classes of individuals listed below, to possess a firearm or other deadly weapon on school premises, on school buses, or at school-sponsored functions. • The prohibition against possessing firearms or other deadly weapons on school premises, on school buses, or at school-sponsored functions does not apply to: <ul style="list-style-type: none"> ○ law-enforcement officers employed by federal, state, county, or municipal law-enforcement agency; ○ probation officers appointed to their position by the West Virginia Supreme Court of Appeals, or otherwise pursuant to W. Va. Code §62-12-5 or Chapter 49 of said code, in the performance of his/her duties; ○ retired law-enforcement officers that are (1) employed by a state, county, or municipal law-enforcement agency; (2) covered for liability purposes by the law-enforcement agency; (3) authorized by the county board of education and the school principal to serve as security for the school; (4) qualified to carry a firearm as a retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. §926C(c); and (5) qualified with his/her firearm to his/her employer's requirements for handling and using a firearm; ○ individuals specifically authorized by the county board of education or school principal to conduct programs with valid educational purposes; ○ individuals that are otherwise lawfully permitted to possess a firearm or deadly weapon may possess an unloaded firearm or deadly weapon in a motor vehicle on school premises; ○ individuals that are otherwise lawfully permitted to possess a firearm or deadly weapon may leave an unloaded firearm or deadly weapon in a locked motor vehicle on school premises; ○ programs or raffles, approved by the county board of education or school, that include the display of unloaded firearms; ○ individuals 21 years and older may possess a concealed handgun in a motor vehicle in a parking lot, traffic circle or other areas of vehicular ingress or egress to a public school if: (1) while occupying the vehicle, the handgun is stored out of view from persons outside the vehicle; or (2) when not occupying the vehicle, the vehicle as a whole is locked and the handgun is stored in a locked trunk, locked glove box, locked interior compartment, or locked container securely fixed to the vehicle; ○ West Virginia University's official mascot, commonly known as the Mountaineer, when acting in his/her official capacity; and ○ Parkersburg South High School's official mascot, commonly known as the Patriot, when acting in his/her official capacity. • State law does contain criminal penalties for unlawfully possessing a

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	<p>firearm or deadly weapon on school premises, on school buses or at school-sponsored functions. For more information on those penalties, please see: W. Va. Code §61-7-11a(b)(3).</p> <ul style="list-style-type: none"> • The principal shall report any unlawful or unauthorized possession of a firearm or deadly weapon discovered by such principal on school premises, on school buses or at school-sponsored functions to the state superintendent of schools as soon as possible, per W. Va. Code §61-7-11a, after the principal becomes aware of such unlawful or unauthorized possession. • The principal shall report any unlawful or unauthorized possession of a firearm or deadly weapon discovered by such principal to the appropriate local office of the division of public safety as soon as possible, per W. Va. Code §61-7-11a, after the principal becomes aware of such unlawful or unauthorized possession.

WVDHHR Rule 64CSR95

**TITLE 64
INTERPRETIVE
RULE**

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES BUREAU FOR PUBLIC HEALTH**

**SERIES 95
IMMUNIZATION REQUIREMENTS AND
RECOMMENDATIONS FOR CHILDREN ATTENDING SCHOOL
AND ENROLLED IN STATE-REGULATED CHILD CARE**

§64-95-1. General.

11. Scope. -- This rule establishes dosages and interval schedules for vaccines mandated by law for admission to a public, private, or parochial school in this state, or a state-regulated child care center. Additionally, the rule includes additional recommendations for immunizations to promote public health. Finally, this rule establishes the process for requesting a medical exemption from compulsory immunizations required of children attending a public, private, or parochial school in this state, or a state-regulated child care center.

12. Authority. -- Generally, the Secretary of the Department of Health and Human Resources is authorized to “adopt rules . . . to obstruct and prevent the introduction or spread of . . . communicable or infectious diseases into or within the state, and the [State Health Officer] shall have the power to enforce these regulations . . .” W. Va. Code §16-3-1. The Commissioner is authorized to require additional immunizations for public health purposes. W. Va. Code §5-16-9(i). Furthermore, the Secretary of the Department of Health and Human Resources is generally authorized to propose legislative rules necessary and proper to effectuate the purposes of Chapter 16. W. Va. Code §16-1-4.

More specifically, a child may not be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been appropriately immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough or produces a certificate from the Commissioner granting the child or person, an exemption from the compulsory immunization requirements. W. Va. Code §16-3-4(c). Although, state law provides for the immunizations required of children attending the schools of the state or state-regulated child care centers, W. Va. Code §16-3-4, does not include specific guidance regarding the manner in which compulsory immunization must be administered.

The Commissioner has the authority to provide information or guidance to the public regarding the agency’s interpretations, policy or opinions upon the law enforced or

administered by the Commissioner. W. Va. Code §29A-1-2. This rule is not intended to be determinative of any issue affecting constitutional, statutory or common law rights, privileges or interests. Instead, the rule will provide the public with information and clearly define the requirements and recommendations for immunizations for all children enrolled in a public, private, or parochial school in this state, or a state-regulated child care center.

