

A Parent's Advocacy Guide to Special Education

**A Companion Guide to
West Virginia Department of Education Policy 2419**



Version 2.0

A Parent's Advocacy Guide to Special Education

A COMPANION GUIDE TO
WEST VIRGINIA DEPARTMENT OF EDUCATION POLICY 2419



West Virginia
Developmental Disabilities Council

Developed by



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Dear Parents, Family Members, Educators, and Other Advocates for Students with Disabilities:

The West Virginia Developmental Disabilities Council (WVDCC) and West Virginia Advocates, Inc. (WVA) are excited to make available the Second Edition of *A Parent's Advocacy Guide to Special Education* to family members, students, educators, and advocates for students with intellectual and developmental disabilities. This Guide was developed in response to parents' requests to have instruction and materials to help them better understand special education policies and procedures in West Virginia. Parents, teachers and others who have used the Guide have found it to be a useful and valuable tool:

- "It's easy to use and easy to find what information is needed to help my son."
- "The Guide is comprehensive and clearly written. The tip boxes are very helpful."
- "The IEP section is a clear, step-by-step guide that really helped us."

The Guide contains references to the following federal and state regulations and laws:

- *The Individuals with Disabilities Education Improvement Act (IDEA 2004)*
- *Section 504 of the Rehabilitation Act of 1973*
- *West Virginia Code, Chapter 18 (school laws)*
- *West Virginia Department of Education (WVDE) Policy 2419, Regulations for the Education of Students with Exceptionalities*
- *WVDE Policy 4373, Expected Behavior in Safe and Supportive Schools*

Laws and regulations are always changing! That means that some of the information in this manual may become outdated over time.

In order to make sure you are receiving the most current information, changes and updates to this Guide are provided on our websites and Facebook page:

- www.wvadvocates.org
- www.ddc.wv.gov
- www.facebook.com/?ref=logo#!/wvadvocates

We encourage you to periodically check these sites for changes or if you have concerns that something in your manual may be out of date.

Our intent is that this Guide helps you better understand special education policy, so you can be the best advocate possible for your child, student, or client. We hope you find it helpful!

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How to Use This Guide

DISCLAIMER:

This document does not constitute legal advice. It is an advocacy training tool.

This Guide was written to help parents understand *Policy 2419, Regulations for the Education of Students with Exceptionalities*. This Guide does not replace or act as a substitute for Policy 2419. It is recommended that you maintain both a copy of Policy 2419 and this Guide to assist you in navigating the special education system. The West Virginia Department of Education (WVDE) provides copies of Policy 2419 at no cost to parents. In addition to Policy 2419, this Guide will also provide information on other relevant state and federal regulations and policies.

The West Virginia Developmental Disabilities Council and West Virginia Advocates websites should be checked for updates and/or addendums to this Guide. Every effort will be made to update this Guide as referenced policies are revised or updated by WVDE.

PARENTS AND ADULT STUDENTS:

Policy 2419 refers to the individuals from the student’s family involved in the Individualized Education Program (IEP) process as the “parent/adult student(s),” because, unless they have been appointed a legal guardian, students over the age of 18 are able to make IEP decisions. For ease of understanding, this Guide will only use the word “parent”; however, please be aware that students over the age of 18 are also included in this term.

SCHOOL/BUSINESS DAYS OR CALENDAR DAYS:

Unless otherwise specified as a school or business day, the term “days” refers to calendar days. Business and school day are each defined in the glossary of Policy 2419.

TIPS:

Tips are located in textboxes throughout the Guide to provide ways parents can effectively use the subject material covered in the Chapter. These provide direct action steps, things to look out for, scenarios or examples to assist parents in navigating the special education system.

REFERENCE MATERIALS:

Each chapter, except Chapter 5, has Reference Materials to help you better understand the subject matter. These Reference Materials include forms, sample letters, brochures and flow charts. Some chapters may refer the reader to Reference Material that is already presented in a previous chapter.



The **document symbol** is used to identify reference materials that are located at the end of a chapter within the Guide.

References to other chapters or sections within a chapter are noted to help the reader find more information about a particular subject.

Some forms and materials have been modified to fit this Guide. No content has been removed or edited.



The **magnifying glass symbol** is used to identify where additional information can be located within other chapters of the Guide.

SAMPLE LETTERS:

The sample letters located within this Guide were developed by West Virginia Advocates. These sample letters are examples and should be modified by the parent to best describe their situation and their desired resolution. Some of the sample letters refer to legal action. **Threats of legal action should only be included as a last resort and only if such action is being seriously considered.**

GLOSSARY:

Terms are used and defined throughout the Guide. There is also a list of these defined terms in the **Glossary** section.

ACRONYMS:

Acronyms are used in this Guide. Parents also will hear these in meetings and general interactions with the school system. There is a list of all acronyms used in the **Acronyms** section.

TIMELINES:

A quick reference guide to important timelines is located in the **Quick Reference Guide**.

Introduction

A Parent's Advocacy Guide to Special Education: A Companion Guide to WV Policy 2419 Version 2.0 is designed to be a companion guide to West Virginia Department of Education Policy 2419 effective September 15, 2014.

Even though compulsory education laws had been in effect in the United States since 1918, children with disabilities were still routinely excluded from public schools until 1975, when Congress passed what was then called the *Education for All Handicapped Children Act (EAHCA or EHA)*, also known as Public Law 94-142. This landmark legislation required public schools to provide a free appropriate public education in the least restrictive environment possible to children with a broad range of disabilities. Congress reauthorized the law in 1990, 1997 and 2004, and it was renamed the *Individuals with Disabilities Education Act (IDEA)* in 1990. In 2004, the IDEA was amended and the title changed to *Individuals with Disabilities Education Improvement Act*. The IDEA has expanded and extended its reach over the years, leading to the provision of a wide array of services to millions of students with disabilities who previously were denied access to an appropriate education in the least restrictive environment.

In the 1930s, parents became an important part of the advocacy coalition that eventually improved educational opportunities for children with disabilities. Today, parents continue to be important partners with the public school system in the education of their children. However, parents of children with disabilities often find themselves confronted with the daunting task of trying to get school districts to understand their children's unique, individualized needs and provide the services they believe are necessary to allow their children to access their education and make progress. Understanding the special education process, including the appropriate policies and procedures, can be frustrating and even overwhelming at times. Sometimes parents turn to support groups, advocacy organizations and each other for help.

This Guide explains that parents have numerous legal rights and self-advocacy tools at their disposal. It is important for parents to recognize and understand these legal rights and self-advocacy tools and how and when to use them in order to obtain necessary services for their children.

Policy 2419, Regulations for the Education of Students with Exceptionalities, contains the policies, procedures and regulations established by West Virginia to show how the state will comply with the federal IDEA as well as the state's mandatory special education laws, which are found in *West Virginia Code, Chapter 18, Article 20*.

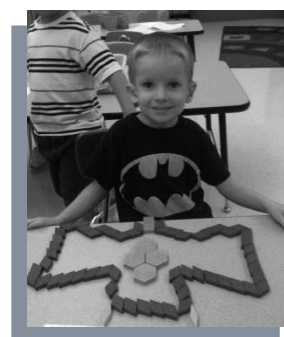
This Guide will take parents through the special education process as it is outlined in Policy 2419, while explaining various concepts and providing tips to help the parent advocate for their child. This includes but is not limited to: understanding their child's Individualized Education Program (IEP); learning how to be an equal partner and prepared participant in the IEP team process; obtaining meaningful and accurate evaluations; and making requests in writing and using letters and emails to communicate effectively with school personnel.

Parents who understand the special education process become more confident and effective advocates. Having a better understanding of the special education process allows parents to avoid the pitfalls of letting emotions get in the way of effective advocacy. Remember that knowledge is power. This Guide contains the information and resources that will enable parents to enhance their knowledge and empower them as they navigate the special education system in West Virginia.

Chapter 1: Eligibility

In this chapter:

- ✓ Introduction
- ✓ Eligibility Criteria
- ✓ Applicable Timelines
- ✓ Students in Private Schools
- ✓ Birth to Three Transition Services
- ✓ Chapter 1 Reference Materials



Introduction

The *Individuals with Disabilities Education Improvement Act (IDEA) of 2004* requires the school district, also referred to as the **local education agency (LEA)**, to provide students with a **Free Appropriate Public Education (FAPE)** and to provide it in the **Least Restrictive Environment (LRE)**. This means that schools must educate children with disabilities in regular education classes with children who are not disabled, “to the maximum extent possible.”

A requirement in IDEA known as **Child Find** gives school districts the responsibility for locating, identifying and evaluating students with disabilities, ages 3 to 21, who reside in the district, including exceptional gifted students. The district is responsible for coordinating with the West Virginia Department of Health and Human Resources (DHHR) regarding the Child Find system for children ages birth to three.

A **referral** is a written statement to the school district, requesting that a child be evaluated to determine if he or she needs special education services. Parents who want their child to be evaluated should document their concerns in a letter and send this request to their county special education director.



See the **Sample Letter to Request an Initial Evaluation for Special Education Services** at the end of this chapter.

A referral for special education services can come from a variety of other sources, including a service coordinator from the **West Virginia Birth to Three Program (BTT)**, **Student Assistance Team (SAT)**, teachers, doctors, or any interested person or agency.

The **Student Assistance Team’s (SAT)** responsibilities are discussed in **Chapter 2 of West Virginia Policy 2419**. Various procedural options the team can take in determining if and when a referred child will be evaluated for special education services are also listed there.

West Virginia Policy 2419 states that referrals from an outside source are referred to the SAT at the student’s school for consideration.

Once a written referral for special education has been made, the school district must provide a consent form to the parent within five (5) calendar days in order to determine if the parent wants to begin the eligibility/evaluation process.

The timeline for completing the eligibility process is required to begin on the actual date the school district receives written parental consent for the evaluation.

Once the child is referred for an evaluation and a signed written consent is provided by the parents, the school district is obligated to provide the multidisciplinary evaluations and hold an **Eligibility Committee (EC)** meeting. The EC will review the evaluations and determine the child's eligibility.

Eligibility Criteria

Eligibility refers to the determination that must be made about whether a child "is a child with a disability as defined by the IDEA." The eligibility determination is made by the **Eligibility Committee (EC)**, which includes the child's parent(s) and a team of qualified professionals, after evaluations are completed.

Under West Virginia Policy 2419, a child must meet three criteria to be eligible for special education services; this is referred to as the **three-prong test of eligibility**. The three-prong test of a student's eligibility is:

1. Does he/she meet state eligibility requirements for specific exceptionalities?
2. Does he/she experience adverse effects on educational performance?
3. Does he/she need special education?

According to Policy 2419, a student **must meet all three of the above components** to be eligible for special education services.

Meet State Eligibility Requirements for Specific Exceptionalities

The first eligibility prong is the child must have a disability that **meets state eligibility requirements for specific exceptionalities**.

Policy 2419 specifies fourteen (14) exceptionalities. Each of the fourteen (14) exceptionalities has a separate and distinct set of eligibility criteria. The specific exceptionalities identified in West Virginia Policy 2419 are:

- Autism
- Blindness and Low Vision
- Deafblindness
- Deafness
- Developmental Delay
- Emotional/Behavioral Disorder
- Gifted
- Hard of Hearing
- Intellectual Disability
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech/Language Impairment
- Traumatic Brain Injury

Specific Learning Disabilities may include the diagnosis of dyslexia and dyscalculia, but keep in mind that a diagnosis does not automatically qualify a child for special education.

Policy 2419 contains for more information on eligibility criteria for each specific exceptionality.

The **Eligibility Determination Checklist** provides information on the specific eligibility criteria for the exceptionalities listed above. In addition, if the child is suspected of having a **learning disability**, the EC must complete the **Specific Learning Disability Report**.



See the **Eligibility Determination Checklist** at the end of this chapter.

See the **Specific Learning Disability Report** at the end of this chapter.

TIP

Parents are advised that extensive changes have been made to some eligibility categories and smaller changes to others.

See the Fact Sheets on the WVDE's website at <http://wvde.state.wv.us/osp/exceptionality-category.htm> and the Eligibility Determination Checklist at the end of this chapter.

Adverse Effect on Educational Performance

The second eligibility prong is the child must experience an **“adverse effect on educational performance”** as a result of his or her disability. Adverse effect on educational performance is a broad term which includes both academic (language arts, math, science, social studies, etc.) and nonacademic (communication, daily life activities, mobility, self-help skills, etc.) areas of the child's education. An adverse effect is a harmful or unfavorable influence of the disability on the student's performance. Adverse effect is not solely measured by scores on individual testing but may be also determined through consideration of other data such as classroom performance and retention history.

Needs Special Education

The third eligibility prong is the child must need special education, which is defined as **“specially designed instruction, at no cost to the parents, to meet the unique needs of the student with an exceptionality.”**

It is important for parents to recognize and remember that, as noted in IDEA, special education is a “service for children rather than a place where such children are sent.”

Policy 2419 defines **special education** as specially designed instruction to meet the unique needs of a student with a disability and includes instruction in the classroom, home, hospital, institution and/or other settings. **Specially designed instruction** means adapting the **content, methodology or delivery of instruction** to address the unique needs of the student. These adaptations will ensure the student has access to the general education curriculum so that he or she can meet the education standards that apply to all students.

1. **Content Area** is the subject area most commonly taught in school. There are traditionally ten (10) content areas built into the school-wide curriculum: the arts, civics, English/language arts, geography, history, math, science, skills for a healthy life, technology, and world languages.
2. **Teaching method (or methodology)** may include class participation, demonstration, recitation, memorization, or combinations of these. The choice of an appropriate teaching method depends largely

on the information or skill that is being taught, and may be influenced by the ability of the student(s). Other types of teaching methods are:

- direct instruction
- inquiry
- individualized instruction
- learning centers
- computer assisted instruction

3. Delivery of Instruction is a set of human interactive skills that promote learning in face-to-face instruction, as well as skills in using various forms of instructional delivery mechanisms. Instructional delivery skills involve such things as:

- giving organized presentations
- motivating students
- generating enthusiasm
- communicating effectively

The goal of specially designed instruction is to enable the student to access the general education curriculum so the student can meet the educational standards that apply to all students. The educational standards that apply to all students are determined by the West Virginia Legislature and are referred to as **Content Standards and Objectives (CSOs)**. The CSOs are located on the West Virginia Department of Education (WVDE) website at <http://wvde.state.wv.us>.

Applicable Timelines

In West Virginia, all evaluations must be completed and an **Eligibility Committee (EC)** must be convened within **eighty (80) calendar days** of the date the school district receives parental consent. However, the **eighty (80) calendar day** timeframe does not apply if the parent repeatedly fails or refuses to produce the student for an evaluation, or if the student enrolls in another district prior to the eligibility determination.

Parents will be provided notice of the EC meeting on the **Notice of Eligibility Committee and/or Individualized Education Program Team Meeting** form.



See the **Notice of Eligibility Committee and/or Individualized Education Program Team Meeting** at the end of this chapter.

The EC will review the multidisciplinary evaluation findings and determine if the child is eligible to receive special education services. Once the review of the students' multidisciplinary evaluation or reevaluation is completed, the EC must prepare the EC Report. The parents must be provided with a copy of all the evaluations and the **Eligibility Committee Report** at no cost.



See the **Eligibility Committee Report** at the end of this chapter.



Chapter 2 provides more information on **Evaluations**.

If the child is found eligible for special education services, the EC must identify the one disability category that most affects the student's education, even if the child has multiple disabilities. **However, the determination of a disability category is important only for purposes of eligibility and does not dictate the program or services the child will receive.**

Once the child is found eligible for special education services, an **Individualized Education Program (IEP)** must be developed within **thirty (30) calendar days** from the date of the eligibility determination. The IEP must be developed before services can be initiated.



Chapter 3 provides more information on the **Individualized Education Program (IEP)**.

If the child is determined **not** to be eligible for special education services, the school district must inform the parents of this decision in writing and explain why. Parents must also be given information in writing about how they can challenge the determination that their child is not eligible.

If the child does not meet the eligibility requirements for special education and related services, as outlined in IDEA, the child may still be eligible for services under Section 504 of the *Rehabilitation Act of 1973* (Section 504), which is a federal civil rights law.



Chapter 7 provides more information on **Section 504**.

Sometimes parents disagree with the primary disability category determined by the EC. Parents may be concerned that their child will not receive certain services if the primary diagnosis identified by the EC is different than they expected. For example, parents may have a privately obtained evaluation that lists one diagnosis, while the school district's evaluation lists a different diagnosis. One way to challenge the primary disability category is to state the disagreement with the school district's evaluation and request an **Independent Educational Evaluation (IEE)** at public expense. Parents must put the challenge of the primary diagnosis in writing.



Chapter 2 and **Chapter 6** provide more information on the **Independent Educational Evaluation (IEE)**.

TIP

Do not let a disagreement about the primary eligibility category hold up the process of getting special education services for your child. If an **Independent Educational Evaluation (IEE)** is obtained and the **Eligibility Committee (EC)** still disagrees about the primary eligibility, you may need to file a state complaint if the disagreement impacts the child's educational services.

Students in Private Schools

Under the Child Find provision in IDEA, school districts are required to locate, identify, and evaluate students for eligibility for special education services in public or private school settings. However, if a student in a private school is found eligible, he or she is not necessarily entitled to the same services as those students in the public school setting. A parent can contact the special education director, in writing, to request evaluations for special education services if they feel their child is in need of services.



See the **Sample Letter to Request an Initial Evaluation for Special Education Services** at the end of this chapter.

The type of services provided may be different from county to county. Services differ because public school districts use proportionate funding to provide special education services in a private school setting. For example, a public school district may choose to provide only Occupational Therapy (OT), Physical Therapy (PT), or Speech/Language Therapy (SLT) to students in private school settings.

Parents who feel their child is not receiving FAPE in the public school setting may choose to enroll their child in a private school setting and request the public school district fund the private placement. However, in order to qualify for reimbursement, the parent must inform the school district in writing of their intent to enroll the student in a private school before removing the student. In addition, the parent needs to show that the district did not provide FAPE prior to the time the parent removed the student.

If a parent asks that the school district pay for the private placement, it is likely the school district will disagree, resulting in mediation or due process to make a decision as to what is appropriate to meet the student's needs.



Chapter 3 provides more information on **Individualized Education Program Due Process**.

Sometimes, in the public school setting, an IEP team may determine the public school cannot provide FAPE to the student. In that situation the public school district is required to pay for the student to receive services in another setting.

Birth to Three Transition Services

West Virginia Birth to Three (BTT) is a statewide system of services and supports for children under age three who have a delay in their development or who may be at risk of having a delay. This program is administered by West Virginia DHHR, Office of Maternal, Child and Family Health (OMCFH). The West Virginia BTT program, as the lead agency for Part C of the IDEA (Early Intervention for Babies and Toddlers), assures that family-centered, community-based services are available to all eligible children and families. More information about the BTT Program and their transition procedures can be found at http://www.wvdhhr.org/birth23/trans_proc.

For children receiving BTT services, transition services are required to begin **six (6) months** prior to the child's third birthday. In addition, a face-to-face transition planning meeting must be held within **90 calendar days** of the child's third birthday. Children receiving services from the BTT program must be reported to the WVDE, Office of Special Programs (Special Education) and identified as students who may be eligible for special education and related services. In instances where the BTT program began providing services to a child shortly before his or her third birthday, the transition planning referral process begins as soon as the program becomes aware of the child. With parental consent, the BTT Service Coordinator will contact the local school district to start the evaluation process. The following provides some additional information about BTT services:

- Parents do not have to allow the school district to evaluate their child for special education services.
- Parents may invite anyone they wish to the BTT transition meeting; however, parents are required to sign a consent form to allow BTT or the school district to invite the individuals the parents want to attend.
- A developmental screening must be given within **thirty (30) school days** upon receipt of the written request from a parent. The school district is not required to provide a screening to the same child more than once a school year.

A **developmental screening** is often performed by someone from the public school system to help determine if further evaluation for special education services is needed. A developmental screening is **not** the only part of the formal multidisciplinary evaluation(s) process that is required to determine a child's eligibility for special education services.

A parent who disagrees with the findings of a developmental screening should write a letter to request a multidisciplinary evaluation be completed in order to determine eligibility. This letter should be sent to the county special education director by certified mail with return receipt requested. Upon receipt of this request, the school district has **five (5) calendar days** to provide **Prior Written Notice (PWN)** if they are not going to complete the evaluations, or they must provide the evaluation consent form to the parent within **five (5) calendar days**.

TIPS

- ❖ It is recommended you request a copy of your child's entire **Birth to Three (BTT)** file when your child exits the program.
- ❖ You may invite anyone you wish to the BTT transition meeting; however, you are required to sign a consent form to allow Birth to Three or the school district to invite the individuals you want to attend.
- ❖ School districts must not use only their evaluations to determine eligibility, but must also consider the BTT evaluations and private evaluations provided by parents.

Chapter 1 Reference Materials

The following documents are referenced in Chapter 1:

- Sample Letter to Request an Initial Evaluation for Special Education Services
- Eligibility Determination Checklist
- Specific Learning Disabilities Team Report
- Notice of Eligibility Committee and/or Individualized Education Program Team Meeting
- Eligibility Committee Report

This is a sample letter to request an initial evaluation for special education services. An initial evaluation may result in the creation of an Individualized Education Program (IEP) or 504 Plan, if it is determined that your child has a disability. Send this letter to the Special Education Director by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)
(Insert your address)

(Insert Special Education Director's name), **Special Education Director**
(Insert county name) **County Schools**
(Insert address)

RE: *(Insert your child's full name)*, a **student at** *(Insert name of your child's school)* **School**

Dear Mr. or Ms. *(Insert last name of Special Education Director):*

I am the parent of *(Insert your child's full name)*, a *(Insert your child's grade)* **grade student at** *(Insert the name of your child's school)*. **I am writing to request that** *(Insert child's first name)* **receives a multidisciplinary evaluation for special education services. I am making this request under the Individuals with Disabilities Education Act (IDEA). I am concerned that** *(Insert child's name)* **is not doing well in school. I believe** *he/she* **has a disability and is eligible to receive special education services through the school.**

Specifically, a few of my concerns are as follows. *(Insert child's name)* **cannot** *(list a few examples of your child's problems at school)*

I understand that I am required to provide written permission to evaluate my child. Please consider this request as written permission. I would be happy to talk with you about *(Insert child's first name)* **and am available to answer any questions you may have. You can reach me during the day at** *(Insert daytime telephone number)*. **Thank you for your prompt attention to my request.**

Respectfully,

(Sign your name)

(Type your name)

Note: The school district should evaluate your child in several areas such as educational level, mobility and intelligence. Other areas such as a physical/occupational or speech evaluation require you to provide a request from your child's doctor. The school district will have eighty (80) days to conduct the evaluations and hold an Eligibility Committee (EC) meeting to review all evaluations and determine your child's eligibility for special education services.

Eligibility Determination Checklist

Student's Name: _____ Date of EC Meeting _____

The Eligibility Committee (EC) must consider all eligibility criteria relevant to any suspected exceptionalities.

A. Autism

Refer to the *Autism Team Report* form to consider and document the eligibility criteria for Autism.

B. Blindness and Low Vision - Documentation the student meets any criteria in 1 and criteria 2 and 3:

1. ___ The student has a documented visual impairment, not primarily perceptual in nature, as determined by an optometrist or 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 assessment (FVA) conducted by a certified teacher of the visually impaired that meets criteria 2 and 3.
2. ___ The student's physical eye condition, even with correction, adversely affects educational performance.
3. ___ The student needs special education.

C. Deafblindness - Documentation the student meets ALL of the following:

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

Note: 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 - Documentation the student meets ALL of the following:

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 - Documentation the student meets ALL of the following:

1. ___ Documentation the student is 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
 - ___ Self-help skills
2. ___ The student needs special education.

Note: If the developmental delay is the result of a vision and/or hearing loss, the student must be determined eligible under that exceptionality if the student meets the criteria.

F. Emotional/Behavioral Disorder - Documentation the student meets ALL of the following:

1. ___ The student continues to exhibit an emotional/behavioral disorder consistent with the definition after interventions have been implemented.
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 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 Grades (Grades One through Eight) - Documentation the student meets ALL of the following:

1. ___ General intellectual ability with a full scale score at the 97th percentile rank or higher on a comprehensive test of intellectual ability with consideration of 1.0 standard error of measurement at the 68% confidence interval;
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.

Note: See Policy 2419 for Special Considerations

H. Exceptional Gifted (Grades Nine through Twelve) - Documentation the student meets one or more of the following:

1. ___ The eligibility criteria for one or more of the disabilities as defined in Policy 2419, Chapter 4; and/or
2. ___ The definition for economically disadvantaged; and/or
3. ___ The definition for underachievement, which takes into consideration the student's ability level, educational performance and achievement levels; and/or
4. ___ The definition for psychological adjustment disorder as documented by a comprehensive psychological evaluation.

I. Hard of Hearing - Documentation the student meets ALL of the following:

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.

J. Intellectual Disability - Documentation the student meets ALL of the following:

1. ___ Documentation will assure that the student meets one of the following:
 - a. ___ The student with a 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 a 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 in at least **two** of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, or safety; **AND**
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.

K. Orthopedic Impairment - Documentation the student meets ALL of the following:

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.

L. Other Health Impairment - Documentation the student meets ALL of the following:

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; 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.

M. Specific Learning Disability

The EC **MUST** complete the *Specific Learning Disability Team Report* form and attach the form to the *Eligibility Committee Report*.

N. Speech/Language Impairment

Refer to the *Speech/Language Impairment Team Report* form to consider and document the eligibility criteria for Speech/Language Impairment.

O. Traumatic Brain Injury - Documentation the student meets ALL of the following:

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.

Specific Learning Disabilities Team Report

_____ County

Student's Full Name _____	Date _____
School _____	Date of Birth _____
Parent(s)/Guardian(s) _____	Grade _____
Address _____	WVEIS# _____
City/State _____	Telephone _____

Initial
 Re-Evaluation
 Other

When considering whether or not a student may be eligible for special education and related services as a student with a **Specific Learning Disability**, the Eligibility Committee must respond to each item below. The EC must answer **“yes” to each yes/no statement** to appropriately conclude a student is a student with a specific learning disability.

1) The student’s multidisciplinary evaluation was sufficiently comprehensive to identify the student’s special education and related services needs and administered in accordance with evaluation procedures specified in <i>Policy 2419</i> , Chapter 3, Section 4.	<input type="checkbox"/> Yes <input type="checkbox"/> No								
2) Based on multiple and convergent sources of data, the student’s level of learning reflects low academic performance compared to same-age peers when provided with learning experiences and instruction appropriate for the student’s age or State-approved grade-level standards (NxGCSOs) in one or more of the following areas (<i>Check all areas that apply</i>): <table style="width: 100%; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Oral Expression</td> <td><input type="checkbox"/> Reading Comprehension</td> </tr> <tr> <td><input type="checkbox"/> Listening Comprehension</td> <td><input type="checkbox"/> Reading Fluency Skills</td> </tr> <tr> <td><input type="checkbox"/> Written Expression</td> <td><input type="checkbox"/> Mathematics Calculation</td> </tr> <tr> <td><input type="checkbox"/> Basic Reading Skill</td> <td><input type="checkbox"/> Mathematics Problem Solving</td> </tr> </table>	<input type="checkbox"/> Oral Expression	<input type="checkbox"/> Reading Comprehension	<input type="checkbox"/> Listening Comprehension	<input type="checkbox"/> Reading Fluency Skills	<input type="checkbox"/> Written Expression	<input type="checkbox"/> Mathematics Calculation	<input type="checkbox"/> Basic Reading Skill	<input type="checkbox"/> Mathematics Problem Solving	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Oral Expression	<input type="checkbox"/> Reading Comprehension								
<input type="checkbox"/> Listening Comprehension	<input type="checkbox"/> Reading Fluency Skills								
<input type="checkbox"/> Written Expression	<input type="checkbox"/> Mathematics Calculation								
<input type="checkbox"/> Basic Reading Skill	<input type="checkbox"/> Mathematics Problem Solving								
3) Identify the method used to determine Eligibility: <input type="checkbox"/> The student fails to achieve a rate of learning to make sufficient progress to meet State-approved grade-level standards (NxGCSOs) in one or more of the areas identified above when assessed using the SPL process. <p style="text-align: center;">OR</p> <input type="checkbox"/> The student exhibits a pattern of strengths and weaknesses in performance, achievement or both, relative to age, State-approved grade-level standards (NxGCSOs) or intellectual development that is determined by the group to be relevant to the identification of a specific learning disability.	<input type="checkbox"/> Yes <input type="checkbox"/> No								
4) The student’s achievement deficits are NOT primarily the result of vision, hearing or motor impairments; intellectual disability; emotional/behavioral disorder; cultural factors, environmental or economic disadvantage or limited English proficiency.	<input type="checkbox"/> Yes <input type="checkbox"/> No								

5) Evaluation information and documentation confirm that lack of appropriate instruction in reading or mathematics was NOT the determinant factor in the eligibility decision.	<input type="checkbox"/> Yes <input type="checkbox"/> No
6) Evaluation information confirms there is an adverse effect on the student's educational performance.	<input type="checkbox"/> Yes <input type="checkbox"/> No
7) The student was observed in the learning environment, including the general classroom setting, to document the student's academic performance and behavior in the areas of difficulty. An observation summary/report is attached and describes the relevant behavior noted during the observation, if any, and the relationship of that behavior to the student's academic functioning.	<input type="checkbox"/> Yes <input type="checkbox"/> No
8) The specific instructional strategies used and the student-centered data collected are documented and available in the Eligibility Committee Report.	<input type="checkbox"/> Yes <input type="checkbox"/> No
9) Note educationally relevant medical findings, if any (Write N/A if no relevant medical findings apply):	

The Eligibility Committee used the above evaluation data analysis and discussion to determine:

- The student **DOES** meet the eligibility criteria for a specific learning disability that adversely impacts his/her education and **is eligible** for special education and related services.
- The student **DOES NOT** meet the eligibility criteria for a specific learning disability and **is not eligible** for special education and related services as a student with a specific learning disability.

The student's parents were notified about the following: The State's policies (i.e., WVBE Policy 2419, Chapter 4, Section 2.L. including Support for Personalized Learning) regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the student's rate of learning; results of repeated assessments of student progress AND, the parent's right to request an evaluation at any time throughout the Support for Personalized Learning process.

Date of parent notification: _____

Eligibility Committee Members

Signature	Position	Agreement with EC Determination
_____	Chairperson	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	Evaluator/Specialist	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	Teacher	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	Parent	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	Student	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	Other	<input type="checkbox"/> Yes <input type="checkbox"/> No

NOTE: If this report does not represent an individual team member's conclusions, that team member must submit a separate statement presenting the member's conclusions.

Meeting Notes (if applicable)

NOTICE OF ELIGIBILITY COMMITTEE AND/OR INDIVIDUALIZED

EDUCATION PROGRAM TEAM MEETING

_____ County Schools

Student's Full Name _____	Date _____
School _____	DOB _____
Parent(s)/Guardian(s) _____	Grade _____
Address _____	WVEIS# _____
City/State _____	Telephone _____

Dear Parent(s)/Guardian(s) and Student:

A meeting will be held on _____ at _____ a.m. p.m.
 at _____. The purpose of the meeting is checked below:

- Eligibility Committee (EC) Meeting** - The EC will review information to determine eligibility for special education. If the EC determines the student is eligible, an Individualized Education Program (IEP) Team meeting will be held. (See description below.) If found not eligible, recommendations from the EC will be provided to a school team for consideration, and no IEP Team meeting will be held. If the EC determines further information is needed, you will be informed.
- Individualized Education Program (IEP) Team Meeting** - An IEP Team meeting will be convened to develop, review and/or revise the IEP. Additionally, the IEP Team may:
 - identify transition services for the student with a disability (beginning with 1st IEP to be effective at age 16)
 - identify preschool transition needs plan for reevaluation
 - determine if the student's conduct is a manifestation of a disability document transfer of student's rights
 - other _____ (age of majority)

We invite you to participate in this meeting so we may plan an educational program together. Please be informed you and the county school district have the right to invite other individuals who have knowledge or special expertise regarding the student.

Procedural Safeguards Brochure & Notice to Parents (Medicaid): Enclose Provided earlier this school year.

If an agency representative is needed, prior written consent was obtained: No Yes **Consent Date:** _____

Copy to Invited Members:

- | | | |
|--|---|--------------------------------------|
| <input type="checkbox"/> Administrator | <input type="checkbox"/> General Education Teacher | <input type="checkbox"/> Evaluator |
| <input type="checkbox"/> Special Education Teacher or Provider | <input type="checkbox"/> Birth to Three Representative | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Student (when transition will be addressed) | <input type="checkbox"/> Agency Representative(s) _____ | |

IEP Team Member Excusal(s): The following IEP Team members will be excused from attending the IEP Team meeting. Members whose curricular area or related service will be discussed will provide a written summary for consideration in developing the IEP.

Name/Position: _____

Name/Position: _____

Sincerely,

Name/Position

Phone Number

Parent(s): Please return this form within 5 days and retain a copy for your records.

STUDENT RESPONSE (when transition will be addressed)

- I will attend the meeting as scheduled.
- I do not wish to attend.
- I wish to have the meeting rescheduled.

PARENT RESPONSE (check one)

- I will attend the meeting as scheduled.
- I do not wish to attend.
- I cannot attend in person, but will participate by phone.
I can be reached at _____.
- I wish to have the meeting rescheduled.

Student Signature

Date

PARENT OPTIONS (check all that apply)

- I agree to waive the 8-day notification requirement.
- I agree to excuse the IEP Team members above.
- I request the district to invite the Birth to Three representative.

Note: Meeting may be rescheduled due to a school delay or cancellation.

Parent Signature

Date

West Virginia Department of Education
October 2014

ELIGIBILITY COMMITTEE REPORT

_____ **County Schools**

Student Full Name _____	Date _____
School _____	Date of Birth _____
Parent(s)/Guardian(s) _____	Grade _____
Address _____	WVEIS# _____
City/State _____	Telephone _____

Initial Re-Evaluation Other _____

The Eligibility Committee (EC) considered the following multi-disciplinary reports and other relevant information.

- | | | |
|---|---|---|
| <input type="checkbox"/> Academic Information | <input type="checkbox"/> Developmental Skills | <input type="checkbox"/> Social Skills |
| <input type="checkbox"/> Achievement | <input type="checkbox"/> Health _____ | <input type="checkbox"/> Transition Assessments |
| <input type="checkbox"/> Classroom Performance | <input type="checkbox"/> Hearing | <input type="checkbox"/> Functional Vocational Evaluation |
| <input type="checkbox"/> Teacher Report | <input type="checkbox"/> Information from the Parents | <input type="checkbox"/> Vocational Aptitudes |
| <input type="checkbox"/> Adaptive Skills | <input type="checkbox"/> Intellectual Ability | <input type="checkbox"/> Interests/Preferences |
| <input type="checkbox"/> Assistive Technology | <input type="checkbox"/> Motor Skills | <input type="checkbox"/> Vision |
| <input type="checkbox"/> Behavioral Performance | <input type="checkbox"/> Observation(s) | <input type="checkbox"/> Orientation and Mobility |
| <input type="checkbox"/> Functional Behavioral Assessment | <input type="checkbox"/> Perceptual-Motor | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Communication | | _____ |

A

student *cannot be identified* as a student in need of special education services if the primary reason for the decision is due to any of the following:

- A lack of appropriate instruction in the essential components of English/language arts (reading); or
- A lack of instruction in mathematics; or
- Limited English proficiency

For initial evaluation or reevaluation, the student meets the three-prong test of eligibility:

- Meets the eligibility requirements for one of the specific exceptionalities; **and**
- Experiences an adverse effect on educational performance; **and**
- Needs special education.

For reevaluation only:

If a student no longer meets the eligibility criteria in one of the designated exceptionalities, the EC must provide _____ the _____ justification for _____ continued _____ eligibility.

The Eligibility Committee has determined the student's primary area of exceptionality is (only one):

- | | | |
|--|--|--|
| <input type="checkbox"/> Autism (AU) | <input type="checkbox"/> Exceptional Gifted (EG) | <input type="checkbox"/> Developmental Delay (PS) |
| <input type="checkbox"/> Emotional/Behavioral Disorders (BD) | <input type="checkbox"/> Gifted (GF) | <input type="checkbox"/> Specific Learning Disability (LD) |

- | | | |
|--|---|--|
| <input type="checkbox"/> Blindness and Low Vision (VI) | <input type="checkbox"/> Intellectual Disability (Designate
WVEIS Code __MM__MD__MS) | <input type="checkbox"/> Speech/Language Impairment (CD) |
| <input type="checkbox"/> Deaf-Blindness (DB) | <input type="checkbox"/> Orthopedic Impairment (PH) | <input type="checkbox"/> Traumatic Brain Injury (TB) |
| <input type="checkbox"/> Deafness (DF) | <input type="checkbox"/> Other Health Impairment (OH) | <input type="checkbox"/> None |
| <input type="checkbox"/> Hard of Hearing (HI) | | |

Additional evaluation data are needed in the following areas: _____

The Eligibility Committee has determined the student is not eligible for special education and submits the following recommendations for consideration by the school team (e.g., SAT or instruction and intervention team): _____

Eligibility Committee Members

Signature

Position

Administrator/Principal/Designee
Evaluator/Specialist
Student's Teacher
Parent
Student
Other _____

West Virginia Department of Education
July 2013

Chapter 2: Evaluations

In this chapter:

- ✓ Introduction
- ✓ Initial Evaluation
- ✓ Reevaluations
- ✓ Additional Evaluations
- ✓ Independent Educational Evaluation
- ✓ Privately Obtained Evaluation(s)
- ✓ Chapter 2 Reference Materials



Introduction

West Virginia Policy 2419 states that **evaluations** are used to determine if “a student has a disability or is gifted, and the nature and extent of the special education and related services the student needs.” Evaluations are also necessary to determine if an **Individualized Education Program (IEP)** is working, and if a student continues to require special education services and supports. **Most importantly, evaluations document a student’s current levels of performance and provide a starting point from which to measure goals and objectives.** With each **reevaluation**, a student’s progress or lack of progress is measured and documented.

TIPS

- ❖ Do not be afraid to ask questions regarding the reports. You are not expected to understand everything in the reports.
- ❖ You do not have to allow the school district to evaluate your child for special education services.
- ❖ Remember that test results are not always reliable. They are merely a snapshot of a certain moment of time in your child’s life.
- ❖ 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.

The **multidisciplinary evaluation team (MDET)** is a group of people with the responsibility to make decisions regarding the evaluation and assessment process. The MDET includes the same membership as the IEP team (not necessarily the same individuals). The parent/ student is a member of the evaluation team and must be given an opportunity to provide input and participate in making team decisions. Business may be conducted with or without holding a meeting. However, if requested by the parent/student, a team meeting must be held. The **Student Assistance Team (SAT)** is one forum for addressing the decisions to be reached by the evaluation team.



Chapter 3 provides more information on **Required IEP Team Members**.



See the **Evaluations Components** at the end of this chapter.

Initial Evaluation

A **referral** for an initial evaluation for special education services may come from a variety of sources. Typically a referral for initial evaluation for special education services will begin a multidisciplinary evaluation process. All areas of suspected disabilities must be assessed. This means that the student should be evaluated in multiple areas; for example, academic, communication, intellectual ability, motor skills, social skills, adaptive skills, assistive technology (AT), hearing, vision, and other areas as needed.

Parents will be asked to provide written consent prior to an initial evaluation. A **Notice of Individual Evaluation/Reevaluation Request** form will be sent to the parents for review and signature. Parents have the choice to give or refuse permission, or schedule a conference prior to the evaluation.

If the parent/ adult student fails to respond **within ten (10) 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 record of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parent/adult student and any response received; and/or
- 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 (30) thirty school days** from the initial request for consent, the district may:

- As part of a reevaluation, provide PWN that the district will conduct the reevaluation; or
- 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.



See the **Notice of Individual Evaluation/Reevaluation Request** at the end of this chapter.

According to Policy 2419, the purpose of the initial evaluation is to gather information to determine:

- Whether the student has a disability or is gifted;
- The educational needs of the student;
- The effects of the exceptionality on educational and functional performance;
- Whether the student needs specially designed instruction; and
- The nature and extent of the special education needed.

The following information helps to explain the initial evaluation process:

- **A child cannot be evaluated until the parent provides consent in writing.** If a parent refuses consent for the initial evaluation, the district can pursue mediation or due process.
- A consent form must be given to the parent within **five (5) calendar days** of the request for initial evaluation(s).
- Timelines begin on the actual date when the school district receives the consent form signed by parents. Evaluations must be completed and an **Eligibility Committee (EC)** must be convened within **eighty (80) days** after the actual date that the school district receives parental consent. However, the **eighty (80) day** timeframe does not apply if the parent repeatedly fails or refuses to produce the student for an evaluation, or if the student enrolls in another district prior to the eligibility determination. The **eighty (80) days** do not include summer break, days when school is closed due to a state of emergency (as declared by the Governor), or days off due to weather. If days off due to weather result in delays of the evaluation, it must be clearly documented in the student's file.
- Each evaluator, including the teacher, must provide a written report to the EC and parent prior to the reevaluation date or within **eighty (80) days** of the parent requesting an initial evaluation.

Evaluations should focus on students' strengths and interests, not solely on their weaknesses.

TIP

Individuals presenting evaluation results during an Eligibility Committee meeting must be qualified to make the report and answer questions regarding the findings.

Reevaluation

For a student who is already receiving special education services, the IEP team must conduct a multidisciplinary **reevaluation** in order to determine the student's continued eligibility for special education. In addition, the reevaluation will be used to monitor the student's progress and to evaluate the appropriateness of the special education services the student receives. The reevaluation, also referred to as a triennial review, must be completed **within three (3) years** of the date of the last EC, or more frequently as requested by the parent or teacher.

As discussed in the previous section, parents will be asked to provide permission prior to the reevaluation. This notice and permission will be provided on the **Notice of Individual Evaluation/Reevaluation Request** form.



See the **Notice of Individual Evaluation/Reevaluation Request** at the end of this chapter.

The individual multidisciplinary reevaluation is conducted to determine a student's:

- educational needs;
- continued eligibility for special education and related services; and
- need for any additions or modifications to the IEP.

As part of the reevaluation, the IEP team must review existing evaluation data on the student. This review may be conducted with or without holding a meeting, and must be documented on the **Reevaluation Determination Plan**. If a meeting is not held the parent will receive and be required to sign the **Reevaluation Determination Plan**. A copy of the completed **Reevaluation Determination Plan** form must be provided to the parent.



See the **Reevaluation Determination Plan** at the end of this chapter.

The following further details the reevaluation process:

- Parental consent is required for a reevaluation.
- **Within five (5) calendar days** of the district's decision to evaluate or reevaluate, written notice requesting consent must be provided to the parent.
- If the team determines evaluations are needed, they must be conducted **prior** to the student's established triennial review date.
- Reevaluations must be provided at no cost to the parent.
- The district and parent must agree in order for more than one reevaluation to occur within one year.

TIP

- ❖ You may find that evaluators use different evaluation tools from year to year. This makes it difficult for parents to see if the student is making progress. Do not be afraid to ask the evaluator to use the same testing tool as the previous year. If they use a different tool, request they explain and compare the student's current and previous scores on their report.
- ❖ You should request documentation of the reason(s) why a service is being removed from your child's IEP.
- ❖ Remember you have a right to request a meeting any time you have questions about the IEP, evaluations or reevaluations. The school must provide prior written notice if they refuse to hold a meeting.

Additional Evaluation

There are times when the EC or IEP team may feel they need additional information about a student. An example could be when a student is not progressing. In that case, the EC or IEP team may request different or additional evaluations be completed. An additional evaluation may be requested to assist with the determination of educational needs or eligibility.



See the **Sample Letter to Request an Evaluation for a Child Already Receiving Special Education Services** at the end of this chapter.