13. Filing Date. -- August 3, 2015.

14. Effective Date. -- September 3, 2015.

15. Summary. -- The Bureau for Public Health is promulgating this interpretive rule to set forth the Bureau's interpretation of the provisions of W. Va. Code §16-3-4, which provides that "[n]o child or person may be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough or produces a certificate from the Commissioner granting the child or person an exemption from the compulsory immunization requirements of this section." The Bureau interprets the provisions of W. Va. Code §16-3-4, to incorporate the most current recommendations issued by the U.S. Department of Health and Human Services, Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), the American Academy of Family Physicians (AAFP) and the Centers for Disease Control and Prevention (CDC).

16. Applicability -- This rule applies to all children enrolled in a public, private, or parochial school in this state, or a state-regulated child care center.

17. Purpose -- The purpose of this rule is to clearly define the requirements and recommendations for immunizations for all children enrolled in a public, private, or parochial school in this state, or a state-regulated child care center. Additionally, the rule series establishes the procedure for granting, renewing, conditioning, denying, suspending or revoking a request for a medical exemption from the compulsory immunization requirements of W. Va. Code §16-3-4.

18. Background -- The Legislature has granted the Commissioner/State Health Officer extensive powers to protect the public health, i.e., restricting the liberty of persons through measures such as quarantine, enter upon and inspecting private property, asserting authority of any epidemic or endemic conditions, compelling physical examinations and compelling vaccination. Indeed, W. Va. Code §16-3-1, provides, "the state board of health [now the Secretary] may adopt rules and regulations to obstruct and prevent the introduction or spread of smallpox or other communicable or infectious diseases into or within the State[.]"

The Legislature has declared as the public policy of this State:

1.8.1. That early immunization for preventable diseases represents one of the most cost-effective means of disease prevention.

1.8.2. The savings which can be realized from immunization, compared to the cost of health care necessary to treat the illness and lost productivity, are substantial. Immunization of children at an early age serves as a preventative measure both in time and money and is essential to maintain our children's health and well-being.

1.8.3. The costs of childhood immunizations should not be allowed to preclude the benefits available from a comprehensive, medically supervised child immunization service.

1.8.4. The federal government has established goals that require ninety percent of all children to be immunized by age two and provided funding to allow uninsured children to meet this goal. W. Va. Code §16-3-5(a).

Consistent with this expressed public policy, the Legislature has mandated compulsory immunization for all children enrolled in a public, private, or parochial school in this state, or a state-regulated child care center. W. Va. Code §16-3-4. However, the legislature only mandated particular immunizations without providing any further guidance. This rule is intended to provide specific guidance with regard to dosage and interval schedules based upon the most current recommendations issued by the U.S. Department of Health and Human Services, Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), the American Academy of Family Physicians (AAFP) and the Centers for Disease Control and Prevention (CDC).

Optimal response to a vaccine depends on multiple factors, including the type of vaccine, age of the recipient, and immune status of the recipient. Recommendations for the age at which vaccines are administered are influenced by age-specific risks for disease, age-specific risks for complications, age-specific responses to vaccination, and potential interference with the immune response by passively transferred maternal antibodies. Vaccines are recommended for members of the youngest age group at risk for experiencing the disease for which efficacy and safety have been demonstrated.

Certain products, including inactivated vaccines, toxoids, recombinant subunit vaccines, polysaccharide conjugate vaccines, and live vaccines, require ≥ 2 doses to elicit an adequate antibody response. Tetanus and diphtheria toxoids require booster doses to maintain protective antibody concentrations. Unconjugated polysaccharide vaccines do not induce T-cell memory, and additional doses (although they elicit the same or a lower antibody concentration) might increase the level of protection. Conjugation with a protein carrier improves the effectiveness of polysaccharide vaccines by inducing T-lymphocyte-dependent immunologic function. Many vaccines that stimulate both cell-mediated immunity and neutralizing antibodies (e.g., live, attenuated virus vaccines) usually can induce prolonged immunity, even if antibody titers decline over time. Subsequent exposure to such viruses usually results in a rapid anamnestic antibody response without viremia.

Approximately 90%–95% of recipients of a single dose of certain live vaccines administered by injection at the recommended age (i.e., measles, rubella, and yellow fever vaccines) develop protective antibodies, generally within 14 days of the dose. For varicella and mumps vaccines, 80%–85% of vaccines are protected after a single dose. However, because a limited proportion (5%–15%) of measles, mumps, and rubella (MMR) or varicella vaccines fail to respond to 1 dose, a second dose is recommended to

provide another opportunity to develop immunity. Of those who do not respond to the first dose of MMR or varicella vaccine, 97%– 99% respond to a second dose.

The recommended immunization schedule for Persons Aged 0 Through 18 Years childhood immunization is the schedule jointly approved by the Advisory Committee on Immunization Practices, the American Academy of Pediatrics, and the American Academy of Family Physicians. This schedule is issued annually and can be found at <http://www.cdc.gov/vaccines>.

19. Revising immunization requirements. -- Upon a finding of the existence of an emergency that may adversely affect the public health and safety, the Commissioner may modify the immunization requirements of this rule, to remove, modify or add a vaccine, in accordance with the requirements of the State Administrative Procedures Act (W. Va. Code §§29A-3-1 et. seq.).

§64-95-2. Definitions.

2.1. "Bureau" means the Bureau for Public Health in the Department of Health and Human Resources.

2.2. "Child" or "Children" means any person between the ages of birth and eighteen years or up to twenty-one years of age when that person is attending school.

2.3. "Commissioner" means the Commissioner of the Bureau for Public Health, or his or her designee.

2.4. "Contraindication" means a medical condition which renders an immunization improper for a particular individual. Contraindications for each vaccine are found in statements written and published by the Advisory Committee on Immunization Practices (ACIP) as Recommendations of the Immunization Practices Advisory Committee and in Vaccine Information Statements (VIS) from the Centers for Disease Control and Prevention (CDC). The recommendations of the ACIP and VIS regarding contraindications can be found at <http://www.cdc.gov/vaccines>.

2.5. "Delinquent" means lacking age appropriate immunization(s) which are required to have been completed prior to school entry.

2.6. "Exemption" means an exemption for the compulsory immunization requirements of W. Va. Code §16-3-4 and 64 C.S.R. 95.

2.7. "Immunization Officer" means the physician appointed and employed by the Commissioner to make a determination on an application for an exemption to the compulsory immunization requirements of W. Va. Code §16-3-4, on a statewide basis.

2.8. “Local Health Officer” means the physician who supervises and directs the medical activities of a local health department and is appointed by the local board of health with approval from the Commissioner.

2.9. “Physician” means the child’s personal licensed physician.

2.10. “Precaution” means a condition defined under the current standards of immunization practice that might increase the chance or severity of an adverse vaccine reaction or compromise the ability of the vaccine to produce immunity.

2.11. “State Health Officer” means the person appointed to serve as Commissioner and State Health Officer of the Bureau.

2.12. “Student” means any child who enters into a school building housing kindergarten through twelfth grade to attend classes or programs or to participate in extracurricular activities taking place in a school building, on school grounds or at a place where the school conducts extracurricular activities and includes children entering for preschool programs as well as children in grades kindergarten through twelfth grade and children who transfer into a West Virginia School from another state or who transfer from being home schooled or from a private or alternative school.

§64-95-3. Interpretive Rule.

As it is the intent of W. Va. Code §16-3-4, to provide for the compulsory immunization of all children enrolled in a public, private, or parochial school in this state, or a state-regulated child care center, and as it is consistent with the Commissioner’s authority to (1) enforce the public health laws of this State; and (2) require additional immunizations for public health purposes, the Bureau for Public Health interprets W. Va. Code §16-3-4, to include:

3.1. Dosage and interval schedules based upon the most current recommendations issued by the U.S. Department of Health and Human Services, Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), the American Academy of Family Physicians (AAFP) and the Centers for Disease Control and Prevention (CDC), for the following immunizations:

3.1a Diphtheria – the specific dosage and interval schedules are contained in section 4;

3.1b Hepatitis B – the specific dosage and interval schedules are contained in section 5;

3.1c Mumps – the specific dosage and interval schedules are contained in section 7;

3.1d Pertussis (Whooping Cough) – the specific dosage and interval schedules are contained in section 4;

3.1e Poliomyelitis (Polio) – the specific dosage and interval schedules are contained in section 8;

3.1f Rubella– the specific dosage and interval schedules are contained in section 9 of this rule;

3.1g Rubeola (Measles) – the specific dosage and interval schedules are contained in section 6;

3.1h Tetanus– the specific dosage and interval schedules are contained in section 4;

3.1i Varicella (Chickenpox) – the specific dosage and interval schedules are contained in section 10; and

3.1j Meningococcal (meningitis) – the specific dosage and interval schedules are contained in section 11;

3.2 Dosage and interval schedules based upon the most current recommendations issued by the U.S. Department of Health and Human Services, Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), the American Academy of Family Physicians (AAFP) and the Centers for Disease Control and Prevention (CDC), for children entering state-regulated child care centers as contained in section 12;

3.3 Recommended, but not required, vaccines for children as contained in section 13;

3.4 Criteria for determining compliance with compulsory immunization requirements of W. Va. Code §16-3-4, as contained in section 14;

3.5 Methods for documenting proof of immunity as contained in section 15;

3.6 Determining eligibility for a medical exemption from the compulsory immunization requirements of W. Va. Code §16-3-4, as contained in section 16; and

3.7 The process for requesting a medical exemption from the compulsory immunization requirements of W. Va. Code §16-3-4, and process for making a determination as to whether there is sufficient medical evidence that an

immunization is contraindicated or there exists a specific precaution to a particular vaccine, as contained in section 17;

§64-95-4. Dosage and Interval Schedule for Diphtheria, Pertussis and Tetanus Vaccines

41. Prior to being admitted to school, a child must show proof that he or she has received a minimum of four doses of Diphtheria, Tetanus, Acellular Pertussis (DTaP) vaccine, with the fourth dose having been received on or after the child's fourth birthday and prior to school entry.