The following provides important timelines for additional evaluations:

- The request for parental consent must be sent within **ten (10) school days** of the meeting which generated the request for evaluation.
- Additional evaluations and a meeting to review the evaluation(s) must be completed within **sixty (60) calendar days** from the receipt of parental consent for the identified evaluations.

When the parent provides a written request for an additional evaluation, the IEP team must consider the request. The local education agency (LEA) must provide prior written notice of its response within **ten (10) calendar days**. The IEP team can consider the request with or without holding a meeting.

Independent Educational Evaluation (IEE)

If a parent disagrees with an evaluation completed by the school district, the parent has a right to request an **Independent Educational Evaluation (IEE)** at the school district's expense, to be conducted by an individual who does not work for the school district. The school district must provide the parent with a list of evaluators and make arrangements in advance of the evaluation. The parent will select the evaluator, and the school will make the arrangements. The independent evaluation must take place without unnecessary delay.

If a school district refuses a parent's request for an IEE, the school district must file for due process to prove that their evaluation is appropriate and that the parent's request is without merit.

A parent must request an IEE from the school district before proceeding to obtain the evaluation.



See **Sample Letter to Request an Independent Educational Evaluation (IEE)** at the end of the chapter.

A parent can choose someone not on the list provided by the school district as long as the evaluator meets the credentials set by the school district. The cost must not exceed the rate set by the school district.



Chapter 6 provides more information about **Independent Educational Evaluations (IEE)**.

Privately Obtained Evaluation(s)

A school district must consider any evaluations the parent obtains privately.

The school district cannot use one evaluation as the sole criterion when making decisions about special education services. Information about the student must be obtained from a variety of sources.

Chapter 2 Reference Materials

The following documents are referenced in Chapter 2:

- Notice of Individual Evaluation/Reevaluation Request
- Evaluation Components
- Reevaluation Determination Plan
- Sample Letter to Request an Evaluation for a Child Already Receiving Special Education Services
- Sample Letter to Request an Independent Educational Evaluation (IEE)

NOTICE OF INDIVIDUAL EVALUATION/REEVALUATION REQUEST

_____ County Schools

Student's Full Name _____
 School _____
 Parent(s)/Guardian(s) _____
 Address _____
 City/State _____

Date _____
 DOB _____
 Grade _____
 WVEIS# _____
 Telephone _____

INITIAL REEVALUATION OTHER _____

Dear Parent(s)/Adult Student:

Your permission is requested to conduct an evaluation to determine the student's educational needs. If the student has been receiving special education services, a reevaluation is required at least every three years or more frequently, if warranted. Upon completion of the evaluation, a meeting will be scheduled to discuss the evaluation results.

This evaluation will be conducted by qualified professionals and will include the areas checked below. A written description of each evaluation component is provided. The evaluation results will be used as the primary source to determine the student's eligibility for special education and related services and/or to adjust the student's educational services.

- | | | |
|---|---|---|
| <input type="checkbox"/> Academic Information | <input type="checkbox"/> Developmental Skills | <input type="checkbox"/> Transition Assessments |
| <input type="checkbox"/> Achievement | <input type="checkbox"/> Health _____ | <input type="checkbox"/> Functional Vocational Evaluation |
| <input type="checkbox"/> Classroom Performance | <input type="checkbox"/> Hearing | <input type="checkbox"/> Vocational Aptitudes |
| <input type="checkbox"/> Teacher Report | <input type="checkbox"/> Information from the Parents | <input type="checkbox"/> Interests/Preferences |
| <input type="checkbox"/> Adaptive Skills | <input type="checkbox"/> Intellectual Ability | <input type="checkbox"/> Vision |
| <input type="checkbox"/> Assistive Technology | <input type="checkbox"/> Motor Skills | <input type="checkbox"/> Orientation and Mobility |
| <input type="checkbox"/> Behavioral Performance | <input type="checkbox"/> Observation(s) | <input type="checkbox"/> Other (specify below) |
| <input type="checkbox"/> Functional Behavioral Assessment | <input type="checkbox"/> Perceptual-Motor | _____ |
| <input type="checkbox"/> Communication | <input type="checkbox"/> Social Skills | _____ |

Procedural Safeguards Brochure explaining parent/student rights and the responsibilities of the county school district is enclosed for an initial referral.

Signature

Date

I have read, or had read to me, the above Notice of Individual Evaluation/Reevaluation Request regarding the student. I understand the contents and implications of this notice and have been advised of my rights.

Check one:

- I give permission to evaluate/reevaluate.
 I wish to schedule a conference before I decide.
 Do not evaluate/reevaluate the student.

*** REQUIRED ***

Received by school/county:

Parent/Adult Student Signature Date

Please return this signed form within 5 days and retain a copy for your records.

EVALUATION COMPONENTS

Academic Information – measures of student performance as demonstrated on formative and summative assessments.

Achievement – individually administered standardized tests that measure a student’s skills in a variety of academic areas.

Examples: mathematics, reading, science and social studies

Classroom Performance – information collected on the student’s learning and progress in the classroom.

Examples: end of the chapter tests, portfolio assessment, classroom-based assessment, progress-monitoring data, interim assessments, benchmark assessments

Teacher Report – information provided by any or all of the student’s current teachers

Examples: information pertaining to a student’s organizational skills, attention to task, work/study habits, grades

Adaptive Skills – measures to determine skills necessary to function adequately within a person’s home, school or community environment.

Examples: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work

Assistive Technology – procedures to determine if a student requires devices or services to increase, maintain or improve functional capabilities.

Examples: functional environmental evaluation to determine the need for devices including, but not limited to, a communication board, adapted equipment or computer software

Behavioral Performance – measures to determine a student’s behavioral, social and/or affective status.

Examples: conduct in the classroom, ability to attend or focus, self-concept, emotional functioning, relationships with others

Functional Behavioral Assessment (FBA) – structured process to determine the possible functions of a student’s behavior so interventions and modifications can be developed.

Examples: systematic observations, data collection, interviews

Communication - measures to determine skills necessary to understand and express information.

Examples: speech sounds, oral language, phonemic awareness, facial expressions, body movements, gestures, touch

Developmental Skills – procedures to determine the student’s early learning and school readiness.

Examples: developmental milestones such as walking, talking and toileting

Health – acquisition of information to determine the effect of health concerns on educational performance.

Examples: report of a medical diagnosis from a physician or health history

Hearing – measures to determine the student’s ability to hear or process language.

Examples: audiological, medical evaluation

Information from the Parents – acquisition of information from the parents to assist in evaluation and program planning.

Examples: social/emotional, developmental history, student preferences, medical history, cultural influence, behavioral information

Intellectual Ability – individualized, standardized measures to assess a student’s ability or potential to learn.

Examples: perception, cognition, memory, processing speed, verbal and non-verbal skills

Motor Skills – measures to determine a student’s gross and fine motor development.

Examples: mobility, muscle tone, balance, coordination, accessibility

Observation(s) – a purposeful study of the student in a variety of activities, situations and/or times at school, home or other settings.

Examples: data collection of student behavior and/or performance in a variety of classes and/or unstructured settings

Perceptual-Motor – measures to determine the student’s ability to convert what is seen to written form.

Example: reproducing a pattern from a sample

Social Skills – measures to determine the student’s ability to initiate and maintain positive relationships with others.

Examples: making friends, problem-solving, cooperating with others, following rules, showing appreciation

Transition Assessments – a planned, continuous process of obtaining, organizing and using selected formal and informal information to assist students in decision-making and preparation for successfully meeting their goals and expectations from school to post-school activities.

Functional Vocational Evaluation – real and simulated measures to determine a student’s ability to perform certain aspects of a work-related task and may include a purposeful study of the student in a variety of work-related activities.

Examples: hands-on work samples, progress reports, job performance checklists

Vocational Aptitudes – measures to determine prerequisite abilities pertaining to the world of work.

Examples: manual dexterity, proof reading words and numbers, color discrimination

Interests/Preferences – measures to assist with post-secondary planning, including schooling, employment and adult living.

Example: career assessment inventory

Vision – measures to determine the student’s functional vision and/or physical eye conditions.

Examples: ophthalmological, optometrist report

Orientation and Mobility – assesses the ability of the student who is visually impaired, blind, or deaf-blind in the use of his/her remaining senses to determine his/her position in the environment and in techniques for safe movement from one place to another.

Examples: concept development, pedestrian safety, cane skills, route planning

**Other:
Specify** _____

REEVALUATION DETERMINATION PLAN

_____ County Schools

Student's Full Name _____ Date _____
 School _____ Date of Birth _____
 Parent(s)/Guardian(s) _____ Grade _____
 Address _____ WVEIS# _____
 City/State _____ Telephone _____

Triennial Reevaluation Due Date _____

Names of Existing Evaluation Data & Dates Administered	Description of Student's Current Status	Evaluate/Reevaluate Y/N
Academic Information <input type="checkbox"/> Achievement <input type="checkbox"/> Classroom Performance <input type="checkbox"/> Teacher Report		
Adaptive Skills		
Assistive Technology		
Behavioral Performance <input type="checkbox"/> Functional Behavioral Assessment		
Communication		
Developmental Skills		
Health		
Hearing		
Information from Parents		

Names of Existing Evaluation Data & Dates Administered	Description of Student's Current Status	Evaluate/Reevaluate Y/N
Intellectual Ability		
Motor Skills		
Observation(s)		
Perceptual-Motor		
Social Skills		
Transition Assessments <input type="checkbox"/> Functional Vocational Evaluation <input type="checkbox"/> Vocational Aptitudes <input type="checkbox"/> Interests/Preferences		
Vision <input type="checkbox"/> Orientation & Mobility		
Other (specify)		

Note: If no additional data is needed as indicated in the current status column, the parent has the right to request an assessment(s) to determine whether the student continues to be a student with an exceptionality.

Multidisciplinary Evaluation Team Members

Signature

Position

- Administrator/Principal/Designee**
- Evaluator/Specialist**
- General Educator**
- Special Educator**
- Parent**
- Student**
- Other** _____

This is a sample letter to request an evaluation for a student already receiving special education services, if there is a need for additional information regarding the student. Send this letter to the Special Education Director by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)
(Insert your address)

(Insert Special Education Director's name), **Special Education Director**
(Insert county name) **County Schools**
(Insert address)

RE: (Insert your child's full name), **a student at** (Insert name of your child's school) **School**

Dear Mr. or Ms. (Insert Special Education Director's last name),

I am the parent of (Insert your child's full name), **a** (Insert your child's grade) **grade student at** (Insert your child's school's name) **School.**

I am writing to request that (Insert child's first name) **be evaluated for possible** (examples of evaluation testing: sensory integration, reading comprehension, written/expressive language, psychological/educational) **needs. I am concerned that** (Insert first child's name) **is having problems in school with** (list a few examples which demonstrate your child's difficulties at school).

I understand that I am required to provide written permission in order to start the evaluation process. Please consider this request written permission. I would be happy to talk with you about (Insert first child's name, and answer any questions you may have. **You can reach me during the day at** (Insert daytime telephone number). **Thank you for your prompt attention to my request.**

Sincerely,

(Sign your name)

(Type your name)

Note: The school has sixty (60) days (this does not count holidays) to complete the evaluation. If the school is not going to do the valuation, they must provide prior written notice within ten (10) days and explain why.

This is a sample letter to request an independent evaluation. Send this letter to the Special Education Director by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)
(Insert your address)

(Insert Special Education Director's name), **Special Education Director**
(Insert county name) **County Schools**
(Insert address)

RE: (Insert your child's full name), **a student at** (Insert name of your child's school) **School**

Dear Mr. or Ms. (Insert last name of Special Education Director):

I am the parent of (Insert child's full name). **I disagree with the school system's** (Insert type of evaluation, such as Physical Therapy, Speech Language or psychological) **evaluation. I am requesting an independent evaluation at public expense.**

Please send a copy of the written criteria under which the independent evaluations must be conducted to meet district criteria. Also, please include a written list of independent evaluators I may consider.

It is my understanding that the school must pay for the independent evaluation, unless it requests a due process hearing to prove that its evaluation was appropriate. I will send the district a copy of the evaluation upon completion. I understand the evaluation must be considered in any future decisions about my child's education.

Please send the requested information, or let me know within five (5) business days if you intend to request a due process hearing.

Respectfully,

(Sign your name)

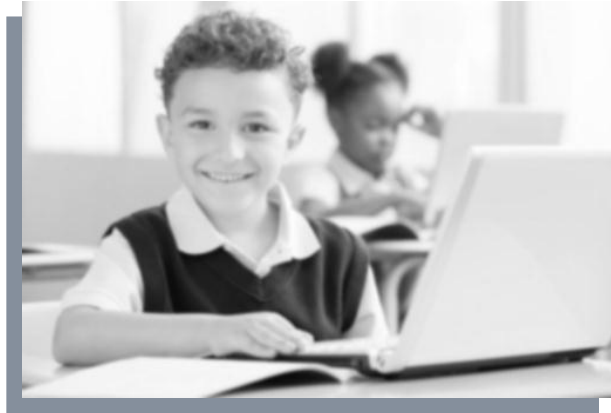
(Type your name)

Note: Payment arrangements between the school district and evaluator must be made prior to you taking your child for an evaluation. The independent evaluation must be within the reasonable range of cost for the type of evaluation. You do not have to choose an evaluator from the list as long as the evaluator you do choose meets the criteria.

Chapter 3: Individualized Education Program (IEP)

In this chapter:

- ✓ Introduction
- ✓ IEP Team Basics
- ✓ The IEP Document
- ✓ IEP Amendments
- ✓ IEPs for Transfer Students
- ✓ Guidelines to Obtain Necessary Services for a Student
- ✓ How to Handle Difficult Conversations
- ✓ Dispute Resolution
- ✓ Chapter 3 Reference Materials



Introduction

West Virginia Policy 2419 explains that the **Individualized Education Program (IEP)** document “sets forth in writing a commitment of resources necessary to enable the student to receive needed special education and related services.” If a service or need is not listed on the IEP document, the school district does not have to provide it.

Special education is specially designed instruction, at no cost to the parent, to meet the unique educational needs of an eligible student with a disability or giftedness, including instruction in the classroom, the home, hospitals, institutions and other settings. Special education can also include instruction in physical education, transition services, travel training, assistive technology services and vocational education. In addition, Occupational Therapy (OT), Physical Therapy (PT), and Speech/Language Therapy (SLT) may be provided as appropriate to meet the student’s needs.

The main purpose of an IEP team meeting is to develop a plan that will meet the unique educational needs of an eligible student. The IEP meeting serves as a communication method between the parent and district personnel that is meant to offer equal participation to make joint and informed decisions. Policy 2419 states, “all members of the IEP team are expected to work toward consensus on the content of the student’s IEP to ensure that he or she receives a **Free Appropriate Public Education (FAPE)**.” Consensus means that all members are in general agreement about the content of the IEP.

If the IEP team cannot reach a consensus about an IEP decision, then the district representative will make the final decision. The district must provide the parent with **Prior Written Notice (PWN)** of the decision at the conclusion of the meeting and prior to implementing the IEP. **If the parent is in disagreement, this will not stop the implementation of the IEP.** The parent may exercise his or her right to mediation or a due process hearing.

TIPS

- ❖ Request a free copy of West Virginia Policy 2419 from the State Department of Education.
- ❖ We recommend that you bring a copy of West Virginia Policy 2419 and *A Parents' Advocacy Guide to Special Education* to your **Individualized Education Program (IEP)** meetings.
- ❖ A parent can request an IEP meeting at any time, but the request must be in writing.
- ❖ Consider having your child develop an "About Me" handout or presentation that includes his or her likes, dislikes, strengths, difficulties, dreams, and goals. This could be presented at the beginning of every meeting to make sure everyone is on the same page. If your child has a specific request, like to change where he or she is seated in the classroom, this would be a good time for them to say so. It also builds self-advocacy skills and ensures everyone is listening.

IEP Team Basics

This section will cover the following basic information about the IEP team and the IEP meeting:

- When are IEP team meetings held?
- What type of notice are parents and other team members supposed to receive prior to an IEP team meeting?
- Who is required to participate as an IEP team member?
- As a parent, what is your role at the IEP meeting?
- What is the role of the student at the IEP meeting?
- How and under what circumstances may a required IEP team member be excused from attending a meeting?

When to Have an IEP Meeting

After a student is found eligible for special education services during an **Eligibility Committee (EC)** meeting, the district must have an IEP meeting within **thirty (30) calendar days** to develop an IEP document.

The following sets forth the other times when an IEP meeting must be convened:

- To review the IEP periodically, but no longer than **365 calendar days** from the date the current IEP was developed.
- At the request of any member, including the parent, the school district has **twenty-one (21) calendar days** to hold an IEP meeting. If the school district feels the current IEP is appropriate and refuses to hold another IEP meeting, they must provide the parents with PWN within **five (5) calendar days**. The PWN must include the reason the school district refuses to hold the IEP meeting.



See **Prior Written Notice of School District's Proposal/Refusal** at the end of **Chapter 6**.

See **Sample Letter to Request Prior Written Notice** at the end of **Chapter 6**.



Chapter 6 provides more information about **Prior Written Notice**.

- The school district must have an IEP meeting within **twenty-one (21) calendar days** of a written request by the general education teacher who has responsibility for implementing the IEP.
- The school district must have an IEP meeting within **ten (10) school days** of any disciplinary removal that results in a change of placement for the student. The IEP team must conduct a **Manifestation Determination Review (MDR)** meeting. If appropriate, a recommendation should be made to complete a **Functional Behavioral Assessment (FBA)** and/or develop a new or review a current behavioral intervention plan.



Chapter 4 provides more information about **Change of Placement** and the **Manifestation Determination Review (MDR)**.

- When an agency fails to provide transition services listed on the IEP, the IEP team must meet to identify alternative strategies to meet the transition objectives. For example, the school district cannot force the **West Virginia Division of Rehabilitation Services (WVDRS)** to provide services for anything listed on the IEP.

TIPS

- ❖ To encourage friendly and cooperative interaction at your Individualized Education Program (IEP) meeting, consider bringing a snack for all to share.
- ❖ A parent can request an IEP meeting at any time, but the request must be in writing.
- ❖ A change of placement occurs when a student is removed from school for more than ten (10) school days, such as when a student is suspended, expelled or moved to an interim alternative education setting (IAES).



See **Sample Letter to Request an IEP Meeting** at the end of this chapter.

IEP Meeting Notice

A parent must be given written notice **at least eight (8) calendar days** prior to an IEP meeting. The written notice must include the date, location, time and who will be attending and the purpose of the meeting. The parent and the district should mutually agree on the meeting. A parent may waive the required **eight (8) calendar day** notice.

The **meeting notice** (also referred to as Notice of Meeting) will list the stated purpose for the IEP meeting. An IEP meeting might be held to:

- develop, review and/or revise the IEP;
- identify transition services from the **Birth to Three (BTT) Program**, preschool or post-secondary at age 16;
- develop a plan for reevaluation every three (3) years;
- transfer of student's rights at age 18 (age of majority); and
- conduct an MDR meeting which occurs when a student is subject to disciplinary actions that may result in a change of placement.



See **Notice of Eligibility Committee and/or Individualized Education Program Team Meeting** at the end of Chapter 1.



Chapter 6 provides information on **Notice of Meetings**.

TIPS

- ❖ If the school district contacts you by phone and tells you they want to have an Individualized Education Program (IEP) meeting the next day and it will be difficult for you to attend the meeting on such short notice, do not agree to attend. Just inform the school district that you want to attend and offer dates/times when you will be able to attend. Remember that you have a right to appropriate notice of meetings.
- ❖ If you cannot attend your child's **IEP** meeting in person, ask the school to provide you with a draft of your child's IEP prior to the formal meeting. You can make notes directly on the IEP draft provided by the school, organizing your thoughts in each of the important IEP sections. After making a copy for yourself, give the draft with your notes back to the school. Ask them to contact you if they have any questions. You may also ask to review copies of evaluations to address questions and concerns before an IEP meeting that you will not be able to attend.
- ❖ Of course, you may still ask for a copy of the draft even if you plan to be at the meeting. If you are told there is no draft, then you should expect to start the meeting with a blank IEP document.

Required IEP Team Members

The following are required IEP team members:

- Parents who may be the natural, adoptive, or foster parent of a child; a court-appointed guardian (but not the State if the State is the child's guardian); an individual acting in place of a natural or adoptive parent (including a grandparent, step-parent, or other relative) who the child lives with; or an individual assigned by the **Local Education Agency (LEA)** to be a **surrogate parent**.
- At least one **general education teacher**, if the student is or may be participating in the **general education environment (GEE)**. Their role 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.
- At least one **special education teacher**, or, when appropriate, **special education service provider** (e.g., speech language pathologist).
- A **representative of the school district** who is qualified to provide or supervise the provision of special education, is knowledgeable about the availability of resources of the district, and has the authority to allocate resources. This can be one of the other team members if he or she meets the requirements and is designated.
- An **individual who can interpret the instructional implications of evaluation results**. For example, a special education specialist, audiologist, special educator, speech/language pathologist, related service provider or school psychologist. A teacher or specialist should not interpret another specialist's evaluation unless they also have credentials in that area of expertise.
- At the parents' or district's discretion, **others with knowledge or special expertise** regarding the child, including related services personnel, as appropriate. The determination of having knowledge or special expertise will be made by the parent or district personnel who invited the individual to the IEP meeting.
- The **student**, when appropriate, but required when the purpose of the meeting is to discuss post-secondary goals and transition services.
- 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.
- At the request of a parent of a child who previously received services under **West Virginia Birth to Three (BTT)**, 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, a **representative of the private school or facility**.

In 2004, the WVDE issued a letter clarifying the role of an advocate in an IEP meeting. The following are answers they provided to specific questions:

- Parents and school districts have the right to invite individuals who have knowledge or special expertise regarding the child to serve as additional members of IEP meetings. The determination of whether the individual possesses the required knowledge or special expertise is made on a case-by-case basis by the party who invited the individual.

- Since the parent has invited the advocate to the IEP meeting, this person is considered to be an IEP team member and may assume an active role in the review and development of the student's IEP. The nature and extent of the advocate's role should be predetermined by the parent, clarified with the advocate prior to the IEP meeting and then communicated to the IEP team members. The advocate is responsible for ensuring that his/her recommendations and decisions are made with respect to the individual educational needs of the student and/or the views of the parent.
- An advocate may be given permission or authority to speak in place of the parent. However, the advocate cannot attend the IEP meeting in lieu of or in place of the parent. Advocates are not entitled to the procedural safeguard protections covering parents and students.
- It is appropriate for the IEP team to directly interact with the advocate at the IEP meeting.

Role of the Parent at the IEP Meeting

It is typical for parents to feel overwhelmed and anxious when they attend an IEP meeting. Parents are full and equal members of the IEP team. Here are some ways to reduce anxiety and increase participation in IEP meetings.

Before the meeting:

- Communicate with the child. Ask how school is going. Ask your child what he or she would like to change, what they would like to be different in school. Find out what they like and dislike.
- Create a vision statement for your child.
- Build a positive relationship with at least one person on the IEP team. This relationship will help you feel more comfortable.
- Communicate regularly with school staff to be prepared for what they may say at the IEP meeting.
- Prepare and write down important questions, points or thoughts to share with the rest of the IEP team.
- Take a copy of your child's IEP with any changes noted on the document.

During the meeting:

- Understand that, as the parent, you are an important part of the IEP team.
- Find ways to personalize your child.
- Involve your child in the IEP meeting to the extent appropriate for his or her age.
- Take someone with you to serve as a support person.
- Always ask questions to clarify or better understand what is being discussed. This is especially important when unfamiliar acronyms or terms are used.
- Stay focused and positive. If you or another team member becomes frustrated or angry, ask to have the meeting continued at another date.

After the meeting:

- Put any concerns about the IEP in writing and return them to the school with the IEP as soon as possible.
- Talk to your child about what was discussed at the IEP meeting.
- Place the IEP in a binder or folder with other school notices and reports.

- Keep good records of all communication in connection with your child. After each telephone call or meeting, write down what was discussed.

TIPS

- ❖ Parents can also bring someone for support, such as a family member or friend. However, if you plan to bring an advocate or attorney, you should let the school district know in advance. If you bring an attorney, the district may also wish to bring one.
- ❖ Parents frequently ask if they can record an IEP meeting. There is nothing in **IDEA** or West Virginia Policy 2419 or the West Virginia State Code that addresses the recording of an IEP meeting. You should request, in writing, the county's policy on recording IEP meetings. It is recommended that you inform the IEP team members in advance that you are going to record the meeting. If the county records a meeting, it becomes an official part of the student's educational file. The county cannot prevent you from recording the meeting if you have a disability that would require you to do so (e.g., memory problems or traumatic brain injury causing short term memory loss).
- ❖ Parents should request that someone from the school staff take meeting notes. Be sure to review the notes and make edits/suggestions, if needed. Get a copy of the notes before you leave.
- ❖ Pay attention to the reevaluation date so if appointments, payments, and/or travel arrangements need to be made, they can be done within the appropriate timelines.

Role of the Student at the IEP Meeting

The IDEA provides that the school must include the child with a disability at the IEP meeting whenever appropriate, and requires that the child be invited to attend the meeting when post-secondary goals and transition is discussed.

Parents have the authority to make educational decisions for the child under Part B of IDEA, including whether the child should attend the IEP meeting.

It is important for elementary school children to come to the IEP meeting to learn a little about the process or to share information about their hopes and dreams. As children get older, it may be a good idea to encourage them to take a more active role. This allows them to have a voice in their own education and can teach them a great deal about self-advocacy and self-determination. Older children may even lead parts of the IEP meeting.

Participation in the IEP meeting should never be an all or nothing proposition. If a child can only participate in part of the IEP meeting, this should still be encouraged and the entire team should work together to make it happen.

Parents have the primary responsibility to prepare their child to attend and even participate in the IEP meeting. The other IEP team members have the responsibility to support and facilitate this attendance and participation.

The student is required to participate during all meetings when post-secondary goals and transition services are discussed.

TIPS

- ❖ All students, when appropriate, should be encouraged to attend **Individualized Education Program (IEP)** meetings and efforts should be made to prepare them to participate prior to the IEP meeting.
- ❖ If the student cannot attend the entire meeting, efforts should be made to include them in at least a portion of the meeting.
- ❖ Parents should prepare the child to be a productive and active member of their IEP team.
- ❖ Parents should encourage team members to directly address and interact with their child.
- ❖ Consider having your child develop an “About Me” handout or presentation that includes their likes, dislikes, strengths, difficulties, dreams, and goals. This could be presented at the beginning of every meeting to make sure everyone is on the same page. If your child has a specific request, like to change where they are seated in the classroom, this would be a good time for them to say so. It also builds self-advocacy skills and ensures everyone is listening.

Required IEP Team Member Excusals

A required IEP team member may be excused from an IEP meeting if the member’s area of the curriculum or related service **is not being modified or discussed** at the meeting. If this situation occurs, someone from the school must contact the parent first to see if the parent agrees the person is not needed at the meeting. The parent must agree to this in writing. An **Individualized Education Program Team Member Excusal(s)** form must be filled out **prior** to the IEP team meeting.



See **Individualized Education Program (IEP) Team Member Excusal(s)** at the end of this chapter.

If the member’s area of curriculum or related service **will be modified or discussed**, and the parent agreed to the member’s excusal, then an **In Lieu of Attendance Report** form must be completed and presented to the IEP Team chairperson and the parent **before** the IEP Team meeting. This provides an opportunity for the parent to ask questions and/or make suggestions regarding the services before the IEP meeting. The In Lieu of Attendance Report is presented to the IEP Team during the IEP meeting.

If the parent does not agree with a team member’s excusal, the meeting must be rescheduled.



See **In Lieu of Attendance Report** at the end of this chapter.

The IEP Document

The IEP is a product of collaboration between parents and educators who, through full and equal participation, identify the unique needs of a student with a disability and plan the special education and related services to meet those needs. It must detail evaluations and the **strengths** and **weaknesses** of the student. The IEP document identifies learning goals, sets timelines, and identifies the supplementary aids and related services the student requires to receive a FAPE. Services can be material, curricular, a human resource, or assistance beyond what is normally afforded students without exceptionalities. **The IEP document lists the student's educational needs beyond what is afforded to all students in order to support the placement of a student with a disability.**

Parents should educate themselves regarding the IEP document. Understanding each of the parts, what information goes where and the flow of the document is important in order to understand the services the student will be receiving, how frequently modifications and accommodations will be provided and how to monitor the student's progress. Various local organizations provide training for parents regarding IEP development. Resources are also available on the Internet and at public libraries, and there are many inexpensive books that discuss IEP development.

Both the IDEA and West Virginia Policy 2419 specifically outline and discuss the information that must be contained in an IEP document. **Parents should thoroughly review the IEP Development section in West Virginia Policy 2419 for more details than this Guide discusses.**

Parents may want to use the **Checklist of Types of Records a Parent Needs to Keep** to organize all the records and documents related to the child's education. In addition, parents may need help in addressing education-related concerns or issues. Parent may want to use the **Organizing Your Education Related Concerns**.



See **Checklist of Types of Records a Parent Needs to Keep** and **Organizing Your Education Related Concerns** at the end of this chapter.

TIPS

- ❖ Make sure that all pages of the **Individualized Education Program (IEP)** document are numbered. This aids in review and ensures that all IEP team members have the same pages. This includes when the IEP team makes changes to the IEP. This is best done by requesting the date and page numbers be changed while making other changes and that a clean, updated copy of the IEP document is printed and given to all the team members.
- ❖ Sometimes school districts will have an IEP document prepared before the IEP meeting and then ask the parent to sign this document when they arrive. This is INAPPROPRIATE. The school district may prepare a draft IEP document before the meeting starts to save time, but they must review the contents with the entire IEP Team, which includes parents. This provides the opportunity for input from all the IEP Team members before the final IEP document is completed.
- ❖ You have the right to a copy of the IEP. If it is not given to you, **you should always ask** for a copy of the IEP before you leave the meeting. The school is required by law to give you Prior Written Notice and a copy of the IEP at the conclusion of the IEP meeting.

The electronic version of the IEP and IEP instructions are available on the WVDE website at <http://wvde.state.wv.us/osp/forms.html>. Districts are now required to use the WVDE Online IEP to ensure that all IEPs are developed in compliance with federal and state regulations. Parents are also required to be given a copy of the IEP prior to leaving the IEP meeting.

This section will detail each section of the IEP and provide guidance and tips for parents to assist them in the development of the IEP for their child. The following **IEP sections** are:

- Part I: Student Information
- Part II: Documentation of Attendance
- Part III: Extended School Year (ESY) Determination
- Part IV: Consideration of Factors for IEP Development/Annual Review
- Part V: Assessment Data
- Part VI: Transition Planning
- Part VII: Present Levels of Academic Achievement and Functional Performance
- Part VIII: Annual Goals
- Part IX: Services
- Part X: Statewide Testing
- Part XI: Placement
- Part XII: Prior Written Notice
- Part XIII: Consent

Part I: Student Information

This part of the IEP document contains the following demographic information: student's name, address, parents' names, student's birth date, current age, current grade, and student number.

In addition to this basic demographic information, this section identifies the reevaluation date and the type of IEP that is being developed. For example, it may be an initial IEP, an annual review, or a reevaluation review. Transfer information such as where the child is being transferred from and the effective date would also be located in this section.

Part II: Documentation of Attendance

This part of the IEP document includes team member signatures. These signatures **only** reflect IEP meeting attendance, including attendance by parents or the adult student.

An exception to this is the very first IEP developed for a student, on which the parental signature reflects the acceptance of special education services.



Part XIII of Chapter 3 provides information on **Consent**.

The bottom of this section is an area to document participation in an IEP meeting by an alternate method, meaning they did not attend in person. This is where someone using an **In Lieu of Attendance Report** will show their recommendations in the IEP development.



See **In Lieu of IEP Team Attendance Report** at the end of this chapter.

TIP

Signing an IEP only indicates you attended the meeting. If you disagree with an IEP, you will need to address your disagreement and concerns by other means including a state complaint, mediation or due process complaint.

Part III: Extended School Year (ESY) Determination

This part of the IEP document discusses and lists **Extended School Year (ESY)** services offered for students who require services in order to receive FAPE beyond the typical school year. West Virginia Policy 2419 says ESY services are only to **maintain skills** the student has shown they lose during breaks, such as holidays and spring break. However, IDEA states, “each public agency must ensure that ESY services are available as necessary to provide a Free and Appropriate Education (FAPE).” ESY services must be provided only if a child’s IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.

Each year the district must inform parents of students with disabilities of: 1) the availability of ESY services; 2) the procedures and criteria for determining a student’s need for ESY services; and 3) their right to refuse ESY services.

When making a determination about a student’s need for ESY, the IEP team must review documentation that the student exhibits or may exhibit:

- Significant regression during an interruption in educational programming;
- A limited ability to recoup skills once programming has resumed;
- Regression or recoupment problems that interfere with the maintenance of identified critical skill areas (as described in the IEP); and
- Other factors that interfere with the maintenance of identified critical skill areas.

The IEP team will choose one or more of the student’s objectives listed on the IEP document that are considered the most important or critical skills to monitor through the student’s progress reports and during breaks throughout the school year. These skills are checkmarked in the Annual Goals section in the Critical Skill column. **Critical skills are only one of the tools used to determine the need for ESY services.**

West Virginia Policy 2419 says that the lack of clear evidence of such factors (regression or **recoupment** skills) 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. Recoupment means the process to regain skills.

The type and length of the services the student requires is determined on an individual basis by the IEP Team. However, the standard ESY services that school districts offer are generally programs which give the same services to every student who needs ESY. An example of this is when a school district states that their ESY services are available for four half-days a week in the month of July and the setting will be at school “XYZ.” This type of program may work well for some students. Such programs do not frequently include typical peers and are offered only to children with disabilities. These types of services are not individualized. Remember, the focus of ESY should be on what your child requires in order to receive **FAPE**. **ESY services may not be limited to a particular category of disability or be limited in the type, amount, or duration of those services and must be provided at no cost to the parent. Parents have the right to refuse ESY services.**

The following is an example of how type and length of services the student requires is determined on an individual basis:

A student is in the general education environment (GEE) during the school year, has an IEP and is eligible for ESY services. The IEP Team is concerned that the student will lose basic third grade math skills during the summer. In this situation, the IEP Team might decide that the student will receive math services in an **Out of School Environment (OSE)**, perhaps the home setting, for eight weeks. The IEP Team determined that the typical ESY setting would not be appropriate for this student because the student is not in a special education resource room or self-contained classroom during the regular school year. Please note that the IEP Team felt that the student needed more than the usual four weeks offered by the school district.

The IEP team should consider what skills are necessary and most important for the student to retain when the next school year starts. Some questions the IEP team may wish to consider:

- Does the student have problems maintaining skills during the holiday/summer breaks?
- Does the student have skills that may be just emerging or skills in which behavior interferes or arises when the student is off from school for extended periods?
- Does the nature and/or severity of the disability and special circumstances require that the student receive services beyond the typical school year?

TIPS

- ❖ A parent might want to ask that the IEP team defer all **Extended School Year (ESY)** decisions until approximately **seventy-five (75) days** before the school year ends. This allows time to evaluate the student’s recoupment from the summer break and holidays and to address any disagreements over the need of ESY. There is space on the IEP to identify that the decision for ESY will be deferred and the date to which it will be deferred.
- ❖ If the school team members disagree with you about the need for ESY services, you can request **Prior Written Notice (PWN)** during the IEP meeting. This allows time for you to file a state complaint regarding the refusal of the service. The state will have **sixty (60) days** to investigate your complaint and issue the findings.

Part IV: Consideration of Factors for IEP Development/Annual Reviews

This part of the IEP document discusses the Consideration of Factors for IEP Development/Annual Reviews. These questions ask if the IEP team considered the student's 1) strengths; 2) concerns of the parent; 3) results of the initial or most recent evaluation, and whether additional evaluations are needed; 4) academic, developmental, and functional needs of the student; and 5) revisions needed to address lack of progress. The following describes the additional considerations identified on this section of the IEP:

- Is the student identified as gifted?
- Does the student need assistive technology devices or services?
- Does the student have communication needs?
- Does the student's behavior impede his or her learning or that of others?
- Does the student have blindness or low vision?
- Is the student deaf or hard of hearing?
- Does the student have limited English proficiency?
- Will the student's next IEP address transition services?
- Does the student have a physical disability that impedes the ability to utilize print (cannot hold or access the material without strenuous effort)?
- Does the student have limited comprehension of grade-level print?

The above questions are answered with a "yes" or "no" response. Any questions answered with a "yes" will require additional information to be provided.

While all the above considerations are important, this section is going to focus primarily on the consideration about the student's behavior impeding on his or her learning or that of others.

TIPS

- ❖ Parents may ask whether their child requires assistive technology (AT) devices or services. This includes the use of AT in the home.
- ❖ Parents may want to consider if additional evaluations are needed. Remember if additional evaluations are requested, written consent must be provided by the parent. The additional evaluations must be completed and an IEP team meeting must be held within sixty (60) calendar days upon receipt of the written consent.
- ❖ Parents may want to consider all aspects of their child's behavior that interferes with learning, even assistance the child may need to remain on task.
- ❖ Parents should consider writing a letter to the school requesting an FBA when challenging behaviors are observed and are impacting the child's ability to participate in the educational program.
- ❖ You may see or hear the term Accessible Instructional Material (AIM) used during IEP meetings. AIM refers to making sure educational materials are provided to eligible students in a way that the student can use.

Sometimes students with disabilities have challenging behaviors. These behaviors may make it difficult for the student to learn and can be harmful and/or disruptive to others. Some students have not learned positive ways to have their needs met. Appropriate behavior skills can be taught. It is important to learn why the behaviors occur and the purpose they serve. The **Functional Behavior Assessment (FBA)** process and **Positive Behavioral Interventions and Supports (PBIS)** plan are the tools that can be used to teach a child appropriate replacement behaviors through proactive, positive and instructional strategies.



See **Sample Letter Used to Request a Functional Behavioral Assessment** at the end of the chapter.

TIPS

- ❖ Either parents or the school district can request that a **Functional Behavior Assessment (FBA)/Positive Behavioral Interventions and Supports (PBIS)** plan be developed anytime the student displays a pattern of behaviors that are of concern.
- ❖ When behaviors interfere with your child's learning, you should request that an FBA be conducted. There is a difference between a **Behavior Intervention Plan (BIP)** and a PBIS plan.
- ❖ Do not allow a school district to use one-page template FBA data collection forms without observing your child or use one page template behavior plan forms that result in generic plans.

The FBA and PBIS plan should be developed by individuals with appropriate training. School districts will sometimes have PBIS specialists or a school psychologist who have the training necessary to lead a team through this process. If the school district does not have someone within the district appropriately trained in PBIS, then it should contract with someone from outside the school district to provide the service. The contracted person may need to continue working with the team for an extended period of time to provide training, monitor data, and update the PBIS plan until the school district is able to maintain the PBIS plan on their own.

The FBA is a process of collecting information. An individual or team of individuals collects data on agreed upon target behavior(s) displayed by the student that the team wishes to change. FBA data should be collected for at least two weeks and in different environments. It is a good practice to also take data in an environment in which the student is not displaying inappropriate behavior, to see why behaviors are different in each environment.

A student may exhibit certain behaviors to get wants or needs met or to avoid a person, task, or environment. Once the team determines the function of the behavior, they will need to identify a replacement behavior that serves the same function. The process of FBA leads to the development of a PBIS plan.

The development of a PBIS plan is individualized to the student and uses proactive strategies to teach appropriate behavior. It does not use consequences (e.g., take away recess or give detention), but instead rewards appropriate behavior. The PBIS plan will describe a specific behavior the team wants to change or eliminate, discuss cues for when a behavior may happen, and outline the exact steps someone will take before and/or after the target behavior occurs. This ensures that everyone responsible for implementing the PBIS plan is doing it in the same manner and is not sending confusing messages to the student. It is important that everyone responsible for implementing the PBIS plan be well trained in implementing all aspects of the plan.

FBA is an ongoing process. Data should continue to be collected after the PBIS plan is developed. This information will be used to determine if the plan is working or if it needs to be changed.

TIPS

- ❖ You may get phone calls from the school to pick up your child because “Johnny is having a bad day.” Often parents respond by dutifully picking up their child. Ask if your child is being suspended. If so, request a copy of the suspension notice. If your child is not being suspended, you may request the school provide written documentation as to why the child needs to be picked up from school. Remember, documentation is important.
- ❖ If a pattern of such phone calls is observed, the parent should write a letter to the school requesting a **Functional Behavior Assessment (FBA)** to address any need to develop a **Positive Behavioral Interventions and Supports (PBIS) Plan** and **Individualized Education Program (IEP)**.
- ❖ You need to decide whether or not to pick up your child. The school is responsible for providing **FAPE** and implementing the **IEP**. Schools should not be sending students home because they cannot effectively respond to a child’s needs.



See **Sample Letter Requesting Suspensions be in Writing and Notifying Child Will Not be Picked Up without Suspension Notice** at the end of this chapter.

Part V: Assessment Data

This part of the IEP document contains Assessment Data. It is very important to list all of the student’s assessment data because this is one of the ways you monitor whether the student is making progress.

Examples of assessment data to be documented are **Statewide Testing** and/or **Alternate Performance Task Assessment (APTA)** scores. Additional assessment data examples include, but are not limited to, Acuity, DIBELS (reading assessment), daily behavior checklist, toileting chart, Woodcock Johnson, and FBA.



See **Evaluation Components** at the end of **Chapter 2**.

TIPS

- ❖ If you do not understand evaluation scores, ask. You are not the professional, and evaluations are not easy to understand. You have the right to know what the evaluations and scores mean.
- ❖ Remember that one of your Procedural Safeguards is the right to access and review your child’s educational records.

Part VI: Transition Planning

This part of the IEP document is for Transition Planning. **Planning must be in effect when the student is age sixteen, but can start earlier if necessary.** The glossary in West Virginia Policy 2419 defines **Transition Services** as the following:

“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.”



See **Mapping Transition Services** at the end of this chapter.

The first IEP to be in effect after a student turns sixteen years old (or sooner, as determined by the team) must include:

- Postsecondary goals related to independent living skills (if appropriate);
- Postsecondary goals based on age appropriate transition assessment for training, education and employment; and
- Transition services needed to reach postsecondary goals.

If the student needs assistance with finding after-school and/or summer employment, or a driving assessment, he/she can apply for services from DRS.

There are seven (7) areas of the IEP section for Transition Planning:

- Transfer of Rights
- Transition Planning Considerations
- Transition Assessments Reviewed
- Type of Diploma
- Post-Secondary Goals
- Transition Services
- Activities and Linkages

The school district must address the **transfer of rights** by providing **Age of Majority** information to the student and parents when the student reaches age seventeen (17). Age of Majority means that when the student becomes eighteen (18) years of age he/she will become a legal adult. The transfer of educational rights to the student will occur at age 18, and at this time the parents no longer have the right to make decisions for the adult student, including the adult student’s educational services. For example, the student may not want the parent to attend the IEP meeting and he or she may exercise that right. Parents need to be able to assist and support an adult child in retaining rights while avoiding undue risks. The adult student may sign (or make a mark) on a note that gives parents the right to continue to make necessary decisions in their life.



See **Age of Majority Brochure** at the end of the chapter.

The following are some additional considerations for transition planning:

- If a student wants to explore attending college after high school graduation, a **representative of any participating agency** that is likely to be responsible for providing or paying for transition services should be invited. For example, WVDRS may be able to pay for college tuition.
- Parents can request a **self-advocacy** goal be included in the transition plan.
- Many agencies provide information on transition planning. The IEP team should also consider enrollment in Career Technical Education (CTE) Centers or post-secondary education.

The IEP team must address the **transition planning considerations** for the student. The team must identify all the methods to be used to determine the student's preferences and interests. Methods include, but are not limited to, student interview/survey, parent interview/survey, functional vocational evaluation, and interest inventory. Other methods identified by the team may be used to determine student preferences and interests.

The **transition assessments reviewed** will also be specified in this section of the IEP. These assessment tools will be used to determine the post-secondary goals and IEP annual goals. Parent input, information from other agencies and other pertinent evaluation data will be noted here.