42. The interval between the third and fourth dose shall be at least six (6) months.

43. A fifth dose of DTaP between the ages of 4 and 6 is only necessary if the fourth dose was given either before the child's fourth birthday or if the interval between the third and fourth doses was less than six months.

44. A child between the ages of 11 and 12 must receive one dose of Tetanus, Diphtheria and acellular Pertussis vaccine (Tdap). Tdap can be administered regardless of the interval since the last tetanus and diphtheria toxoid containing vaccine (Td). This includes a child/student transferring into school or newly joining school who has not had the DTaP or Tdap prior. Inadvertent doses of Tdap given between the ages of 7 and 10 do not count as the 11-12 year old dose except as provided in subsection 4.6.

45. A student who becomes pregnant may receive one dose of Tdap during the pregnancy (preferred during 27-36 weeks gestation) regardless of the number of years since a prior Tdap or Td vaccination.

46. A student aged 7 – 10 years old who is not fully immunized with the childhood DTaP vaccine series must receive the Tdap vaccine as the first dose in the catch-up series and if additional doses are needed, the student should receive the Td vaccine. A child who receives the Tdap vaccine, is specifically excluded from the requirements of subsection 4.4.

§64-95-5. Dosage and Interval Schedule for Hepatitis B Vaccine.

51. Prior to entering school, a child must show proof that he or she has received at least three doses of HEPATITIS B vaccine with at least one dose having been given on or after six months of age. The first and second dose must be at least four (4) weeks apart. The second and third doses should be separated by at least eight (8) weeks. Additionally, the third dose should be at least sixteen (16) weeks after the first dose.

52. An unvaccinated student must complete a three (3) dose series. However, a two (2) dose series (with doses separated by a minimum of four (4) months) using the adult formulation Recombivax HB which is licensed for children aged 11 -15 years, is an

acceptable alternative to the three dose requirement.

53. Occurrence of prior disease may be used as evidence of immunity.

54. A student may attend school and participate in extracurricular activities after he or she has received the first of the series of Hepatitis B vaccinations. The series must be completed within seven (7) months of the date of entry or the student will be excluded from school and all extracurricular activities until the student completes the Hepatitis B series. It is the responsibility of the student and his or her parents or legal guardians to ensure the timely completion of the Hepatitis B series and submit the acceptable proof to the school authorities.

§64-95-6. Dosage and Interval Schedule for Rubeola (Measles) Vaccine.

6.1. Prior to entering school, a child must show proof that he or she has received two doses of Rubeola (Measles) vaccine, the first dose on or after the first birthday and the second dose no less than four (4) weeks after the first dose. Alternatively, immunity may be proven through laboratory testing. Results of laboratory that prove immunity must be presented to the Local Health Officer for review and approval before the child may be admitted to school.

6.2. Occurrence of prior disease may be used as evidence of immunity.

§64-95-7. Dosage and Interval Schedule for Mumps Vaccine.

7.1. Prior to entering school, a child must show proof that he or she has received at least two doses of Mumps vaccine, the first dose on or after the first birthday and the second dose no less than four (4) weeks after the first dose. Alternately, immunity may be shown through laboratory testing. Results of laboratory that prove immunity must be presented to the Local Health Officer for review and approval before the child may be admitted to school.

7.2. Occurrence of prior disease may be used as evidence of immunity.

§64-95-8. Dosage and Interval Schedule for the Polio (IPV) Vaccine.

8.1. Four doses of trivalent inactivated polio vaccine (IPV) are recommended for routine immunization of all children with the fourth dose given on or after the child's fourth birthday and at least a six (6) month interval from the third dose. Prior being admitted to school, a child must show proof that he or she has received a minimum of three doses of IPV with the last dose given on or after the child's fourth birthday and at least six months after the second dose.

8.2. A child who has not received the recommended doses of IPV should receive a minimum of three doses, with four (4) weeks between dose one and two, and six (6) months between doses two and three. Additionally, dose three must be received on or after the child's fourth birthday.

8.3. A student may attend school and participate in extracurricular activities after he or she has received the first of the series of IPV vaccinations. The series must be completed within seven (7) months of the date of entry or the student will be removed from school and all extracurricular activities until the IPV series is complete. It is the responsibility of the student and his or her parents or legal guardians to ensure the timely completion of the IPV series and submit the acceptable proof to the school authorities.