The next part of the IEP will identify the **type of diploma** the student will be working towards. When the student starts the ninth grade, they begin to accumulate credits for graduation based on the **Content Standards and Objectives (CSOs)** set by the West Virginia Legislature. If a student will not be able to progress in the general education curriculum offered to all students earning credits for graduation based on the CSOs for a **standard diploma**, even with the accommodations and modifications offered through special education services, the decision for a modified diploma should be made at this time.

If a student continues to be eligible for special education services, and does not graduate with a standard high school diploma, that student can remain in high school until the end of the school year in which he or she turns twenty-one (21) years of age, unless he or she turns 21 prior to September 1.

A **modified diploma** may be awarded to a student with disabilities who has satisfactorily met the graduation requirements specified in his/her IEP if that student requires:

- extensive modifications and functional application of the CSOs, and/or
- instruction in functional daily living skills (social, motor and communication) not directly addressed in the CSOs.

TIP

IEP teams may make decisions about services, modifications, and accommodations that lead the student toward a modified diploma without the parent even realizing it. Parents should be aware that the options available to their child after graduation depend on the type of diploma they will receive: modified or general. A modified diploma will limit their options.

Generally, when a student's IEP Team comes together to develop the IEP for what will be the student's third grade year, the discussion of whether the student will be taking the required **statewide testing** comes up. **Statewide testing** is standardized testing in West Virginia and is given to all students working on CSOs. Some school district staff might tell parents that it may be stressful or hard for the student to take **statewide test** and suggest that the student take the **alternate assessment**. The alternate assessment is for the student who exhibits significant cognitive disabilities and is being instructed through **Alternate Academic Achievement Standards (AAAS)**, not the CSOs. Agreeing to the alternate assessment opens the door for the future use of the AAAS in place of the CSOs. In this situation, the student will not work on the foundational skills that enable the student to progress through the CSOs during high school and earn a standard diploma.

The decision for a modified diploma can be delayed until after ninth grade to give the student a chance to work toward a standard diploma. This is important because a modified diploma may limit opportunities for employment and vocational training after high school.

TIP

Students who will be receiving a modified diploma are permitted to participate in the graduation ceremony with their same grade classmates. Parents must request this in writing. These students can receive services until age 21.

Keep in mind that a student who graduates with a modified diploma, is not able to enlist in the military or obtain a degree from any type of college or technical school.



See **Transition Assessment Guide** at the end of the chapter.

The next area of this part of the IEP will be to identify the **post-secondary goals** for the student. The IEP will identify the areas that the student will work toward for the following: educational goals, employment goals, and/or adult living goals. The course of study information will be recorded from the **Individual Student Transition Plan (ISTP)**.

Next, the **transition services** will be addressed. This is where the annual goals will be developed in Part VIII of the IEP. This section of this part of the IEP will identify areas to be addressed in annual goals. These areas will be carried out through instruction, related services, community experiences, employment and other adult living objectives, daily living skills, and functional vocational evaluation.

The final area of this part of the IEP will be to identify **activities and linkages** to support acquisition of post-secondary goals. The team will need to check whether the parent/student or agency will be the lead party for the activity or linkage. Types of activities and linkages identified on the IEP to be addressed are instruction/education, vocational aptitude/interest assessment, career awareness/work-based learning, employment, independent living/mobility, and agency referral/application.

The school must prepare a **Summary of Performance** to provide a summary of the child's academic achievement and functional performance. The **Summary of Performance** is completed under two circumstances: 1) for a child whose eligibility for special education ends due to graduation from secondary school with a standard diploma, or 2) due to exceeding the age of eligibility for FAPE under State law. The Summary of Performance must also include recommendations on how to assist the student in meeting his/her post-secondary goals.



See **WV Guidelines to Assist in Development of the Summary of Performance** at the end of the chapter.



See **Summary of Performance** at the end of the chapter.

The WVDE gathers information from exiting students each school year through an Exit Survey. The stated purpose of this survey is to help the WVDE improve transition services that prepare students for education or training, work, and living after high school. The exit survey is located on the WVDE website at <http://wvde.state.wv.us/osp/Transition/surveys.html>.

Part VII: Present Levels of Academic Achievement and Functional Performance (PLAAPF)

This part of the IEP document contains the **Present Levels of Academic Achievement and Functional Performance**. The information and statements in this section are used to develop the student's measurable annual goals and enable school personnel to track the effectiveness of services and accurately report progress. It is very important that this part of the IEP document includes the student's strengths and weaknesses. Information about the student that cannot be easily captured in formal evaluations needs to be included here so a goal can be put in place.

TIPS

- ❖ You may see **Present Levels of Academic Achievement and Functional Performance (PLAAFP)** referred to by other terms or acronyms. It is the term used in this Guide because it is the terminology used in Policy 2419.
- ❖ Other terms you may see or hear: Present Levels of Academic Performance, Present Levels of Educational Achievement, Present Levels of Achievement and Functional Performance.
- ❖ Acronyms you may see or hear that also refer to PLAAFP: PLAP, PLEP, PLAFP, PLOP.

Present levels describe the child's unique and individualized needs that result from his or her disability. Present levels describe the child's strengths, challenges, and needs.

Present levels of academic achievement include subjects like language arts, math, science, and social studies. In addition, **present levels of functional performance** include non-academic and functional areas like communication, fine and gross motor skills, behavior and social skills, and activities of daily living.

The PLAAFP should support the IEP team's determination of supplementary aids/services and supports, annual goals, and transition planning.¹

Requirements for Writing PLAAFP Statements

According to Policy 2419, statements of PLAAFP must document:

- how a school-aged student's disability affects his or her involvement and progress in the general education curriculum (West Virginia Content Standards and Objectives [CSOs]); or
- how a preschool student's disability affects his or her involvement and progress in the West Virginia Early Learning Standards and Framework, and participation in appropriate activities.

The PLAAFP statements must:

- be written in objective, measurable terms and easy-to-understand non-technical language;
- establish a basis for the other components of the IEP, including annual goals; .
- provide a starting point for goal development; and

¹ Wright, Esq., Peter W.D., Pamela Darr Wright, MA, MSW, and Sandra Webb O'Connor, M.Ed. *Wrightslaw: All About IEPs*. 1st ed. Harbor House Law Press, 2010. Print.

- explain any gaps that may exist between the student’s grade level expectations or CSOs and his or her demonstrated performance.

For a student’s participation in the West Virginia Alternative Assessment, the PLAAFP statements will establish the basis for benchmarks/objectives and special education services.

For students with disabilities, beginning with the first IEP to be effective at age 16, PLAAFP must include:

- information from age-appropriate transition assessments related to training, education, employment, and independent living skills related to post-secondary goals;
- transition services needed to assist the student in reaching those goals; and
- the student’s strengths, preferences and interests.

TIPS

- ❖ It is recommended the first statement in the PLAAFP describe the purpose of the IEP meeting.
- ❖ It is important to remember that in order to remove a student from the general education environment (GEE) or activities, the PLAAFP must reflect the need for this change and justify the action.
- ❖ Parents knowledgeable about the PLAAFP statement and IEP process can help their child work toward higher achievement.
- ❖ Parents should have high expectations for their child so the child can set and achieve challenging goals, thus becoming better prepared to lead productive and independent adult lives.

Considerations for Writing PLAAFP Statements

To see where the student is starting and what obstacles he or she may face, the IEP team needs to ask these important questions for both academic and non-academic areas at the annual meeting:

- What are the disability-related challenges affecting learning and involvement at school?
- At what academic and functional level is the student performing right now?
- Is there any other information we need to provide a complete picture of this student?
- What strategies, accommodations and/or assistive technology have already been successful for this student’s learning?
- What are the grade-level academic standards for this student’s grade, and how do this student’s skills compare to those standards?

The answers to these questions will be documented as the PLAAFP statements on the IEP. Areas the IEP team will need to consider are academic, communication, functional, health, motor or physical, sensory, social and emotional, and transition.

The PLAAFP will include data gathered from various sources, including:

- ending levels of performance on last year’s goals;
- any new special education assessment results;
- performance on statewide testing;
- classroom grades and observations;
- input from student and parents;
- interests and strengths; and
- any strategies, accommodations or AT devices or services that have already shown success.

The information in the PLAAFP section of the IEP should be written in brief, clear, specific and accurate statements with enough information to describe the student’s current skill levels in objective, measurable terms. For example:

Vague Phrases	Specific Phrases
Michael is friendly and loves attention.	Michael greets peers appropriately for his age level.
Michael received a math score of 50.	Michael can count to 25.
Michael cannot talk well.	Michael speaks in one or two word sentences.
Michael can add.	Michael writes answers to double-digit addition problems.
Michael knows different careers.	Michael can name five (5) careers and five jobs associated with each.
Michael has difficulty reading third-grade materials.	Michael reads third-grade materials at 70 words per minute.
Michael has difficulty following classroom rules.	Michael follows classroom rules using visual cues.
Michael spends a lot of time in suspension due to behavior problems.	Michael becomes angry and disrupts class when redirected.
Michael has language difficulty and will have trouble meeting language arts standards.	Michael has a language impairment that includes words with multiple meanings, which affects his progress in grade-level standards.
Michael seldom completes assignments.	Michael completes 25 percent of his homework and turns in 10 percent of the assignments.

The PLAAFP statement will lead to the development of annual goals, accommodations, modifications and other IEP services. All IEP goals should be connected to PLAAFP statements.

Here are some questions to help you identify a child’s PLAAFP:

- What is the child’s level of academic achievement in reading, writing, spelling, and arithmetic?
- Can the child read the textbooks assigned to general education students in his or her grade?
- Are the child’s reading skills two or three years below grade level on an individual educational achievement test?
- Can the child read the grade level textbooks in core academic subjects?

The next step in the IEP development is to develop annual goals. The PLAAFP will be used to define the annual goals and all other special education and related services needed by the student.²

Part VIII: Annual Goals

This part of the IEP document contains:

- the **Annual Goals, Part A** for students who are taught the West Virginia CSOs and are working toward a standard diploma; or
- the **Annual Goals, Part B** for students who are taught with West Virginia **Alternate Academic Achievement Standards (AAAS)**, will participate in the APTA testing, and are working toward a modified diploma. For students taking the APTA on AAAS, each goal must have at least two (2) benchmarks/objectives. Benchmarks/objectives must include a statement of how far the student is expected to progress and in what timeframe.

Measurable academic and functional annual goals must be related to the needs described in the **Present Levels of Academic Achievement and Functional Performance section of the IEP**. Specifically, annual goals **must** be written to:

- 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.
- 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.
- Include the **timeframe, condition, behavior** and the **evaluation procedure with performance criteria**.

The IEP Team generally develops at least two objectives for each goal.

The information captured on this part of the IEP is the same whether the student is working on Annual Goals for Part A or Part B. This information includes annual goal, critical skill, timeframe, condition, behavior, evaluation procedure with criteria, mastery/progress codes, and progress. Each of these is discussed below for Part A and Part B of the Annual Goals.

Anecdotal recording refers to information obtained through personal accounts, examples and observations. Anecdotal recording should **never** be used as the data collection technique. If a student's goal was to greet peers independently, and one time in a grading period the teacher or an aide saw the student greet a peer and wrote it down, it could be inaccurately stated that the goal had been met, even though the student did not greet peers during hundreds of other opportunities throughout the grading period.

Critical skills are used to determine whether a student will be eligible to receive ESY.



Part III of Chapter 3 provides more information on **Extended School Year (ESY) Determination**.

²"Pacer Center Action Information Sheets." 2011. PACER Center. *A Place to Start: Understanding the Present Levels of Academic Achievement and Functional Performance Statement*.

Timeframe includes the time period that represents when the student can realistically be expected to achieve the annual goals. This is generally one year.

Condition identifies the circumstances under which the behavior will occur, or the specially designed instruction necessary for the student to perform the behavior.

Behavior refers to observable, measurable actions the student will perform. Behavior under this section is to be **stated in positive terms**.

Evaluation Procedure with Criteria will identify the specific evaluation method(s) that will be used to determine whether the goal/objective has been achieved.

Progress specifies **how** and **when** a report must be given to parents to monitor the student's progress on the Goals listed on the IEP. The IEP Team decides how and when the progress report will be provided. It is recommended that the progress report be provided at least as often as the student receives a Report Card, but it could be more often. A **Report Card** is provided to **all students** (including students with IEPs) at the end of a grading period to inform parents of the student's progress. The IEP Team needs to monitor a student's progress often enough to ensure the student is on track for reaching the goal within the one year timeframe. **Traditional report cards by themselves are not an acceptable means of providing a progress report.**

Mastery Codes and **Progress Codes** are the means used to document regression or retention for ESY and student progress toward IEP annual goals and objectives.

- **Master Codes** are listed to indicate current skill levels and are used to assist in determining ESY services. The following codes are the only ones that should be used on the Progress Report:

0 = Regression, 1 = Maintained, or 2 = Recouped (Retained).

- **Progress Codes** are listed to indicate the progress a student is making towards achieving their goals on the IEP and assist in determining ESY services. The following codes are the only ones that should be used on the Progress Report:

P = Progress Sufficient, A = Achieved, IP = Insufficient Progress, or NA = Not Applicable.

TIPS

- ❖ Some teachers and related service professionals may use their own codes (e.g., "progressed some"), which may indicate the student is not on track to achieve the goal by the end of a year. If a student rarely achieves the goal by the end of the year, the teacher may not be exposing the student to the skills listed on the **Individualized Education Program (IEP)** document as frequently as listed or as needed. Teachers should be collecting data on the goals listed on the student's IEP. Ask for a copy of the daily/weekly/monthly (or however often) data collection to review as part of the progress report notifications.
- ❖ Remember that the progress reports are one of the tools to help determine the need for **Extended School Year (ESY)** services and whether the student is making progress in general.

Examples of Annual Goals

It is important to look at some examples of how the Present Levels of Academic Achievement and Functional Performance (PLAAFP) and Annuals Goals work together to create the most effective IEP. There are numerous online resources for how to write IEP goals and examples of IEP goals for academic and non-academic subject areas.

The following provides an example of connecting PLAAFP statements with IEP goals and objectives:³

<p>Example 1:</p> <p>Present Levels of Performance: Carrie promptly follows simple, one-step directions such as “pick up your pencil” or “hang up your coat” fewer than 5 out of 10 times.</p> <p>Goal: Given a three-step direction, Carrie will promptly follow all three steps, in the correct order, 9 out of 10 times.</p> <p>Objectives:</p> <ol style="list-style-type: none">1. Given a one-step direction, Carrie will promptly follow the direction 9 out of 10 times.2. Given a two-step direction, Carrie will promptly follow at least the first of the two steps 9 out of 10 times.3. Given a two-step direction, Carrie will promptly follow both steps in the direction 9 out of 10 times.
<p>Example 2:</p> <p>Present Levels of Performance: John reads 70-100 words per minute with 4-6 errors.</p> <p>Goal: Given fourth grade material, John will read 100 words per minute with only random error.</p> <p>Objectives:</p> <ol style="list-style-type: none">1. Given third grade material, John will read 110-120 words per minute with 1-3 errors.2. Given fourth grade material, John will read 50-70 words per minute with 1-3 errors.3. Given fourth grade material, John will read 70-100 words per minute with 1-3 errors.

Part IX: Services

This part of the IEP document lists the special education, related services and supplementary aids and services/program modifications for school personnel that will be provided to or on behalf of the student to enable him/her to progress toward the annual goals. In addition, this section will identify the student’s participation in the general curriculum and how the student will be involved in and progress toward annual goals. This section will

³ Bateman, Barbara D. and Herr, Cynthia M. 2006. *Writing Measurable IEP Goals and Objectives*. Verona Wisconsin: Attainment Company, Inc.

also identify how the student will be educated and participate with other students with and without disabilities. The school does not have to provide anything that is not listed on the IEP.

This part of the IEP document is broken down into three sections, detailed below.

Supplementary Aids and Services/Program Modifications

This part of the IEP discusses supplementary aids and services/program modifications that are provided in the GEE to enable the student to be educated in that environment to the maximum extent possible. **Supplementary aids and services/program modifications** can include material, curricular or human resources or assistance beyond what is normally afforded students without disabilities, including alterations and adaptations in instructional methods, materials, techniques, media, physical setting or environment, but focused on grade level CSOs.

Supplementary aids and services/program modifications:

- Must be considered prior to removing a student from a GEE;
- Must be considered for a variety of general education programs, including core academics, physical education, art, music and technical education;
- Must foster independence in the classroom, be implemented consistently and documented: and
- Must be documented in this section and provided routinely to the student in the GEE.

IEP Teams often use a home/school communication log and list it in this column. The log provides a place for parents and teachers to communicate information on a daily basis, if necessary. Some examples might be: the parent can tell the school that the child had a seizure the night before; the school and parent can exchange information about food intake; the teacher may want to tell the parent about something positive that happened during the day; or the parent may need to alert school staff of the child's mood that may lead to a behavioral incident if not handled properly.

Assistive Technology (AT), such as a communication device, is listed in this section. The IEP team must consider whether the student needs access to that device in the home and community setting, on weekends and breaks, and during ESY and the summer. If the IEP team determines the student does need the AT device to communicate during these times, the IEP would indicate "home" under the "Location of Services" column, and the extent and frequency (e.g., weekends, summer). Next, list the initiation/duration the device is needed by the student.

Accommodations are changes in how a student accesses information and demonstrates learning. Accommodations do not substantially change the instructional level, content, or performance. Policy 2419 states: "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." See Glossary for definitions.

However, **modifications** are changes in what a student is expected to learn. These changes are made to provide a student with opportunities to participate meaningfully and productively along with other students in classroom and school learning experiences. Modifications might include changes in instructional level, content and performance criteria. For example:

- Documenting the need for **adult assistance/supervision** in this section indicates that the student requires this level of support above and beyond what is typically offered in the classroom.
- Assistive Technology (AT) such as a communication device or voice-to-print software can be listed in this section.
- Any needed BIP/PBIS or Healthcare Plan(s) can also be listed in this section. Be sure to list the date of the current plan.

This section of the IEP will detail each identified type of supplementary aid and service/program modification needed for location of services, extent or frequency of services, initiation date, and the duration. Below is a description of each of these:

- **Location of Services** column will identify the environment in which the services will be provided. Examples include special education, general education, home, or out of school environment.
- **Extent/Frequency** column will indicate a specific amount of time or a specific description of the instructional/environmental circumstances. Specifying a range is only acceptable if the IEP team determines it is necessary to meet the unique needs of the student. A range may not be used because of personnel shortages or uncertainty. Examples include one day per week, during all tests, prior to initial instruction, daily, 10-20 minutes per assignment, and during note taking activities.
- **Initiation Date** for each service must allow **at least a five (5) calendar day timeline** for PWN. This information must include the month, date, and year the service will begin. Initial IEPs must be implemented as soon as possible. A short delay during the school year may occur when arrangements for services must be made, but **should not exceed fifteen (15) calendar days**.
- **Duration** date will specify when each service ends. This information must include the month, date and year.

Supplementary aids and services/program modifications are supports that must be considered prior to removal from the GEE. These could include pre-teaching/re-teaching activities, assistive technology devices, organizers, behavior support or intervention plans, direct instruction, interpreting and/or note taking.

TIP

Sometimes school districts will not allow a student to take assistive technology home unless they receive assurances from the parent that their homeowner's insurance will cover the assistive technology used in the home by the student. **The school district is required to provide insurance to cover damages in any setting the device is used.**

Special Education Services

This part of the Services page lists the specially designed instruction necessary to meet the individualized educational needs of a particular student. The specially designed instruction necessary to accomplish IEP goals ensures the student access to the general curriculum and does not weaken or change the standards of the general education curriculum. Special Education Services can be provided by a general education teacher, a special education teacher or both.

This section of the IEP will identify the type of special education service that is needed. Examples include reading comprehension, written language, math problem solving, social skills instruction, daily living skills, vocabulary development, or Braille instruction.

In addition, for each type of special education service needed, the following information will be identified: type (direct/indirect), location of services, extent or frequency, initiation date, and duration. **Direct services** are instruction, therapies or interventions provided one-on-one or in groups to an eligible student in the GEE or the **Special Education Environment (SEE)**, the home or community settings. **Indirect services** are consultative services provided by special educators and service providers to other educators responsible for providing IEP services to directly benefit the student.

TIP

When listing **Direct** and **Indirect services**, make sure they are listed on separate lines. Direct service is time the qualified service provider spends with the student. Indirect service is time during which the qualified service provider provides consultative services to the general or special education teacher(s). This ensures it is clear how much time the qualified service provider spends with the student versus the time the service provider spends with a teacher(s).

Related Services

Related services are the developmental, corrective and other supports required to assist an eligible student to benefit from special education. In addition, for each type of related services needed the following information will be identified: type (direct/indirect), location of services, extent or frequency, initiation date, and duration. This information was described in the above two sections.

Related services include, but are not limited to:

- Assistive technology
- Audiology
- Counseling services
- Early identification and assessment
- Interpreting services
- Medical services for diagnostic or evaluative purposes
- Occupational therapy (OT)
- Supports for school staff
- Therapeutic recreation
- Transportation
- Orientation and mobility services
- Parent counseling and training
- Physical therapy (PT)
- Psychological services
- Rehabilitation counseling services
- School nurse services
- Social work services in school
- Speech-language therapy (SLT)

A related service cannot include a medical device that is surgically implanted, the optimization of that device's functioning, maintenance of that device or the replacement of such device.

TIPS

- ❖ A doctor's prescription stating the student should be evaluated is needed for related services such as OT, PT, and SLT. A doctor cannot require the IEP team to include or the school to provide these services. School districts are only required to provide what is educationally necessary for your child.
- ❖ If you think your child requires any of these services to better access the community, you may need to talk with your child's doctor about privately obtaining these types of services outside of the school environment.

The provision of related services CANNOT be based on personnel shortages or the availability of service or staff. For example, it is inappropriate if every student in the district who needs speech services gets 30 minutes of speech services simply because there is only one speech therapist. Related services must meet the unique needs of the student.

It is important to note that 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. In addition, the student is not entitled to related services if:

- He or she does not need special education, or
- The parent/adult student does not consent to special education services.

Three (3) areas that often cause problems during IEP development are specialized transportation, assistive technology and a student's need for a health care plan. These are highlighted below.

- If **specialized transportation** is required, the IEP should list information such as the bus stop location, any special care equipment (e.g., seat belt, car seat or wheelchair lift) or that an adult will be responsible for meeting the student (with location and time).
- Extended transportation time cannot result in a shortened instructional day. Students with disabilities are legally required to attend the same number of days and time unless a doctor determines a shortened day is necessary.
- School districts cannot refuse to transport a student because of his or her disability and must make accommodations for the disability of the student. Unless both the parent and school agree to alternative arrangements, refusal to provide transportation for a student may be a civil rights violation. A complaint can be filed with the Office of Civil Rights (OCR).



Chapter 8 provides information on how to contact the Office of Civil Rights, or go to its website at <http://www.ed.gov/ocr>.

Assistive Technology

Assistive Technology (AT) is 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. This does not include a medical device that is surgically implanted or the replacement of such a device.

Sometimes school districts do not want to provide assistive technology needed by a student because they are concerned about the cost. A school district can apply for grants for assistive technology from the **West Virginia Department of Education (WVDE)**.

During a student's AT evaluation process, the school district may be able to obtain AT from **West Virginia Assistive Technology Systems (WVATS)**, the local **Regional Education Service Agencies (RESA)** or an AT vendor for trial periods and assessment of the student before purchasing a device.

The IEP team should develop a back-up plan in the event that the student's AT device breaks. This is another instance when a loaner device might be obtained from the resources listed above.



See **Sample Letter to Use to Request an Assistive Technology Evaluation** at the end of the chapter.

Health Care Plan

This section is going to focus on providing general information about **the development of a Health Care Plan, medication administration, and special health care needs**.

A **Health Care Plan** is required for all students receiving specialized health care procedure(s) during the school day and school related events. A plan must be prepared by a certified school nurse based on assessment of the student and/or a written order by a licensed health care provider. A review/training (which should be provided by the school nurse) of the health care plan is conducted with staff member(s) assigned by the administrator (generally the school principal) to carry out the plan. Additional information about health care plans can be found in the *Basic and Specialized Health Care Procedures Manual for West Virginia Public Schools (Policy 2422.7)*.

Nothing in West Virginia Policy 2419 requires that a Health Care Plan be listed on an IEP document. However, it is recommended that a Health Care Plan be included in the Related Services section of the IEP and/or mentioned in the Present Levels of Academic Achievement and Functional Performance. The following provides additional information about the Health Care Plan:

- The plan must contain a nursing assessment, nursing diagnosis, goals, and expected outcomes, interventions and evaluations.
- The plans are reviewed annually, or more often if required by the student's condition(s).

- A plan should be written if a student has medical needs or issues. Some examples of medical needs that should be addressed on the Health Care Plan and included in the IEP are:

Ambulating with Assistance	Oral Feeding	Skin Care and Positioning	Toileting
Passive Range of Motion Exercises	Tube Feedings	Ostomy Care	Diabetic Management
Medication Administration	Seizure Management	Allergies	Ventilator Care
Tracheostomy Care	Oral Suctioning	Oxygen Administration	Catheter Care

Policy 2422.8 addresses **medication administration**, and **Policy 2422.7** addresses **basic and specialized health care procedures** in West Virginia public schools.

Administration of medication may be performed by school personnel who are designated, qualified, trained and authorized. A **designated qualified personnel** is an employee or contracted provider who agrees to administer medications, is authorized by the administrator, and completes required training who may then be delegated to administer prescribed medications.

Medication administration may be provided by many methods, such as by mouth, by injection, by continuous subcutaneous infusion, by gastrostomy tube, by rectal suppository, and by inhalation therapy.

Long-term and Emergency Prescribed Medication is any medication prescribed to treat acute and chronic health conditions, including both daily and PRN (as needed) medication. These types of medications are typically authorized for the school year.

Over-the-Counter Medication and Supplements fall under the same policies and regulations as prescription medications.

Self-administration means medication administered by the student under the supervision of the school nurse, designated qualified personnel, administrator, or administrator’s designee. This may include medication taken by the student in an emergency or acute situation. An example would be a rescue inhaler.

Each county board of education is required to develop and implement a medication administration policy to meet or exceed the standards established by *West Virginia State Code § 18-5-22a* and **Policy 2422.8.**

TIP

Parents need to request a copy of the county policy on medication administration. Some counties may require the completion of additional paperwork and forms. It is important to know the specific requirements of the county. Counties can create policies that are more stringent than the state policy or law.

Policy 2422.8 states “the administration of medication to students during the school day should be discouraged unless absolutely necessary for the student’s health.”

At a minimum, schools will require the parent or guardian to:

- Administer the initial dose of any medication at home, except for emergency medications. An exception to this would be if the initial dose is prescribed by a licensed prescriber to take place during school hours and/or a court order requires the dose to be given during school hours.
- Complete and sign a parent/guardian authorization form.
- Provide the school with an authorization form from the licensed prescriber.
- Supply medication and ensure that medication arrives safely at the school in a current and properly labeled container.
- Replenish long-term medication and emergency prescribed medication as needed.
- Retrieve unused or outdated medicine from school personnel no later than 30 days after the authorization expires or on the last day of the school year.

Medications must be stored in a designated space within the school facility, at the correct temperature, in a secure, locked, clean cabinet or refrigerator. An exception to this is when the student must maintain possession of the medication. For example, an Epi-pen or an asthma inhaler might need to remain in the student's possession.

Medication administration incidents include (but are not limited to) any deviation from the instructions provided by the licensed prescriber. The school nurse and the administrator are to be notified immediately of a medication administration incident.

TIPS

- ❖ Parents should address how medication administration incidents are reported as a part of the IEP development process.
- ❖ Parents need to clearly communicate with the school about their expectations and requirements for notification in these types of incidents.
- ❖ Policy 2422.8 states, "contact the physician and parent/guardian, if necessary."
- ❖ Be sure to list the date of the current Health Care Plan. This will ensure that teachers who are responsible for implementing an IEP for a student with health concerns are aware of procedures that may be required for the student's care.
- ❖ You need to remember that Policy 2419 prohibits state and district personnel "from requiring parents to obtain a prescription for controlled substances as a condition of attending school, receiving an evaluation, or receiving services."



For information on immunizations, please go to the following website, or contact your local/county health department.

<http://www.dhhr.wv.gov/oeps/immunization/Pages/default.aspx>

School districts must obtain signed permission from parents to bill a student's West Virginia Medicaid card or their private insurance for any of the related services listed on the student's IEP. In the past, school districts would attach a form called "Medicaid Consent to Release Information from Educational Records" as the last page of the IEP document.

According to IDEA regulations implemented on March 18, 2013, districts must first provide written notification explaining what the parent is consenting to. This written notification must include:

- What personal identifying information may be disclosed;
- The reason for that disclosure; and
- What agencies may receive that information.

In addition, the consent must state that the parent understands the consent and agrees that the student's public benefits or private insurance may be billed.

Once a parent grants consent to bill a student's Medicaid card or their private insurance, the district does not need to request consent again, regardless of whether a student's services change in amount, type or cost. However, the district must provide annual written notification to the parent containing the same information as the original consent.

For parents who may have signed consent that Medicaid or private insurance can be billed before the March 18, 2013 changes, a new consent is not necessary unless there are changes in the amount, type, or cost of services. The first time after March 18, 2013 that changes are made to the amount, type, or cost of services, the district must provide a new consent with all of the required written notification information listed above. After that new consent is provided and signed, no further consent is required, though the district must provide annual written notification.

If the school district is billing a student's Medicaid card during the school year for things like OT, PT and/or Speech, the student may not be able to obtain those services outside of the school day. The following lists some special considerations:

- Medicaid and private insurance only allow for a certain number of appointments for services such as OT, PT and/or Speech services. If the school has used all of the services allowed during the school year, you will not be able to get these services during the summer or at other times.
- A school district **cannot** deny necessary related services because a parent refuses to allow them to bill Medicaid or private insurance.
- Familiarize yourself with your insurance policies and be aware of what your private insurance lifetime caps are for **Applied Behavioral Analysis (ABA)**, OT, PT and/or SLT services.
- Parents need to inform the school system in writing each year if they do not want the school district to bill Medicaid. It is suggested that you write a note on the **Medicaid Consent form** during the annual IEP development.

TIP

Keep in mind if the school district is billing Medicaid for services, for example speech language therapy, this could prevent this service from being provided after school.

To review the types of services for which school districts can bill West Virginia Medicaid, consult the *School-Based Services Medicaid Operations Manual*, which can be found at the WVDE website, <http://wvde.state.wv.us/osp/medicaid.html>. School districts can bill West Virginia Medicaid for services such as OT, PT, Speech, Private Duty Nursing, Personal Care, Transportation and more.



See **Consent to Release Information from Educational Records for Medicaid Billing** at the end of this chapter.

Targeted Case Management (TCM) is a Medicaid service federally defined as “those services which assist Medicaid eligible recipients in the target group to gain access to needed medical, behavioral health, social, educational, and other services”. Effective October 1, 2014, schools are able to bill Medicaid for TCM “per 15 minute” services. If your child receives services through a provider agency, they may already be receiving these services. TCM replaces the previous Care Coordination “per month” service. Procedures may vary by county. Be sure to consult your county’s Special Education Director with any questions you have.



See **Targeted Case Management forms and information** at the end of this chapter.

Part X: Statewide Testing

This part of the IEP document addresses the student’s participation in **statewide testing**. All students in grades 3-11 participate in **statewide testing**. Students on track for a modified diploma take an alternate assessment.

A student with a disability who has an IEP may participate under 1) standard conditions or 2) standard conditions with accommodations. Standard conditions with accommodations are testing accommodations or changes in the administration of an assessment. For example, setting, scheduling, timing, presentation format, response to be measured by the assessment or the meaning of the resulting scores.

Not all accommodations used during instruction are appropriate or helpful during testing. Accommodations cannot be used that are not used in the classroom during instruction.

When a student with significant cognitive disabilities cannot be adequately assessed through **statewide testing**, even with extensive accommodations, they may be eligible to take the West Virginia alternate assessment. Prior to determining if a student will participate in an alternate assessment, the IEP team must carefully consider the implications of that decision as it will result in the student receiving a modified diploma. As stated above, the IEP team will determine how the student will participate by selecting 1) standard conditions, or 2) standard conditions with accommodations.

The team will need to justify how the student meets criteria for alternate assessment. In addition, each accommodation to be provided to the student will need to be identified. Lastly, this section will list the specific test(s) on which these accommodation(s) will be used by the student.

Regulations regarding students eligible for alternate assessment can be found in the *West Virginia Guidelines for Participation in State Assessments* and the test administration manuals at <http://wvde.state.wv.us/oa/pdf/ParticipationGuidelines.pdf>. The alternate assessment is designed with accommodations, so additional accommodations are not needed. The exceptions are Braille and large print, which must be requested.



Read **Chapter 3**, Part VI: Transition Planning, of this Guide for more information about CSOs/AAAS, Diploma/Modified Diploma, Statewide Testing and APTA.

Part XI: Placement

This part of the IEP document discusses a student's Placement. **An eligible student must be educated with general education students in the general education classroom to the maximum extent appropriate.** This requirement is known as **Least Restrictive Environment (LRE)**. Students receiving special education services are 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 section lists the percentage of time a student **will** and **will not** participate in the GEE and/or extracurricular and other non-academic activities. The percentage of time is divided into the GEE and the SEE. The SEE time reflects the amount of special education and related services listed on the Services section of the IEP. **Placement is determined annually, based on the IEP.**

When deciding on placement, the first consideration for every child should be the GEE. Make sure the correct sequence of steps is followed in deciding placement. Placement decisions should **always**:

- Be made by the IEP team, not one or two members of the team;
- Be reviewed at least annually; and
- Be made based on the educational needs of the child.

Placement decisions should **never**:

- Be made based on a child's label;
- Be made before the IEP is developed; or
- Be based on administrative convenience.

Services and placement must be based on the student's unique needs that result from his or her disability, and not on the category of disability or the availability of placement options, services, staff or space.

TIP

The IEP must clearly and specifically state where services are to take place. Do not agree to "in the classroom OR in the resource room, as appropriate." This will allow services to be provided in a place convenient for the staff, rather than what is best for the child.

For student ages three (3) to five (5) or those not in a regular early childhood program, types of placement differ from those listed above. Policy 2419 should be consulted for more information. This section will focus on student's ages six (6) to twenty-one (21).

The percentage in each environment determines the placement. For students ages six (6) to twenty-one (21):

- **General Education – Full Time (FT):** The student's specially designed instruction and related services are delivered inside the GEE or integrated community settings for **80% or more** of the school day.
- **General Education – Part Time (PT):** The student's specially designed instruction and related services are delivered inside the GEE or integrated community settings for **no more than 79%** or **not less than 40%** of the school day.
- **Special Education – Separate Class (SC):** The student's specially designed instruction and related services are delivered inside the GEE or integrated community settings for **less than 40%** of the school day.
- **Special Education – Special School – Public or Private (SS):** The student's specially designed instruction and related services are delivered in a special school that serves only exceptional students for **more than 50%** of the school day.
- **Special Education – Out-of-School Environment (OSE):** The student's specially designed instruction and related services are temporarily delivered in a non-school environment.
- **Special Education – Residential Facility – Public or Private (RF):** The student's specially designed instruction and related services are delivered in a facility that provides twenty-four (24) hour care and supervision.
- **Parentally Placed in Private School:** The student is placed in a private school by the parent.
- **Correctional Facility:** The student receives IEP services in a correctional facility.

The IEP Team must first consider placement in the GEE with the use of supplementary aids and services. The GEE is the classroom in which all students would typically be educated. Any **removal from the GEE must be based on the Present Levels of Academic Achievement and Functional Performance, and justification through data with an explanation** why the student must be removed from the GEE. **Removal may only occur when the nature or severity of the disability is such that education in the GEE, even with the use of supplementary aids and services, cannot be achieved satisfactorily.** Any potentially harmful effects of the placement on the student and the quality of the student's services are considered. Examples of a SEE are when a student receives special education services in a resource room or a self-contained classroom that do not include typical peers.

Placement should be in the school the student normally would attend, unless the IEP requires other arrangements, and then it is provided as close to home as possible. Placement decisions must be made individually for each student.

The IEP Team must also consider an array (variety) of services and a continuum (several) of placement options to meet the individual needs of each student.

Some examples of the continuum of placement options are:

- A student might be in the GEE for English, Science or Physical Education yet receive special education services for Math in a resource room because, although the student is working at grade level, the student

requires a slower pace for introduction of new materials and increased repetition of previously learned skills in Math;

- A student might receive core academic classes (e.g., Math, Reading) in a self-contained classroom because the student is significantly below grade level but still participate in the GEE for Health, Physical Education, Music and Work Exploration;
- A student might need to attend a school-based ESY program to receive special education services that meet their critical skill goals; and
- A student who participates in the GEE during the regular school year, except for Math services in a resource room, may only require Math services from a teacher in the home setting for ESY. For this student the school based ESY program is not the LRE because during the school year the student is in the GEE the majority of the time, which is with typical peers. The school-based ESY does not include typical peers. The LRE for one student may be very different for another student.

West Virginia Policy 2419 states that:

“the district’s reassignment of students to another classroom or building in the district is **not** a change of placement for a student as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; and going to a different school as a result of moving from one grade level to another grade level.”

In summary, the IEP team must consider the following in determining the LRE in which the IEP can be implemented:

- LRE;
- basis of the placement;
- when to make and review placement decisions;
- neighborhood school;
- similar-age peers;
- harmful effects of placement; and
- the array of services and a continuum of placement options.

One of the placement options listed above is the **Special Education: Out-of-School Environment (OSE)**. OSE services are when a student’s specially designed instruction and related services are temporarily delivered in a non-school environment, such as a public library, group home, mental health center, hospital or the student’s home. **If a student’s services are being delivered in an OSE setting, the amount of service time must be determined by the IEP Team and reasonably reflect the amount of time the student will need to continue to progress in the general education curriculum (if they are in GEE classes) and achieve their IEP goals.**

Policy 2510 states that for an **exceptional student** (including one receiving special education services) who is unable to attend school temporarily because of an injury, illness or health condition, a change in the student’s placement to Out-of-School Environment is **required**. The placement of the student should be made during an IEP Team process.

Sometimes school districts inappropriately remove students from the public school setting due to a student’s behavior and place the student on what the school district calls “homebound services.” In these instances, some

school districts and parents are inappropriately using the word “**homebound**” for what should be called **Out-of-School Environment (OSE)**. Making the situation even more confusing, school districts are inappropriately applying *West Virginia Policy 2510: Assuring the Quality of Education: Regulations for Education Programs* to remove students with a disability who have an IEP from the public school setting.

The Section on **Homebound/Hospital Services** outlines services for students who cannot attend the public school setting due to an injury or for any other reason as certified in writing by a licensed physician or other licensed health care provider, or are temporarily confined to home or hospital for a period that lasts or will last more than three consecutive weeks.

You can review Policy 2510 for more details (see the Policy section of the WVDE website). There is nothing in state policy regarding the amount of time that must be given to a student who receives homebound services. A county policy could give a minimum of service hours such as four hours per week. The parent needs to request a copy of the county policy in writing.

TIP

- ❖ A student who receives homebound instruction can participate in non-academic activities such as field trips, clubs, honors programs, and dances.
- ❖ Remember, homeschool and homebound are not the same.

Part XII: Prior Written Notice

This part of the IEP document is where the school district provides notice to the parents when the IEP will be implemented.



See **Prior Written Notice of District’s Proposal/Refusal** and **Sample Letter to Request Prior Written Notice** at the end of Chapter 6.



Chapter 6 provides more information on **Prior Written Notice (PWN)**.

Part XIII: Consent

This part of the IEP document requests **consent**. Parents sign to give consent for the **initial placement**, allowing special education services to begin. After initial placement consent is given, a parent’s signature on an IEP document only indicates attendance (and participation as part of the IEP team).



Chapter 3, Part II provides more information on **Documentation of Attendance**.

If the parent refuses to provide the initial consent, the district will not provide special education and related services to the student. The district must document reasonable efforts to obtain informed consent.

A parent may revoke consent for continued provision of special education and related services at any time. This must be done in writing. Within five (5) calendar days of receiving the request to revoke consent, the district must provide prior written notice to the parent that services will end.

When a parent 1) refuses to consent to the initial provision of services, or 2) revokes consent for continued services:

- The district must provide PWN and must fully inform the parent of the reasons the district believes the student should receive services and potential consequences of refusing services.
- Neither mediation nor a due process complaint may be used to attempt to reach an agreement or ruling that services will be provided. (However, if a parent fails to respond to a request for consent to the initial provision of services, the district may request mediation or file a due process complaint against the parent.)
- The district will not be in violation of the requirements to provide FAPE or special education and related services available to the student.
- The district will not be required to hold 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:

- The district is not required to amend the student's educational records to remove any references to the student's receiving special education and related services.
- The parent maintains the right to request an initial evaluation. Any subsequent request for the student to be re-enrolled in special education is treated as a request for an initial evaluation. As a result the evaluation and eligibility process will start over.
- 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 discipline protections offered under Policy 2419.

If consent for services has been revoked, and the parent or adult student change their minds and would like for special education and/or related services to begin again, the student will have to start at the beginning with the evaluation/eligibility process. **When special education services have been revoked, the student is no longer protected by Special Education Procedural Safeguards.**

TIPS

- ❖ At the conclusion of the IEP team meeting, you will receive prior written notice and a copy of the IEP as well as any evaluations and/or other documents you signed including but not limited to health care and behavior intervention plans.
- ❖ Prior to initiation of services, the district must make sure a copy of your child's IEP and other related documents are accessible to each service provider who is responsible for the implementation. These individuals include 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 who must read and sign them. With their signature, they indicate that they understand the IEP and related plans.
- ❖ Your child's IEP will be reviewed at least annually, **once every 365 calendar days**.
- ❖ If you believe your child is not progressing satisfactorily or that there is a problem with the current IEP, you can request an IEP team meeting. The district is required to grant any reasonable request for such a meeting.

IEP Amendments

An IEP can be amended without a full IEP team meeting. If the school district and the parents agree in writing not to hold an IEP meeting to make changes, they can develop an amendment to the student's current IEP. The school district must document the changes on the **IEP Amendment Form** in the Online IEP and provide a copy of the form to the parents (see the WVDE website for the instructions and form to amend an IEP without an IEP team meeting). **A complete revised copy of the IEP will only be provided to the parent upon request.** The annual review date remains the same and anyone impacted by the amendment must be informed of the changes.



See **Amendment to the IEP without Convening an IEP Team Meeting** at the end of this chapter.

See **Instructions for Amendments to the IEP Without Convening an IEP meeting** at the end of this chapter.

TIP

Parents are cautioned to use the **Individualized Education Program (IEP) Amendment** process only when making minor changes to the student's IEP.

IEPs for Transfer Students

Student Transfers can come from another West Virginia school district or from an Out-of- State District.

If a student with a **current West Virginia IEP transfers school districts** within the same school year, the receiving district **must**:

- Make **reasonable efforts** to consult with the parent within **two (2) school days** of initial enrollment to the new school;
- Initiate FAPE services within **one (1) school day** of the parent consultation. FAPE includes services **comparable** to those described in the previously held IEP; and
- Within **ten (10) school days** of the parent consultation, the district must adopt the previously established IEP **or** develop and implement a new IEP.

If a student with an **IEP from another state transfers to a receiving West Virginia school district** within the same school year, the district **shall**:

- Make reasonable efforts to consult with the parent within **two (2) school days** of initial enrollment;
- Initiate FAPE for the student within **one (1) school day** of the parent consultation. FAPE includes services comparable to those described in 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 (2) school days** of enrollment, the receiving district shall 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.

TIP

If a county school district tries to remove a service from a transferring student's **Individualized Education Program (IEP)** from another school district or state, request that the school district provide you with a copy of their supporting data and **Prior Written Notice (PWN)** that removal of the service in question is appropriate. Parents should request PWN if they disagree with a school district's removal of a service. If your school district does not have data to support the removal of a service, you can then file a State Complaint.