84. In the alternative, a child who has had three or more doses of an oral, live attenuated version of the Polio Vaccine (OPV), or a combination of OPV and IPV, the last dose of which was given on or after the child's fourth birthday with at least a six (6) month separation between the second and third dose, are in compliance with this section. Otherwise, subsection 8.2., applies but doses of OPV may be substituted in the record for IPV.

§64-95-9. Dosage and Interval Schedule for the Rubella Vaccine.

9.1. Prior to entering school, a child must show proof that he or she has received at least two doses of Rubella vaccine, the first dose on or after the first birthday and the second dose no less than one month after the first dose. Alternately, immunity may be proven through laboratory testing. Results of laboratory testing that prove immunity must be presented to the Local Health Officer for review and approval before the child may be admitted to school.

9.2. Occurrence of prior disease may be used as evidence of immunity.

§64-95-10. Dosage and Interval Schedule for the Varicella (Chickenpox) Vaccine.

10.1. Prior to a child age 4 to 12 years entering school, he or she must show proof of having received two doses of Varicella (Chickenpox) vaccine, the first dose on or after the first birthday and the second dose no less than three month after the first.

10.2. A child age 13 years and older who is without proof of immunity, must receive two doses of the Varicella vaccine with at least 4 weeks between shots.

10.3. A student who has received only one dose of the Varicella vaccine is required to obtain a second dose. For a child between the ages of 4 to 12 years, the second dose must be given at least 28 days after the first dose.

10.4. Alternately, immunity may be shown through the written or verbal statement of a parent or legal guardian attesting to the fact of their child's history of chickenpox accompanied by laboratory testing showing immunity, if requested.

10.5. A student may attend school and participate in extracurricular activities after he or she has received the first of the series of Varicella vaccinations. The series must be completed within three (3) months of the date of entry for a child between ages 4 to 12 years and within one (1) month for a child 13 or older, or the student must be removed from school and all extracurricular activities until such time as the Varicella series is complete or laboratory evidence of immunity is supplied. It is the responsibility of the student and his or her parents or legal guardian to ensure the

timely completion of the Varicella series or laboratory testing and submit acceptable proof to the school authorities.

§64-95-11. Dosage and Interval Schedule for the Meningococcal (MCV4) Vaccine.

11.1. A student ages 11 or 12 must show proof of Meningococcal vaccination prior to entry into the 7th grade. Students will require a booster shot at age 16 or older, and will need to show proof of the MCV4 booster prior to entry into the 12th grade.

11.2. A student who is newly entering the school system at age 13, 14 or 15, and who has not been previously vaccinated with MCV4 must receive the MCV4 vaccination and must also show proof of a booster shot on or after age 16 and prior to entry into the 12th grade.

11.3. A student who is newly entering the school system at age 16 or older and who has not been previously vaccinated with MCV4 must receive a MCV4 vaccination and will not be required to show proof of a booster prior to entry into the 12th grade.

§64-95-12. Applicability of Dosage and Interval Schedules to Pre-School Students.

The dosage and interval schedules contained in sections 4 through 11 apply to children entering a state-regulated child care center and preschool children who enter a school building housing other children in grades kindergarten through twelfth, to the extent that they are age appropriate in accordance with those immunization schedules.

§64-95-13. Recommended Vaccinations.

The following vaccines are recommended, but not required, for all children attending a public, private, or parochial school in this state, or a state-regulated child care center:

13.1. Influenza Vaccine.

13.1.a. A child aged six months or older should be vaccinated annually against influenza. Children from six to twenty-three months are at substantially increased risk for influenza-related hospitalizations and children ages twenty-four to fifty-nine months are at increased risk for influenza-related clinic and emergency room visits. Children and school personnel with certain medical conditions and school personnel who are older are at increased risks of influenza complications and death.

13.1.b. An annual flu vaccine is recommended in accordance with annually released

U.S. Department of Health and Human Services, Advisory Committee on Immunization Practices recommendations.

13.2. Human Papillomavirus Vaccine - HPV Vaccine. Most human papillomavirus (HPV) infections are inapparent clinically. However, HPVs can cause benign though disfiguring epithelial proliferation of the skin and mucous membranes and are associated with several cancers. The HPV vaccines are the only available vaccine that protects against certain cancers. The American Academy of Pediatrics recommends that routine vaccination of females with the HPV2 or HPV4 starting at age 11 or 12, though the vaccine has been approved starting at age 9. The vaccine is a three dose series with a minimum of one month between doses one (1) and two (2) and dose three

(3) given six months after dose one (1). The vaccine for females is approved from age 9 to 26. The vaccine is also recommended for males from age 13 to 26 with the same dosing schedule. HPV4 is the only HPV vaccine approved for males.

13.3. Other Vaccinations. Other vaccines recommended for various high risk populations in the school setting may be found on the immunization schedules jointly approved by the Advisory Committee on Immunization Practices, the American Academy of Pediatrics, and the American Academy of Family Physicians at www.cdc.gov by searching under “Immunization Schedules”.

§64-95-14. Compliance with the Law.

14.1. A child is considered to be in compliance with the law requiring compulsory immunizations and this rule, when the child has a complete certificate of immunization or similar medical record of immunizations, or when immunization is contraindicated or there exists a specific precaution to a particular vaccine.

14.2. If a child has been granted an exemption from receiving one or more vaccinations, the certificate of immunization must indicate the vaccine(s) for which the child is exempted, the reason for the exemption, and whether or not the reason for the exemption is permanent or temporary. If the exemption is temporary, it must be re-evaluated annually unless a longer period of time is indicated by the child’s treating physician. A temporary exemption may not exceed a period of 24 months before re-evaluation.

14.3. A student who does not have a completed certificate of immunization or other similar medical record of immunizations must show proof that he or she has received at least one dose of each of the required vaccines in order to be provisionally enrolled in school.

14.3.a. Provisional enrollment may continue for the time medically necessary to complete the missing vaccinations.

14.3.b. At no time should the provisional enrollment period exceed 8 months from school entry, the time medically necessary to complete all required childhood vaccine series under the standard catch up schedule.

14.3.c. After attending school for the provisional enrollment time period, all provisionally enrolled students must show proof to the school that they have completed all of the required immunizations or laboratory evidence of immunity.

14.4. A child who is delinquent for any required vaccination, or who has exceeded the provisional enrollment period, will be considered not to be in compliance with the law and this rule, and will be suspended from attending school until the appropriate vaccine(s) or laboratory evidence is received and the records

are amended.

§64-95-15. Proof of Immunity.

15.1. Proof that a child has received the immunizations required by law, in the correct number and spacing of doses, shall be recorded on a completed document, such as a certificate of immunization, for all students.

15.2. A Certificate of Immunization form has been developed by the West Virginia Department of Health and Human Resources, Bureau for Public Health, Immunization Program. This form is available to appropriate health care providers electronically through participation in the West Virginia Statewide Immunization Information System (WVSIIS) - - <http://www.dhhr.wv.gov/oeps/immunization/providers/Pages/WVSIIS.aspx>. The form is also available from:

ATTN: WVSIIS
Bureau for Public
Health Immunization
Program
350 Capitol Street, Room 125
Charleston, WV 25301

15.3. The documentary evidence of immunizations must contain the day, month and year of each vaccine received by the child or sufficient information of the time interval between doses to enable verification that the minimum intervals required or suggested by this rule have been observed.

15.4. Proof of prior measles, mumps, rubella, varicella or hepatitis B disease being used in lieu of vaccination, requires a document signed by a physician indicating, at a minimum, the name of the patient, the date of the illness and laboratory evidence of immunity in the form of titers for measles, mumps and rubella and a Hepatitis B panel for Hepatitis B. If the historical disease diagnosis is in question, current laboratory evidence of immunity may be required.

§64-95-16. Eligibility for a Medical Exemption.

The Immunization Officer must determine that the child, on whose behalf his or her physician has made a request for an exemption, is eligible for and issue an exemption, upon sufficient medical

evidence that an immunization is contraindicated or there exists a specific precaution to a particular vaccine.

§64-95-17. Eligibility Process.

17.1. Request. A physician must complete a “Request for Medical Exemption from Compulsory Immunization” form available at the Department of Health and Human Resources Medical Exemption Resource Center website. The form may be accessed at the following link:

http://www.dhhr.wv.gov/oeps/immunization/Documents/Medical%20Exemptions/WV_Med_Exempt_Request_FILLABLE_Form%20_8.24.15.pdf

The application must include:

- 17.1.a. The name of the child for whom the request is made;
- 17.1.b. The date of birth of child for whom the request is made;
- 17.1.c. The name of the school the child attends and the county where the school is located;
- 17.1.d. The name(s) of the child’s parent or guardian;
- 17.1.e. The address of the child’s parent or guardian;
- 17.1.f. The name, address and telephone number of the physician making the request;
- 17.1.g. The specific vaccine or vaccines for which an exemption is requested;
- 17.1.h. An explanation of the medical contraindication or precaution relied upon to make the request;
- 17.1.i. Whether the request is for a permanent or temporary exemption;
- 17.1.j. Certification by the physician that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine. This certification must be supported by medical signs and

laboratory findings; and

17.1.k. If a temporary exemption is indicated, the physician's opinion as to the date or period of time after which the exemption should be reevaluated.

17.2. Evidence. In general, the physician, on behalf of the child, has the burden of proving that an exemption is necessary. This means that the physician must furnish medical and other evidence that the Immunization Officer can use to reach conclusions about the need for an exemption.

17.2.a. Evidence is anything the physician submits to the Immunization Officer or that the Immunization Officer obtains that relates to the request for an exemption. This includes, but is not limited to:

17.2.a.1. Objective medical evidence, that is, medical signs and laboratory results;
and

17.2.a.2. Other evidence from medical sources, such as medical history, opinions, and statements about treatment the child has received.