See **Prior Written Notice of the School District's Proposal/Refusal** at the end of **Chapter 6**.

Guidelines to Obtain Necessary Services for a Student

Make all requests during an IEP meeting in writing. This starts the timelines for the school district to respond by agreeing with your request and getting a consent form signed by you, or disagreeing with your request and providing Prior Written Notice of their disagreement.

Questions to keep in mind when making a request:

- Why are you making the request?
- Do you have documentation from a professional recommending what you are asking the school district to provide?

Some requested services may require an evaluation first. Parents will need to provide a doctor's prescription requesting an evaluation for a related service such as PT, OT and/or SLT services. The evaluation will then determine if the student has an educationally based need for the related service. If an evaluation is needed, consider the following:

- A written request for an assistive technology evaluation should be made if the student needs a device or software to benefit from or have access to their education.
- Be sure to keep a copy of the doctor's prescription and/or the letter requesting an evaluation.



See **Evaluation Components** document at the end of Chapter 2.

TIP

Do not request **Individualized Education Program (IEP)** meetings every other month because of the same issues or problems. Make your request(s) for services, explain your reasoning, and if the IEP Team members do not agree with your request(s), ask **for Prior Written Notice (PWN)** and move on to the next step. The IEP meeting may not be the place to get your issue resolved. Also, do not let the issue(s) that you are in disagreement about hold up and extend the IEP meeting for hours. There will likely be many issues that the team members do agree on, so continue with the IEP development process.

Parents often state that they have requested something from the school district during an IEP meeting, and the school district refused to provide it. These requests are for things like evaluations, assistive technology, therapies, or for an accommodation to be listed on the student's IEP. When the school district will not provide what parents have requested, parents sometimes make the mistake of "going to the board of education" to complain. Board of education members are NOT part of a student's IEP team, nor can they make IEP decisions outside of the IEP process. Remember, IEP development is a process and the process must be followed.

TIPS

- ❖ Remember, you will most likely be working with the school system for several years. It is important to build a good working relationship with the school's **Individualized Education Program (IEP)** team members.
- ❖ Keep in mind that because someone from the school district responds with a “no” to something you requested at an IEP meeting does not mean they personally disagree with you. They may have been told to say “no” by their supervisor(s). Be professional.
- ❖ If you are being told “no” for one or more of your requests, request Prior Written Notice for **each issue** and move on through the IEP development. Do not let the “no” hold up the rest of the IEP development. There are most likely many other issues the team will agree on.

How to Handle Difficult Conversations

It is important to know how to effectively handle difficult conversations. Differences of opinion are inevitable at various points in the IEP process.

The following steps can help parents in handling difficult conversations:⁴

1. Begin by finding things that everyone agrees with.
 - a. Example: “I know that you have found it hard to teach John because his behavior is challenging at school. I deal with these challenges every day and it can be exhausting.”
2. Use “I” statements in place of “you” statements. “I” statements state how you feel, “you” statements are critical or judgmental.
 - a. Example: Say, “I am feeling that I am not a member of the team because I don’t get enough information about what is going on in school” instead of “You never let me know what’s going on. Why can’t you ever write in our communication journal?”
3. Avoid negatives because people will feel hostile.
 - a. Example: Say, “Can’t we try...” or “Is it possible...” Don’t say, “Why won’t you...”
4. Avoid dictating to the school.
 - a. Example: Say, “Could we consider...?” Don’t say, “Stop doing...”
5. Try to see things from the school’s point of view, but do not compromise your principles. In some conflicts, both sides can be right. Ask lots of questions so you can see the advantages of both points of view.
6. Find some positive comments to share with the team.

⁴ Eason, Anne I. and Whitbread, Kathleen. 2006. *IEP and Inclusion Tips for Parents and Teachers*. Verona, Wisconsin: Attainment Company.

7. If you ask a yes or no question, the school might say “no.” Instead, start a question with these words, “What would it take in order to...” In this way, the school will start brainstorming solutions instead of refusing to do something.
8. Do not yell or raise your voice. In fact, lower your voice when you are angry.
It is important to role play or practice your handling of difficult conversations.

Dispute Resolution

A **Facilitated IEP Team Meeting** can be requested to resolve disputes about an IEP prior to filing a State Complaint. A Facilitated IEP Team meeting is a voluntary option which uses an impartial facilitator not employed by the district and not the parent to guide the IEP process and promote effective communication. The IEP Facilitator must be qualified and trained in effective facilitation techniques, be verified by the WVDE as having met the requirements for qualified facilitators and be and impartial.

A **State Complaint** can be filed when an individual, organization, parent or adult student feels that special education laws or regulations are not being followed by a school district or public agency. The complaint must include specific information which is outlined in West Virginia Policy 2419. **A copy must be provided to the county special education director at the same time you file the complaint with the WVDE.**



See **State Complaint Process Brochure** and the **State Complaint Form** at the end of this chapter.

If the parent or other IEP team member cannot reach a consensus about an IEP decision, then the district representative on the IEP team will make the decision. When this occurs, the district representative must provide PWN of the decision to the parent at the conclusion of the meeting and prior to implementing the IEP. The parent may exercise their right to mediation or a due process hearing concerning the decision.



See **Sample Letter When You Disagree with the IEP** at the end of this chapter.

The following information is important to consider before filing a complaint:

- The alleged violation **cannot have occurred more than one year prior** to the date the complaint is filed.
- **A complaint must be in writing and contain an original signature.** Attaching documentation that supports the complaint is an important part of this process. **A phone call to the WVDE is not a formal complaint requiring them to investigate your issue(s). Parents need to maintain a copy of all important records.**
- The WVDE has **sixty (60) calendar days to investigate** a State Complaint and issue a written decision of their findings to the individual that filed the complaint.

- Once a state complaint is filed, there will be a **fifteen (15) calendar day** timeline for **Early Resolution** between the school district and the parent. If the school district does not follow through with the agreed upon steps from the Early Resolution, a new complaint must be filed and the timelines start over. School districts can start to correct issues brought up in a State Complaint while the investigation is ongoing.



See **Early Resolution of State Complaints Brochure** at the end of this chapter.

The following provides information about the Special Education Director and their attendance at the IEP meeting:

- If the county's **Special Education Director attended** the IEP meeting where the request was made, a complaint can be filed as soon as the PWN has been received.
- If the **Special Education Director did not attend** the IEP meeting where the request was made, a letter can be written to the Special Education Director. In the letter, explain what was requested and why. The letter can discuss what other IEP team members discussed about the request. Finally, ask the Special Education Director to look into the matter and to respond in writing within **ten (10) school days**. Send the letter by certified mail with a return receipt. The letter allows time for the Special Education Director to investigate the issue(s). The Special Education Director may then instruct the IEP team to meet again with instruction given to the chairperson of the meeting on how to resolve the issue(s) in question.
- If the Special Education Director does not offer assistance to the IEP Team on how to resolve the issue(s), the next step for the parent would be to file a state complaint with the WVDE.

Parents should not be nervous about filing a state complaint. The role of the WVDE is to investigate matters to determine if a district has followed WVDE policies and procedures outlined in West Virginia Policy 2419. If a district is not following the policies, the WVDE will require them to do so. The WVDE may also require the county to provide staff training or develop necessary policies or procedures to address a particular problem. They may determine the student is owed compensatory educational services, which means the school district must make up services for something they failed to do. If the WVDE has received several complaints from the same county for similar issues, they may see that they need to provide training in that county. So, a state complaint can serve many beneficial purposes.

Another option available to parents and educators in resolving disagreements about a student's IEP is **Mediation**, which is a voluntary process. In mediation, both parties must be willing to compromise in order to come to an agreement about what is the best way to meet the student's needs. If both parties are not willing to give and take a little, this process will not help. Mediation can take place any time, even if a state complaint or due process has been filed. An agreement reached by the parties through WVDE mediation is enforceable in state and federal courts.



See **Mediation Process** at the end of this chapter.

A **Due Process Hearing** request can be filed to resolve disputes between parents and school districts. A hearing officer makes a decision which determines whether the law has been violated and what will be done to resolve issues. The burden of proof in the case 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). This means that if a parent files the due process complaint, they must produce evidence to persuade the hearing officer that they are right.

A due process hearing is very much like a court proceeding. It is strongly suggested that if a parent wishes to obtain legal representation for a due process hearing, they should do so **before** filing the due process complaint. The timeline of events runs very quickly in due process proceedings, and an attorney will need time to prepare your case.



See ***Due Process Hearing Brochure*** at the end of this chapter.

A due process complaint must be initiated within **two (2) years** of the date the parent or district knew or should have known of the disputed decision or alleged action that forms the basis for the complaint.

There is a **thirty (30) calendar day** early resolution process after the school district receives a due process complaint. If the early resolution timeline ends without agreement, the **forty-five (45) calendar day** due process hearing timeline begins. Either of these timelines may be adjusted upon the agreement of both parties. In the resolution process, either party may void the agreed to resolution to adjust the thirty (30) day period within three (3) business days of signing.

The student must remain in his or her current educational placement during any administrative or judicial proceeding regarding a due process unless the state or local agency and the parent agree otherwise.

TIPS

- ❖ It is wise not to threaten to sue the school district every time you go to an **Individualized Education Program (IEP)** meeting unless you intend to follow through with the threat. Keep in mind that it can be difficult to find attorneys who will take a special education case. School districts are always represented by an attorney.
- ❖ If a parent wishes to obtain legal counsel, it is strongly suggested to do so prior to filing a due process complaint. The timeline of events for a due process hearing is fast and you will need time to prepare your case.
- ❖ An agreement reached by the parties through **West Virginia Department of Education (WVDE)** mediation is enforceable in state and federal courts.

Chapter 3 Reference Materials

The following documents are referenced in Chapter 3:

- Sample Letter to Request County Policy
- Sample Letter to Request an Individualized Education Program (IEP) Meeting
- Individualized Education Program (IEP) Team Member Excusal(s)
- In Lieu of IEP Team Attendance Report
- Checklist of Types of Records a Parent Needs to Keep
- Sample Letter to Request a Functional Behavioral Assessment
- Sample Letter to Request Suspensions be in Writing and to Give a School Notice that Student Will Not be Picked Up Without Written Suspension Notice
- Mapping Transition Services Chart
- Age of Majority Brochure
- Transition Assessment Guide
- WV Guidelines to Assist in Development of the Summary of Performance
- Summary of Performance
- Sample Letter to Request an Assistive Technology Evaluation
- Consent to Release Information From Education Records for Medicaid Billing
- School Based Medicaid Targeted Case Management Student Acknowledgement Form
- School Based Medicaid Targeted Case Management Service Record
- Amendment to the IEP without Convening an IEP Team Meeting
- Instructions for Amendments to the IEP Without Convening an IEP Team Meeting
- State Complaint Process Brochure
- State Complaint Form
- Sample Letter to Use When You Disagree with the IEP
- Early Resolution of State Complaints Brochure
- Mediation Process Brochure
- Due Process Hearings Brochure
- What's A Parent To Do

This is a sample letter to request the county Board of Education policy on an issue of question. Send this letter to the Special Education Director by certified mail with a return receipt. Send a copy to the Superintendent also. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert Special Education Director's name), **Special Education Director**

(Insert county name) **County Schools**

(Insert address)

RE: Board of Education policy

Dear Mr. or Ms. *(Insert last name of Special Education Director):*

I am requesting a copy of *(Insert the County name)* **County's written policy on** *(Insert the type of policy you are requesting. Examples are tape recording IEP meetings, cameras/videos in the classroom, or other circumstances for which the county is claiming to have a policy or guideline.)* **Please include a copy of** *(Insert the County name)* **County's Board of Education meeting minutes where this policy was approved.**

Please send the requested information within five (5) business days upon receipt of this letter. Thank you in advance for your timely response.

Respectfully,

(Sign your name)

(Type your name)

cc: Mr./Ms. *(Insert name of County Superintendent)*, **Superintendent,** *(Insert County)* **County Schools**

Note: Some school staff have claimed that something is against their district policy when, in fact, no such policy exists.

This is a template letter to request an Individual Education Program (IEP) meeting with the appropriate school personnel. Send this letter to the Principal (or chairperson of the IEP team) via certified mail with a return receipt. Send a copy to the Special Education Director. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert name of principal), **Principal**

(Insert name of school)

(Insert school address)

RE: IEP meeting request for (Insert child's full name)

Dear Mr. or Ms. (Insert principal's last name):

I am writing to request an IEP meeting for (Insert child's full name). **I would like to discuss making some changes to** (Insert child's first name)'s IEP. **I am concerned about** (briefly state your concerns. You do not need to go into details about changes you want to address. You can do so during the meeting. If you want to ensure that a specialist such as an OT, PT, Mobility, etc. attends, specifically request that he or she be present at the meeting.)

It is my understanding that a meeting must be held within 21 days or prior written notice provided stating why the meeting is being denied. Dates and times that I will be available are (list a few dates and times you will be available for a meeting). **Please let me know what time will be best for you. You can reach me by phone at** (insert phone number).

I look forward to hearing from you soon.

Respectfully,

(Sign your name)

(Insert your name)

cc: (Insert full name of Special Education Director), **Special Education Director**

Note: The school district is still required to provide you with an eight (8) day notice of the meeting. However, depending on the reason you are requesting a meeting, you may choose to waive the 8-day notice requirement.

**INDIVIDUALIZED EDUCATION PROGRAM (IEP)
TEAM MEMBER EXCUSAL(S)**

_____ County Schools

Student's Full Name _____	Date _____
School _____	Date of Birth _____
Parent(s)/Guardian(s) _____	Grade _____
Address _____	WVEIS # _____
City/State _____	Telephone _____

TO BE COMPLETED WHEN A TEAM MEMBER'S EXCUSAL WAS NOT DOCUMENTED ON THE MEETING NOTICE:

Documentation of District/Parent Discussion

(To be completed **prior** to the IEP Team Meeting.)

Date parent contacted regarding excusals _____

Personnel making contact (names/positions) _____

Date of scheduled IEP Team Meeting _____

Agreed-upon excused IEP Team members _____ Name/Position

Reports are required from the following excused members: _____

IN LIEU OF IEP TEAM ATTENDANCE REPORT

Student _____ Grade _____ IEP Team Meeting Date _____

Excused IEP Team Member _____

Curricular or Related Service Area(s) _____

Directions for excused team members:

- Complete this form if you have been excused from the IEP Team meeting and your area of curriculum or related service will be discussed in your absence.
- Attach copies of relevant reports, draft IEP pages, additional information, etc.
- Provide this report to the IEP Team chairperson and the parent prior to the meeting.

PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE:

SUGGESTIONS FOR GOALS/MODIFICATIONS/ACCOMMODATIONS/SERVICES:

Excused Team Member Signature

Position

Date

Parent Statement:

I have been provided an opportunity to review this report **prior** to the development of the student's IEP.

Parent Signature

Date

Checklist of Types of Records a Parent Needs to Keep

It is a good idea to keep an organized file folder or divided notebook of your child's school records. This checklist is a guide to assist you with keeping these records. You will periodically need some or all of these records for meetings with school personnel. It is a good idea to keep the records in chronological order. Mark or label the notebook or file folder for the current school year. Most records (i.e. IEPs, meeting notices) can be kept for two years. Evaluation reports (i.e. physical/occupational/speech) should be kept for three years. All psychological evaluations are necessary to keep until your child leaves the school system. They may be needed to determine your child's eligibility for services/programs after leaving the school system.

Items to keep on file:

- Report Cards and progress reports (*you should receive progress reports regarding the goals on your child's IEP as often as report cards*)
- Notes from the school staff regarding your child's behavior or difficulties with learning
- Attendance Records and copies of doctor's excuses
- Evaluation reports (*i.e. Speech/Language, Occupational, Physical therapies and Assistive Technology/Any State standardized testing results that are given to all students*)
- Medical records related to disability or ability to learn that you have shared with the school (*such as prescriptions requesting OT, PT or Speech/Language evaluations*)
- The current IEP (Individual Education Program), health care plan, behavior plan or 504 plan
- Letters or notes from school staff, special educators, evaluators, administrators
- All meeting notices, notices of disciplinary action or suspension
- Student handbook of school and county policies
- Samples of schoolwork
- The current copy of WV Policy 2419 for the education of students with disabilities (*for IEPs*) OR Section 504 of the Rehabilitation Act of 1973 (*for 504 plans*)
- Copies of letters you sent the school staff, special educators, evaluators, administrators
- Private evaluations you may have obtained and shared with the school
- Other (i.e. samples of schoolwork)_____

You may also want to keep notes regarding meetings and their outcomes, dates you sent or received important documents, dates of suspension, disciplinary action or times your child was sent home with no formal written explanation (i.e. *he's having a bad day, behavior*).

Lastly, keep notes of telephone or personal conversations you have with school staff. Be sure to include the date, who you spoke with and what the conversation was about



800-950-5250
wvadvocates.org

1207 Quarrier St Ste 400
Charleston, WV 25301

This is a sample letter to request a functional behavioral assessment. Send this letter to the Special Education Director by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert name of Special Education Director), **Special Education Director**

(Insert name of county) **County Schools**

(Insert address)

RE: Request for a functional behavioral assessment

Dear Mr. or Ms. *(Insert Special Education Director's last name)*:

I am the parent of *(Insert child's full name)*, **who is in the** *(Insert child's grade)* **grade at** *(Insert name of child's school)*. **I am writing to request the school to conduct a functional behavioral assessment on my child. Please consider this letter as written consent for the functional assessment evaluation.**

It is my understanding that the first step in this process is to have a team meeting, which includes me. The meeting is to identify target behaviors, the purpose of the behaviors so that IEP goals and objectives can be identified, and interventions and modifications that can be developed and implemented through a Positive Behavioral Support Plan using proactive strategies.

Please contact me within the next eight (8) days to arrange a team meeting date, or provide prior written notice within five (5) days if the school district is refusing my request.

Respectfully,

(Sign your name)

(Type your name)

cc: *(Insert principal's full name)*, **Principal**

Note: If a student already has an IEP, the school district will have sixty (60) days to complete the functional assessment, develop the positive behavioral support plan and train staff responsible for the plan's implementation. If the school refuses to do a functional behavioral assessment, write a letter requesting prior written notice explaining why they are refusing to do so. Send the letter by certified mail with a return receipt. Keep a copy for your records.

This is a sample letter to address disciplinary removals and suspensions. A parent can send this letter to request that the school provide written suspensions and also to notify the school in writing that the parents/family will not pick up the child from school without a written suspension notice. Send this letter to the school Principal and the Special Education Director by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)
(Insert your address)

(Insert principal's name), **Principal**
(Insert name of child's school) **School**
(Insert address of school)

RE: Disciplinary removals of (Insert child's full name) **from** (Insert name of child's school)

Dear Principal (Insert principal's last name):

I am the parent of (Insert child's full name), **a student at** (Insert name of school). (Insert child's first name) **receives special education services.**

The purpose of this letter is to notify you that (Insert child's first name) **has been sent home because of a "bad day" or behavior issues on numerous occasions without written notice of suspension. In the future, I** (and/or other family members-if applicable) **will require a written notice of suspension, which is included in my child's school records, stating for what reason** (he/she) **is being sent home, from the principal or the principal's designee, before I pick** (Insert child's first name) **up again because of a "bad day" or behavior issues.**

I (and/or other family members-if applicable) **have been contacted by staff at** (Insert name of school) **to pick up** (Insert child's first name) **with no written notice of suspension on the following dates:**

- (list date and reason)
- (list date and reason)
- (list date and reason)
- (list date and reason)

I believe that school staff are giving (Insert child's first name) **unofficial suspensions and/or disciplinary removals by sending** (him/her) **home from school, that school staff are unable to fully implement** (his/her) **IEP because of the absences, and that these unofficial disciplinary removals may be occurring in violation of IDEA 2004 and WV Policy 2419 regarding special education services.**

It is my understanding that after ten (10) days, removals from the current educational placement (through written/formal suspensions and unofficial suspensions) add up to a change of educational placement in violation of IDEA 2004, Policy 2419 and the IEP process. If school staff fails to comply with special education law and policy concerning disciplinary removals, I understand I have the right to file an administrative complaint with the Office of Special Education of the WV Department of Education and/or pursue legal remedies.

Sincerely,

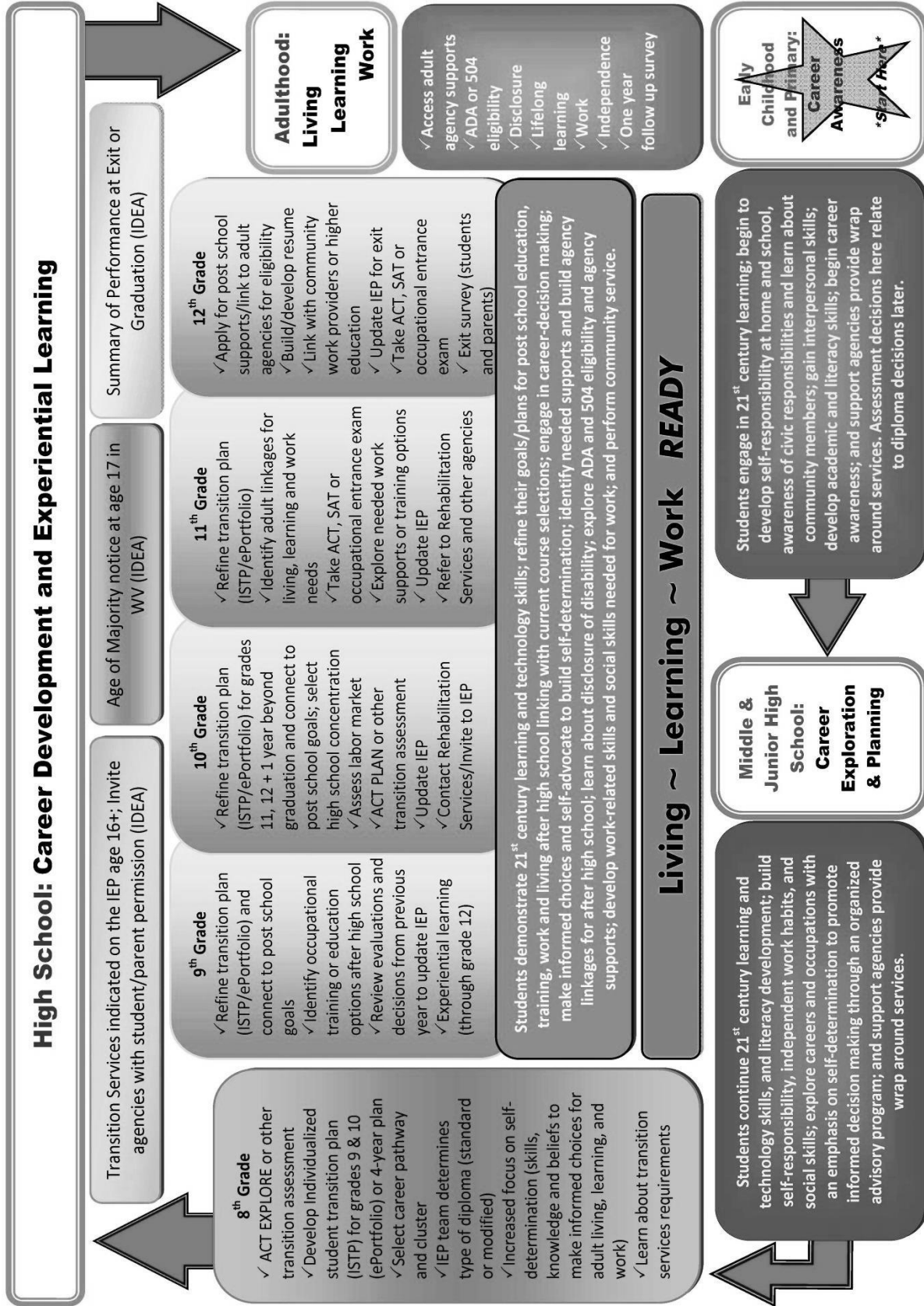
(Sign your name)

(Type your name)

cc: Mr./Ms. (Insert last name of Special Education Director), Special Education Director

Note: If you are being contacted to pick up your child from school, you will need to request a functional assessment to develop a Positive Behavioral Interventions and Supports (PBIS) plan. (See sample letter.) If your child already has a PBIS plan, then you need to request the team to revise it.

Mapping Transition Services



*Begin at star in bottom right corner

Resources

- *West Virginia Department of Education
Office of Special Programs
1-800-642-8541*
- *West Virginia Parent Educator
Resource Center
(PERCs are located in most districts)
1-800-642-8541*
- *West Virginia Parent Training and
Information Center (WVPTI)
1-800-281-1436*
- *Mountain State Parents CAN
1-800-2445-5385*
- *Region II Family Network
1-888-711-4334*
- *West Virginia Advocates
1-800-950-5250*

This document was prepared by
the Parent Partnership Work Group
and designed by the West Virginia Department of
Education Communications Office

For Additional Information:

Karen Ruddle, Transition Coordinator
West Virginia Department of Education
Office of Special Programs, Extended and
Early Learning
Building 6, Room 304
1900 Kanawha Boulevard, East
Charleston, WV 25305-0330
Phone: (304) 558-2646
1-800-642-8541 (V/TDD)

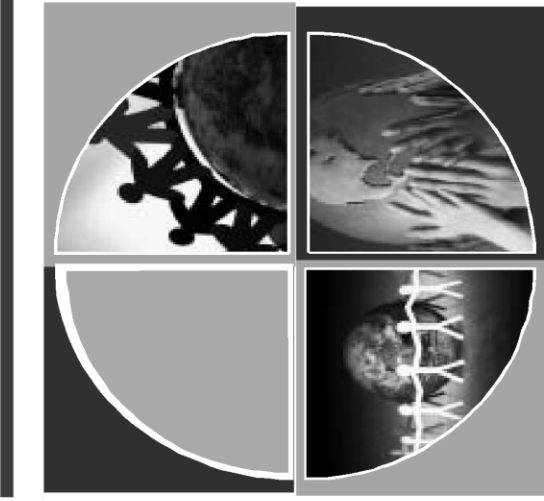
The West Virginia Department of Education, Office of Special Programs, Extended and Early Learning, is dedicated to positively effecting the lives of students by providing leadership and establishing partnerships with parents and school district personnel. The Office of Special Programs believes this brochure will be useful to you in understanding the Rights of Transfer and in resolving your concerns.



Lowell E. Johnson, President
Delores W. Cook, Vice President; Priscilla M. Haden, Secretary
Robert W. Dunlevy, Member; Barbara N. Fish, Member
Burma Hatfield, Member; Gayle C. Manchin, Member;
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Brian E. Noland, Ex Officio; James L. Skidmore, Ex Officio;
Steven L. Paine, Ex Officio

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Dr. Steven L. Paine
State Superintendent of Schools
West Virginia Department of Education



AGE OF MAJORITY

Transfer of Rights for Exceptional Students

Office of Special Programs, Extended
and Early Learning
West Virginia Department of Education

What is the transfer of rights?

If you are a school-age student and receiving special education services, you are protected under the Individuals with Disabilities Education Improvement Act 2004 (IDEA 2004). It is extremely important that you understand your due process rights to special education services so you will be able to advocate for yourself. In West Virginia, at age 18, individuals are presumed to be capable of decision-making in all areas of life, including education. IDEA 2004 states that you must be informed about decisions and choices regarding becoming your own educational guardian no later than one year before you reach the “age of majority” or legal age for your state. In West Virginia the legal age is 18 (unless you have been determined to be a protected person under state law). This means you become responsible for making your own decisions about school unless you have a court-appointed legal guardian or court-appointed surrogate parent.

An Individualized Education Program (IEP) team that includes you, your parents, teachers and others makes yearly plans about your education if you receive special education services. Your parent has made the decisions that affect your education, including looking at school records and being involved in planning your education. At age 18, these rights transfer to you; and you become the decision-maker about your special education services.

It is important that you understand the choices that will become your responsibility at age 18. During the year in which you will become 17 years of age, the school is required to inform you and your parents of this transfer of rights in writing. This usually occurs at the IEP meeting for that year. This will allow you time to talk with your parents and others, to be ready to take this responsibility and be prepared to make the best decisions about the supports you will need from special education.

What are the rights that transfer at age 18?

The decisions about your special education that transfer to you at the “age of majority” include decisions about:

- Your eligibility
- Your IEP
- Your placement

You will also have the right to give consent or refuse consent for your evaluation or re-evaluation. You have the right to give consent or refuse consent for placement if this is your first placement in a special education program or services. You will have the right to review your educational records, request mediation or a due process hearing, and/or to file a complaint regarding a Free Appropriate Public Education (FAPE).

It is in your best interest to learn about special education laws so that you can make informed decisions about your educational program. It is our hope that you already have been a part of the special education process and played an active role in developing your transition goals since the age of 16. Ask your teacher, your parent or other adults to help you learn more about special education laws.

Will my parent still participate in my special education meetings?

Your parent will continue to receive notice of meetings and written information related to special education if you or your school district invites them. Their part in the special education process is up to you. You may ask your parent or other adult to continue to make decisions about special education; however, you are not giving up your rights unless your parent goes through the guardianship process. This person is called a “surrogate parent” and may be your parent or another adult who knows about special education rights and can represent your needs, preferences and interests.

Who is responsible for notifying me about this transfer of rights?

The school will provide both you and your parents written notice of the transfer of rights at age 18. For more information, contact a special educator in your school or the special education director for your district. This person also should be able to answer other questions that you may have regarding any information or words in this pamphlet.

What happens after these rights transfer to me at age 18?

- You will receive written notice for all meetings and will be invited to attend those meetings. You may invite your parents or others to attend the meetings.
- You have the right to participate in all meetings where decisions are made about your special education eligibility, evaluations, IEP or placement before those decisions are put in place. You also have the right to prior written notice if the district refuses your request to take these actions.
- You have the right to review your educational records.
- You have the right to request meetings to review or change your IEP, identification, evaluation or placement in special education.
- You have the right to provide consent when it is required, including consent to evaluate or re-evaluate, release records, request mediation or a due process hearing and/or file a complaint regarding FAPE.
- You have the right to ask questions and to ask and receive help in solving problems. This includes the right to file a complaint, request a due process hearing and participate in mediation regarding special education services you receive.

Transition Assessment is one component of the transition services process identified in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). It is designed to assist a student and the IEP team in identifying preferences, interests and aptitudes about living, learning or education, and work needs for school and post school adult settings. Transition assessments are crucial for successful transition planning and typically occur over time. This document provides a framework for discussion of assessments that might be considered for transition by **Groups**, describes the **Types** of assessments that might be included in each group, and provides specific **Examples** of assessments though not all inclusive.

Web resources for transition: <http://wvde.state.wv.us/osp/Transition/webresources.html>

More information about transition and the connection with the Individualized Education Program (IEP) process can be found at: <http://www.nsttac.org>

Transition Assessment Groups	Types Of Assessments	Examples Of Assessments <small>*The following are merely samples. <i>Career Planning Begins with Assessment</i> (http://www.ncwd-youth.info/) is one guide that provides descriptions of various assessments.</small>
Interest	Interview Observation Questionnaire Student ratings Simulated assessment Situational assessment Work samples Internet inventories	Armed Services Vocational Aptitude Battery (ASVAB) ACT PLAN and EXPLORE Campbell Interest and Skill Survey (CISS) CareerScope Career Assessment and Reporting System COPSsystem: Career Occupational Preference Interest Inventory (COPS), Career Ability Placement Survey (CAPS), and Career Orientation Placement and Evaluation Survey (COPES) O*NET Interest Profiler- http://www.onetcenter.org/IP.html Pictorial Inventory of Careers (PIC) Reading Free Vocational Interest Inventory 2 (RFVII 2) Voc-Ties and Career Development Plan Informal Inventories, questionnaires, checklists Situational Assessments (actual or simulated)
Vocational aptitude	Certification measures – Career and Technical Education completers, End of Course Exams Credentialing measures – Nationally	Armed Services Vocational Aptitude Battery (ASVAB) Brigance Life Skills/Employability Skills Inventories Bennett Hand Tool Dexterity Test Crawford Small Parts Dexterity Test Talent Assessment Program-TAP VALPAR Work Samples Practical Assessment Exploration System (PAES) ACT WorkKeys

	administered and standardized evaluations Occupational specific or situational assessments	McCarron-Dial Evaluation System (MDS) Occupational Aptitude Survey and Interest Schedule (OASIS) Informal Inventories, questionnaires, checklists, observation Situational Assessments-actual or simulated
Academic skills	Individual achievement measures for eligibility Statewide achievement measures National achievement measures Adult measures	ACT-American College Testing SAT and PSAT-College Board Armed Services Vocational Aptitude Battery (ASVAB) General Educational Development Test (GED) Kaufman Test of Educational Achievement (KTEA) Key Math Peabody Picture Vocabulary Test (PPVT) WV Statewide Testing WV Alternate Performance Task Assessment (APTA) Tests of Adult Basic Education (TABE) Test of Written Language (TOWL) Wechsler Individual Achievement Test (WIAT) Wide Range Achievement Tests (WRAT) Woodcock-Johnson Tests of Achievement (WJ III) Woodcock Reading Mastery ACT WorkKeys ACT PLAN and EXPLORE
Learning styles and work readiness skills	Generalizable skills-stamina, following a schedule, motor skills, basic academics, manual dexterity Employability/Soft work skills-cooperative work, attendance, following orders Assistive technology Communication Skills	WorkKeys Rating Scales Environmental assessment Personality measures Communication assessment Community work experience assessments and reports Temperament Inventories Informal Inventories, questionnaires, checklists, observation Situational Assessments-actual or simulated
Independent living skills	Self Determination Transition planning Inventories Personal care Personal hygiene Safety/Environmental Nutrition Mobility Home maintenance	Transition Planning Inventory (TPI) Test of Adult Basic Education (TABE) Brigance Life Skills/Employability Skills Inventories Scales of Independent Behavior (SIB) Observations Interviews Informal Inventories, questionnaires, checklists, observation Situational Assessments-actual or simulated
Psychological and cognitive skills	Intelligence and cognitive measures Social skills Adaptive behavior, social and emotional measures	Wechsler Intelligence Scale for Children IV (WISC IV) Wechsler Adult Intelligence Scale IV (WAIS IV) Conners' Rating Scales (CRS) Childhood Autism Rating Scale (CARS) Stanford-Binet (S-B) Woodcock-Johnson III Cognitive (WJ III)

	Medical measures	Achenbach System of Empirically Based Assessment (ASEBA) Behavioral Assessment System for Children (BASC) Transition Planning Inventory (TPI) Vineland Adaptive Behavior Scales (VABS) Scales of Independent Behavior (SIB) Social Skills Rating System (SSRS)
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WV Guidelines to Assist in Development of the Summary of Performance

Purpose: For a child whose eligibility under special education terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age of eligibility for Free Appropriate Public Education (FAPE) under State law, the local education agency “must provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals” §Sec.300.305 (e) (3). – IDEA 2004

The Summary of Performance (SOP):

- Is designed to assist the student in transition from high school to post school activities, including postsecondary education, training and/or employment, along with additional documentation, for the purpose of establishing a student’s eligibility under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act and identification of reasonable accommodations and supports in postsecondary settings
- Is helpful for the Vocational Rehabilitation Comprehensive Assessment process
- Is intended to help postsecondary institutions consider accommodations for access
- Is useful when linked with the IEP process and the student has the opportunity to actively participate in the development of the document
- Must be completed during the final year of a student’s high school education with timing of completion depending on student’s postsecondary goals (Example: transition to higher education may require submission along with application *OR* application for employment/agency may be needed near the end of the school year to provide the most updated information on student performance)
- Recommendations should not imply that any individual who qualified for special education in high school would automatically qualify for services in postsecondary education or employment settings. Those settings will continue to make decisions on a case-by-case basis.

<p>Basic background information: (Provide identifying information.)</p>	<ul style="list-style-type: none"> • Complete, legal name • School last attended • Parent or guardian name(s) • Complete mailing address 	<ul style="list-style-type: none"> • Date of SOP report (Year of exit) • Date of birth / Age • WVEIS # / Grade • Telephone number (s)
<p>Additional background information: (Optional)</p>	<ul style="list-style-type: none"> • Name/title/contact information of staff completing SOP • Date of most recent IEP • Primary Language/Services for ELL 	<ul style="list-style-type: none"> • Primary disability and initial date of eligibility • Secondary disability, if applicable, and initial date of eligibility
<p>I. Postsecondary goals: (Indicate the post-school environments the student intends to transition to upon exit from high school.)</p>	<p>List the goals for environments of</p> <ul style="list-style-type: none"> • Work • Education • Living 	<p>If employment is the primary goal, list the top three job interests.</p>

<p>II. Summary of Performance:</p> <p>(Completion of this section may require input from a variety of staff, but one person should have the responsibility of gathering and organizing the information. Describe both present levels of performance that apply to the student and the <i>essential</i> accommodations, modifications and assistive technology utilized to assist the student in achieving progress. Address <i>only</i> those areas that apply.)</p> <p>Terms:</p>	<p>A. Academic Achievement: Specifically discuss the current level of performance in applicable areas of</p> <ul style="list-style-type: none"> • Reading (decoding, comprehension, fluency) • Math (calculation, algebraic problem solving, quantitative reasoning) • Language (written, speaking, listening, spelling) • Learning skills (work habits, note taking, keyboarding, organization, time management, assignment completion, study skills, test taking skills) in detail using both narrative information for strengths and needs as well scores and grade level functioning <p>Identify <i>essential</i> accommodations, modifications and/or assistive technology utilized in high school and why they were needed for academics described in the current level of performance.</p>
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<p><u>Accommodation</u>-a support or service that is provided to help a student fully access the general education curriculum or subject matter and <i>does not</i> change the content of what is being taught or the expectation that the student meet a performance standard applied for all students. (Example: Deficit spelling/handwriting skills may require a note-taker, permission to word process notes, provision of extra notes)</p> <p><u>Adaptation (also known as modification)</u>-changes to the general education curriculum or other material being taught, which alters the standards or expectations for students with disabilities. Instruction can be adapted so that the material is presented differently and/or the expectations of what the student will master are changed. Adaptations are not allowed in most postsecondary education environments.</p> <p><u>Assistive technology</u>-any device that helps a student with a disability function in a given environment, but does not limit the device to expensive “high-tech” options. Assistive technology can also include simple devices such as laminated pictures for communication, removable highlighter tape, Velcro and other “low-tech” devices.</p>	<p>B. Functional Performance: Specifically discuss the current level of performance in applicable areas of</p> <ul style="list-style-type: none"> • General ability and problem solving (reasoning, processing) • Attention and executive functioning (stamina, sustained attention, memory, processing speed, impulse control, activity level) • Communication (speech, language, assisted communication) • Social skills and behavior (interactions with others, responsiveness to services and accommodations, ability to request assistance, extra-curricular activities, confidence, persistence in the learning environment), • Independent living skills (self-care, leisure skills, personal safety, transportation, money skills) • Environmental access/mobility (assistive technology, mobility, transportation) • Self determination/self advocacy (ability to respectfully identify needs and articulate goals) • Career/employment (interests, experiences, exploration, aptitudes) • Medical or family issues/concerns <p>Identify <i>essential</i> accommodations, adaptations and/or assistive technology utilized in high school and why they were needed for functional performance described in the current level of performance.</p>
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<p>Note: It is highly recommended that student perspective and voice are incorporated as part the SOP. This section may be completed independently by the student or completed with the student through an interview. The student's contribution can help:</p> <ul style="list-style-type: none"> • Professionals complete the summary, • The student to better understand the impact of his/her disability on academic and functional performance in the postsecondary setting, <p>Postsecondary personnel to more clearly understand the student's strengths and impact of the disability on this student.</p>	<p><u>C. Student Perspective/Input (Optional/Highly recommended):</u></p> <p>Responses to the following questions should be included as part of the SOP:</p> <ol style="list-style-type: none"> 1. How does your disability affect your schoolwork and school activities (such as grades, relationships, assignments, projects, communication, time on tests, mobility, extra-curricular activities)? 2. In the past, what supports have been tried by school staff or by you to help you succeed in school (aids, adaptive equipment, physical accommodations, behavior supports, academic changes, other services)? 3. Which of these accommodations and supports have worked best for you? 4. Which of these accommodations and supports have not worked? 5. What strengths and needs should professionals know about you as you enter the postsecondary education or work setting?
<p>III. Recommendations for meeting postsecondary goals:</p> <p>(Indicate suggestions for accommodations, adaptive devices, assistive services, compensatory strategies and/or collateral support services to enhance access in the applicable post-high school environments listed.)</p>	<ul style="list-style-type: none"> • Education: College, Community and Technical College, Career and Technical Education/Vocational, Adult Education, Apprenticeship Programs • Employment (be specific to the focused area of interest for employment) • Independent Living • Community Participation
<p>Attachments:</p> <p>(Attach academic transcript, awards, certificates, credentials, relevant and most recent assessment data that clearly identify the student's disability or functional limitations and will assist in postsecondary planning.)</p>	<ul style="list-style-type: none"> • Transcripts, awards, certificates, credentials • Psychological/cognitive/adaptive behavior • Medical/physical/social skills/behavior analysis • Achievement/academics • Situational/simulated work experiences • Career interest/aptitude • Self determination • Communication • Observations • Assistive technology • Informal assessment • Other

Adapted from the Nationally Ratified
 Summary of Performance Model Template
 9/06 – Karen Ruddle, WVDE OSE
 Revised 12/08

SUMMARY OF PERFORMANCE

_____ County Schools

Date _____

Student Full Name _____

DOB _____

School _____

Age _____

Parent(s)/Guardian(s) _____

Grade _____

Address _____

WVEIS# _____

City/State: _____

Telephone _____

Additional Background Information (optional): _____

I. Postsecondary Goal(s)

Education/Training: _____

Employment: _____

Adult Living: _____

II. Summary of Performance

A. Academic Achievement: _____

B. Functional Performance: _____

C. Student Perspective (optional): Impact of disability: _____

Supports tried: _____

Supports that work: _____

Supports that did not work: _____

Strengths/Needs others should know: _____

III. Recommendations for Meeting Postsecondary Goal(s)

Education/Training: _____

Employment: _____

Adult Living: _____

Community Participation: _____

NOTE: Attach academic transcript and/or relevant assessment data to this form.

West Virginia Department of Education

July 2013

This is a sample letter to request an assistive technology evaluation. Send the letter to the Special Education Director by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)
(Insert your address)

(Insert Special Education Director's name), **Special Education Director**
(Insert county name) **County Schools**
(Insert address)

RE: *(Insert your child's full name)*, **a student at** *(Insert name of your child's school)* **School**

Dear Mr. or Ms. *(Insert last name of Special Education Director):*

I am the parent of *(Insert your child's full name)*, **a** *(Insert your child's grade)* **grade student at** *(Insert the name of your child's school)*. **I believe my child's education may benefit from the provision of an assistive technology device, software and/or service** *(here you could state a specific device, software and/or service if you have something specific in mind)*. **I am requesting that my child be evaluated.**

I understand that I am required to provide written permission in order to begin the evaluation. Please consider this request as written permission. I would be happy to talk with you about *(Insert child's first name)* **and answer any questions you may have. You can reach me during the day at** *(Insert daytime telephone number)*. **Thank you for your prompt attention to this request.**

Sincerely,

(Sign your name)

(Type your name)

Note: If your child currently has an IEP, the school district has sixty (60) days to perform the evaluation or must provide prior written notice within ten (10) days of their refusal and explain why.

CONSENT TO RELEASE EDUCATIONAL RECORDS FOR MEDICAID BILLING
_____ County

Student's Full Name _____

The county school district wishes to periodically apply for reimbursement for certain services provided to your child by accessing Medicaid or other publicly funded benefits. Medicaid reimbursement to county school districts is authorized by West Virginia Legislative Code §18-2-5b, effective March 15, 1990. These funds provide additional financial resources for the county's educational services.