17.2.b. Physician's responsibility.

17.2.b.1. The physician must provide medical evidence showing that an exemption is necessary. The Immunization Officer will make reasonable efforts to notify the physician of any deficiencies in the request but it remains the responsibility of the physician to assure that the request is complete; and

17.2.b.2. The physician must inform the child's parent or guardian of the process for obtaining an exemption and the status of the request.

17.2.c. Immunization Officer's responsibility. Before making a determination as to whether an exemption should be granted, the Immunization Officer will review the evidence obtained from the physician. The Immunization Officer will make every reasonable effort to obtain relevant medical evidence from the physician.

17.2.d. Every reasonable effort means that the Immunization Officer will make an initial request for evidence from the physician and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, the Immunization Officer will make one follow-up request to obtain the medical evidence necessary to make a determination. The physician will have a

minimum of 10 calendar days from the date of the follow-up request to reply, unless the Immunization Officer's experience with that physician indicates that a longer period is advisable in a particular case.

17.3. Preliminary Exemption. The Immunization Officer may grant a child a preliminary exemption if it appears that there is a substantial likelihood that the child will be eligible for a medical exemption, but that the medical evidence sufficient to support a medical exemption cannot be timely developed through no fault of the physician.

17.3.a. How a preliminary exemption is obtained. A preliminary exemption may be requested by a physician or may be granted without a request, by the Immunization Officer if the Immunization Officer finds that the medical evidence is insufficient to make a determination.

17.3.b. Findings necessary for preliminary exemption. In order to grant an applicant a preliminary exemption, the Immunization Officer must find that:

17.3.b.1. Sufficient medical evidence is not available;

17.3.b.2. Additional relevant medical evidence is obtainable;

17.3.b.3. Additional effort must be made to obtain relevant medical evidence;

17.3.b.4. It is not the fault of the physician that sufficient medical evidence is not

available;

17.3.b.5. Because of the delay in obtaining relevant medical evidence, the child will miss a significant number of educational days if the preliminary exemption is not granted;

17.3.b.6. It is likely that little or no harm will result to the public if the preliminary exemption is granted; and

17.3.b.7. There is a substantial likelihood that the child will be eligible for an exemption once the relevant medical evidence is obtained.

17.3.c. Duration of a preliminary exemption. If a preliminary exemption is granted by the Immunization Officer, the preliminary exemption will remain in

effect until the Immunization Officer makes a determination on the application for an exemption.

17.4. Determination of Eligibility. The Immunization Officer must determine eligibility for an exemption in accordance with the eligibility standard specified in section 16 and grant the certificate of exemption to any applicant determined eligible.

17.4.a. After the Immunization Officer reviews all of the evidence relevant to the application, including medical opinions, the Immunization Officer will make findings about what the evidence shows. In some situations, the Immunization Officer may not be able to make these findings because the evidence in the case record is insufficient or inconsistent. Evidence will be considered to be insufficient when it does not contain all the information needed to make a determination or decision. Evidence is considered to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in the record is insufficient or inconsistent, the Immunization Officer may need to take additional actions, as explained in subdivisions c. and d. of this subsection.

17.4.b. If all of the evidence received by the Immunization Officer, including all medical opinion(s), is consistent and there is sufficient evidence for a determination of whether to grant an exemption, the Immunization Officer will make a determination or decision based on that evidence.

17.4.c. If any of the evidence in the record, including any medical opinion(s), is inconsistent, the Immunization Officer will weigh the relevant evidence and see whether a determination can be made based on the evidence obtained.

17.4.d. If the evidence is consistent, but the Immunization Officer has insufficient evidence to determine whether an exemption may be granted, or if after weighing the evidence the Immunization Officer determines that a conclusion cannot be reached about whether an exemption should be granted, the Immunization Officer will determine the best way to resolve the inconsistency or insufficiency. The action(s) taken by the Immunization Officer will depend on the nature of the inconsistency or insufficiency. The Immunization Officer will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs 17.4.d.1, 17.4.d.2, and 17.4.d.3. The Immunization Officer might not take all of the actions listed below. The Immunization Officer may also grant the applicant a preliminary exemption as described in subsection 17.3 until sufficient medical evidence is obtained. The Immunization Officer will consider any additional evidence received together with the evidence already obtained.

17.4.d.1. The Immunization Officer may re-contact the physician. If the Immunization Officer obtains medical evidence over the telephone, the telephone report will be sent to the Physician for review, signature, and return;

17.4.d.2. The Immunization Officer may request additional existing records; or

17.4.d.3. The Immunization Officer may request that the physician seek the opinion of a specialist.

17.4.e. When there are inconsistencies in the evidence that the Immunization Officer cannot resolve or when, despite efforts to obtain additional evidence, the evidence is insufficient to determine whether an exemption should be granted, the Immunization Officer will make a determination or decision based on the evidence available.