In order for the county school district to apply for Medicaid reimbursement for certain services provided to your child, your consent to release information from your child's education records is requested. The following information may be released to the state Medicaid agency:

- Child's name, date of birth and address
- Service(s) provided
- Dates and times the service is provided at school
- Child's IEP goals that relate to these services
- Progress notes pertaining to the billing of services

This consent allows the school district to bill for special education and related services that are on your child's Individualized Education Program (IEP).

If you think another provider outside the school system may be billing your child's Medicaid benefits for the same services (for example, speech services) provided by the county school district, please notify your child's teacher, school principal or a county office administrator as soon as possible. The county school district will not duplicate the outside provider's Medicaid billing.

This consent may be withdrawn at any time. If consent is not withdrawn, the county school district will notify you of the continued billing of provided services for Medicaid reimbursement and remind you of all of your legal protections once a year. For the additional protections provided by the Individuals with Disabilities Education Act (IDEA), please refer to the annual *Notice to Parents – Parental Consent to Access Public Benefits or Insurance (E.g. Medicaid)*.

I give my consent to release information from my child's educational records for the purpose of Medicaid billing and for agency review of records for the duration of services. I understand and agree that the district may access my child's or parent's public benefits or insurance (e.g., Medicaid) to pay for IEP services covered by Medicaid. I have received a written notification from the county school district that explains my rights and legal protections.

Parent Signature: _____ Date: _____

Child's Medicaid Number: _____

Family Physician (optional): _____

West Virginia Department of Education

August 2014

SCHOOL BASED MEDICAID TARGETED CASE MANAGEMENT STUDENT ACKNOWLEDGEMENT FORM

_____ County

Student's Full Name _____

Medicaid Number _____

Date Of Birth _____

Effective Date _____

(Effective For One Year From This Date)

Targeted Case Management (TCM) services assist Medicaid eligible students in the target group to gain access to needed medical, behavioral health, social, educational and other services. This may include:

- A. Assessment: gathering information to be used in the development of an individualized education program (IEP)/Service Plan;
- B. IEP/Service Plan: developing an IEP/Service Plan;
- C. Linkage/Referral: linking and referring to services and supports identified in the student's IEP/Service Plan;
- D. Advocacy: advocating for the student to ensure continuity of services, integrated services and resources;
- E. Crisis Response Planning: ensuring that adequate and appropriate crisis response procedures are available to the student and identified in the IEP/Service Plan;
- F. IEP/Service Plan Evaluation: evaluating the appropriateness of the student's IEP/Service Plan and making appropriate modifications in services as necessary; and
- G. Monitoring and Follow Up: monitoring and following up on one of the above stated components.

As a school district, we wish to periodically apply (to bill for) Medicaid reimbursement for Targeted Case Management services provided to your child in the school setting.

In order for the school district to apply (to bill for) Medicaid reimbursement for Targeted Case Management services provided to your child, the school district needs to know if your child is receiving Targeted Case Management through another Targeted Case Management provider outside the school system.

If another provider outside the school system may be (is) billing your child's Medicaid benefits for the same Targeted Case Management service on the same date as the county school district, the county school district will not duplicate the outside provider's Medicaid billing. This acknowledgement will serve to notify your county school district to not bill for duplicate Targeted Case Management services provided by an outside provider.

If you have not given consent to release information from your child's educational records for the purpose of Medicaid billing, the county school district will not bill Medicaid for any services. If you have given consent, the consent may be withdrawn at any time. For the additional protections provided by the Individuals with Disabilities Education Act (IDEA), please refer to the annual *Notice to Parents – Parental Consent to Access Public Benefits or Insurance (e.g. Medicaid)*.

-
-
- Yes, my child is receiving Targeted Case Management Services outside the school system.
Please list the name of the agency: _____
 - No, I do not want my child to receive Targeted Case Management Services through the school system.
 - No, my child is not receiving Targeted Case Management Services outside the school system.
 - I acknowledge that TCM services provided by the district will be billed for Medicaid reimbursement.

Parent Signature: _____
WV-BMS-SBHS-01

Date: _____
Effective Date: September 2014

IEP Date: _____

Service Record – Targeted Case Management

Medicaid Number		Last Name		First Name	
WVEIS Number		Date of Birth		Diagnosis Code	School
County	Teacher Name (Print)	Month Service Provided		Procedure Code	
T1017					
Definition: T1017 = 15 minute unit. Services which assist Medicaid eligible recipients to gain access to the needed medical, behavioral, health, social and educational needs, etc.					
Types of Contact: 1. Face to Face 2. Correspondence 3. Telephone Contact					

Targeted Case Management Activities	
A	Assessment: The case manager ensures an on-going formal and informal process to collect and interpret information about student’s strengths, needs, resources and life goals. This process is used in the development of an individualized education program (IEP)/Service Plan.
B	IEP/Service Planning: The case manager ensures and facilitates the development of a comprehensive, IEP/Service Plan.
C	Linkage/Referral: The case manager ensures linkage to all internal and external services and supports identified in student’s IEP/Service Plan related to medically necessary service (PT, OT, ST, Health Care Plan, Behavior Intervention Plan).
D	Advocacy: The case manager’s advocacy refers to the actions undertaken on behalf of the student in order to ensure continuity of services, system flexibility, integrated services, proper utilization of facilities, and resources and accessibility to services.
E	Crisis Response Planning: The case manager must ensure that adequate and appropriate crisis response procedure(s) and accessibility are available to the student and identified in the IEP/Service Plan.
F	IEP Evaluation: The case manager continually evaluates the appropriateness of the student’s IEP/Service Plan and makes appropriate modifications, establish new linkages, or engage in other dispositions as necessary related to medically necessary service (PT, OT, ST, Health Care Plan, Behavior Intervention Plan).
G	Monitoring and Follow Up: The case manager monitors and follows up on one of the above stated components.

Enter the TCM activity letter under the appropriate dates during this calendar month.

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
TCM																															
TCM																															
TCM																															
Units																															

Signature

Date

**AMENDMENT TO THE IEP
WITHOUT CONVENING AN IEP TEAM MEETING**

_____ County Schools

The following change(s) amend the student's IEP dated _____.

Student's Full Name _____	Date of Amendment _____
School _____	Date of Birth _____
Parent/Guardian _____	Grade _____
Address _____	WVEIS# _____
City/State _____	Phone _____

The parent/adult student was contacted by the undersigned district personnel on _____ (date) and agreed to make a change(s) to the student's IEP without convening an IEP Team meeting. The district's proposed change(s) to the student's IEP pertain(s) to _____ based on _____. The reason(s) for the proposed change(s) is/are _____.

The district also considered _____; however, _____. Other factors relevant to this change include _____. The documented change(s) (addition(s), deletion(s) or substitution(s)) is/are outlined in detail below.

For **each Part** of the IEP affected by the change, document the corresponding change(s) and the initiation date(s).

Part	Change	Initiation

The parent/adult student has been advised a copy of the revised IEP with the amendments incorporated would be provided upon request. Enclosed please find: ___ a copy of the Amendment; **or** ___ a copy of the Amendment and the student's revised IEP.

Signature _____ Title/Position _____

Exceptional students and their parents have protections under the procedural safeguards. A copy of the Procedural Safeguards Brochure and assistance with understanding the provisions of the procedural safeguards may be obtained by contacting the Director of Special Education at _____, as appropriate, the local Parent Educator Resource Center at _____ and/or the West Virginia Department of Education, Office of Special Programs at 304.558.2696 or 1.800.642.8541.

NOTE: This form must be attached to the IEP being amended and all service providers responsible for implementing these changes must be informed of the change(s).

**AMENDMENT TO THE IEP
WITHOUT CONVENING AN IEP TEAM MEETING**

	ITEM	CLARIFICATIONS/INSTRUCTIONS
1	IEP Date	Enter the date of the current IEP subject to the amendment. *Note: An amendment does not change the date of the student's current IEP.
2	Student Information	Complete ALL fields containing county name and student demographic information.
3	Amendment Date	Enter the date on which the district and parent agreed to amend the IEP without convening a meeting. #3 & #4 should document the same date.
4	Contact Date	Enter the date the parent/adult student was contacted by the district to discuss the proposed change(s) to the IEP.
5	Proposed Action (PWN #1)	Describe, in general , the district's proposed change(s) to the IEP (e.g., <i>increase the student's speech therapy time, delete an accommodation no longer required by the student</i>).
6	Evaluation(s) (PWN #3)	List any evaluation procedures, assessment information, student records or reports the district used as a basis for the proposed change(s) (e.g., <i>Golman-Fristoe results and therapy logs, formative assessments and teacher observation data</i>).
7	Explanation/Reason(s) for the Change(s) (PWN #2)	Describe, in detail , the reasons for the change(s) to be made to the student's IEP (e.g., <i>to provide additional time for instruction, practice and generalization of the skills across school and home environments, student has mastered the skill after fading the accommodation</i>).
8	Other Options Considered and Reason(s) Rejected (PWN #4)	Describe any other option(s) considered and the reason(s) those option(s) were rejected (e.g., <i>maintain current level of speech therapy; however, current evaluations indicate need for additional therapy time, consideration of a less restrictive accommodation; however, the student performs the skills without the accommodation</i>).
9	Other Relevant Factors (PWN #5)	Describe any other factors relevant to the proposal, if applicable. (e.g., <i>the impact of the student's fluctuating hearing loss on articulation skills, none at this time</i>).
10	Part(s)	Designate the Part # (Section) of the IEP where the change will occur. Each Part affected by the change must be addressed (i.e., present level statements, annual goals and services).
11	Change(s)	Describe the exact change(s) as it will be written into the IEP.
12	Initiation Date (PWN Timeline)	Enter the date the change(s) will commence (must be 5 days from the date the district and parent agreed to amend the IEP without convening a meeting).
13	Provision of Copies to Parent	After advising the parent that a copy of the revised IEP with amendments incorporated would be provided upon request, denote by checkmark whether the parent was provided the amendment only or both the amendment and the revised IEP.
14	Signature/Title	Personnel completing the amendment process must sign the form, including title/position.
15	Procedural Safeguards (PWN #6 & 7)	A written statement of the procedural safeguards and sources to contact for a copy of and assistance in understanding the parent's/student's rights. Insert the phone numbers of the county's special education director and Parent Educator Resource Center, if appropriate.

How is a complaint investigated?

The OSP will:

- notify the county school district of the allegations in the complaint;
 - request from the district information, records or documentation needed for the investigation; and
 - notify the complainant in writing and provide an opportunity to submit additional information either orally or in writing.
- The OSP may:
- request answers to written questions;
 - conduct telephone or in-person interviews with people involved, including the person filing the complaint; and/or
 - conduct an on-site fact finding investigation.

What results may I expect?

The parents and the district will receive a report of the final results of the investigation. This letter will constitute the resolution of the complaint.

Possible findings include:

- the county school district is not following the laws or regulations and must correct the violation within a specific time, and/or
- the school district has met its responsibilities under federal or state laws or regulations and no corrective actions are necessary.

In the event the school district or the parent disagrees with the findings, either party may request mediation or a due process hearing regarding the complaint issues with the OSP.

If violations have occurred, the county district or public agency must submit documentation to the OSP to verify that the required corrective activities have been implemented. The case is closed if the documentation is acceptable.

If specified corrective activities are not implemented, the WVDE may recommend the use of the following enforcement sanctions alone or in combination:

- withhold all funds until the deficiencies are corrected;
- withhold any administrative funds, maintained by the WVDE, used for the salary of the special education director;
- redirect funds (e.g., target funds for specific activities);
- remove the ability to apply for any discretionary funds;
- cease funding for all subsequent years;
- request an audit of the agency's financial records; direct the administration of the agency's special education programs; and/or
- fine the agency on a daily and/or monthly basis until the deficiencies are corrected.

The OSP hopes this brochure has been useful to you in understanding the special education complaint process as a means for resolving your concerns.

State Complaint Process for Special Education



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James B. Phares, Ed.D.
State Superintendent of Schools

February 2013

West Virginia Department of Education
Office of Special Programs

Foreword

Federal regulations and West Virginia laws enable you to play an important role in the special education process. The decisions you make should be based on sound knowledge and a clear understanding of the rights and responsibilities set forth in the law. The West Virginia Department of Education, Office of Special Programs (OSP) encourages parents and districts to work together to resolve disputes before calling upon the formal dispute resolution processes identified in the law. However, when informal procedures fail to resolve the issue(s), the state complaint procedures provide parents, organizations and other individuals an important means of ensuring the educational needs of children with exceptionalities are met and any findings of noncompliance are corrected in a timely manner. This brochure provides an overview of the state complaint process identified in the federal regulations to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and Policy 2419: Regulations for the Education of Students with Exceptionalities.



James B. Phares, Ed.D.
State Superintendent of Schools

INTRODUCTION

Trust and open communications with your county school district are essential for a positive, long term partnership in the education of students with exceptionalities. If misunderstandings and/or problems arise, there are several ways to solve them.

First, you may want to discuss your concerns with the school personnel directly involved. If the problem is not resolved and you believe that special education regulations are not being followed, you may request mediation or file a formal state complaint. This brochure describes the special education state complaint process.

What is a state complaint?

A state complaint is a charge that special education laws or regulations are not being followed by a county school district or public agency. A complaint also may address a district's failure to implement a due process hearing decision.

Who may file a state complaint?

Any interested person may file a state complaint. This includes parents of eligible students, students 18 years or older, organizations, groups, school district employees or any individual residing in or outside the state. In addition, private school officials have the right to submit a complaint 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. A state complaint form is available on the OSP Web site at <http://wvde.state.wv.us/osp>.

What steps should you take before filing a state complaint?

1. Reasonable efforts should be made to resolve your concerns at the school or county level such as:
 - scheduling a conference with school personnel to discuss your concerns, and/or
 - making an appointment with the county director of special education and/or the county superintendent of schools.
2. Call the WVDE, Office of Special Programs for assistance at: 1-800-642-8541 or 304-558-2696.
3. Contact an agency or organization that provides information to parents of students with exceptionalities.

What must be included in a state complaint?

A complaint must:

- allege a violation that occurred not more than one year prior to the date the complaint is received in the OSP;
- be written and contain the original signature and contact information of the complainant (e.g., facsimiles/e-mails will not be accepted);

- specify the law or regulation that you believe has been violated;
- contain the facts on which the allegation is based including the following information when alleging violations to a specific child:
 - the name of the student and his/her school;
 - the address of the residence of the child;
 - the name of the county school district or public agency;
 - specific information regarding the alleged violation (e.g., dates and sequences of events, persons contacted and/or involved, meetings held, etc.); and
 - proposed resolution(s) to the issues.
- be forwarded to the county school district.

The complaint may include:

- a description of the efforts made to solve the problem informally, and/or
- copies of the relevant documents, notices, etc.

Where should I send my state complaint?

West Virginia Department of Education
Office of Special Programs
Building 6, Room 304
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330

What happens after a state complaint is received?

The OSP will:

- review the complaint for sufficiency;
- notify the complainant and the county school district that the complaint has been received;
- provide a copy of the complaint letter to the district, if not forwarded by the complainant; and
- provide an opportunity for the county school district and complainant to engage in early resolution.

**West Virginia Department of Education
Office of Special Programs
State Complaint Form**

Any interested person may file a complaint, including an individual or organization from out of state. This includes parents, students, if 18 years or older and school district employees. **The complaint must allege a violation(s) that occurred not more than one year prior to the date the complaint is received.**

Date _____

Part I: Complainant Information

Complainant's Name: _____

(Person/Agency Filing Complaint)

Address _____

City _____ State _____ Zip Code _____

Phone Number _____ Alternate Phone Number _____

Part II: Student Information

Student's Name _____

Last

First

Middle Name

Student's Date of Birth _____ Exceptionality _____

Parent's Name _____

(if different from the complainant)

Parent's Address _____

City _____ State _____ Zip Code _____

Home Phone _____ Work Phone _____ Cell Phone _____

School District _____ School Student Attends _____ Grade _____

Part III: Allegation Information (Use additional pages as needed.)

Statement of the violation(s): Provide an explanation of the law(s) or regulation(s) (Individuals with Disabilities Education Improvement Act (IDEA 2004), Policy 2419: *Regulations for the Education of Students with Exceptionalities*) that you believe the district has violated with regard to the student(s). (Please list each alleged violation individually.)

This is a sample letter to notify the school district that you disagree with your child's Individualized Education Program (IEP). Send this letter to the Special Education Director by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)
(Insert your address)

(Insert name of Special Education Director), Special Education Director
(Insert name of county) County Schools
(Insert address)

RE: Disagreement with IEP

Dear Mr. or Ms. *(Insert Special Education Director's last name)*:

I am the parent of *(Insert your child's full name)*, a student in the *(Insert your child's grade)* grade at *(Insert name of your child's school)*.

I attended an IEP meeting on *(Insert the date of the meeting)*. I am writing to inform you that I am in disagreement with other IEP team members. I disagree with *(BRIEFLY state the issues you are in disagreement about and the reason for each)*.

I am requesting another IEP meeting for my child in an effort to resolve *this/these issue(s)*. I will be available on *(list dates and times you are available)*. Please send me the written meeting notice as required.

Respectfully,

(Sign your name)

(Type your name)

Note: The school district has 21 days to schedule the requested IEP meeting. You must receive notice eight (8) days before the meeting. If the school district refuses to schedule another IEP meeting, they must provide prior written notice stating so within 5 days.

Who may request early resolution?

Either the special education director or designee, the parent or a student who has reached the age of majority may request early resolution to a state complaint by contacting the other party and conducting a conference at the local level.

What are the timelines for early resolution and complaint investigations?

There are several timelines that must be met by the OSP and the school district.

Complaints may be resolved at any time during the complaint investigation process. However, if the county school district and the parent reach an early resolution of all complaint allegations within 15 calendar days of being notified of the complaint or other timeline as specified by the OSP:

- The county school district is not required to submit to the OSP its written response to the allegations, and
- The OSP will not proceed with the complaint investigation and will consider the complaint resolved.

Any allegation that is unresolved by early resolution will be investigated by the OSP and a letter of findings issued in accordance with the required 60-day timeline.

For additional information:

West Virginia Department of Education
Office of Special Programs
Building 6, Room 304
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
Phone: 304.558.2696
800.642.8541

Early Resolution of State Complaints



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February 2013
West Virginia Department of Education
Office of Special Programs

Foreword

Communication between parents and county school districts results in partnerships that enhance the education of students. This brochure, "Early Resolution for State Complaints," has been developed to assist parents and students in learning about one of the options available for resolving a state complaint. It is intended to help parents ensure their children with exceptionalities receive a quality education that meets their needs.



James B. Phares, Ed.D.
State Superintendent of Schools

What is early resolution?

Early resolution is an informal conference involving the parent and the special education director or designee. The purpose of the conference is to:

- talk about the allegation(s) specified in the written complaint;
- discuss how the allegation(s) can be resolved by the county school district; and
- if agreement is reached, document how each allegation will be resolved on the Verification of Early Resolution form.

The Verification of Early Resolution form includes the following:

- a statement of each complaint allegation;
- the details of the resolution for each allegation;
- whether the parent and the district have agreed to the resolution for each allegation; and
- the signatures of both parties.



Why use early resolution?

Early resolution of state complaints is in the best interest of students and has benefits for both the parent and the county school district. Early resolution:

- provides an opportunity for the parent and district personnel to openly discuss the allegation(s);
- encourages a collaborative, problem solving approach;
- can result in a mutually developed solution; and
- requires less time to address and resolve the parent's complaint allegations.

Early resolution can also have the following positive results?

- an increased understanding of the other party's perspective(s);
- student needs are met in accordance with the views of both the district and the parent; and
- a partnership between the district and the parent is established for future problem-solving.

INTRODUCTION

Federal and state laws and regulations provide several dispute resolution options such as mediation, due process hearing and state complaints, when disagreements arise regarding the implementation of special education requirements and/or the provision of a free appropriate public education (FAPE) for students with exceptionalities. With regard to resolving a state complaint, mediation and/or early resolution may be used by parents and county school districts. The purpose of this brochure is to provide information specific to the early resolution of state complaints.

Why use mediation?

The mediation process provides the following benefits:

- offers a timely opportunity for discussion of differences;
- empowers parties to resolve their own differences and enhances future relationships;
- increases satisfaction with the outcome by both parties;
- unlike the resolution meeting, mediation is confidential; and
- is available at no cost to the parents and the school district.

What can be expected from mediation?

During mediation, parents and district personnel, with the help of the mediator, can expect to:

- state their concerns;
- discuss their differences;
- talk about how the differences can be settled;
- possibly reach an agreement; and
- receive written, signed copy of the agreement at the conclusion of the mediation, if an agreement is reached.

For additional information:

West Virginia Department of Education
 Office of Special Programs
 Building 6, Room 304
 1900 Kanawha Boulevard, East
 Charleston, West Virginia 25305-0330
 Phone: 304.558.2696
 800.642.8541

Mediation Process for Special Education



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February 2013
 West Virginia Department of Education
 Office of Special Programs

Foreword

Mediation is a voluntary process for school systems and families to resolve disagreements about the education of students with exceptionalities. Disagreements are resolved collaboratively, resulting in improved relationships among educators and families, therefore, improving outcomes for children and youth with exceptionalities.



James B. Phares, Ed.D.
State Superintendent of Schools

INTRODUCTION

Under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), special education mediation must be made available to parents of children and youth with exceptionalities. Federal and state laws require school systems and parents to collaborate in developing an Individualized Education Program (IEP) for each student who is eligible for special education services. Parents and educators may have different perspectives regarding a child's education. They may have different ideas about a child's strengths and educational needs. Open communication is essential for a positive, long term partnership. Mediation is a voluntary and confidential process that may be used by parents and educators to help resolve these issues if there are continuing disagreements about an eligible student's education.

This brochure, written for parents of children with exceptionalities and district personnel, presents important information regarding special education mediation. Parents and school districts are encouraged to use special education mediation to resolve disputes in a timely, non-adversarial manner. The West Virginia Department of Education (WVDE), Office of Special Programs (OSP), has a toll free number to obtain information about the mediation process.

1-800-642-8541 (V/TDD)

What is mediation?

Mediation is an informal, voluntary and confidential process in which an impartial third party (the mediator) provides an opportunity to the parties to problem-solve through discussion. Mediators assist parents and the school system in resolving disputes and reaching agreement on issues regarding the proposals or refusals to initiate or change the identification, evaluation, educational placement of the student and/or the provision of a free appropriate public education (FAPE). Mediators do not make decisions for the parties. Mediation may take place at anytime regardless of the filing of a due process and/or state complaint.

Is mediation required by federal or state law?

Yes. The IDEA requires the WVDE to make available the option of mediation to parents and school districts at anytime.

Although not required, another component of the mediation system is an optional meeting to encourage mediation. This meeting is conducted by a parent agency representative who provides information to the parents about mediation and its benefits.

Who pays the cost for mediation?

The WVDE bears the entire cost for the mediation process required under the IDEA. There are no costs to the parents or the school district.

Who may request mediation?

Mediation may be requested by:

- the parent, guardian or surrogate parent of a student with an exceptionalality;
- the student with an exceptionalality who has reached the age of majority; and/or
- the school district.

How is mediation requested?

A request for mediation may be initiated by contacting the school district or the WVDE. The request for mediation must be in writing on a mediation request form and contain an original signature.

Who conducts a mediation?

The mediation is conducted by a trained mediator who meets the following criteria:

- an impartial third party who is knowledgeable in special education law and skilled in problem – solving and interpersonal communication;
- an individual who is not an employee of the WVDE or the school district; and
- a mediator is assigned from the list of qualified mediators on a rotational basis.



What are the timelines for an expedited due process complaint?

In certain discipline cases, an expedited due process hearing must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing. Unless the parents and the school system agree in writing to waive the resolution meeting or agree to use mediation, a resolution meeting must occur within 7 calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

What if a due process hearing decision is not implemented?

The parent may file a complaint with the WVDE, OSP. The WVDE, OSP will conduct an investigation through the complaint process. A letter of findings will be issued within 60 calendar days of receipt of the parent's written complaint.

What if a due process hearing decision is not implemented?

A decision made in a due process hearing is final unless a party aggrieved by the decision brings a civil action.

Where should I send my request for a due process complaint?

West Virginia Department of Education
Office of Special Programs
Building 6, Room 304
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
Phone: 304.558.2696
800.642.8541

Due Process Hearings for Special Education



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2012-2013

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February 2013
West Virginia Department of Education
Office of Special Programs

Foreword

Laws and regulations help safeguard the partnership of parents of students with exceptionalities and educators in the special education process. Throughout identification, evaluation and placement, Parents participate by making referrals, providing input and consent for evaluation and initial placement and serving as important members of the Eligibility Committee (EC) and the Individualized Education Program (IEP) Team meeting. When parents and educators disagree, a due process complaint may be filed to resolve disputes between the parents and school district. The hearing officer renders a decision which determines whether the law has been violated and what remedies are available.



James B. Phares, Ed.D.
State Superintendent of Schools

Introduction

Special education laws and regulations ensure that all students with exceptionalities have available a Free Appropriate Public Education (FAPE). The West Virginia Department of Education (WVDE), Office of Special Programs (OSP), is required to receive due process complaints regarding the identification, evaluation, educational placement and/or provision of FAPE for exceptional students. Due process complaints and hearings are important procedural safeguards for parents and are required by federal law. This brochure describes the special education due process procedures available to parents and students with exceptionalities. The WVDE has a toll-free number to discuss the choices available in resolving concerns.

1-800-642-8541 (V/TDD)

Who may file a due process complaint?

A parent, an adult student with an exceptionality, a school district or an attorney representing a party may request a due process complaint regarding the school district's proposal or refusal to initiate or change the identification, evaluation, educational placement and/or the provision of FAPE to the student.

How do I file a due process complaint?

A due process complaint is filed by contacting the district superintendent or the WVDE. A due process complaint must be initiated within two years of the date the parent or district knew or should have known of the disputed decision or alleged action that forms the basis for the complaint.

The request for a due process complaint must be in writing with the original signature of the parent/adult student, his or her attorney or the school district representative. The request must be sent to the other party named in the due process complaint and the WVDE.

The request for a due process complaint must include all of the following information:

- the name of the student;
- the address of the student's residence;
- the name of the school the student is attending;
- available contact information in the case of a homeless student;
- a description of the nature of the student's problem, including facts relating to the proposed or refused initiation or change; and
- a proposed resolution of the problem to the extent known and available to the parent or the school district at the time.

How is a due process complaint assigned and scheduled?

Upon receipt of a due process complaint, the WVDE, OSP, will complete the following activities:

- select the hearing officer on a rotating basis, and
- notify the hearing officer of the assignment.

After assignment the hearing officer will complete the following activities:

- schedule the hearing with both parties, and
- make final decisions regarding the location and scheduling of the hearing, including extensions and any other procedures within the authority of the due process hearing officer.

What is the timeline for a due process complaint?

When a parent, an adult student with an exceptionality, or his or her attorney files a due process complaint, a resolution meeting shall be held within 15 calendar days. A due process hearing will be scheduled if no resolution is reached. Hearing timelines commence at this point.

A resolution meeting need not be held if both parties agree in writing to waive the resolution meeting or both parties agree to participate in mediation. If the school district files the complaint, a resolution meeting is not required.

What's a Parent to Do?

Statewide Testing or APTA?

Standard Diploma or Modified Diploma?

Once a student reaches high school, he or she begins to earn credits which count toward graduation with a **standard diploma**. Some advanced classes in middle school may also count as credits. Credits are based on the Content Standards and Objectives (CSO's), which are determined by the West Virginia State Legislature. CSO's lay out what a student is to be taught in each grade level, what is required to advance to the next grade, and eventually what counts as a credit toward a standard diploma.

Unfortunately, some students with disabilities are not able to learn at the level required by the CSO's. In such cases, the student's Individualized Education Program (IEP) team must decide if the student needs a modified curriculum, known as the Alternate Academic Achievement Standards (AAAS). The determination of whether the student will work toward the standard diploma or the modified diploma under the AAAS is generally made when the student begins high school, but can be made later.

The **West Virginia Statewide Test** is given to all students statewide who pursue the standard diploma in grades three through eleven. The statewide testing includes an Online Writing Assessment which measures the student's educational ability levels. Students with disabilities are occasionally administered the **Alternate Performance Task Assessment (APTA)** instead of the statewide test. Students should be given the APTA only if the student exhibits significant cognitive disabilities and is pursuing a modified diploma under the AAAS. It is important to note that students who take the statewide test can attain **either a standard or modified diploma**; however, students who take the APTA are **only eligible for a modified diploma**.

A modified diploma is awarded to students with disabilities who satisfactorily complete modified graduation requirements. These requirements are extensively modified versions of the CSO's that consist of functional academics and instruction in daily living skills. **A modified diploma is not the same as a standard diploma**. A student who receives a modified diploma cannot obtain the credits necessary to graduate with a standard diploma. Therefore, employers, vocational programs, and colleges typically do not accept students who have received a modified diploma.

Generally, when a student’s IEP team comes together to develop the IEP for what will be the student’s third grade year, the discussion of whether the student will be taking the state required statewide test comes up. Some school district staff might say to the family that it may be stressful or hard for the student to take the statewide and suggest that the student take the APTA. Keep in mind that the APTA is for the student who exhibits significant cognitive disabilities and is being instructed through AAAS – not the CSO’s. So, agreeing to the APTA testing opens the door for the future use of the AAAS in place of the CSO’s. In such a situation, the student will not work on the foundational skills that enable the student to progress through the CSO’s during high school.

There are times when the parents and the rest of the IEP team know that a student will not be able to learn the information contained in the CSO’s in order to graduate with a standard diploma. When this occurs, an IEP team can choose to start the use of the Alternate Academic Achievement Standards and APTA testing. If the parents and the rest of the IEP team are unsure and want to challenge the student by setting the bar a little higher, the student can be taught using the standard CSO’s. Even if the team knows the student will not score in the “Mastery” range on the statewide test, the team can still gauge if the student is progressing. However, there are times when a student seems to be caught in the middle.

Keep in mind that a school district is required to offer the least restrictive environment to students with disabilities as well as a variety of educational placements. The IEP team must first try the General Education Environment (GEE) with supports and services (such as co-teaching with a special education teacher in the GEE), then if the student is not successful other options can be tried (such as a resource room or a self-contained classroom). It is up to the parent and the other members of the IEP team to decide what is best for each individual student.

So, what’s a parent to do? The answer is found in the intent of the Individuals with Disabilities Education Act (IDEA) and West Virginia Policy 2419. Those laws require that an eligible student be provided with an Individualized Education Program (IEP) that meets the unique needs of the student through specially designed instruction. There is no clear cut answer. Parents and other members of the IEP team must ensure that the individual and unique needs of each student are met.



(800) 950-5250

wvadvocates.org

contact@wvadvocates.org

1207 Quarrier St Ste 400
Charleston, WV 25301

Chapter 4: Discipline

In this chapter:

- ✓ Introduction
- ✓ Placement
- ✓ Disciplinary Change of Placement
- ✓ Behavior Violations Involving Weapons, Illegal Drugs or Serious Bodily Injury
- ✓ Requesting An Expedited Due Process Hearing
- ✓ Discipline and Students Not Receiving Special Education Services
- ✓ Protections for Students Who Are Not Eligible for Special Education
- ✓ Use of Restraint
- ✓ Chapter 4 Reference Materials



Introduction

Children who are frustrated, bored, bullied, or limited in communicating their needs may exhibit behaviors that result in a disciplinary response by school personnel. It is important for parents and teachers to prevent situations that cause conflict or stress for the student. Parents should learn about the school's disciplinary policies and regulations. Parents can also work with the **Individual Education Program (IEP)** team members to understand and prevent behaviors from becoming problems.

A student's behavior may impede his/her learning or the learning of others. If so, the IEP team must consider the use of strategies, including positive behavioral supports and interventions, to address the behavior. If the IEP team determines that such services and supports are needed, they must be included in the IEP and implemented.

Students who are being disciplined by the district are entitled to all of the due process rights available under *West Virginia Code §18A-5-1a*. When the district is considering removing a student with a disability from his or her current educational placement for disciplinary reasons, the **IDEA** provides additional procedures and safeguards. The district must consider any unique circumstances to determine whether a change of placement is appropriate. These determinations are subject to due process and judicial review.

West Virginia Department of Education (WVDE) Policy 4373, Expected Behavior in Safe and Supportive Schools also addresses discipline in West Virginia schools. This policy became effective July 1, 2012.

Placement

Placement refers to the setting in which the student is receiving special education and related services. The child should be placed in their **Least Restrictive Environment (LRE)**. The student's placement is listed on his or her IEP as a percentage of time the student spends in the **General Educational Environment (GEE)** and/or **Special Education Environment (SEE)**.



Chapter 3 provides more information about **Placement** and the **Individualized Education Program (IEP)**.

When determining whether a change of placement is appropriate, the district must consider any unique circumstances on a case-by-case basis.

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.

In-school suspension is when a child is temporarily removed from his or her classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. In-school suspension is not considered a day of suspension as long as the student:

- has the opportunity to participate in the general curriculum;
- continues to receive services listed on the IEP; and
- participates with students without disabilities the same amount of time as in their current placement. Repetitive in-school suspension could be considered a pattern.

Portions of a school day that a student has been suspended may be considered a removal when determining whether there is a pattern of removals that constitutes a disciplinary change of placement.

A student with a disability can be suspended from the school bus. If transportation is listed as a service on the student's IEP, the school may provide another means of transportation for the student. However, if another means cannot be found and the student misses school, the suspension must be counted as a missed school day due to suspension.

If transportation is not listed on the student's IEP, the parent is responsible for getting the student to school during the suspension from the bus. In this instance, any days missed are days on which the student is considered absent and do not count as a missed school day due to suspension. However, if the student's behavior on the bus is similar to behavior in a classroom that is addressed in an IEP, the IEP team should address that behavior in the IEP and a positive behavior support plan.

When are removals not a change of placement?

- When a student with a disability is removed for up to **ten (10) consecutive school days in a school year;**
or
- **When a student with a disability has an initial ten (10) cumulative days** of removal, services do not need to be provided to a student with a disability unless services are provided to other suspended students without disabilities.

TIP

When a suspension is **not** a change of placement, the school district is **not** required to hold an **Individualized Education Program (IEP)** or **Manifestation Determination Review (MDR)** meeting. However, it is still important for parents to talk with school staff and advocate for appropriate services, including a review of the positive behavior support plan.

For each subsequent removal beyond ten (10) 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).



Chapter 3 provides more information about the **Manifestation Determination Review (MDR)** and the **Individualized Education Program (IEP)**.

In addition, if the **Manifestation Determination Review (MDR)** determines the **behavior is not a manifestation of the student's disability**, the district will:

- Determine appropriate disciplinary action, which may include procedures that are used with students without disabilities;
- Hold an IEP meeting to develop an IEP with educational services that allows the student to participate in the general educational curriculum, in another setting, and to progress toward meeting the goals set out in the student's IEP; and
- Provide, as appropriate, a **Functional Behavior Assessment (FBA)**, and behavior intervention services and modifications that address the behavior violation(s) so that it does not happen again.

TIP

A student could be suspended for three days for one incident, two days for another incident and then five days for another incident, resulting in a **total of ten (10) cumulative days** of suspension. The school is not required to provide the student with services. However, if the student is suspended again during that academic year (day #11), the school is required to provide the student with a **manifestation determination review (MDR)** meeting. If all the separate suspensions are for the same behavior (e.g., throwing a book when asked to complete a worksheet) then this is considered a pattern. The removal of a student for portions of a school day may be considered when determining if there is a pattern of removals.

Disciplinary Change of Placement

A **disciplinary change of placement** is a removal from the student's current educational placement for more than **ten (10) consecutive school days** or a series of removals that constitutes a pattern. A **pattern** is established when a series of removals totals more than **ten cumulative school days** in a school year and the student's behavior is similar to the behavior in previous incidents that resulted in removal. For example, if a student spits at a teacher on eleven (11) different occasions and is removed for one day each time, a pattern is established.

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.

A student who exhibits behaviors that become a pattern should have those behaviors addressed through an **FBA** and the development of a positive behavior support plan.



See the **Sample Letter to Request a Functional Behavioral Assessment** in the **reference materials** located in **Chapter 3**.

TIPS

- ❖ The **Functional Behavior Assessment (FBA)** is an assessment tool used by a trained person to better understand the meaning of behaviors. The FBA should provide ideas to teachers and parents about how to teach more appropriate ways for a student to express their wants and needs. A good FBA will study the places or situations where the behavior happens, look at the events that happen before and after, and try to find out events, times, people or situations likely to cause or trigger the behavior.
- ❖ **FBA** is a process for collecting information. This information is used to develop a **Positive Behavioral Interventions and Support (PBIS)** Plan. The FBA is a data collection process based on observation of the student in different settings. The FBA should **not** be a one page checklist discussed during the **Manifestation Determination Review (MDR)**.
- ❖ **Functional Behavior Assessments (FBA)** and **Positive Behavioral Interventions and Supports (PBIS)** plans should be developed by individuals with appropriate training. School districts will sometimes have PBIS specialists or a school psychologist who have the training necessary to lead a team through this process. If the school district does not have someone within the district appropriately trained in PBIS, then it should contract with someone from outside the school district to provide the service. The contracted person may need to continue working with the team for an extended period of time to provide training, monitor data, and update the **Positive Behavioral Interventions and Supports (PBIS)** plan until the school district is able to maintain the PBIS plan on their own.

Federal and state laws say it is illegal to discriminate against a person on the basis of disability. Parents are an equal member of the IEP team. Parents have a right to know the qualifications of school staff involved in making decisions about his or her child's placement. The IEP team must meet to develop or review the behavior intervention plan. The FBA should provide information about whether or not the behavior is related to the student's disability.

If a school district is considering changing a student's placement for disciplinary reasons, a **Manifestation Determination Review (MDR)** meeting is required to follow the MDR process. A manifestation determination review is a meeting of IEP team members (determined by the district and parent) including the parent(s), to review the relationship of the student's disability and the behavior resulting in disciplinary action. The team will determine if the behavior is related to the student's disability and review information in the student's file, the IEP, teacher observations, and important information from the parents.



See the **Discipline Flowchart** located at the end of this chapter.

Be sure to get your copies of all the documents from the MDR meeting.



See the **Manifestation Determination Review (MDR) Process** at the end of this chapter.

When the district considers disciplinary action that will result in a change of placement, the district must:

- Provide the parent(s) with same day written notice of the removal, date of suspension/removal, **Prior Written Notice (PWN)**, and the procedural safeguards notice of the disciplinary action to be taken; and
- Within **ten (10) school days** of any decision to change placement, meet with the parents and relevant IEP team members to conduct the manifestation determination review meeting.
- Change of placement must be documented on the Disciplinary Action Review Form (DARF).



See the **Disciplinary Action Review Form (DARF)** at the end of this chapter.

The MDR must determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or
- If the conduct in question was the direct result of the district's failure to implement the IEP.

If the MDR determines that either of the conditions described above were met, the student's conduct must be determined to be a manifestation of the student's disability, and the district must take immediate steps to address the issues.

The district must:

- Conduct an **Functional Behavior Assessment (FBA)** unless an **FBA** was conducted before the behavior, which resulted in the change of placement, occurred;
- Develop and implement a **Positive Behavioral Interventions and Supports (PBIS)** plan or a **Behavior Intervention Plan (BIP)**; or review the existing PBIS/BIP and revise as needed to address the current behavior(s); and
- 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 PBIS/BIP.



Chapter 3 provides more information on the **Functional Behavior Assessment (FBA)**, **Positive Behavioral Interventions and Supports (PBIS)** plans, and **Behavior Intervention Plans (BIP)**.

TIPS

- ❖ Be sure to get a copy of all documents discussed and/or developed at the **Manifestation Determination Review (MDR)** meeting.
- ❖ Suggested questions to ask the team members during the MDR meeting: 1) Did anyone go to the hospital or receive medical attention? 2) Did anyone miss any school after the occurrence? 3) Is there an incident report about your child's behavior, and may you have a copy?
- ❖ If your child has a behavior plan, question whether the plan was followed by school staff, and was the school staff appropriately trained in implementing the behavior plan? Sometimes school staff intervene during a behavioral incident and are not aware the student has a behavior plan, which results in their injury.

Behavior Violations Involving Weapons, Illegal Drugs or Serious Bodily Injury

A student with a disability can be removed to an **Interim Alternate Educational Setting (IAES)** regardless of whether the behavior is a manifestation of the student's disability for **forty-five (45) school days or less** if the student:

- Carries or possesses a weapon at school, on school premises, or at a school function; or
- 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
- Inflicts serious bodily injury to another person at school, on school premises, or at a school function.

West Virginia Policy 2419 explains that the following definitions must be used by school districts when removing students under special circumstances involving illegal drugs, weapons, or serious bodily injury:

- **Weapon** is a 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.

Policy 4373, Expected Behavior in Safe and Supportive Schools has other definitions of what is or is not considered a dangerous weapon.

If a student brings a firearm to school, law enforcement must be contacted pursuant to the Gun-Free Schools Act.

- **Illegal drug** is 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.

- **Serious bodily injury** is bodily injury that involves a substantial risk of death; extreme physical pain; or protracted and obvious disfigurement; or protracted loss or impairment of the function of the bodily member, organ or mental faculty.

According to Policy 2419, an **IAES** must enable the student to receive educational services, 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 FBA and behavioral intervention services and modifications to address the behavior violation so that it does not persist.

TIP

Keep in mind that the **Manifestation Determination Review (MDR)** meeting will determine the district's actions when the behavior violation involves weapons, illegal drugs or serious bodily injury. Some school district's MDR members may argue that the student has committed serious bodily injury to staff or another student as a means to move the student to an **Interim Alternate Education Setting (IAES)** for **45 calendar days**. You may need to question the team members as to whether the injury to staff or another student meets the definition as listed in Policy 2419 and West Virginia Code. **Being hit, bruised or scratched, or kicked may not meet the definition and should not result in the student being placed in an IAES.**

Requesting an Expedited Due Process Hearing

An expedited due process hearing can be requested if:

- The parent disagrees with:
 - The manifestation determination decision; or
 - Any decision of the IEP team regarding a change of placement during a disciplinary proceeding; or
 - The decision regarding the student's placement in an IAES.

OR

- The district believes that maintaining the current placement is substantially likely to result in injury to the student or to others.

An **expedited hearing** is conducted by a WVDE special education due process hearing officer and occurs within **twenty (20) school days** of the request. A decision is issued within **ten (10) school days** of the hearing. The hearing officer's decision may be appealed to state or federal district court.

Discipline and Students Not Receiving Special Education Services

If a student is not currently receiving special education services but a request for evaluation is made during the time the student is subject to disciplinary measures, the evaluation must be conducted in an expedited manner. Expedited manner means a shorter period of time than the typical evaluation timeline. While waiting on the evaluation, the student remains in the educational placement determined by the district officials. This placement may include suspension or expulsion without educational services if the district does not provide educational services to students without disabilities in similar circumstances.



Chapter 2 provides more information on **Evaluations**.

If the student is subsequently found eligible for special education the district will immediately:

- Hold an IEP team meeting to develop an IEP; **and**
- Conduct an MDR meeting.

If the behavior had a direct and substantial relationship to the student's disability, the disciplinary action must be set aside. Also, the student must be provided appropriate educational services in the LRE. This should include positive behavior supports.

If the behavior 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. However, he or she is still entitled to receive **Free and Appropriate Public Education (FAPE)**, which must be defined by the IEP team. **Educational services cannot cease for more than ten (10) 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.

If the **evaluation team** determines that the student is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students without disabilities who act out in similar ways.

Protections for Students Who Are Not Yet Eligible for Special Education

Sometimes a student who has not been determined eligible for special education services may violate a rule or behavior policy. However, that student may assert the protections of the IDEA, if the district had knowledge that he or she had a disability before the violation that resulted in disciplinary action.

Basis of Knowledge

The district will be said to have knowledge that a student has a disability if **one or more of the following** is true:

- The parent has expressed concern to district professional personnel that results in written documentation that the student may need special education and related services;

- The parent has requested in writing that the student be evaluated for special education; or
- 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.

No Basis of Knowledge

The district will be said **not** to have knowledge that a student has a disability if **one or more of the following** is true:

- An evaluation was given and a determination was made that the student did not have a disability;
- The parent did not give written consent for an evaluation; or
- The parent refused or revoked 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.

The district may report an alleged crime committed by a student with a disability to appropriate authorities. The IDEA does not prevent law enforcement or judicial authorities from exercising their responsibilities for crimes committed by a student with a disability.

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 their consideration. Generally, the release of records requires parental consent. Guidelines for the release of records are found in the **Family Educational Rights Privacy Act (FERPA)** and **West Virginia Board of Education Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data**.

Use of Restraint

WVDE Policy 4373 states, "Reasonable force may be used to restrain a student from hurting himself/herself or any other person or property." Furthermore, the policy states, "all students, including students with disabilities, must be treated with dignity and respect."

Restraint is defined as the use of physical force to significantly restrict the freedom of movement of all or a portion of a student's body. Restraints may be used in response to an emergency situation.

Emergency is a situation in which a student's behavior poses a threat of imminent, serious physical harm to the student or others or serious property destruction.

School personnel and/or independent contractors may use restraint in an emergency as defined above with the following limitations:

- **Prohibited procedures and maneuvers include any that:**
 - **restrict breathing;**
 - **place pressure or weight on the chest, lungs, sternum, diaphragm, back, neck or throat; or**
 - **may cause physical harm. Prone restraints are prohibited under any circumstance.**

- Restraint must be limited to the use of reasonable force necessary to address the emergency.
- Restraint must be stopped at any point when the emergency no longer exists.
- Restraint must be implemented in a manner as to protect the health and safety of the student and others.
- Restraint must **not** deprive the student of basic human necessities.
- **Mechanical restraint is prohibited** as an intervention or consequence for inappropriate behavior. The use of mechanical devices when applied for their intended purpose is not prohibited. Permitted mechanical restraints include seat belts or feeding tables.

West Virginia Code Chapter 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.** According to Policy 4373, this includes:

- **seclusion** or removal in which a student is left unsupervised in a dark area or in any space as an intervention or consequence for inappropriate behavior.
- hitting or striking a student on his or her body;
- requiring physical activity as a punishment (this does not apply to physical activity within the structure and context of extracurricular activities); and
- use of noxious stimuli (e.g. pepper spray), denial of food or water or other negative physical actions to control behavior.

School employees and/or independent contractors who, as determined by the principal, may need to use restraint must be provided annual training in the use of a nationally recognized restraint process. **This training must include prevention and de-escalation techniques and provide alternatives to the use of restraint.**

School personnel are required to provide comprehensive documentation and immediate notification on the use of restraint. The following details documentation and notification requirements:

- **Immediately following the restraint:** Within one (1) hour the principal or designee must be provided verbal and written notification that the restraint was used on a given student with a description of the restraint process used.
- **Same day:** A good faith effort must be made to verbally notify the parents/guardian regarding the use of restraint.
- **Within one (1) school day:** Written notification of the use of restraint must be mailed or otherwise provided to the parent/guardian.
- **Within one (1) school day:** Written documentation regarding the use of restraint must be placed in the student's official school record. This information must be available to determine the relationship of a student's behavior as it impacts the student's learning and/or the need for revision of a PBIS plan.

Written notification to the parent/guardian and documentation in the student's official record must include:

- Name of the student;
- Name of staff member(s) administering the restraint;
- Date of the restraint;
- Time the restraint began and ended;
- Narrative that describes antecedents, triggers, problem behavior(s), and rationale for use of restraint;

- Efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
- Documentation of all parental contact and notification efforts.

In May 2012, the **U.S. Department of Education (DOE)** released the ***Restraint and Seclusion: Resource Document***. The DOE has identified **fifteen (15) principles** that should be considered as a framework for developing and implementing restraint and seclusion policies and procedures. The fifteen (15) principles are:

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
2. Schools should never use mechanical restraints to restrict a child’s freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement.
3. Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective, and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
5. Any behavioral intervention must be consistent with the child’s rights to be treated with dignity and to be free from abuse.
6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
7. Restraint or seclusion should never be used in a manner that restricts a child’s breathing or harms the child.
8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.
9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.
11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
12. Parents should be informed of the policies on restraint and seclusion at their child’s school or other educational setting, as well as applicable Federal, State, or local laws.
13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.

15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

The *Restraint and Seclusion: Resource Document* is at <http://www2.ed.gov/policy/seclusion/index.html>

TASH is an international organization that advocates for human rights and inclusion for people with significant disabilities and support needs. TASH published *Shouldn't School Be Safe?* This publication was developed by parents for parents in response to repeated requests for a practical guide to keeping school children safe from restraint, seclusion and other aversive practices.

One topic discussed in this publication is prevention. This publication can be found at <https://tash.org/blog/2011/05/12/tash-offers-free-parent-guide-on-restraint-and-seclusion-shouldnt-school-be-safe/>. More resources can be found on TASH's website at: <https://tash.org/?s=seclusion+and+restraint>.

There are six things parents can do to help prevent the use of restraint:

1. Parents should work with their child's IEP team to create a strong, positive IEP and PBIS plan. Parents need to make sure the IEP details safe and positive ways that teachers and other school staff respond to their child's needs and any potentially challenging behavior. If teachers require special training and support to implement any items on the IEP, make sure this is included in the IEP with specified timeframes.
2. Do **not** allow restraint practices to be specified and/or permitted through the IEP or PBIS plan. Parents may be told that restraint must be written into the IEP to allow for emergency usage. Schools do not need parental permission to use restraint in an emergency situation.
3. Ask for a copy of any policies that address the use of restraint (*West Virginia Policy 4373, Expected Behavior in Safe and Supportive Schools*). In addition, ask for a copy of any policies that address crisis intervention and safe, proactive responses that the school is prepared to implement for all students.
4. Be aware that restraint is often referred to in terms that may be unfamiliar to parents. For example, holding, restrictive procedure, restricting movement, limiting movement, physical support, or hands-on. Parents should carefully and completely read any forms they are asked to sign. Parents should ask questions and not sign anything they do not fully understand.
5. If possible, parents should always attend IEP meetings with a trusted support person who knows the system well and can offer support and advice.
6. Parents have five strong legal arguments against the use of restraint in their child's IEP. Parents need to be familiar with these and know how and when to use them.



See the **No Restraint Letter** at the end of this chapter.

According to TASH's *Shouldn't School Be Safe?*, the five strong legal arguments against the inclusion of restraint in a student's IEP are:

1. **Presumption in favor of positive interventions.** The IDEA has created a presumption in favor of positive behavioral interventions. The IDEA requires the student's IEP team to "consider, when appropriate, strategies – including positive behavioral interventions, strategies, and supports – to address that behavior." Congress gave this approach most favored intervention status.

2. **Requirement for an FBA, which is a process specifically designed to lead to positive interventions and supports.** Congress further strengthened this presumption in favor of positive interventions by specifying the requirement for an FBA.
3. **Requirement for evidence-based practices.** The *No Child Left Behind Act (NCLB)* requires educational programs and practices to be founded on scientifically-based research. There is a lack of evidence that restraint offers a safe means of teaching desirable, self-directed behavior that a child can maintain over the long term. The research also shows that restraint offers no therapeutic value, can increase problematic behavior, and decrease positive, pro-social behavior. Safe, positive methods of changing and redirecting behavior are well documented in scientifically-based research.
4. **Prohibitions against restraint for staff convenience, or as a coercion, punishment or retaliation, as codified in various school district policies and/or state laws and regulations.** Parents need to educate themselves on any prohibitory language and procedures that are in place by regulation or statute. When such prohibitions are in place, these will further reduce the available justifications for their use.
5. **Requirement that a student receive Free and Appropriate Public Education (FAPE).** The use of restraint may lead to violations of the FAPE provisions of IDEA. Under IDEA, an appropriate special education program must be designed to provide the student with meaningful educational benefit. Students cannot learn meaningful lessons about alternative ways of communicating and interacting when the school responds to his/her challenging behaviors with restraint.

TIPS

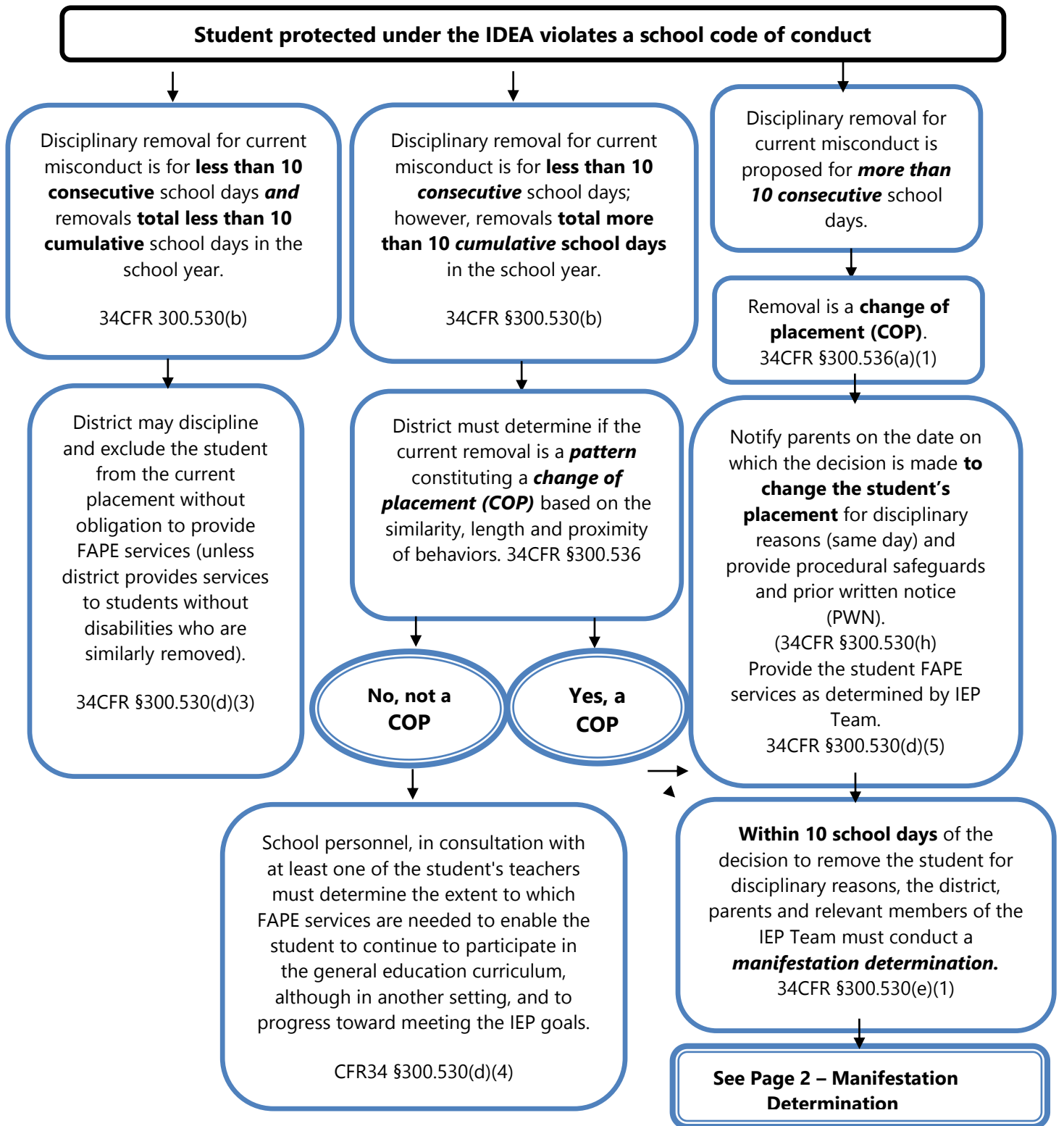
- ❖ You can back up the positive content of your child's **Individualized Education Program (IEP)** with a "No Restraint Letter." Many parents have used this letter, designed by the Respect ABILITY Law Center, to assure that the school is aware of their position on restraints. **Visit the Respect ABILITY website at <http://respectabilitylawcenter.com/>.**
- ❖ Back up the "No Restraint Letter" with letters from your child's medical doctor or other relevant health care professional stating why restraint techniques pose a health and safety risk to your child.
- ❖ Do **not** allow the use of restraint, even for "emergencies," to be included in an IEP or positive behavior support plan.
- ❖ You can ask to see the documentation certifying the staff has been trained on the method used for restraint.

Chapter 4 Reference Materials

The following documents are referenced in Chapter 4:

- Discipline Flowchart
- Disciplinary Action Review Form
- No Restraint Letter

**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 student's disability? 34CFR §300.530(e)

Yes to Either

No to

Student's conduct **is** a manifestation of his/her disability. 34CFR §300.530(e)

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. 34CFR §300.530(e)(3)

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 in another setting, and progress toward meeting the IEP goals. 34CFR §300.530(d)(i)

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,

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)(ii)

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. 34CFR §300.530(g)

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)

DISCIPLINARY ACTION REVIEW FORM

_____ County

Student's Full Name _____	Date _____
School _____	Date of Birth _____
Parent(s)/Guardian(s) _____	Grade _____
Address _____	WVEIS# _____
City/State _____	Telephone _____

Section 1: If the student meets one or more of the following criteria, proceed to Section 2.

- ___ at the time of the incident, the student had a disability (IDEA or 504).
- ___ the student is in the multidisciplinary evaluation process.
- ___ the parent(s) has/have expressed in writing to supervisory personnel that the student may be in need of special education and related services.
- ___ the parent(s) has/have requested in writing a multidisciplinary evaluation.
- ___ the student's teacher or other district personnel have expressed concerns about a pattern of behavior to the district's director of special education or other district supervisory personnel.

Section 2: The student's disciplinary removal on _____ is a *disciplinary change of placement* if the criteria in either A OR B are met: _____ Date(s) _____

A. ___ a removal for more than 10 consecutive school days.

OR

B. ___ a series of removals that constitutes a pattern as established by meeting **ALL** three criteria:

- More than 10 cumulative school days; **AND**
- Similarity of behaviors; **AND**
- Length of each removal and proximity of removals to one another.

Total # days removed to date: _____

If either A **OR** B is met, a ***disciplinary change of placement has occurred***. Document that all of the following were provided to the parent on the **SAME DAY**: ___ Written Notice of Suspension ___ Procedural Safeguards Brochure ___ Prior Written Notice.

Document the date provided: _____ and the method provided: ___ hand-delivered ___ emailed/faxed.

Proceed to Section 3, as a Manifestation Determination is required at this time.

If **neither** A nor B is met, a ***disciplinary change of placement has not occurred***.

Proceed to Section 5: Consultation, as a Manifestation Determination is NOT APPLICABLE at this time.

Section 3: A Manifestation Determination was conducted on _____ (within 10 school days) and the following documentation was reviewed by the team: _____

Incident report ___ IEP/504 Plan ___ Teacher observation(s) ___ Attendance report ___ Parent information ___ FBA/BIP

___ Discipline record ___ Evaluation information ___ Student schedule ___ Progress reports ___ Other _____

After reviewing the above documentation, the team must respond to the following statements:

Yes No The conduct in question was caused by, or had a direct and substantial relationship to the student's disability.

Yes No The conduct in question was a direct result of the district's failure to implement the IEP.

If **Yes** to either statement, the conduct in question is a manifestation of the student's disability and the team must: 1) conduct a FBA and develop a BIP, if one has not been completed; **or** 2) review the existing BIP and revise 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 determined by the IEP Team. If **No**, refer to Policy 2419, Chapter 7, Section 2.B.

Section 4: Manifestation Determination: Relevant IEP Team members as determined by the district and parent.

Signature: _____ Position: _____

Signature: _____ Position: _____

Signature: _____ Position: _____

Signature: _____ Position: _____

Section 5: Actions When Not a Change of Placement: Document that school personnel have **consulted** with at least one of the student's teachers to 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.

Extent of Services: _____

_____ **Initials: Administrator** _____ **Teacher** _____

NO RESTRAINT LETTER

PARENTS NAME
ADDRESS
CITY, STATE ZIP CODE
TELEPHONE NUMBER

Date

(Name of Special Education Director)

(Name of School District)

(Address of School)

Dear (Name of Special Education Director):

Re: child's name and birth date

Dear Special Education Director;

My child, **child's name**, is a _____ grade student at _____ school. **Insert child's name** has **insert disability** and has received special education services since **insert grade or age**.

We are concerned that **insert child's name's** behavior challenges now are being or might be addressed in part through the use of seclusion, physical management or restraint. I have not authorized and will not consent to any activity that involves physically or mechanically restraining my child while at school or going to and from school. I know that special education law requires the use of functional assessments of behavior and positive behavior support plans to address behavior challenges. If the school feels **insert child's name's** behavior is such that seclusion, physical management or restraints are being considered or used, it is obvious to me that we need to follow the law, do the assessment and develop a positive behavior support plan.

I am sure you are aware of the number of news reports in recent months highlighting the death of children with disabilities during or after having been secluded, physically managed or restrained. Given that special education law requires the development of behavior plans, and given the known risks to children – and to **insert child's name** – of the use of seclusion and restraint, this letter is official notice that I will weigh all legal options if these activities against **insert child's name** are not terminated immediately, pursuant to *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998), and *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

You may consider this letter a request to convene a behavior support team meeting to discuss **insert child's name's** behavior and possible approaches to address **his/her** particular needs. You also may consider this letter my request and consent for the performance of a functional assessment of behavior across environments and across time, provided that I am informed in advance that the functional

assessment of behavior is going to be conducted and am permitted to participate in the development and implementation of the assessment.

I want to work with you and with **insert child's name's** teachers and professionals at ____ school to be sure that **insert child's name** learns to develop positive behavioral skills in an environment that is safe for **him/her**, for **his/her** peers and for school personnel. I am certain that you also share my concern for student safety where seclusion or physical intervention has the potential to result in the student's death. I, like you, want my child's school to be a safe and secure environment where all students can learn. I want to work with you to help create that environment for **insert child's name**.

Sincerely,

(Your name)

(Your address)

(Your telephone number)

cc: Insert name of school superintendent
Insert name of state protection and advocacy system
Insert name of state education department/compliance

Chapter 5: Administration of Services

In this chapter:

- ✓ Introduction
- ✓ Initiation of Services
- ✓ Provision of IEP Information
- ✓ Provision of Services
- ✓ Provision of Staff
- ✓ Reference Materials for Chapter 5



Introduction

Administration of services refers to the timelines, assurances and requirements for school personnel (including regular educators) in carrying out the student's **Individualized Education Program (IEP)** and providing a **Free and Appropriate Education (FAPE)**. School districts must have the capacity to adequately educate and support all of their students. Students have a right to receive educational supports and related services identified in their IEP promptly by qualified staff.

Each school district is responsible for providing the special education and related services necessary to implement each student's IEP. This chapter will discuss the initiation of IEP services, the requirements to ensure all educators have access to the IEP, what the district is responsible for in the provision of services, and the requirements for providing adequate and qualified staff necessary to carry out the IEP.

Initiation of Services

When is an IEP active? An IEP must be in effect prior to the provision of special education and related services. Services for initial IEPs must be implemented as soon as possible. Short delays in the immediate initiation of services may be needed during the school year to allow the school district to make arrangements for the services, but these delays should not exceed **fifteen (15) calendar days**.

If the IEP team determines the student needs **Extended School Year (ESY)** and/or other services during the summer, these services must be provided. Otherwise, the implementation of the IEP will begin in the fall. Each student who receives special education and related services must have a current IEP in effect at the beginning of each school year.

For a preschool student, the IEP must be in effect by the child's third birthday. Similar provisions are in place for ESY and other services provided during the summer.

Provision of IEP Information

Who gets a copy of the IEP? The IEP must be **accessible** to each general education teacher, special education teacher, related service provider and other service providers who are responsible for its implementation. Each teacher and provider must be informed of their specific responsibilities related to implementing the student's IEP.

Under state law, the general education teacher is entitled to receive a signed copy of the IEP **prior to** the student's placement, or when the student's IEP requires adjustment in the curriculum, the instruction, or the services (including modifications and supports) to be provided by the teacher.

TIP

A parent should ask during the **Individualized Education Program (IEP)** meeting, "Who will distribute the IEP to all appropriate personnel?"

Provision of Services

What type of services must the school district provide? The school district **must** provide:

- A continuum (range) of service options in order to respond to the intensity and severity of student needs;
- Services in school facilities that serve age-appropriate peers without disabilities;
- Classrooms for eligible school-age students with disabilities in close proximity to classrooms for age-appropriate peers without disabilities;
- Classrooms for eligible students with disabilities that are adequate and comparable to the classrooms for students without disabilities;
- Classrooms/facilities for eligible students with disabilities with physical and/or sensory impairments that are in compliance, to the extent necessary, with the requirements of various federal and state laws and codes;
- Transportation, specially designed if necessary, for all students with disabilities;
- Appropriate grouping of students with disabilities 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 disability;
- 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 device worn by students in schools in accordance with procedures to assure they are working;
- Assistive technology devices (and maintenance) or assistive technology services, or both, 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 in a student’s home or in other settings if the student’s IEP Team determines that the student needs access to those devices in order to receive **Free and Appropriate Public Education (FAPE)**; and
- Services for young children in the **least restrictive environment (LRE)**, which includes utilizing approved participating partners in West Virginia Pre-K. The socioeconomic level, ability and/or funding streams should not be viewed as deterrents to providing fully inclusive programs.

When appropriate, the school district must provide parents information regarding the West Virginia School for the Deaf and Blind.

Provision of Staff

Qualified Personnel

What does “highly qualified personnel” mean? Each school district must provide highly qualified personnel. *Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessionals Personnel* conforms with definitions for “qualified personnel” in *No Child Left Behind (NCLB) Act of 2001* and in the **IDEA**.

Policy 5202 defines “highly qualified teacher” as one who:

- holds a bachelor’s degree or higher;
- meets state certification requirements, **and**
- demonstrates subject matter competency.

West Virginia Code §18-20-1c addresses “integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to the affected classroom teacher.”

Specific training requirements for personnel can be found in Policy 2419, Chapter 9 – General Supervision and Accountability for Performance and Compliance.

TIPS

- ❖ You (and your child) have the right to request training for any and all staff providing services for your child.
- ❖ Whenever possible, training must be provided prior to the student’s placement.
- ❖ When prior training is not possible, it must be provided no later than **ten (10) calendar days** following the placement of the student in the general education classroom.
- ❖ Unavoidable delays in providing training must not result in the student being excluded from class.

An IEP may specify training for general education teachers to assist them in implementing the IEP goals and objectives. The 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 disability needs. The general education teacher is entitled to request training regarding the integrated classroom program and additional individualized training developed by the district to prepare to meet the needs of an individual student.

TIP

School districts may hire the most highly qualified applicant for a position, even if that person lacks the required credentials. However, that person must be working to attain appropriate credentials. If a teacher does not currently have the appropriate credentials or training required to implement an IEP, a parent may, during the IEP meeting, request consultative services be provided to the under-qualified teacher by someone who does possess the appropriate training. The consultative services would be added to the “Services” page of the student’s IEP.

Adequate Staff

What does adequate staff mean? It is the responsibility of the school 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.

Highly qualified teachers and/or licensed therapists must design and provide initial or original instruction. **Support personnel** provide reinforcement and practice of previously taught skills or content, but they **cannot provide new instruction to students**.

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.



For information about one to one aides, see **My Child Needs a One to One Aide** at the end of this chapter.

For more information on Administration of Services go to:

- West Virginia Policy 5202 on the West Virginia Department of Education (WVDE) website, <http://wvde.state.wv.us/policies/>.
- West Virginia Policy 2419, “Administration Services” section, provides more detailed information, including class size and student/teacher ratios. The requirements vary depending on a student’s disability.

Chapter 5 Reference Materials

The following documents are referenced in Chapter 5:

- My Child Needs a One to One Aide

My child needs a one to one aide!

Parents often contact WVA requesting assistance with obtaining a one to one aide for their child at school. One to one aides are also known as Paraprofessionals or may be referred to on the Individualized Education Program (IEP) as adult assistance or adult supervision. Parents might tell WVA that their child needs help in school with things like toileting, staying on task while working on assignments, or that they need an aide for safety concerns.

Parents sometimes get their child's doctor to write a "prescription" for a one to one aide at school. The IEP team determines the student's need for a one to one aide, not a doctor who writes a prescription. Parents can obtain evaluations and/or letters from professionals such as doctors, psychologists or behavior specialists. The evaluations and/or letters should specifically discuss the child's need for a one to one aide and can be presented to and must be considered by the IEP team.

School districts are reluctant to provide one to one aides for an individual student. School staff express concern during IEP meetings that the student will become dependent on the aide and the student will not learn to do things on their own. Sometimes the school staff will even state that they cannot provide a one to one aide for financial reasons.

During an IEP meeting the team will discuss the educational placement of a student. The need for a one to one aide should not impact the student's educational placement. It may be that a one to one aide is the accommodation that provides the student access to the educational environment. There are very clear rules regarding a student's placement in the Individuals with Disabilities Education Act (IDEA) and West Virginia's Regulations for the Education of Students with Exceptionalities: Policy 2419. Students must be placed in what is called the least restrictive environment that meets that individual student's needs. A student's IEP team, through IEP development, should determine if the student will progress in the general education environment (GEE) before moving the student to a special education environment (SEE), such as a resource room or self-contained classroom, either part time or full time.

The IEP must be written in a manner that shows your child requires a one to one aide level of support in order for them to benefit from their education. Your child may need a one to one aide if your child requires assistance with things such as:

- Hand over hand prompting
- Adult assistance with toileting
- Safety concerns that require constant adult supervision
- Implementation of a Positive Behavioral Interventions and Supports (PBIS) plan that requires:
 - o Immediate redirection or prompting
 - o Immediate positive reward (from the reward chart) upon completion of the targeted task
 - o Removal from the classroom for a break such as a sensory break or a walk

If your child has any of these types of needs, they should be reflected on your child's IEP.

During the IEP meeting, members might ask questions such as:

- Who will be there to carry out the IEP and/or PBIS plan?
- Does the IEP indicate the need for the level of support of a one to one aide?

These are questions which should be discussed when the IEP team reach the Services page of the IEP. School staff generally will not put "paraprofessional" or "one to one aide" on the Services page, but will list "adult supervision" or "constant adult supervision" instead. **This is not the same as a one to one aide.** Keep in mind that the IEP document is supposed to list the services that a student with a disability requires above and beyond what is typically offered to a student without a disability.

The school **may** elect to use more than one employee to carry out the "adult supervision" listed on a student's IEP. In some situations this can work effectively. Using more than one person may help the student and prevent

them from becoming too dependent on one person. It can also keep an aide from becoming too familiar with the student, and perhaps not noticing inappropriate behaviors, or discouraging the student from completing tasks independently.

Sometimes parents are not pleased with having more than one person provide “adult supervision” because they feel their child needs the consistency of one well-trained individual to provide support in all educational environments. If multiple staff work with your child, you should document when problems arise. Your documentation should include the date, time, school staff and details of any particular complaint or problem. Documentation may be used to show that:

- one or more staff may not be properly trained;
- staff are not following the IEP;
- your child is exhibiting a loss of skills; or
- having multiple staff isn’t helping your child progress toward educational goals.

Your child may require a one to one aide in order to access the general education curriculum. Your child may be able to absorb information being provided verbally by a teacher in a classroom, but need assistance with things like organization, answering questions, and getting started on an assignment.

During an IEP meeting, you can present the documentation you have collected as proof that using multiple staff is not working and to support your request for a one to one aide. If the IEP team refuses to provide a one to one aide, you should request Prior Written Notice (PWN). Once you receive the PWN, you can file a state complaint with the West Virginia Department of Education to address the denial of your request.

School districts cannot have a policy stating that they do not assign one to one aides or they cannot afford to provide a student with a one to one aide. The IEP team must consider the needs of each individual student in order to determine whether a student requires the support of a one to one aide in

order to access their education. A one to one aide might be the “accommodation” that assists a student to access information in the classroom and demonstrate their ability to learn.

It is often very difficult for parents to think about their child functioning in a school setting without assistance. However, parents and educators should work together to promote as much independence as possible for the student, while ensuring that they are able to fully access their education.



Chapter 6: Procedural Safeguards

In this chapter:

- ✓ Introduction
- ✓ Types of Notices
- ✓ Parental Participation
- ✓ Informed Consent
- ✓ Independent Educational Evaluations (IEE)
- ✓ Surrogate Parents
- ✓ Adult Students and the Transfer of Rights
- ✓ Confidentiality and Access to Records
- ✓ Chapter 6 Reference Materials

Disclaimer: Not all of the Procedural Safeguards are discussed in this chapter. To see all of your Procedural Safeguards, refer to West Virginia Policy 2419 or the booklet provided to you by your school district.



Introduction

Procedural safeguards are intended to ensure a student's right to a free appropriate public education (FAPE). They protect the educational rights of students with disabilities who need changes in how their educational services are provided in order to meet their individual needs. Procedural safeguards are required to be provided to students by the **IDEA** and **West Virginia Policy 2419**.

Procedural safeguards, under the IDEA, entitle parents to be equal partners in making decisions about their child's education, especially when changes or improvements are needed in the student's educational programs and services. Parents have the right to attend all meetings, examine their child's records or request an **Independent Education Evaluation (IEE)** of their child.

All notices must be written in the native language or mode of communication of the parent, and must be written in an easily understandable manner. The district must maintain written evidence that these requirements have been met.

IDEA and Policy 2419 require three types of notice: 1) Procedural Safeguards Notice; 2) Prior Written Notice (PWN); and 3) Notice of Meeting. All must meet general requirements and additional criteria specific to the type of notice.

Types of Notice

Procedural Safeguards Notice

A **Procedural Safeguards Notice** contains written explanations of parent and student rights regarding a student's educational services. Parents are informed of the extensive procedural safeguards through the ***Procedural Safeguards Available to Parents and Students with Exceptionalities*** document. The procedural safeguards notice must contain information on the following:

- Independent Educational Evaluation (IEE);
- Prior Written Notice (PWN);
- Parent/adult student consent;
- Access to educational records;
- The opportunity to resolve disagreements through the due process complaint or the state complaint process, including timelines, early resolution opportunities, and the difference between the due process and state complaint procedures;
- The availability of mediation;
- A student's placement while waiting for a due process decision;
- Procedures for students who are subject to an interim alternative educational setting (IAES);
- Requirements for placement by parents of students in private schools at public expense;
- Due process hearings;
- Civil actions; and
- Attorneys' fees.



Chapter 2 describes the **Independent Education Evaluation (IEE)**.

A copy of the Procedural Safeguards Notice must be provided at least once per school year (July 1 through June 30). In addition, the Procedural Safeguards Notice must also be provided:

- Upon an initial referral for special education evaluation by the parent or whoever made the referral;
- Upon the first filing of a due process complaint;
- When filing a state complaint;
- When a disciplinary removal results in a change of placement; or
- When a parent requests a copy.

TIP

Remember that one of your Procedural Safeguards is the right to access and review your child's educational records.

Prior Written Notice

A Prior Written Notice (PWN) is the act of informing a parent, in writing, before the district proposes or refuses to initiate or change the student's identification, the evaluation, educational placement, or provision of a FAPE. PWN must be provided within a reasonable timeframe. The PWN serves two (2) purposes:

1. To provide information so that the parent is able to fully understand the school district's proposed action(s) or refused action(s) and to make informed decisions, if necessary; and
2. To provide documentation for discussion and problem solving.

PWN **must** contain the following information:

- A description of the action proposed or refused by the school district;
- An explanation of why the school district proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the school district used when making its decision about the proposed or refused action;
- A description of other options the **Individualized Education Program (IEP)** team considered **and** the reasons why those options were rejected;
- A description of other factors relevant to the school district's proposal or refusal;
- A statement that the parent 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
- Who to contact for help in understanding the Procedural Safeguards Notice.

If the district and the parent agree, PWN must be provided and services may be initiated within a reasonable time, which may be fewer than five (5) days.

Disciplinary removals must be provided on the same day the decision to remove the student is made.

TIPS

- ❖ **Prior Written Notice (PWN)** is one of a parent's most important advocacy tools. Make sure you are getting PWN when you are supposed to be receiving them.
- ❖ If the school district does not provide all of the information required in the PWN, this may be an issue for a state complaint.
- ❖ PWN is sometimes written using broad, general statements not specific to the service requested or refused. There may be times or circumstances when you want to inform the team of your intention to request PWN, prior to making this request in writing. This will allow you to specifically discuss what you requested or refused during the **Individualized Education Program (IEP)** meeting and what you were told by the team members.
- ❖ Remember, once you have received your PWN from the school district, the next step could be to file a state complaint on the issue that you are in disagreement about with the school district.

An example of PWN is:

A parent made a request for a paraprofessional (one-to-one aide) for a student in the **General Education Environment (GEE)** and the IEP Team refused the request. The parent discussed with the IEP Team that the student has a behavior plan that requires an immediate and frequent reward system. The behavior plan addresses issues such as the student remaining on task, hand over hand prompts and redirection, and following lunch room rules. The student requires adult assistance with safety issues and toileting. The student has difficulty with several different adults assisting them. Instead, the student requires the consistency of one adult.

In the above example, the parent can request PWN. A written request for PWN would require the school district to explain why a paraprofessional (one-to-one aide) is not needed and is being refused. In this situation a school district would likely state that the reason for their refusal to provide adult supervision is based on evaluations by the teacher, testing and because the IEP Team determined it is not necessary.

Although a parent might request that a paraprofessional (one-to-one aide) be replaced for a variety of reasons, the school district is not required to grant the request. Sometimes difficulties may be resolved by the aide receiving additional training.



See **Sample Letter to Request Prior Written Notice** and **Prior Written Notice of District's Proposal/Refusal** at the end of this chapter.

Notice of Meetings

Notice of Meetings are sent to ensure that one or both parents are present at each meeting and have a chance to participate in meetings, including the **Eligibility Committee (EC)** and IEP meetings.



See **Notice of Eligibility Committee** and/or **Individual Education Program Team Meeting** in the **reference materials** located in **Chapter 1**.

The school district **must** provide written notice by:

- Notifying parents of the meeting **no less than eight (8) calendar days** prior to the scheduled meeting date; and
- Scheduling the meeting at a mutually agreed on time and place.

The written notice **must** include:

- The purpose, time and location of the meeting;
- Who will be attending the meeting; and
- Information regarding the parent's right to bring other people who have knowledge or special expertise regarding the student to the meeting.

The school district must obtain a parent's signature giving consent to invite individuals from outside agencies (e.g., **West Virginia Birth to Three (BTT)** or the **Division of Rehabilitation Services (DRS)**) prior to inviting the outside agency to meetings.

Parental Participation

The school district must give parents an opportunity to review all educational records regarding the identification, evaluation and educational placement of the student, and the provision of FAPE. The procedures for accessing education records are outlined in *West Virginia State Board of Education (BOE) Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data*.

The school district must take whatever action is necessary to ensure that the parent understands what is taking place during a meeting, including arranging and paying for an interpreter for parents who are hearing impaired or whose native language is other than English.

A school district may hold an EC and/or IEP team meeting without a parent only when they have documentation that they have attempted to contact the parent and/or convince them to attend. The district must have a record of its attempts to arrange a mutually agreed upon time and place. For example:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of letters sent to the parent and any responses received; and/or
- Detailed records of visits made with the parent and results of those visits.

If the parent(s) cannot attend in person, the school district shall use other methods to make sure the parents participate in the meeting, including individual and conference telephone calls.

A copy of the IEP must be provided to the parent at no cost at the end of the IEP meeting.

TIP

If you cannot attend your child’s **Individualized Education Program (IEP)** meeting in person, ask the school to provide you with their draft of your child’s IEP prior to the formal meeting. You can make notes directly on the IEP draft provided by the school, organizing your thoughts in each of the important IEP sections. Give the draft with your notes back to the school and ask them to contact you if they have any questions. You may also ask to review copies of evaluations to address questions and concerns before an IEP meeting that you will not be able to attend.

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.

Informed written consent from the parent is required before:	Informed written consent from the parent is not required when:
<ul style="list-style-type: none"> ➤ Conducting an initial evaluation or reevaluation. ➤ Providing initial special education and related services. ➤ Disclosing personally identifiable information from the student’s educational records. ➤ Accessing public benefits or private insurance to pay for services listed in the IEP. ➤ Inviting an agency representative likely to pay for or provide transition services to an IEP meeting. ➤ Releasing personally identifiable information between officials in the district of residence and the district in which the private school is located. 	<ul style="list-style-type: none"> ➤ Reviewing existing data as part of an evaluation or reevaluation. ➤ Giving tests to both the general and special education students and consent is not required of all students. For example, the statewide testing, weekly spelling test, math test, etc. ➤ Conducting 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. ➤ Disclosing personally identifiable information to persons authorized to have access under the Family Educational Rights and Privacy Act (FERPA).

Refusing Consent (or Failing to Respond)

A parent may refuse to give consent for a variety of reasons. For initial evaluations, a school district can request mediation or due process procedures to encourage parents to provide consent. The district may not use the mediation or due process procedures if consent for the initial evaluation involves a student who has been enrolled (by the parent) in a private school or is being home schooled.

However, if the initial evaluations have been completed and the parent refuses to consent to start special education and related services, the district cannot request mediation or due process. The district will not be in violation of the FAPE requirement when reasonable efforts to obtain consent are made and documented by the school. In addition, the district is not required to convene an IEP team or develop an IEP.

Once you have consented to special education services, the district may not use a parent's refusal of consent to one service or activity to deny any other service, benefit or activity.

When a parent fails to respond to reasonable attempts to obtain written consent to determine continued eligibility, the district may proceed with the reevaluation. The district must document its attempts to gain consent.

Revoking Consent

A parent can revoke (remove) consent, **in writing**, for an individual assessment, initial provision of services, and the disclosure of information before the action occurs.

If the parent revokes consent, **in writing**, for the provision of special education and related services, the district may not continue providing those services. However, they must provide PWN before ceasing the provision of services. Under this circumstance, the district will not be in violation of the FAPE requirement. In addition, dispute resolution services may not be used to obtain agreement that the services may be provided to the student.

If the parent has revoked consent for the provision of special education services and then later decides they want special education services for the student again, they must start with a request for evaluation for the initial eligibility for special education services.

Independent Educational Evaluations (IEE)

An **Independent Educational Evaluation (IEE)** is one or more individual assessments completed by a qualified examiner who is not employed by the school district responsible for the student.



See **Sample Letter to Request an Independent Education Evaluation** in the **reference materials** located in **Chapter 2**.

The following details the right to an IEE:

- Parents have a right to request an IEE **at public expense** if they disagree with an evaluation obtained or conducted by the school district.
- The student is entitled to only one IEE in response to a single evaluation provided by the school district.

- The IEP team must consider the IEE in the decision making process if it meets the appropriate criteria.
- The parent is not automatically entitled to have additional assessments beyond those determined necessary for an evaluation. If the parent is interested in additional or different assessments and the district refuses, a due process hearing may be requested.
- The parent has a right to obtain a private evaluation at any time at their own expense.

To receive an IEE at public expense, a parent must make a written request. Within **five (5) calendar days** of receipt of the written request the district may ask why the parent disagrees with the evaluation obtained by the school district. However, parents are not required to provide this information. Within **ten (10) school days** of the written request for an IEE, the school district must give the parent:

- The location for the evaluation;
- The required qualifications of the examiner; and
- The maximum allowable charges for specified assessments, including travel costs for necessary services not available in the community.

The district may not impose other conditions or timelines if doing so would be inconsistent with the parent's right to an IEE. A list of qualified examiners will be provided upon request to the parent. Qualified examiners can be from another county.

TIP

An independent evaluator cannot be employed by the student's school district.

Some examples of when you might want to request an IEE are:

- ❖ when you disagree with a speech evaluation;
- ❖ if you believe the behavior assessment given to your child was not appropriate for their ability level;
or
- ❖ you are not sure the physical therapy evaluation adequately measured your child's current needs.

If the parent requests an IEE at public expense, the district must do **one of the following** within **ten (10) school days**:

- Agree, in writing, to pay for an IEE at reasonable and prevailing rates and provide the parent with the required information; or
- Offer mediation to try to resolve a disagreement (the parent must agree for mediation to occur); or
- Request a due process hearing to show how the evaluation the school district provided was appropriate.

If a parent obtains an IEE and makes that evaluation available to the district, the results must be considered in any decision made with respect to the provision of FAPE.

A school district must consider IEE results whether the IEE was paid for privately by the parent or by the school 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 a disability or continues to have a disability under West Virginia Policy 2419.

Surrogate Parents

A surrogate parent is an individual assigned by the school district to assume the rights and responsibilities of a parent under IDEA, including attending IEP meetings. The surrogate parent may represent a student in all matters relating to the identification, evaluations, educational placement, and the provision of FAPE to the student. Any person can make a referral for a surrogate parent. The school district will appoint a surrogate in any of the following circumstances:

- A parent cannot be identified.
- A parent cannot be found after reasonable efforts to locate the parent.
- The student is a **ward of the state**. A child who is in the custody of DHHR is considered a ward of the state. However, if a judge has appointed an individual to oversee the care of a student who is a ward of the state, that individual may make decisions regarding the student's education, including special education, provided that he or she meets the criteria for a surrogate.
- The student is an unaccompanied homeless youth as defined in *Section 725 (6) of the McKinney-Vento Homeless Assistance Act*.

The district has the responsibility to make good faith efforts to locate a parent, and maintain records of these attempts. When a natural parent is available but chooses not to participate, the district cannot appoint a surrogate parent.

The district will make reasonable efforts to assign a surrogate within **thirty (30) days** after it is determined there is a need.

The specific criteria for being appointed as a surrogate parent as listed in Chapter 10 of Policy 2419 are as follows:

- Has knowledge and skills that ensure effective representation of the student.
- Has no personal or professional interest that conflicts with the interest of the student.
- Is not an employee of the WVDE, the district, or any other agency that is involved in the education or care of the student.

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. No later than the student's 17th birthday, the IEP team must discuss the transfer of special education rights from the parent to the student. The special education rights 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. Both the parent and adult student will be informed that the rights are transferred.



See **Age of Majority Brochure** in the **reference materials** located in **Chapter 3**.



Chapter 3 provides information on the issue of the transfer of rights.

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 and the FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records.



See **Sample FERPA complaint** at the end of this chapter.

See **Sample Letter to Request to Copy or View a Copy of Your Child's Educational Records** at the end of this chapter.

Parents have the right to review and inspect their child's educational records. Parents can also request a copy of their child's educational records from the school district at a reasonable cost. Often, school districts will provide copies of the records for free.

Chapter 6 Reference Materials

The following documents are referenced in Chapter 6:

- Sample Letter to Request Prior Written Notice
- Prior Written Notice of District's Proposal/Refusal
- Sample Letter to Request to Copy or Review Your Child's Educational Record
- Sample FERPA Complaint

This is a sample letter to request prior written notice from the school district. A parent can request prior written notice when the school district has refused to provide a service a parent has requested or when a parent disagrees with a proposed action (such as educational placement) by the school district. Send this letter by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert name of Special Education Director), **Special Education Director**

(Insert name of county) **County Schools**

(Insert address)

RE: Request for Prior Written Notice

Dear Mr. or Ms. *(Insert Special Education Director's last name):*

I attended an IEP meeting on *(Insert date of IEP meeting)* **for** *(Insert child's full name)* **who attends** *(Insert name of school)*. **I am requesting prior written notice for the issue(s) proposed or refused at the IEP meeting. The issue(s) of concern is/are as follows:**

1. *(List each proposed or refused issue that you disagree with and reasons why)*
- 2.
- 3.

Please send a written response within five (5) business days. Thank you.

Respectfully,

(Sign your name)

(Type your name)

Note: After the school district has provided prior written notice(s), the next step may be to contact the special education director in writing (see sample letter) to discuss your concerns, if the special education director was not at the meeting. If the special education director was at the meeting, then the next step may be to file a state complaint.