17.4.f. The Immunization Officer will make the determination or decision based upon the most recent guidance from the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP) with respect to medical contraindications or precautions for each vaccine.

17.5. Time Standards. A determination on an application for an exemption will be made within 20 days of receipt of a complete request for an exemption. A request that remains incomplete for 45 days will result in the denial of the request.

17.6. Notice of the Immunization Officer's Decision. The Immunization Officer will mail a written notice of the determination to the physician and the child's parent or guardian, at their last known address. The written notice will explain in simple and clear language the Immunization Officer's decision and the reasons for and the effect of the determination. If the Immunization Officer's determination is in whole or in part unfavorable, the written notice also will contain in understandable language a statement of the case setting forth the evidence on which the determination is based. The notice also will inform the child's parent or guardian of the right to request a review of the Immunization Officer's decision by the State Health Officer.

17.7. Documenting Exemptions. The Immunization Officer will ensure that that any exemption granted by the Immunization Officer is entered into the West Virginia Statewide Immunization Information System, Medical Exemption Module.

17.8. Review by the State Health Officer. If the Immunization Officer's determination is in whole or in part unfavorable, the child's parent or guardian may request a review of the Immunization Officer's decision by the State Health Officer.

17.8.a. How to request a review by the State Health Officer. A child's parent or guardian may request a review of the Immunization Officer's determination by filing a written request. A request form is available at the West Virginia Division of Immunization Services (DIS) website at the following link: http://www.dhhr.wv.gov/oeps/immunization/Documents/Medical%20Exemptions/FINAL_Template_for_FILLABLE_Parents-MEDICAL_EXEMPTION-APPROVED_6-17-15.pdf The request should include:

17.8.a.1. The name and age of the child for whom the exemption is requested;

17.8.a.2. The name and address of the child's parent or guardian;

17.8.a.3. The reasons you disagree with the previous determination or decision;and

17.8.a.4. A statement of additional evidence to be submitted and the date you will

submit it.

17.8.b. When and where to file. The request must be filed with the State Health Officer by U.S. Mail at 305 Capitol Street, Room 702, Charleston, West Virginia 25301; or email at VaccineExemption@wv.gov; or facsimile at 304-558-8736, within 30 days after the date the child's parent or guardian receives notice of the Immunization Officer's decision (or within the extended time period if an extension is granted as provided in paragraph 17.8.c.).

17.8.c. Extension of time to request a review. If the child's parent or guardian fails to request a review within 30 days after the date the child's parent or guardian receives notice of the Immunization Officer's determination or decision, the child's parent or guardian may ask for more time to make their request. The request for an extension of time must be in writing and it must give the reasons why the request for a review was not filed within the stated time period. A request for an extension may be filed by U.S. Mail, facsimile or email as provided by subdivision 17.8.b. If the child's parent or guardian shows that there is good cause for missing the deadline, the time period will be extended to permit the filing of a request for a review. In determining whether the applicant has shown good cause for missing a deadline to request for review the following will be considered:

17.8.c.1. What circumstances kept the child's parent or guardian from making the request on time;

17.8.c.2. Whether an action of the Bureau misled you; and

17.8.c.3. Whether the child's parent or guardian has any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented the child's parent or guardian from filing a timely request or from understanding or knowing about the need to file a timely request for review.

17.8.d. Review procedures. If a request for a review is made, the child's parent or guardian will be given an opportunity to present any additional written evidence to the State Health Officer. The State Health Officer will then make a decision based on all of this evidence.

17.8.e. Review determination. After the child's parent or guardian requests a review of the determination of the Immunization Officer, the State Health Officer will review the evidence that the Immunization Officer considered in making the initial determination and any other evidence the State Health Officer receives. The State Health Officer may request additional information of the child's parent or guardian or the physician to complete the review and provide a decision. The State Health Officer will make a determination based on the preponderance of the evidence.

17.8.f. Time Standards. A determination on a request for a review of the Immunization Officer's determination will be made within 30 days of receipt of the request for review or, in the event the State Health Officer requests additional information from the child's parent or guardian or the physician, 30 days from the receipt of the requested information. Failure of the child's parent or guardian to submit requested information within 45 days of the receipt of the State Health Officer's request will result in the State Health Officer making a determination based on the evidence available.

17.8.g. Effect of the State Health Officer's review of the Immunization Officer's determination. The State Health Officer's review is binding unless the child's parent or guardian requests a hearing with 45 days of the receipt of the State Health Officer's notice of review, as required by the Rules for Contested Case Hearings and Declaratory Rulings, 64 CSR1.

17.8.h. Notice of the State Health Officer's Review. The State Health Officer

will mail a written notice of the Review of the Immunization Officer's determination to the applicant at their last known address. The State Health Officer will state the specific reasons for the determination and tell the child's parent or guardian of the right to a hearing.