PRIOR WRITTEN NOTICE OF DISTRICT'S PROPOSAL/REFUSAL

_____ County Schools

Student's Full Name _____	Date _____
School _____	DOB _____
Parent(s)/Guardian(s) _____	Grade: _____
Address: _____	WVEIS: _____
City/State: _____	Telephone: _____

Dear _____:

As a result of:

- ___ a Student Assistance Team (SAT) meeting conducted on _____,
- ___ an Eligibility Committee (EC) meeting conducted on _____,
- ___ an Individualized Education Program (IEP) Team meeting conducted on _____,
- ___ a disciplinary action occurring on _____,
- ___ other _____,

the district is ___ proposing **or** ___refusing to initiate or change:

- ___ the educational evaluation or reevaluation of the student.
- ___ the identification of the student as having a disability.
- ___ the educational placement of the student.
- ___ the provision of a free appropriate public education (FAPE) to the student.

Specifically, the district is: _____

The district is proposing **or** refusing this action because: _____

The evaluation procedure(s), assessment(s), record(s) or report(s) the district used as a basis for the
___ proposed **or** ___refused action are: _____

Other options the district considered include: _____

The reasons the above options were rejected are: _____

Other factors relevant to the district's ___proposal **or** ___refusal are: _____

Exceptional students and their parents have protections under the procedural safeguards. A copy of the Procedural Safeguards Brochure and assistance in understanding the provisions of the procedural safeguards may be obtained by contacting the Director of Special Education at _____, as appropriate, the local Parent Educator Resource Center at _____ and/or the West Virginia Department of Education, Office of Special Programs at 304.558.2696 or 1.800.642.8541.

Sincerely,

Signature/Position Date

West Virginia Department of Education July 2013

This is a sample letter to request a copy of your child’s school records or to review your child’s school records in person. Send this letter to the Special Education Director by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert name of Special Education Director)

(Insert name of county) **County Schools**

(Insert address)

RE: Request for school records of (Insert child’s full name)

Dear Mr. or Ms. (Insert Special Education Director’s last name):

I am the parent of (insert child’s full name), **a student at** (insert name of school). **I am writing to** (request a copy of my child’s entire educational records maintained by the county OR schedule a time to come and review all of my child’s educational records). (If you are scheduling a time to review records, add: I may need copies of some or all of these records.)

If you are planning to review the records in person, use the following:

I will be available on (insert dates and times that you are available to review the records at the school). **Please notify me by phone at** (insert your daytime phone number) **or by mail at the address listed above, as to when and where I can review the records.**

If you are requesting the records to be sent to you, use the following:

Please send these records within ten (10) business days or contact me to let me know when I can expect to receive the records. I can be reached during the day at (insert a daytime phone number).

Please call if you have any questions. Thank you.

Sincerely,

(Sign your name)

(Type your name)

Note: The full requirements can be found in WV State Board of Education Policy 4350: Collection, Maintenance and Disclosure of Student Data. The policy states a county shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request. 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. An educational agency or institution may not charge a fee to search for or retrieve the education records of a student.

This is a sample letter used to file a complaint with the Family Policy Compliance Office when your child's school doesn't comply with FERPA. Examples of non-compliance with FERPA include refusal to provide access to school records, providing incomplete school records, or refusal to recognize your rights as a parent. Modify the letter to fit your circumstances if necessary, then mail it 'Certified' with 'Return Receipt Requested' to the address shown at the bottom of this page. Send a copy to your attorney and make sure you keep a copy for your records as well.

**COMPLAINT UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT
(FERPA)**

(Date)

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4605

RE: School In Violation of FERPA

I hereby lodge an official complaint against the School District of _____ on behalf of *(student's name)* who attends *(name of school)* for what I believe to be:

- Inappropriate maintenance of records/content
- A violation of the Family Educational Rights and Privacy Act of 1974.

The nature of the complaint is as checked:

Challenge to Record or Content

- ___ Inaccurate
- ___ Misleading
- ___ Incomplete
- ___ Inappropriate

Record challenged may be identified as:

Title: _____

Date: _____

Person responsible for Entry or person currently maintaining record: _____

Date challenged content discovered: _____

Alleged Violations of Act or Regulations

- ___ Failure to provide notification of all rights (totally or in needed language)
- ___ Failure to publish local access and hearing procedures
- ___ Inappropriate person(s) grant denied access
- ___ Failure to provide interpretation assistance as requested
- ___ Failure to provide requested hearing
- ___ Failure to provide uninvolved hearing officer
- ___ Failure of hearing officer to provide written opinion within reasonable time
- ___ Inappropriate sharing of confidential information
- ___ Other: _____

Date of Violation: _____
 Date Violation Discovered if different from above: _____

Other Relevant Information:

(Use this section to add any additional explanatory comments)

Yours Truly,

(Signature)

(Parent Name)

(Address)

(Phone number)

Print it out, fill it out, then mail it (certified, with Return Receipt Requested) to the following address:

**Family Policy Compliance Office
 U.S. Department of Education
 400 Maryland Avenue. S.W.
 Washington, D.C. 20202-4605**

Chapter 7: Section 504

In this chapter:

- ✓ Introduction
- ✓ Eligibility
- ✓ Evaluations
- ✓ Services
- ✓ Discipline
- ✓ Parent/Student Rights
- ✓ Chapter 7 Reference Materials



Introduction

Section 504 of the Rehabilitation Act of 1973 is a federal civil rights law that protects the rights of individuals with disabilities. Under Section 504, a student cannot be discriminated against because of a disability. No person with a disability can be excluded from or denied benefits of any program receiving federal financial assistance. Section 504 applies to preschool, elementary, and secondary school policies regarding services for students with physical and mental disabilities.

Section 504 ensures that students with a disability can receive accommodations and/or modifications in order to access educational services. Related services should place students with disabilities on equal footing with students without disabilities. Section 504 also mandates that students cannot be excluded from school activities or be required to receive unnecessary, unequal or separate services.

Students with disabilities can receive services in two ways: through an **Individualized Education Program (IEP)** or a **Section 504 Plan (504 Plan)**. First, a student must go through the evaluation process. An **Eligibility Committee (EC)** meeting will then be held to determine if the student is eligible for special education services.

To be eligible for an IEP, the student must be eligible for services under the **IDEA**. The student must have an eligible diagnosis and require specialized instruction in the content, methodology, or delivery of instruction. This specialized instruction will address the unique needs of the student that result from the student's disability. Students with disabilities do not always qualify for special education services.

Section 504 allows students who do not need "specially designed instruction" to potentially qualify to receive services, accommodations, and modifications to access their education. Students eligible for special education are also covered under Section 504.

To be in compliance with Section 504, schools must:

- Provide written assurance of nondiscrimination;
- Designate a 504 Coordinator;
- Provide grievance procedures to resolve complaints;
- Provide notice of nondiscrimination in admission or access to its programs or activities;
- Annually identify and locate all qualified children with disabilities who are not receiving public education;
- Annually notify persons with disabilities and their parents of the school’s responsibilities under Section 504;
- Provide parents with procedural safeguards; and
- Conduct self-evaluation of school district policies, programs and practices to make sure discrimination is not occurring.

All school districts must have a Section 504 Coordinator to assist in starting the evaluation process for a student. The 504 Coordinator’s role is to assist the educators and administrators regarding their responsibilities under Section 504, and assist school staff and parents in the creation of an ongoing individualized plan that will accommodate the student’s needs.

Unlike the IDEA, Section 504 does not require the school to provide an IEP that is designed to meet the child’s unique needs and provide the child with education benefit. Under Section 504, fewer procedural safeguards are available to children with disabilities and their parents than under IDEA.



See **Sample Letter to Request Accommodations Under Section 504 of the Rehabilitation Act** at the end of this chapter.

The following chart describes differences between IDEA and Section 504 for **education services**:

EDUCATION SERVICES	
IDEA	SECTION 504
<ul style="list-style-type: none"> ❖ Requires an Individualized Education Program (IEP) to provide a Free and Appropriate Public Education (FAPE). ❖ Requires specialized instruction and related services be provided to the eligible student. ❖ Placement may be any combination of special education and general education environments. ❖ Provides related services, if required. 	<ul style="list-style-type: none"> ❖ Requires a Section 504 Plan. ❖ Requires accommodations to be provided to the eligible student. ❖ Placement is usually in a general education environment. ❖ Children can receive specialized instruction, related services, or accommodations within the general education environment. ❖ Provides related services, if needed.

Eligibility

In order to be eligible for services under Section 504, a student must have a mental or physical impairment that substantially limits **one or more major life activities**, have a record of such impairment, or be regarded as having such an impairment.

Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The student's disability must impede his or her education in order to qualify for educational accommodations and/or modifications.



See the **Making Accommodations/Modifications section** detailed later in **this chapter** for more information.

Section 504 cites some examples of students **who may be eligible** for accommodations: students with HIV/AIDS, Tourette's syndrome, attention deficit hyperactivity disorder (ADHD), heart malfunctions, communicable diseases, urinary conditions, blood disorders, chronic fatigue syndrome, school phobia, respiratory conditions, blood/sugar disorders, post traumatic disorders, pregnancy (with health issues that affect ability to learn), epilepsy, cancer, repetitive motion syndrome, birth defects, tuberculosis, and other conditions.

Students with **hidden disabilities** may also be eligible for accommodations. In the publication titled *The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973*, hidden disabilities are described as "physical or mental impairments that are not readily apparent to others. Hidden disabilities include such conditions and diseases as specific learning disabilities, diabetes, epilepsy, and allergy. A disability such as a limp, paralysis, total blindness or deafness is usually obvious to others. But hidden disabilities such as low vision, poor hearing, heart disease, or chronic illness may not be obvious. A chronic illness involves a recurring and long-term disability such as diabetes, heart disease, kidney and liver disease, high blood pressure, or ulcers... These hidden disabilities often cannot be readily known without the administration of appropriate diagnostic tests."

Another example of a student who may be eligible for accommodations is a student who uses a wheelchair and attends a school that has stairs. In this instance, a class may have to be moved to another classroom in order to accommodate the student.

The following chart describes differences between IDEA and Section 504 for eligibility:

ELIGIBILITY	
IDEA	SECTION 504
<ul style="list-style-type: none"> ❖ Covers all school-aged children who fall within one or more specific categories of qualifying conditions. ❖ Requires that a child's disability adversely affects his/her educational performance. 	<ul style="list-style-type: none"> ❖ Covers individuals who have a physical or mental impairment that substantially limits at least one major life activity. ❖ Does not require that a child need special education to qualify.

ELIGIBILITY	
IDEA	SECTION 504
❖ Students eligible under IDEA are also protected under Section 504.	❖ Students eligible under Section 504 are not automatically eligible under IDEA.

Evaluations

Section 504 requires that a school evaluate “any person who, because of a disability, needs or is believed to need special education or related services.” A student must be evaluated by a team of individuals to determine eligibility for services under Section 504. Most likely, the results of the evaluations will be shared with the parent during an eligibility team meeting. **However, the parent is not a required team member.**

The school must evaluate specific areas of educational need, not just **Intelligence Quotient (IQ)**. These areas could include physical condition, social and cultural background, behaviors, assistive technology, speech and hearing.

An evaluation is required prior to any significant change in placement. Section 504 also requires at least a periodic reevaluation.



See the **Placement section** detailed later in **this chapter** for more information.

Parents can request an evaluation of their child to determine eligibility for Section 504 services. The request for an evaluation should be made in writing. Written requests for an evaluation should be sent to the Section 504 Coordinator of the school district by certified mail with a return receipt. If the Section 504 Coordinator does not make contact within two weeks after receiving the request, a follow up phone call or another letter may be necessary. The requested evaluations must take place within **eighty (80) days** after the school system has obtained written consent from the parent.

The evaluations are not only used to determine eligibility, but also to describe how the disability affects the student’s education and to make recommendations for the student.

The evaluations document the levels at which the student is currently performing. Upon reevaluation, the team can determine if the student is making measureable progress.

The following chart describes differences between IDEA and Section 504 for evaluations:

EVALUATION	
IDEA	SECTION 504
<ul style="list-style-type: none"> ❖ Requires that the child be fully and comprehensively evaluated by a multidisciplinary team. ❖ Requires informed and written parental consent. 	<ul style="list-style-type: none"> ❖ Evaluation draws on information from a variety of sources and is documented. ❖ Decisions about the child, evaluation data, and placement options are made by

EVALUATION	
IDEA	SECTION 504
<ul style="list-style-type: none"> ❖ Requires a reevaluation of the child at least once every three years, or if condition warrants reevaluation, or if the parent or teachers request a reevaluation. ❖ Provides for independent evaluation at the district's expense if parents disagree with the first evaluation. ❖ Does not require reevaluation before a significant change in placement. 	<p>knowledgeable individuals and do not require parental consent.</p> <ul style="list-style-type: none"> ❖ Requires "periodic" reevaluation. ❖ No provisions made for independent evaluation at school's expense. ❖ Requires reevaluation before a significant change in placement.

Services

The determination of what services or accommodations are needed must be made by a team of people knowledgeable about the student. This team should include the parent and the student, school principal, classroom teacher(s) and other educators or personnel working with the student. The services will be outlined in a 504 Plan.

The team must determine the student's placement in the LRE to provide an equal opportunity to gain the same benefit or reach the same level of achievement as students without disabilities. The student must be placed with his or her peers without disabilities to the maximum extent possible, with necessary accommodations and programs designed to meet the student's unique needs.

Section 504 Plan

A school system must develop a 504 Plan for an eligible student. Written documentation of the student's evaluations, eligibility and the needs of the student must be included in the student's education file. The 504 Plan should explain the nature of the student's disability and how it affects the student's education. The team will need to identify whether the student requires supplementary aids, services, and/or related services, including those needed for participation in non-academic and extracurricular activities. **Related services** include but are not limited to Occupational Therapy (OT), Physical Therapy (PT), Speech/Language Therapy (SLT), transportation, audiology or assistive technology (AT).

Information contained in the 504 Plan may come from a variety of sources, including private evaluations obtained by the parent if the parent chooses to share this information with the team.

The student file (or 504 Plan) should describe specifically how each of the accommodations, modifications or services will be carried out to ensure that the student receives **Free and Appropriate Public Education (FAPE)** services in the **Least Restrictive Environment (LRE)**. The school district cannot rule out a service because of cost. **Additionally, the school district cannot require parents to use private insurance to pay for required services.**

Staff must be informed that they will be responsible for implementing the plan. Steps should be in place to monitor the plan as it is implemented.

Accommodations and Modifications

Accommodations are changes in how a student accesses information and demonstrates learning. Accommodations do not substantially change the instructional level, content, or performance criteria. The changes are made in order to provide a student with equal access to learning and equal opportunity to show what he or she knows and can do.

Modifications are changes in what a student is expected to learn. The changes are made to provide a student with opportunities to participate meaningfully and productively along with other students in classroom and school learning experiences.

The classroom teacher(s) and other school staff must follow accommodations so that the student can benefit from their educational program to the same extent as a student without disabilities. A student who benefits from accommodations or modifications is making educational progress in the general education curriculum offered to all students. Remember, accommodations should place the student with a disability on a level playing field with the student without disabilities.

Modifications listed on a 504 Plan must be followed. Modifications can be made to a school, classroom, and/or program(s). The student's functional limitation(s) must be considered and alternative methods of performing tasks or activities must be used so that the student can participate without jeopardizing the outcome. For example, the accommodations and/or modifications cannot alter outcome scores in required statewide testing.

TIP

Seek modifications and accommodations that help maximize the student's learning while minimizing attention to his or her disability or condition.

There is no specific list of modifications and accommodations that a school must use. Accommodations and modifications used must be made on an individual basis and based on the needs of the student.



See **Sample Letter to Request an Assistive Technology Evaluation** at the end of this chapter.

Areas of Accommodations for the Team to Consider

- Equipment Needed
- Enrichment Classes/Activities (e.g., Art, Band, Music)
- Extracurricular Activities/Programs
- Medical Supports/Medications

- Stamina (e.g., length of day or scheduling)
- Accessibility
- Fire Safety
- Therapies
- Self-Help Skills
- Physical Education
- Transportation
- Evaluations

Examples of Accommodations

- Aides or RN for extracurricular and other non-academic activities
- Modify assignments, instructions and tests
- Oral testing (given to the student or received from the student)
- Copies of notes or audio taping discussions by a teacher
- Provide an extra set of textbooks for home
- Use of a study guide and organizing tools
- Provide a peer tutor or helper
- Provide school counseling
- Provide preferential seating
- Modify recess, Physical Education or transportation
- Use necessary health care procedures through a Health Care Plan
- Train the student in organizational skills
- Reduce written work
- Textbooks on audio tape
- Enlarged printed materials
- Personal aides
- Hearing devices
- Braille

Discipline

Students with disabilities can be disciplined but they have special protections. A student with a disability can be suspended, but **after ten (10) cumulative school days** the suspension becomes a significant change of placement and protections come into place. A series of removals or a pattern of removals may also be a change in placement.



See **Chapter 4** for more information on Discipline.

If a change of placement occurs, students who have a 504 plan have a right to a team meeting called a **Manifestation Determination Review (MDR)** meeting. This meeting is held to determine if the undesired behavior a student is displaying is related to their disability. When the undesired behavior is related to the student's disability, the team should consider the need for re-evaluation(s) and perhaps the need for a **Functional**

Behavior Assessment (FBA) leading to the development of a **Positive Behavioral Interventions and Supports (PBIS)** plan.

FBA is a process of collecting information. An individual or a team collects data on agreed upon target behavior(s) displayed by the student that the team wishes to change. FBA data collection should be taken for at least two weeks and in different environments. It is a good practice to take data in an environment in which the student is not displaying inappropriate behavior as well to see why behaviors are different in each environment.



See **Sample Letter to Request a Functional Behavioral Assessment** at the end of this chapter.

A student may exhibit certain behaviors to get wants or needs met or to avoid a person, task, or environment. Once the team determines the function of the behavior, they will need to identify a replacement behavior that serves the same function. The process of FBA leads to the development of a PBIS plan.

The development of a PBIS plan is individualized to the student and uses proactive strategies to teach appropriate behavior. It does not use consequences, (e.g., take away recess or give detention) but instead rewards appropriate behavior. The PBIS plan will describe a specific behavior the team wants to change or eliminate, discuss cues for when a behavior may happen, and outline the exact steps someone will take before and/or after the target behavior occurs. This ensures that everyone responsible for implementing the PBIS plan is doing it in the same manner and is not sending confusing messages to the student. It is important that everyone responsible for implementing the PBIS plan be well trained in implementing all aspects of the plan.

FBA is an ongoing process. Data should continue to be collected after the PBIS plan is developed. This information will be used to determine if the plan is working or if it needs to be changed.

TIP

Functional Behavior Assessments (FBA) and **Positive Behavioral Interventions and Support (PBIS)** plans should be developed by individuals with appropriate training. School districts will sometimes have PBIS specialists or a school psychologist who have the training necessary to lead a team through this process. If the school district does not have someone within the district appropriately trained in PBIS, then it should contract with someone from outside the school district to provide the service. The contracted person may need to continue working with the team for an extended period of time to provide training, monitor data, and update the Positive Behavioral Interventions and Supports (PBIS) plan until the school district is able to maintain the PBIS plan on their own.

Parent/Student Rights

Parents/Students have the right to:

- Be informed about their rights under Section 504. The school district must provide them with written notice of their rights under Section 504. If further explanation or clarification of any of the rights is needed, contact the county 504 Coordinator.
- An appropriate education designed to meet his or her educational needs as adequately as the needs of non-disabled students are met.
- To the maximum extent appropriate, to be educated with students without disabilities. A student should be placed and educated in regular classes, unless the district demonstrates that his or her educational needs cannot be adequately met in the regular classroom, even with the use of supplementary aids and services, and accommodations and modifications.
- Services, facilities, and activities comparable to those provided to students without disabilities.
- Be evaluated prior to determining appropriate educational placement or program of services under Section 504, and before every significant change in placement.
- Formal assessment instruments that are used for an evaluation, procedures used to administer assessments and other instruments must comply with the requirements of Section 504 regarding test validity, proper method of administration, and appropriate test selections. The district should consider information from a variety of sources in making its determinations, including aptitude and achievement tests, teacher recommendations, reports of physical condition, social and cultural background, adaptive behavior, health records, report cards, progress notes, parent observations, and scores on required state achievement tests, among others.
- Placement decisions regarding a student must be made by a group of persons (a Section 504 committee) knowledgeable about the student, the meaning of the evaluation data, possible placement options, and the requirement that to the maximum extent appropriate, students with disabilities should be educated with students without disabilities.
- Periodic evaluations to determine if there has been a change in educational need. An evaluation should take place at least every three years.
- Be notified by the school district prior to any action regarding the identification, evaluation, or placement of the student.
- Examine all relevant documents and records regarding a student (generally documents relating to the identification, evaluation, and placement of the student under section 504).



See **Sample Letter to Request a Copy of Your Child's School Records or to Review Your Child's School Records in Person** at the end of this chapter.

- An impartial due process hearing to contest any action of the school district with regard to a student's identification, evaluation, or placement under Section 504.



See **Sample Letter to File a Complaint with 504 Coordinator Due to Disagreement with 504 Services** at the end of this chapter.

- Participate personally at the hearing, and to be represented by an attorney, at the family's expense.

A **due process hearing** request can be filed to resolve disputes between parents and school districts. A hearing officer makes a decision which determines whether the law has been violated and what will be done to resolve issues. A due process hearing is very much like a court proceeding. **It is strongly suggested that if a parent wishes to obtain legal representation for a due process hearing, to do so before filing for the hearing. The timeline of events runs very quickly in a due process hearing, and an attorney will need time to prepare your case.**

TIPS

- ❖ If you want to hire an attorney, it is strongly suggested to do so **before** requesting a due process hearing because the timeline of events for the hearing occur quickly and an attorney will need time to prepare your case.
- ❖ Keep in mind that it is very difficult to find attorneys who will take a special education case. School districts are always represented by an attorney.
- ❖ School districts may not intimidate, threaten or discriminate against a student because a complaint or due process was filed on their behalf.



More information on due process complaints can be found in **Chapter 3**.

The following provides more information about due process:

- If a parent/student wishes to contest an action taken by the Section 504 Committee by means of an impartial due process hearing, they must submit a Notice of Appeal or a Request for Hearing to the District's Section 504 Coordinator. A date will be set for the hearing and an impartial hearing officer will be appointed. The parent will then be notified in writing of the hearing date, time, and place.
- If the parent/student disagrees with the decision of the hearing officer, they have a right to seek a review of that decision before a court of competent jurisdiction (typically the closest federal district court).
- Parents have the right to present a grievance or complaint to the District's Section 504 Coordinator (or their designee) for investigation in an effort to arrive at a fair and speedy resolution. Grievances and complaints can be filed to resolve issues including, but not limited to, identification, evaluation, or placement.
- The parent/student also has a right to file a complaint with the **Office for Civil Rights (OCR)** under the **U.S. Department of Education (DOE)**. Contact information is located on the Complaint form.

For more information on the laws enforced by the OCR, how to file a complaint, or how to obtain technical assistance:

- Call the OCR Customer Service Team at 1-800-421-3481; or
- Visit the OCR website at <http://www2.ed.gov/about/offices/list/ocr/index.html>; or
- Access the OCR Complaint Process at: <http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>.

The following chart describes differences between IDEA and Section 504 for due process:

DUE PROCESS	
IDEA	SECTION 504
<ul style="list-style-type: none"> ❖ Must provide impartial hearings for parents who disagree with the identification, evaluation, or placement of the student. ❖ Requires written parental consent. ❖ Describes specific procedures. ❖ An impartial appointee selects a hearing officer. ❖ Provides “stay-put” provisions. “Stay-put” provisions means the student’s current IEP and placement continues to be implemented until all proceedings are resolved. ❖ Parents must receive ten days’ notice prior to any change in placement. ❖ Enforced by the U.S. Department of Education, Office of Special Education. 	<ul style="list-style-type: none"> ❖ Must provide impartial hearings for parents who disagree with the identification, evaluation, or placement of the student. ❖ Does not require written parental consent. ❖ Requires that parents have an opportunity to participate and be represented by legal counsel, while other details are left to the discretion of the school. ❖ A hearing officer is usually appointed by the school. ❖ No “stay-put” provisions. ❖ Does not require that parents are notified prior to the student’s change of placement, but they still must be notified. ❖ Enforced by U.S. Department of Education, Office for Civil Rights.

Chapter 7 Reference Materials

The following documents are referenced in Chapter 7:

- Sample Letter to Request Accommodations Under Section 504 of the Rehabilitation Act
- Sample Letter to Request an Assistive Technology Evaluation
- Sample Letter to Request a Functional Behavioral Assessment
- Sample Letter to Request a Copy of Your Child’s School Records or to Review Your Child’s School Records in Person
- Sample Letter to File Complaint with 504 Coordinator Due to Disagreement with 504 Services

This is a sample letter to request accommodations under Section 504 of the Rehabilitation Act. A parent can request accommodations under Section 504 if the student is not eligible for special education services under WV Policy 2419 through an Individualized Education Program (IEP). Accommodations under Section 504 can be requested when a child needs physical access accommodations such as ramps/handrails and/or accommodations/modifications to class work but *not* regarding the delivery of specialized instruction. Send this letter to the 504 Coordinator (*this may be the Special Education Director*) by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert name of 504 Coordinator)

(Insert name of county) **County**

(Insert address)

RE: Request for accommodations under Section 504 of the Rehabilitation Act

Dear Mr./Ms. (Insert 504 Coordinator's last name):

I am the parent of (Insert your child's full name), **a student in the** (Insert your child's grade) **grade at** (Insert the name of your child's school).

This letter is a request for accommodations under Section 504 of the Rehabilitation Act. (Insert your child's first name) **has been diagnosed with** (Insert your child's diagnosis). **Given this diagnosis, (he/she) should be eligible for a 504 plan as per 34 CFR 104.33. Please arrange for the necessary assessments and/or evaluations and notify me of any actions to be taken.** (If you have private evaluations and recommendations) **Enclosed are evaluations and recommendations from** (Insert name of who provided evaluation and recommendations).

If this request should be denied, please respond in writing with the basis for the denial. Otherwise, please call me at (Insert your phone number) **with any questions you may have. I look forward to a response within five (5) days of receipt of this letter.**

A copy of this letter is to be included in (Insert child's first name)'s educational record.

Sincerely,

(Sign your name)

(Type your name)

cc: Mr./Mrs. (Insert principal's last name), **Principal**

This is a sample letter to request an Assistive Technology evaluation. Send this letter to the 504 Coordinator by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)
(Insert your address)

(Insert name of 504 Coordinator)
(Insert name of county) **County**
(Insert address)

RE: Request for evaluation for assistive technology devices, software and/or services

Dear Mr. or Ms. *(Insert 504 Coordinator's last name)*:

I am the parent of *(Insert your child's full name)*. I am writing to request an assistive technology evaluation for my son/daughter. I believe my son's/daughter's education may benefit from the provision of an assistive technology device, software and/or services *(here you could state a specific device, software and/or service if you have something specific in mind)* and want him/her evaluated.

I understand that I have to give written permission in order for the testing to begin. Please consider this request as written permission. I would be happy to talk with you about *(Insert child's first name)*, and answer any questions you may have. You can reach me during the day at *(Insert daytime telephone number)*.

If the school district refuses to provide the requested evaluation, please respond in writing with the reasons for the refusal within the next five (5) days.

Thank you for your prompt attention to my request.

Sincerely,

(Sign your name)

(Type your name)

This is a sample letter to request a functional behavioral assessment. Send this letter to the 504 Coordinator by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)
(Insert your address)

(Insert name of 504 Coordinator)
(Insert name of county) **County**
(Insert address)

RE: Request for a functional behavioral assessment

Dear Mr. or Ms. *(Insert 504 Coordinator's last name):*

I am the parent of *(Insert child's full name)*, **who is a student in the** *(Insert child's grade)* **grade at** *(Insert name of child's school)*. **I am writing to request the school to conduct a functional behavioral assessment on my child. Please consider this letter as written consent for the functional assessment evaluation.**

It is my understanding that the first step in this process is to have a team meeting, which includes me. The meeting is to identify target behaviors, objectives identified, and interventions/modifications that can be developed and implemented through a Positive Behavioral Support Plan using proactive strategies.

Please contact me within the next eight (8) days to arrange a team meeting date. If the school district is refusing to provide a functional assessment, please respond in writing with the reasons why within five (5) days.

Respectfully,

(Sign your name)

(Type your name)

cc: Mr./Ms. *(Insert principal's last name)*, **Principal**

This is a sample letter to request a copy of your child's school records or to review your child's school records in person. Send this letter to the 504 Coordinator by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert name of 504 Coordinator)

(Insert name of county) **County**

(Insert address)

RE: Request for school records of *(Insert child's full name)*

Dear *Mr. or Ms. (Insert 504 Coordinator's last name):*

I am the parent of *(insert child's full name)*, **a student at** *(insert name of school)*. **I am writing to** *(request a copy of my child's entire educational records maintained by the county OR schedule a time to come and review all my child's educational records). (If reviewing records ADD- I may need copies of some or all of these records.)*

If you are planning to review the records in person, use the following:

I will be available on *(insert dates and times that you are available to review the records at the school)*. **Please notify me by phone at** *(insert your daytime phone number)* **or by mail at the address listed above, as to when and where I can review the records.**

If you are requesting the records to be sent to you, use the following:

Please send these records within ten (10) business days or contact me to let me know when I can expect to receive the records. I can be reached during the day at *(insert a daytime phone number)*.

Please call if you have any questions. Thank you.

Sincerely,

(Sign your name)

(Type your name)

Note: The full requirements can be found in WV State Board of Education Policy 4350: Collection, Maintenance and Disclosure of Student Data. The policy states a county shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request. 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. An educational agency or institution may not charge a fee to search for or retrieve the education records of a student.

This is a sample letter to notify the school district that you disagree with the 504 services and want to file a complaint with the 504 Coordinator. Send this letter to the 504 Coordinator by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert the 504 Coordinator's name), 504 Coordinator

(Insert county name) County

(Insert address)

Dear Mr. or Ms. *(Insert the 504 Coordinator's last name)*:

I am the parent of *(Insert child's full name)*, a student at *(Insert name of school)*. I attended a 504 meeting on *(Insert the date of the meeting)*, and I am in disagreement with the plan developed for *(Insert child's first name)* and want to file a complaint.

The issue(s) that I disagree with *is/are (list and/or discuss the issue(s))*. I request that you investigate my complaint and then arrange for another 504 meeting in an attempt to resolve the issue(s).

If you are not going to investigate my complaint, please respond in writing with the reasons why within five (5) days.

Thank you for your assistance.

Sincerely,

(Sign your name)

(Type your name)

Chapter 8: Bullying and Harassment

In this chapter:

- ✓ Introduction
- ✓ Identifying Bullying and Harassment
- ✓ Guidance for Parents
- ✓ Chapter 8 Reference Materials



Introduction

The **bullying** and **harassment** of a student by his or her peers is currently an issue of national concern. Students with disabilities can become easy targets for bullying. Parents become frustrated if they complain to their child's school and feel the administrators are not listening and responding to the problem.

This chapter will provide an overview of warning signs, how to talk to a child about bullying, the difference between bullying and harassment, prevention methods, state and federal laws, and how to work with the school.

Identifying Bullying and Harassment

The information in this section came from the PACER's National Bullying Prevention Center at <http://www.pacer.org/Bullying/>.

Bullying is an aggressive and intentional behavior that involves an imbalance of power or strength. Bullying is often repeated over time, and can take many forms. Some examples are:

- **Physical:** hitting, kicking, pinching, spitting, tripping, taking/breaking personal belongings, or shoving;
- **Verbal:** teasing, inappropriate sexual comments, taunting, threatening to cause harm, or name calling;
- **Non-verbal or emotional:** intimidation through gestures, spreading rumors, public embarrassment or humiliation, or social exclusion; and/or
- **Cyberbullying:** sending insulting messages by text messaging, e-mailing, or internet posting.

Bullying can occur during and after school hours and school activities.

Not all children who are bullied will show warning signs. Some warning signs that may point to a problem are:

- Unexplained injuries;
- Lost or destroyed personal possessions or property;

- Frequent headaches, stomach aches, feeling sick, or faking illness;
- Changes in eating habits (skipping meals or binge eating);
- Difficulty sleeping or frequent nightmares;
- Declining grades, loss of interest in schoolwork, or not wanting to go to school;
- Sudden loss of friends or avoidance of social situations;
- Feelings of helplessness or decreased self-esteem; and
- Self-destructive behaviors (running away from home, harming themselves, talking about suicide).

Children who are victims of bullying are often embarrassed and ashamed, and do not tell an adult. Children often do not tell for many reasons:

- Bullying can make a child feel helpless. They may fear being seen as weak or a tattletale.
- Children may fear backlash or that the bullying may get worse if they tell.
- Bullying is a humiliating experience, and they may not want others to know what is being said or done to them. They may fear being judged or punished.
- Children who are bullied often feel socially isolated, and may feel that no one cares or could understand.
- Children may fear being rejected by their peers.

It is important to know the warning signs and talk to your child if you suspect a problem.

Students with disabilities are bullied at a statistically higher rate than their peers. The two (2) factors that are highly indicative of becoming a target of bullying are 1) social isolation, and 2) vulnerable reaction to the behavior. These are key characteristics of many students with disabilities.

When does bullying become harassment? The **Office for Civil Rights (OCR)** and the **Department of Justice (DOJ)** have stated that bullying may also be considered harassment when it is based on a student's race, color, national origin, sex, **disability**, or religion.

Guidance for Parents

According to PACER's National Bullying Prevention Center, parents can do a variety of things to address situations of bullying or harassment, including prevention. These include:

- promoting peer advocacy;
- educating your child;
- using the Individualized Education Program (IEP);
- knowing the law; and
- working with the school.

Promote Peer Advocacy

Classmates can be powerful allies in preventing, identifying and reporting bullying and harassment. This is vital considering how much occurs at school outside the view of adults. Peer advocacy, or students speaking out of behalf of others, is a unique approach that empowers students to protect those targeted by bullies. Peer advocacy works for two reasons:

- Students are more likely than adults to see what is happening with their peers and peer influence is powerful.
- A student telling someone to stop bullying has much more impact than an adult giving the same advice.

A peer advocacy program creates a formal process that identifies, trains and supports a designated group of students who create a support system for students with disabilities. Purposeful engagement of peers to intervene in systematic ways is a powerful step to reduce bullying.

Educate Your Child

Children may not always realize or understand that they are being bullied. Children can benefit from a definition of the differences between friendly behavior and bullying behavior. **The basic rule children should know: If the behavior hurts or harms them, either emotionally or physically, it is bullying.**

Parents should be ready to:

- Listen
- Believe
- Be supportive
- Be patient
- Provide information
- Explore options for intervention strategies

Open-ended questions will help the child talk about his or her situation. If the child is talking about the situation, parents can help their child recognize bullying behavior by asking one or more of the following questions:

- Did the child hurt you on purpose?
- Was it done more than once?
- Did it make you feel bad or angry?
- How do you feel about the behavior?
- Did the child know you were being hurt?
- Is the child more powerful (bigger, stronger) than you in some way?

For the child who is reluctant to talk about the situation, questions may include:

- How was gym class today?
- Who did you sit by at lunch?
- You seem to be feeling sick a lot and want to stay home. Please tell me about it.
- Are kids making fun of you?
- Are there a lot of cliques in school? What do you think about them?
- Has anyone treated you in a way that did not feel right?

When children choose to tell their parents about bullying, parents need to avoid these reactions:

- Do not tell the child to stand up to the bully. This can imply that it is the child’s responsibility to handle the situation.
- Do not tell the child to ignore or avoid the bullying. In fact, this can actually incite further or increased bullying.
- Do not “take matters into your own hands.” When a child tells a parent or adult about bullying, they are seeking help and for that adult to guide them to a solution that makes them feel empowered.

It is important for children to know:

- They are not alone.
- It is not their fault.
- It is not up to them to stop the bullying.
- Bullying happens to a lot of kids but that never makes it right.
- No one deserves to be bullied.
- We all need to work together to stop bullying.

Use the Individualized Education Program (IEP)

The **Individualized Education Program (IEP)** can be a helpful tool in bullying prevention. Every child receiving special education is entitled to a free and appropriate public education (FAPE), and bullying can become a serious barrier to receiving that education.

The IEP team can identify strategies that can be written into the IEP to help stop bullying. For example:

- Identify an adult in the school who the child can report to or go to for assistance.
- Determine how school staff will document and report incidents.
- Allow the child to leave class early to avoid hallway incidents.
- Hold separate in-services for school staff and classroom peers to help them understand a child’s disability.
- Educate peers about school district policies on bullying behavior.
- Ensure regular reassurance from the school staff that the student has a “right to be safe” and that the bullying is not his or her fault.
- Provide shadowing by school staff of the student who has been bullied.

Know the Law

If bullying is related to a child’s disability, this may be in violation of the child’s federal rights under *Section 504 of the Rehabilitation Act of 1973*, *Title II of the Americans with Disabilities Act (ADA)*, and the IDEA.

On October 21, 2014, a “Dear Colleague” letter from the U.S. Assistant Secretary for the Office of Education, Office for Civil Rights (OCR) was sent to schools reminding them that:

“Building on OSERS’s 2013 guidance, today’s guidance explains that the bullying of a student with a disability on any basis can similarly result in a denial of FAPE under Section 504 that must be remedied; it also reiterates schools’ obligations to address conduct that may constitute a disability-based harassment violation and explains that a school must also remedy the denial of FAPE resulting from disability-based harassment.”

Furthermore, the letter states that:

“The bullying on any basis of a student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services can result in the denial of FAPE that must be remedied under Section 504.”



See **OCR letter regarding harassment and bullying, dated October 21, 2014** at the end of this chapter.

The letters to schools from the U.S. Assistant Secretary for Civil Rights can also be found on the OCR website at <http://www2.ed.gov/about/offices/list/ocr/index.html>.

The October 26, 2010 “Dear Colleague” letter explained:

“Harassing conduct may take many forms, including verbal acts and name-calling: graphic and written statements, which may include use of cell phones or the Internet: or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.”

The OCR under the U.S. Department of Education (DOE) enforces the following statutes:

- *Title VI of the Civil Rights Act of 1964*, which prohibits discrimination based on race, color, or national origin;
- *Title IX of the Education Amendments of 1972*, which prohibits discrimination based on gender or sex;
- *Section 504 of the Rehabilitation Act of 1973*, which prohibits discrimination based on disability;
- *Title II of the Americans with Disabilities Act of 1990*, which prohibits discrimination based on disability.

Section 504 and Title II prohibit discrimination on the basis of disability. School districts may violate these civil rights laws and federal regulations when peer harassment based on race, color, national origin, sex, or **disability** creates a hostile environment. Schools may also be in violation of these laws and regulations when this hostile environment and harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.

According to the OCR letter, the school is responsible for addressing harassment it knows or reasonably should have known is occurring or has occurred.

Some situations of harassment may be in plain sight, widespread, or well-known to students and staff. In these cases, the signs are obvious and sufficient enough to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation. In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.

When responding to harassment, a school must take immediate and appropriate action to investigate or determine what occurred.

If an investigation reveals that discriminatory harassment has occurred, a school must:

- Take prompt and effective steps to end the harassment;
- Eliminate any hostile environment and its effects; and
- Prevent the harassment from recurring.

The school must take the above action regardless of whether:

- the misconduct is also covered by an anti-bullying policy;
- a student has complained;
- a student has asked the school to take action; and/or
- a student identified the harassment as a form of discrimination.

The following lists some appropriate steps to end harassment:

- separate the accused harasser and the target;
- provide counseling for the target and/or harasser; or
- take disciplinary action against the harasser.

These steps should not penalize the student who was harassed. For example, any time the accused harasser and the target are separated, the burden on the target's educational program should be minimized. The target should not be required to change his or her class schedule.

The school district may need to take the following steps to stop further harassment and retaliation:

- provide training or other interventions to ensure the ability to recognize and respond to harassment;
- provide additional services to the student harassed in order to address the effects of the harassment; or
- issue new policies and procedures for reporting and addressing harassment.

School districts must address the following:

- The label the school uses to identify the incident (e.g., bullying, hazing, or teasing) does not determine how they are obligated to respond. The nature of the conduct itself must be assessed for civil rights implications. If the behavior is on the basis of race, color, national origin, sex, or disability, and creates a hostile environment, a school is obligated to respond in accordance with federal civil rights statutes and regulations enforced by OCR.

- When the behavior implicates the civil rights laws, school administrators should do more than just discipline the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. The school is responsible to eliminate the hostile environment, address its effects, and take steps to ensure that it does not recur.

Harassment is not limited to student-to-student situations. Teachers or other school personnel may be the individuals who harass a student.

Understanding School Policy and Filing Complaints

West Virginia Policy 4373, Expected Behavior in Safe and Supportive Schools “sets the requirements for the development of safe and supportive schools that provide the optimum learning conditions for both students and staff.” This policy is also known as *Legislative Rule, Title 126, Series 99*, and became effective July 1, 2012. This rule “establishes disciplinary guidelines for student conduct that outline behaviors prohibited in West Virginia schools that must be consistently addressed in order to assure the orderly, safe, drug-free, violence- and harassment-free learning environment.”

Policy 4373 cites the following definition for bullying/harassment and intimidation:

“A student will not bully/intimidate/harass another student. According to *West Virginia State Code §18-2C-2*, ‘harassment, intimidation or bullying means any intentional gesture, or any intentional electronic, written, verbal or physical act, communication, transmission or threat that:

- A reasonable person under the circumstances should know [bullying/harassment] will have the effect of harming a student, damaging a student’s property, placing a student in reasonable fear of harm to his or her person, and/or placing a student in reasonable fear of damage to his or her property;
- Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or emotionally abusive educational environment for a student; or
- Disrupts or interferes with the orderly operation of the school.”

Each county has bullying/harassment policies. One incident of bullying, if severe enough, may be sufficient to file a complaint according to OCR and State Policy.

TIPS

- ❖ You can request a copy of your county’s Bullying and Harassment Policy from your school or Board of Education (BOE) office.
- ❖ Often, school districts provide student handbooks and/or planners at the beginning of the school year that include the Bullying and Harassment Policy.
- ❖ Be cautious, however, because the definition of bullying and harassment may differ from the OCR definition and West Virginia policy.

The Bullying and Harassment policy is typically handed out at the beginning of the school year or found in a student planner if the child's school provides one to each student. A copy can also be requested from the school office or the county office. A bullying/harassment grievance should be in writing. If you think the county policy does not comply with the OCR definition and West Virginia policy, contact the Office of Healthy Schools under the WVDE. The Office of Healthy Schools is responsible for enforcing this policy.



See **Sample Letter to Request County Policy** in the **reference materials** located in **Chapter 3**.

See **Sample Letter to Address Student-to-Student Harassment** at the end of this chapter.

See **Sample Letter to Address Teacher-to-Student Harassment** at the end of this chapter.

TIP

Be sure to keep a copy of the complaint for your records. It is also suggested that a copy of the **October 21, 2014 OCR letter** be enclosed with the complaint. The complaint should be sent to the principal by certified mail with a return receipt.

The grievance should contain as much information as possible, such as who did the bullying, where it happened, the time, any witnesses and what happened in specific detail.

The school district should conduct an investigation of the complaint. The parent should receive a report of the investigation that informs them if the school did find that bullying occurred. The report will not tell you what actions were taken against the student who was the bully. This would be a violation of privacy. Sometimes the "bully" is a student with a disability and actions taken for that student may be very different than a student without a disability.

If the same student continues to bully your child, another complaint should be filed. Be sure to mention in the complaint that this is a second incident. The second complaint should be sent not only to the school principal but also to the County Superintendent, Board of Education President and to the WVDE, Office of Healthy Schools.

If there is a third incident of bullying, the parent should file a complaint with the OCR.

Please note that depending on the severity of the bullying or the school district's responsiveness to your concerns, you might wish to file a complaint with the OCR the first time an incident happens. Parents may also want to consider filing charges with their local police department.

TIPS

- Anyone can file an **Office for Civil Rights (OCR)** complaint if they believe a school that receives federal funds has discriminated against someone.
- When filing an OCR complaint you will need to make sure that you file the complaint under the correct statute. This sometimes becomes difficult for parents of children with disabilities because the child may not be able to communicate to parents or school staff that bullying/harassment is occurring.
- If you are filing an OCR complaint under Section 504 or Title II of the ADA, you will need to describe the actions taken by the person who is bullying/harassing the child that are related to the child's disability.

Another option parents or any citizen has in resolving problems when there appears to be a failure to provide elements of a high quality education is *West Virginia Policy 7211, Citizens Appeals*. Parents or any citizen may file an appeal using Policy 7211 when a state board policy or state law has been violated and there is evidence to support the allegation. This evidence may include meeting dates, meeting notes, phone records, and/or written correspondence.

An appeal under Policy 7211 can only be filed after the issue has been informally discussed with the proper school administrator without successful resolution. There are four (4) levels of appeal under this policy.

- **Level I:** In the event the issue is not resolved informally with the proper school administrator, a formal, written appeal may be filed with the principal or school administrator.
- **Level II:** Unsatisfactory Level I decisions may be appealed in writing to the county superintendent. This must be done within **fifteen (15) calendar days** of receipt of the Level I decision.
- **Level III:** Unsatisfactory Level II decisions may be appealed in writing to the county board of education. This must be done within **fifteen (15) calendar days** of receipt of the Level II decision.
- **Level IV:** Unsatisfactory Level III decisions may be appealed in writing to the state superintendent of schools. This must be done within **thirty (30) calendar days** of receipt of the Level III decision.

Policy 7211 **cannot** be used to address a personal complaint about a school employee, or a concern about the placement of an exceptional student. Each county has its own procedures to address personal complaints about school employees. Policy 2419 includes a dispute resolution process for placement decisions.

When filing a Citizens Appeal under Policy 7211, the parent will need to list the policy and/or laws violated. These can be found on the **West Virginia Department of Education (WVDE)** website at <http://wvde.state.wv.us/policies>. For school personnel to student harassment, the *Employee Code of Conduct (Policy 5902)* is the policy most likely being violated. Additional information can be obtained by calling the 24-hour West Virginia Safe Schools Helpline at 1-866-723-3982.



See **Policy 7211, Citizens Appeal Forms** at the end of this chapter or go to <http://wvde.state.wv.us/policies/p7211forms.pdf> to file an online complaint.

When making a report, the following information will be needed:

- What is being reported (complaint, problem, suggestion)
- Date and time incident did or will occur
- Name of school where the incident did or will take place
- The suspect
- School the suspect attends
- Description of the incident that did or will take place
- Contact information (optional)

TIP

When calling the 24-hour West Virginia Safe Schools Helpline, you will be given a case number and reminded not to give any identifying information. You will be asked to report any information that did or could negatively impact a student(s), school staff, or school property, such as violence, weapons, threats, thefts or property damage, drug or alcohol abuse or sexual harassment. You may request a status report of action three (3) school days after making a report.

Chapter 8 Reference Materials

The following documents are referenced in Chapter 8:

- Dear Colleague Letter: Responding to Bullying of Students with Disabilities, dated October 21, 2014
- Sample Letter to Address Student-to-Student Harassment and Discrimination
- Sample Letter to Address Teacher-to-Student Harassment and Discrimination
- Policy 7211: Citizens Appeal Forms



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

October 21, 2014

Dear Colleague:

While there is broad consensus that bullying is wrong and cannot be tolerated in our schools, the sad reality is that bullying persists in our schools today, and especially so for students with disabilities.¹ In recent years, the Office for Civil Rights (OCR) in the U.S. Department of Education (Department) has received an ever-increasing number of complaints concerning the bullying of students with disabilities and the effects of that bullying on their education, including on the special education and related services to which they are entitled. This troubling trend highlights the importance of OCR's continuing efforts to protect the rights of students with disabilities through the vigorous enforcement of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). It also underscores the need for schools to fully understand their legal obligations to address and prevent disability discrimination in our schools.

Today's guidance follows a long history of guidance issued by the Department in this critical area of disability discrimination. In 2000, OCR and the Office of Special Education and Rehabilitative Services (OSERS) issued joint guidance informing schools that disability-based harassment may deny a student equal educational opportunities under Section 504 and Title II.² The 2000 guidance also noted the responsibilities of schools under Section 504 and the Individuals with Disabilities Education Act (IDEA) to ensure that students receive a free appropriate public education (FAPE),

¹ These students are bullied or harassed more than their nondisabled peers. *See* Office of Special Education and Rehabilitative Services (OSERS) 2013 Dear Colleague Letter on Bullying of Students with Disabilities, <http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>, at page 2 ("Students with disabilities are disproportionately affected by bullying."). That letter explains that, "[b]ullying can involve overt physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (e.g., cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles." *Id.* Throughout this guidance, the terms "bullying" and "harassment" are used interchangeably to refer to these types of conduct. *See* Office for Civil Rights (OCR) 2010 Dear Colleague Letter on Harassment and Bullying, <http://www.ed.gov/ocr/letters/colleague-201010.pdf>, at page 3 ("The label used to describe an incident (e.g., bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications.").

² OCR-OSERS 2000 Dear Colleague Letter: Prohibited Disability Harassment, <http://www.ed.gov/ocr/docs/disabharassltr.html>.

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and alerted schools that harassment of a student based on disability may adversely impact the school's provision of FAPE to the student.³ In 2010, OCR issued a Dear Colleague Letter on Harassment and Bullying that provided further guidance concerning when a school's inappropriate response to bullying or harassment of a student based on disability constitutes a disability-based harassment violation under Section 504 and Title II.⁴ In 2013, OSERS issued a Dear Colleague Letter on Bullying of Students with Disabilities that, in turn, provided additional guidance to schools that the bullying of a student with a disability on *any* basis can result in a denial of FAPE under IDEA that must be remedied.⁵

Building on OSERS's 2013 guidance, today's guidance explains that the bullying of a student with a disability on *any* basis can similarly result in a denial of FAPE under Section 504 that must be remedied; it also reiterates schools' obligations to address conduct that may constitute a disability-based harassment violation and explains that a school must also remedy the denial of FAPE resulting from disability-based harassment. Following an overview of the federal protections for students with disabilities in schools, the guidance elaborates on the elements of a disability-based harassment violation and a FAPE violation, discusses how OCR generally analyzes complaints involving bullying of students with disabilities on each of these bases, and then concludes with a series of hypothetical examples that illustrate varying circumstances when conduct may constitute both a disability-based harassment violation and FAPE violation, a FAPE violation, or neither. Although by no means exhaustive, in the context of this discussion, the guidance also offers some insight into what OCR might require of a school to remedy instances of bullying upon a finding of disability discrimination. OCR urges schools to consider these hypothetical resolution agreement provisions in proactively working to ensure a safe school environment, free from discrimination, for all students.⁶

I. Overview of Federal Protections for Students with Disabilities in Schools

OCR enforces Section 504 and Title II, both of which prohibit disability discrimination. Section 504 prohibits disability discrimination by recipients of Federal financial assistance.⁷ OCR enforces Section 504 against entities that receive Federal financial assistance from the Department, including all public schools and school districts as well as all public charter schools and magnet schools. Under Section 504, recipients that operate a public elementary or secondary education program must

³ The terms "school" and "school district" are used interchangeably in this letter and refer to public elementary and secondary schools that receive financial assistance from the Department.

⁴ OCR 2010 Dear Colleague Letter on Harassment and Bullying, <http://www.ed.gov/ocr/letters/colleague-201010.pdf>.

⁵ OSERS 2013 Dear Colleague Letter on Bullying of Students with Disabilities, <http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>.

⁶ This guidance addresses only student-on-student bullying and harassment. Under Section 504 and Title II, students with disabilities are also protected from bullying by teachers, other school employees, and third parties. Such bullying can trigger a school's obligation to address disability-based harassment, remedy a denial of FAPE, or both. *See* 34 C.F.R. §§ 104.4, 104.33; 28 C.F.R. pt. 35. OCR recommends that States and school districts consult with legal counsel regarding their responsibilities and duties in cases of bullying that involve school personnel.⁷ 29 U.S.C. § 794; 34 C.F.R. pt. 104.

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provide students with disabilities equal educational opportunities. Among other things, this means they must ensure that students with disabilities receive FAPE, defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that satisfy certain requirements concerning educational setting, evaluation, placement, and procedural safeguards.⁸ Schools also have an obligation under Section 504 to evaluate students who need or are believed to need special education or related services. Further, schools have an obligation to ensure that Section 504 FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.⁹ Schools often document these services in written plans, sometimes referred to as Section 504 plans, or, if the child is receiving IDEA FAPE services, through the required individualized education program (IEP).¹⁰

Title II prohibits disability discrimination by public entities, including all public schools and school districts, as well as all public charter schools and magnet schools, regardless of whether they receive Federal financial assistance.¹¹ OCR, along with the U.S. Department of Justice (DOJ), enforces Title II in public elementary and secondary schools. Title II is generally construed to provide no less protection than Section 504. Therefore, violations of Section 504, including the failure to provide needed regular or special education and related aids and services to students with disabilities, also constitute violations of Title II.¹²

IDEA is another key Federal law addressing the needs of students with disabilities. OSERS, not OCR or DOJ, administers IDEA.¹³ OCR, however, enforces the Section 504 and Title II rights of IDEA-eligible students.¹⁴ Under Part B of IDEA, the Department provides Federal funds to State educational agencies and through them to local educational agencies (school districts), to assist

⁸ For Section 504 and Title II, the term “disability” means a physical or mental impairment that substantially limits one or more major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment. 29 U.S.C. § 705(9)(B), (20)(B); 42 U.S.C. § 12102. The Americans with Disabilities Act Amendments Act (Amendments Act), Pub. Law No. 110-325, amended the disability definition for Section 504 and Title II. Most notably, the Amendments Act required that “disability” under these statutes be interpreted broadly. More information about the Amendments Act is available from OCR’s website at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html> and <http://www.ed.gov/ocr/docs/dcl-504faq-201109.html>.

⁹ In this letter, the term “Section 504 FAPE services” is used to refer to the regular or special education and related aids and services provided to students with disabilities as specified in 34 C.F.R. § 104.33(b). The term “IDEA FAPE services” is used in this letter to refer to the special education and related services provided to students with disabilities that meet the requirements of 34 C.F.R. pt. 300, as specified in 34 C.F.R. §§ 300.17 (FAPE), 300.39 (special education), and 300.34 (related services).

¹⁰ Students with disabilities who are IDEA-eligible also have rights under Section 504 and Title II. The Department’s Section 504 regulations provide that implementation of an IEP developed in accordance with IDEA is one means of providing Section 504 FAPE services. 34 C.F.R. § 104.33(b)(2).

¹¹ 42 U.S.C. §§ 12131-12134; 28 C.F.R. pt. 35.

¹² 42 U.S.C. § 12201(a). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II’s requirements.

¹³ For more information about OSERS, please visit <http://www.ed.gov/osers>.

¹⁴ This letter only addresses Federal law; other State or local laws and policies may apply.

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school districts in providing FAPE to eligible children with disabilities through the provision of special education and related services.¹⁵ School districts must ensure that IDEA FAPE services in the least restrictive environment are made available to all eligible children with disabilities through a properly developed IEP that provides a meaningful educational benefit to the student. In addition, school districts must locate, identify, and evaluate children suspected of having disabilities who may need special education and related services.

II. Schools' Obligations to Address Disability-Based Harassment

Bullying of a student on the basis of his or her disability may result in a disability-based harassment violation under Section 504 and Title II.¹⁶ As explained in OCR's 2010 Dear Colleague Letter on Harassment and Bullying, when a school knows or should know of bullying conduct based on a student's disability, it must take immediate and appropriate action to investigate or otherwise determine what occurred.¹⁷ If a school's investigation reveals that bullying based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects. Therefore, OCR would find a disability-based harassment violation under Section 504 and Title II when: (1) a student is bullied based on a disability; (2) the bullying is sufficiently serious to create a hostile environment; (3) school officials know or should know about the bullying; and (4) the school does not respond appropriately.¹⁸

As explained in Section III, below, for the student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services, a school's investigation should include determining whether

¹⁵ 20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300. IDEA establishes 13 disability categories: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment. 34 C.F.R. § 300.8(c).

¹⁶ These legal protections extend to all students with disabilities, including students who are regarded as having a disability or who have a record of a disability and students with disabilities who are not receiving services under Section 504 or IDEA. In addition to being protected from harassment on the basis of disability, students with disabilities, like all students, are entitled to protection from harassment on the basis of race, color, national origin, sex (including sexual violence), and age under the Federal civil rights laws that OCR enforces. For more information about other types of discriminatory harassment, see [OCR's 2010 Dear Colleague Letter](#) referenced in note 4.

¹⁷ Schools know or should know about disability-based harassment when, for example, a teacher or other responsible employee of the school witnesses the conduct. For more information about how to determine when knowledge of such conduct will be imputed to schools, refer to the OCR 2001 Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, <http://www.ed.gov/ocr/docs/shguide.pdf> at page 13; and [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#), at page 3 and note 11.

¹⁸ This is the standard for administrative enforcement of Section 504 and in court cases where plaintiffs are seeking injunctive relief. It is different from the standard in private lawsuits for money damages, which, many courts have held, requires proof of a school's actual knowledge and deliberate indifference. See *Long v. Murray Cnty. Sch. Dist.*, 522 Fed. Appx. 576, 577 & n. 1 (11th Cir. 2013) (applying the test enunciated in *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643 (1999)).

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that student's receipt of appropriate services may have been affected by the bullying.¹⁹ If the school's investigation reveals that the bullying created a hostile environment and there is reason to believe that the student's IDEA FAPE services or Section 504 FAPE services may have been affected by the bullying, the school has an obligation to remedy those effects on the student's receipt of FAPE.²⁰ Even if the school finds that the bullying did not create a hostile environment, the school would still have an obligation to address any FAPE-related concerns, if, for example, the school's initial investigation revealed that the bullying may have had some impact on the student's receipt of FAPE services.

III. Bullying and the Denial of a Free Appropriate Public Education

The bullying on *any* basis of a student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services can result in the denial of FAPE that must be remedied under Section 504. The OSERS 2013 Dear Colleague Letter clarified that, under IDEA, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP team²¹ to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide a meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP team must determine the extent to which additional or different IDEA FAPE services are needed to address the student's individualized needs and then revise the IEP accordingly. Any decisions made by the IEP team must be consistent with the IDEA provisions addressing parental participation and should keep the student with a disability in the original placement or setting (e.g., the same school and classroom) unless the student can no longer receive FAPE in that placement or setting. Under IDEA, schools have an ongoing obligation to ensure that a student with a disability who is the target of bullying continues to receive FAPE in accordance with his or her IEP—an obligation that exists whether the student is being bullied based on his or her disability or is being bullied based on other reasons.

Similarly, under Section 504, schools have an ongoing obligation to ensure that a qualified student with a disability who receives IDEA FAPE services or Section 504 FAPE services and who is the target of bullying continues to receive FAPE—an obligation that exists regardless of why the student

¹⁹ As stated in [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#) at page 2, "The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors." When a student with a disability who receives Section 504 FAPE services is being bullied, an appropriate "other factor" is whether that student's receipt of services has been affected by the bullying.

²⁰ When a student with a disability has engaged in misconduct that is caused by his or her disability, the student's own misconduct would not relieve the school of its legal obligation to determine whether that student's civil rights were violated by the bullying conduct of the other student. For example, if a student, for reasons related to his disability, hits another student and other students then call him "crazy" on a daily basis, the school should, of course, address the conduct of the student with a disability. Nonetheless, the school must also consider whether the student with a disability is being bullied on the basis of disability under Section 504 and Title II.

²¹ The IEP team is the group of persons specified in IDEA that determines the appropriate IDEA FAPE services for an IDEA-eligible student. 34 C.F.R. § 300.321(a).

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is being bullied.²² Accordingly, under Section 504, as part of a school's appropriate response to bullying on *any* basis, the school should convene the IEP team or the Section 504 team²³ to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed,²⁴ ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.²⁵ In addition, when considering a change of placement, schools must continue to ensure that Section 504 FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

Although there are no hard and fast rules regarding how much of a change in academic performance or behavior is necessary to trigger the school's obligation to convene the IEP team or Section 504 team, a sudden decline in grades, the onset of emotional outbursts, an increase in the frequency or intensity of behavioral interruptions, or a rise in missed classes or sessions of Section 504 services would generally be sufficient.²⁶ By contrast, one low grade for an otherwise straight-A student who shows no other changes in academic progress or behavior will generally not, standing alone, trigger the school's obligation to determine whether the student's needs are still being met. Nonetheless, in addition to addressing the bullying under the school's anti-bullying policies, schools should promptly convene the IEP team or Section 504 team to determine whether FAPE is being provided

²² At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under State law to provide elementary and secondary educational services to students with disabilities; or a student to whom a State is required to provide FAPE under IDEA. 34 C.F.R. § 104.3(l). In addition to the provision of regular or special education and related aids and services pursuant to 34 C.F.R. § 104.33, FAPE protections extend to educational setting, evaluation and placement, and procedural safeguards. 34 C.F.R. §§ 104.34-.36.

²³ The Section 504 team is the group of knowledgeable persons that determines the appropriate Section 504 FAPE services for a qualified student with a disability under Section 504.

²⁴ A reevaluation would not be needed unless there is a reason to believe the student's underlying disability or disabilities have changed or the student has an additional disability.

²⁵ OCR would expect that schools address bullying behavior to ensure that the burden does not fall on the student with a disability. Along these lines, and consistent with the OSERS 2013 Dear Colleague Letter, schools should exercise caution when considering a change in placement, or the location of services (including classroom) provided to the student with a disability who is the target of bullying and should keep the student in the original placement unless the student can no longer receive Section 504 FAPE in that placement. OCR also urges schools to allow for parental participation when considering any change in placement or location of services (including classroom). *See* 34 C.F.R. pt. 104, app. A (discussion of Subpart D).

²⁶ In light of schools' ongoing obligation to ensure that students with disabilities are receiving FAPE, adverse changes in the academic performance or behavior of a student receiving FAPE services could trigger the school's obligation to convene the IEP team or Section 504 team regardless of the school's knowledge of the bullying conduct. *See, e.g.*, Section V, Hypothetical Example B, below. As a best practice, schools should train all staff to report bullying to an administrator or school official who can promptly convene a meeting of knowledgeable people (e.g., the student's Section 504 team or IEP team) to ensure that the student is receiving FAPE and, as necessary, address whether the student's FAPE needs have changed.

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to a student with a disability who has been bullied and who is experiencing any adverse changes in academic performance or behavior.

When bullying results in a disability-based harassment violation, it will not always result in a denial of FAPE. Although all students with disabilities are protected from disability-based harassment, the requirement to provide FAPE applies only to those students with disabilities who need or may need FAPE services because of their disability.²⁷ This means that if a student is the target of bullying resulting in a disability-based harassment violation, but that student is not eligible to receive IDEA or Section 504 FAPE services, there could be no FAPE violation.

When a student who receives IDEA FAPE services or Section 504 FAPE services has experienced bullying resulting in a disability-based harassment violation, however, there is a strong likelihood that the student was denied FAPE. This is because when bullying is sufficiently serious to create a hostile environment and the school fails to respond appropriately, there is a strong likelihood both that the effects of the bullying included an impact on the student's receipt of FAPE and that the school's failure to remedy the effects of the bullying included its failure to address these FAPE-related concerns.

Ultimately, unless it is clear from the school's investigation into the bullying conduct that there was no effect on the student with a disability's receipt of FAPE, the school should, as a best practice, promptly convene the IEP team or the Section 504 team to determine whether, and to what extent: (1) the student's educational needs have changed; (2) the bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and (3) additional or different services, if any, are needed, and to ensure any needed changes are made promptly. By doing so, the school will be in the best position to ensure the student's ongoing receipt of FAPE.

IV. How OCR Analyzes Complaints Involving Bullying of Students with Disabilities

When OCR evaluates complaints involving bullying and students with disabilities, OCR may open an investigation to determine whether there has been a disability-based harassment violation, a FAPE violation, both, or neither, depending on the facts and circumstances of a given complaint.

²⁷ The FAPE requirement to evaluate applies to all students who are known or believed to need special education or related services, regardless of the nature or severity of the disability. 34 C.F.R. §§ 104.33, -.35. For a student who is suspected of having a disability but who is not yet receiving IDEA or Section 504 services, OCR may consider whether the school met its obligation to evaluate the student. 34 C.F.R. § 104.35. For example, if a student suspected of having a disability was missing school to avoid bullying, OCR may consider whether the student's evaluation was unduly delayed (e.g., if the school knew or should have known of the bullying and failed to act) in determining whether there was a denial of FAPE under the circumstances.

When investigating disability-based harassment, OCR considers several factors, including, but not limited to:

- Was a student with a disability bullied by one or more students based on the student's disability?
- Was the bullying conduct sufficiently serious to create a hostile environment?
- Did the school know or should it have known of the conduct?
- Did the school fail to take prompt and effective steps reasonably calculated to end the conduct, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects?

If the answer to each of these questions is "yes," then OCR would find a disability-based harassment violation under Section 504 and, if the student was receiving IDEA FAPE or Section 504 FAPE services, OCR would have a basis for investigating whether there was also a denial of FAPE under Section 504.

Even if the answers to one or more of these questions is "no," for a student who was receiving IDEA FAPE or Section 504 FAPE services, OCR may still consider whether the bullying resulted in a denial of FAPE under Section 504 that must be remedied.

When investigating whether a student receiving IDEA FAPE or Section 504 FAPE services who was bullied was denied FAPE under Section 504, OCR considers several factors, including, but not limited to:

- Did the school know or should it have known that the effects of the bullying may have affected the student's receipt of IDEA FAPE services or Section 504 FAPE services? For example, did the school know or should it have known about adverse changes in the student's academic performance or behavior indicating that the student may not be receiving FAPE?

If the answer is "no," there would be no FAPE violation.²⁸ If the answer is "yes," OCR would then consider:

- Did the school meet its ongoing obligation to ensure FAPE by promptly determining whether the student's educational needs were still being met, and if not, making changes, as necessary, to his or her IEP or Section 504 plan?

If the answer is "no," and the student was not receiving FAPE, OCR would find that the school violated its obligation to provide FAPE.

²⁸ Where a student is suspected of having a disability but is not yet receiving IDEA FAPE services or Section 504 FAPE services, OCR could consider whether the student's evaluation was unduly delayed in determining whether there was a denial of FAPE under the circumstances. See fn. 27, above.

V. Hypothetical Examples

The following hypothetical examples illustrate how OCR would analyze a complaint involving allegations of the bullying of a student with a disability who only receives Section 504 FAPE services.

A. Disability-Based Harassment Violation and FAPE Violation

At the start of the school year, a ten-year-old student with Attention Deficit Hyperactivity Disorder (ADHD) and a speech disability is fully participating in the classroom, interacting with his peers at lunch and recess, and regularly attending speech therapy twice a week. In addition to providing for speech services, the student's Section 504 plan also provides for behavior supports that call for all his teachers and other trained staff to supervise him during transition times, provide constructive feedback, and help him use preventative strategies to anticipate and address problems with peers.

Because of the student's disabilities, he makes impulsive remarks, speaks in a high-pitched voice, and has difficulty reading social cues. Three months into the school year, students in his P.E. class begin to repeatedly taunt him by speaking in an exaggerated, high-pitched tone, calling him names such as "weirdo" and "gay," and setting him up for social embarrassment by directing him to ask other students inappropriate personal questions. The P.E. teacher witnesses the taunting, but neither reports the conduct to the appropriate school official, nor applies the student's behavior supports specified in his 504 plan. Instead, she pulls the student aside and tells him that he needs to start focusing less on what kids have to say and more on getting his head in the game. As the taunting intensifies, the student begins to withdraw from interacting with other kids in P.E. and avoids other students at lunch and recess. As the student continues to withdraw over the course of a few weeks, he misses multiple sessions of speech therapy, but the speech therapist does not report his absences to the Section 504 team or another appropriate school official.

In this example, OCR would find a disability-based harassment violation. The student's peers were making fun of him because of behaviors related to his disability. For OCR's enforcement purposes, the taunting the student experienced, including other students impersonating him and calling him "weirdo" and "gay," was therefore based on his disability.²⁹ The school knew about the bullying because the P.E. teacher witnessed the conduct.³⁰ Yet upon witnessing the taunting, the P.E. teacher not only failed to provide the student behavior supports as required in the student's 504 plan, but also failed to report the conduct to an appropriate school official. Had she taken this step, the school could have conducted an investigation and found that the conduct created a hostile environment because it interfered with the student's ability to benefit from the speech therapy services that he

²⁹ OCR would have also investigated whether a school's inappropriate response to the use of the word "gay" in this context constituted a gender-based harassment violation under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688; 34 C.F.R. pt. 106, which prohibits discrimination on the basis of sex. For a discussion of gender-based harassment, see [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#), at pages 7-8.

³⁰ The P.E. teacher in this example is a responsible employee. See fn. 17, above.

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should have been receiving and negatively affected his ability to participate fully in P.E., lunch, and recess. The school's failure to appropriately respond to the bullying violated Section 504.

OCR would also find FAPE violations under Section 504. First, when the P.E. teacher failed to implement the behavior supports in the student's Section 504 plan, the school denied the student FAPE under Section 504. In addition, and independent of the failure to provide behavior supports, because the bullying impacted the student's receipt of Section 504 FAPE, the school should have addressed the student's changed needs; by failing to do so, the student was denied Section 504 FAPE. The school should have known about the missed Section 504 services and related changes in behavior. The P.E. teacher knew about the bullying but did nothing to report the student's behavioral changes (e.g., the student's increasing efforts to isolate himself from other students) to the Section 504 team members or other appropriate school official. Similarly, the speech therapist knew that the student was missing speech therapy but did not report this to the 504 team or to an appropriate school official. By failing to address the adverse effects of the bullying on FAPE, the school did not make necessary changes to ensure the student was provided FAPE under Section 504. If, upon concluding its investigation, OCR and the district were to enter into a resolution agreement, OCR could require, for example, that the district (1) ensure that FAPE is provided to the student by convening the Section 504 team to determine if the student needs different or additional services (including compensatory services) and, if so, providing them; (2) offer counseling to the student to remedy the harm that the school allowed to persist; (3) monitor whether bullying persists for the student and take corrective action to ensure the bullying ceases; (4) develop and implement a school-wide bullying prevention strategy based on positive behavior supports; (5) devise a voluntary school climate survey for students and parents to assess the presence and effect of bullying based on disability and to respond to issues that arise in the survey; (6) revise the district's anti-bullying policies to develop staff protocols in order to improve the district's response to bullying; (7) train staff and parent volunteers, such as those who monitor lunch and recess or chaperone field trips, on the district's anti-bullying policies, including how to recognize and report instances of bullying on any basis; and (8) provide continuing education to students on the district's anti-bullying policies, including where to get help if a student either witnesses or experiences bullying conduct of any kind.

B. FAPE Violation, No Disability-Based Harassment Violation

A thirteen-year-old student with depression and Post-Traumatic Stress Disorder (PTSD) who receives counseling as part of her Section 504 services is often mocked by her peers for being poor and living in a homeless shelter. Having maintained an A average for the first half of the academic year, she is now getting Bs and Cs, neglecting to turn in her assignments, and regularly missing counseling sessions. When asked by her counselor why she is no longer attending scheduled sessions, she says that she feels that nothing is helping and that no one cares about her. The student tells the counselor that she no longer wants to attend counseling services and misses her next two scheduled sessions. The counselor informs the principal that the student has missed several counseling sessions and that the student feels the sessions are not helping. Around the same time, the student's teachers inform the principal that she has begun to struggle academically. The

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principal asks the teachers and counselor to keep her apprised if the student's academic performance worsens, but does not schedule a Section 504 meeting.

In this example, whether or not the school knew or should have known about the bullying, OCR would not find a disability-based harassment violation under Section 504 because the bullying incidents were based on the student's socio-economic status, not her disability.

Independent of the basis for the bullying and regardless of whether school officials knew or should have known about the bullying, the school district still had an ongoing obligation under Section 504 to ensure that this student with a disability was receiving an education appropriate to her needs. Here, the student's sudden decline in grades, coupled with changes in her behavior (missing counseling sessions), should have indicated to the school that her needs were not being met. In this example, OCR would find that these adverse changes were sufficient to put the school on notice of its obligation to promptly convene the Section 504 team to determine the extent of the FAPE-related problems and to make any necessary changes to her services, or, if necessary, reevaluate her, in order to ensure that she continues to receive FAPE. By failing to do more than keep track of the student's academic performance, the school failed to meet this obligation, which violated Section 504.³¹

C. No Disability-Based Harassment Violation, No FAPE Violation

A seven-year-old student with a food allergy to peanuts has a Section 504 plan that provides for meal accommodations, the administration of epinephrine if the student is exposed to peanuts, access to a peanut-free table in the cafeteria, and the prohibition of peanut products in the student's classroom. In advance of the upcoming Halloween party, the teacher reminds the class that candy with peanuts is prohibited in the classroom at all times, including Halloween. That afternoon, while on the bus, a classmate grabs the student's water bottle out of the student's backpack, drinks from it, and says, "I had a peanut butter sandwich for lunch today, and I just finished it." The following day, while having lunch at the peanut-free table in the lunchroom with some friends, a classmate who had been sitting at another table sneaks up behind her and waves an open candy bar with peanuts in front of her face, yelling, "Time to eat peanuts!" Though the candy bar does not touch her, a few other classmates nearby begin chanting, "Time to eat peanuts," and the student leaves the lunchroom crying. When the student goes back to her classroom and tells her teacher what happened at lunch and on the bus, the teacher asks her whether she came into contact with the candy bar and what happened to the water bottle. The student confirms that the candy bar did not touch her and that she never got the water bottle back from the classmate who took it, but says that she is scared to go back into the lunchroom and to ride the bus. The teacher promptly informs the principal of the incidents, and the peers who taunted the student on the bus and in the lunchroom are removed from the lunchroom, interviewed by the assistant principal, and required to meet with the counselor during

³¹ If OCR and the district were to enter into a resolution agreement in this case, such an agreement could include, for example, any of the provisions specified in Hypothetical Example A, above.

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recess to discuss the seriousness of their conduct. That same week, the school holds a Section 504 meeting to address whether any changes were needed to the student's services in light of the bullying. The principal also meets with the school counselor, and they decide that a segment on the bullying of students with disabilities, including students with food allergies, would be added to the counselor's presentation to students on the school's anti-bullying policy scheduled in the next two weeks. Furthermore, in light of the young age of the students, the counselor offers to incorporate a puppet show into the segment to help illustrate principles that might otherwise be too abstract for such a young audience. In the weeks that follow, the student shows no adverse changes in academic performance or behavior, and when asked by her teacher and the school counselor about how she is doing, she indicates that the bullying has stopped.

In this example, based on the school's appropriate response to the incidents of bullying, OCR would not find a disability-based harassment violation under Section 504. The bullying of the student on account of her food allergy to peanuts was based on the student's disability. Moreover, the physically threatening and humiliating conduct directed at her was sufficiently serious to create a hostile environment by limiting her ability to participate in and benefit from the school's education program when she was near the classmates who bullied her in the lunchroom and on the bus. School personnel, however, did not tolerate the conduct and acted quickly to investigate the incidents, address the behavior of the classmates involved in the conduct, ensure that there were no residual effects on the student, and coordinate to promote greater awareness among students about the school's anti-bullying policy. By taking prompt and reasonable steps to address the hostile environment, eliminate its effects, and prevent it from recurring, the school met its obligations under Section 504.

OCR also would not find a FAPE violation under Section 504 on these facts. Once the school became aware that the student feared attending lunch and riding the bus as a result of the bullying she was experiencing, the school was on notice that the effects of the bullying may have affected her receipt of FAPE. This was sufficient to trigger the school's additional obligation to determine whether, and to what extent, the bullying affected the student's access to FAPE and take any actions, including addressing the bullying and providing new or different services, required to ensure the student continued receiving FAPE. By promptly holding a Section 504 meeting to assess whether the school should consider any changes to the student's services in light of the bullying, the school met its independent legal obligation to provide FAPE under Section 504.

VI. Conclusion

OCR is committed to working with schools, students, families, community and advocacy organizations, and others to ensure that schools understand and meet their legal obligations under Section 504 and Title II to appropriately address disability-based harassment and to ensure that students with disabilities who are bullied continue to receive FAPE.

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OCR also encourages States and school districts to reevaluate their policies and practices in light of this letter, as well as OCR's and OSERS's prior guidance. If you would like to request technical assistance or file a complaint alleging discrimination, please contact the OCR enforcement office that serves your area. Contact information is posted on OCR's website at: <http://www.ed.gov/ocr/complaintintro.html> or please contact OCR's customer service team at 1-800-421-3481 (TDD 1-800-877-8339).

I look forward to continuing our work together to address and reduce incidents of bullying in our schools so that no student is limited in his or her ability to participate in and benefit from all that our educational programs have to offer.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

This is a sample letter to address student-to-student harassment. A parent can use this sample to notify the school district of the harassment and address concerns about discrimination on the basis of disability. This letter does not replace legal advice from a lawyer. If you need advice based on facts unique to your child, please contact a lawyer.

(Date)

(Insert your name)
(Insert your address)

(Insert the Superintendent's name), **Superintendent**
(Insert county name) **County Schools**
(Insert address)

RE: Harassment of (Insert child's name)

Dear Superintendent (Insert Superintendent's last name):

I am the parent of (Insert child's full name). (Insert child's first name) **attends** (Insert school's name) **in** (Insert county name) **County and receives special education services.**

The purpose of this letter is to notify you that (Insert child's first name) **has been the subject of severe and pervasive student-to-student harassment. I want to make you aware of the following incidents that** (Insert child's first name) **has been subject to at** (Insert name of school). (List facts such as dates harassment occurred, where it occurred, times and witnesses. List incidents of bullying/harassment. Include any documentation.)

I believe this harassment constitutes discrimination against (Insert child's first name). **The discrimination interferes with** (Insert child's first name) **right to equal access to educational programs and activities because** (explain how the child cannot access educational programs. The effect must be serious in nature, such as afraid to attend school, made fun of in class resulting in private therapy, etc.) (Insert name of school staff) **has been made aware of this harassment, but has failed to act to end the discrimination and harassment that harms** (Insert child's first name).

It is my understanding that (Insert county name) **County and** (Insert school's name) **School are the recipients of federal funds. As the Superintendent of this county school system, you have the authority to control** (Insert name of school) **School where the acts of harassment occur, the individuals committing these acts, and school personnel who have ignored the problem.**

(Sample letter continued on next page)

I would like *(Insert county name)* County Schools to correct the harassment and discrimination by doing the following: *(Describe suggested corrective actions)*. It is my understanding that as Superintendent of this county school system, you have the authority and responsibility to investigate this complaint on behalf of *(Insert child's first name)* and implement corrective actions to end the harassment and discrimination. Please act to correct the harassment and discrimination suffered by *(Insert the child's first name)*.

Please consider this letter a request for you to investigate the harassment and discrimination suffered by *(Inserts child's first name)* and to take appropriate and effective corrective actions. I believe that any failure by you and your county school system to investigate and take effective corrective actions, as necessary, demonstrate deliberate indifference to this discrimination, and I understand I have the right to file a complaint with the Office of Civil Rights and/or pursue legal remedies.

I look forward to end of the harassment and discrimination against *(Insert child's first name)*.

Sincerely,

(Sign your name)

(Type your name)

Note: A harassment complaint can be filed by anyone on behalf of a child.

This is a sample letter to address teacher-to-student harassment. A parent can use this sample letter to notify the school district of the harassment and to address concerns about discrimination on the basis of disability. This letter does not replace legal advice from a lawyer. If you need advice based on facts unique to your child, please contact a lawyer. Send this letter to the Superintendent in your county by certified mail with a return receipt. Keep a copy for your records.

(Date)

(Insert your name)

(Insert your address)

(Insert the Superintendent's name), **Superintendent**

(Insert county name) **County Schools**

(Insert address)

RE: Harassment of *(Insert child's full name)*

Dear Superintendent *(Insert Superintendent's last name)*:

I am the parent of *(Insert child's full name)*. *(Insert child's first name)* **attends** *(Insert school's name)* **in** *(Insert county name)* **County and receives special education services.**

The purpose of this letter is to notify you that *(Insert child's first name)* **has been the subject of severe and pervasive teacher** *(or any school personnel)* **-to-student harassment by** *(Insert name of teacher or school personnel harassing the student)*. **I want to make you aware of the following incidents that** *(Insert child's first name)* **has been subject to at** *(Insert the name of the school)* **School.** *(List facts such as dates harassment occurred, where it occurred, times and witnesses. List incidents of bullying/harassment. Include any documentation.)*

I believe this harassment constitutes discrimination against *(Insert child's first name)*. **The discrimination interferes with** *(Insert child's first name)* **right to equal access to educational programs and activities because** *(explain how the child cannot access educational programs. The effect must be serious in nature, such as afraid to attend school, made fun of in class resulting in private therapy, etc.)* *(Insert name of school staff)* **has been made aware of this harassment, but has failed to act to end the discrimination and harassment that harms** *(Insert child's first name)*.

(Sample letter continued on next page)

It is my understanding that *(Insert county name)* **County and** *(Insert name of school)* **School are the recipients of federal funds. As the Superintendent of this county school system, you have the authority and responsibility to control *(Insert name of school)* **School where the acts of harassment occur, the individual committing these acts, and school personnel who have ignored the problem.****

I would like *(Insert county name)* **County Schools to correct the harassment and discrimination by doing the following:** *(Describe suggested corrective actions).* **It is my understanding that as the Superintendent of this county school system, you have the authority and responsibility to investigate this complaint on behalf of** *(Insert the child's first name)* **and implement corrective actions to end the harassment and discrimination. Please act to correct the harassment and discrimination suffered by** *(Insert child's first name)*.

Please consider this letter a request for you to investigate the harassment and discrimination suffered by *(Inserts child's first name)* **and to take appropriate and effective corrective actions. I believe that any failure by you and your county school system to investigate and take effective corrective actions, as necessary, demonstrate deliberate indifference to this discrimination, and I understand I have the right to file a complaint with the Office of Civil Rights and/or pursue legal remedies.**

I look forward to end of the harassment and discrimination against *(Insert child's first name)*.

Sincerely,

(Sign your name)

(Type your name)

Note: A harassment complaint can be filed by anyone on behalf of a child.

126CSR188

CITIZENS APPEAL FORM
*LEVEL I
(Principal/School Administrator)

_____ COUNTY SCHOOLS

*This form is to be completed only after an informal conference with the principal or administrator in charge as specified at 126CSR188, 4.1.1. The appeal procedure approved by the West Virginia Board of Education should be reviewed prior to submitting a formal appeal. Copies are available at the Office of the State Superintendent of Schools, the office of the county board of education and at each public school.

CITIZEN(S) MAKING APPEAL

Form with three columns: Name, Address, Phone. Two rows of lines for entry.

(Note: If more than two citizens are filing the appeal, the names, addresses and signatures are to be given on the reverse side of this form.)

INFORMATION REGARDING APPEAL

Policy 7211 states, "An 'appeal' is a claim by one or more citizens of a violation of state law or the policies, rules and regulations of the West Virginia Board of Education." Please identify the specific state law or the policy, rule or regulation of the State Board of Education claimed to have been violated:

Horizontal line for text entry.

Horizontal line for text entry.

In the space provided below briefly describe the problem or concern, how it affects you, and how you think it should be corrected. (Additional information may be attached.)

Horizontal line for text entry.

Horizontal line for text entry.

Horizontal line for text entry.

Horizontal line for text entry.

Date

Signature(s)

126CSR188

Additional Aggrieved Citizens

1.	_____	_____
	Name	Phone
	_____	_____
	Address	Signature
2.	_____	_____
	Name	Phone
	_____	_____
	Address	Signature
3.	_____	_____
	Name	Phone
	_____	_____
	Address	Signature
4.	_____	_____
	Name	Phone
	_____	_____
	Address	Signature
5.	_____	_____
	Name	Phone
	_____	_____
	Address	Signature
6.	_____	_____
	Name	Phone
	_____	_____
	Address	Signature

126CSR188

CITIZENS APPEAL FORM
*LEVEL II
(County Superintendent of Schools)

_____ COUNTY SCHOOLS

*For a Level II appeal to be considered, it must be presented to the county superintendent within fifteen days after receiving the decision from Level I. While the original claim may not be altered greatly in content or wording, additional supportive information may be provided. Please attach a copy of the Level I decision to this form before forwarding it to the county superintendent.

CITIZEN(S) MAKING APPEAL

Form with four rows for Name, Address, and Phone, and a final row for Date and Signature(s).



Note: Upon receipt of this appeal, the county superintendent or his/her designee(s) shall have a conference with the citizen(s) in an attempt to resolve the appeal and a written decision will be rendered as specified at 126CSR188, 4.2.

126CSR188

CITIZENS APPEAL FORM
*LEVEL III
(County Board of Education)

_____ COUNTY SCHOOLS

*For a Level III appeal to be considered by the county board of education, it must be presented to the county superintendent within fifteen days after receiving the decision from Level II. While the original claim may not be altered greatly in content or wording, additional supportive information may be provided. Please attach a copy of the decisions rendered at Levels I and II to this form before forwarding it to the county superintendent.

CITIZEN(S) MAKING APPEAL

Form with fields for Name, Address, Phone, Date, and Signature(s) for the citizen(s) making the appeal.



Request for Hearing

Citizen(s) are entitled to a hearing before the county board of education if requested at the time the Level III appeal is filed.

I/we do _____, do not _____ request a hearing before the county board of education.

Form with fields for Date and Signature(s) for the hearing request.

126CSR188

CITIZENS APPEAL FORM
*LEVEL IV
(State Superintendent of Schools)

_____ COUNTY SCHOOLS

*If the citizen(s) is/are not satisfied with the decision of the county board of education at Level III, that decision may be appealed to the State Superintendent of Schools, if filed within thirty days. The citizen(s) shall include with this form a statement of basic facts related to the appeal plus copies of the appeal and decisions at all lower levels, available transcripts of hearings, and any other supportive information. A copy of all information provided the State Superintendent shall, at the same time, be transmitted by the citizen(s) to the county superintendent of schools. NOTE: An appeal cannot be heard at Level IV if a specific violation of state law or policy, rule or regulation of the State Board of Education has not been identified at Level I, 126CSR188, 2.1.

CITIZEN(S) MAKING APPEAL

Name Address Phone

Name Address Phone

versus

RESPONDENT

County Board of Education County Superintendent

At the request of either party, a hearing shall be conducted by the State Superintendent or his/her designee hearing officer.

I/we do _____, do not _____ request a hearing before the State Superintendent of Schools or his/her designated hearing officer on this appeal.

I/we do hereby swear that the matters set forth in this appeal are true insofar as is known. I/we certify that a copy of this Level IV appeal and accompanying information has been provided the county superintendent of schools.

Date Signature Date Signature

Glossary

Glossary

Accommodations: Changes in how a student accesses information and demonstrates learning. Accommodations do not substantially change the instructional level, content, or performance criteria. The changes are made in order to provide a student with equal access to learning and equal opportunity to show what he or she knows and can do. Accommodations can include changes in the following: presentation and/or response format and procedures, instructional strategies, time/scheduling, environment, equipment, and architecture. An accommodation does not alter what the student is expected to know.

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 of Majority: The age at which educational rights of a student receiving Special Education Services, as required by IDEA, are transferred to the student. In West Virginia, educational rights are transferred to the student on their eighteenth birthday.

Alternative Academic Achievement Standards (AAAS): Provide a framework for teachers of students with the most significant cognitive disabilities to teach skills and competencies essential for independent living, employment, and postsecondary education. These are the descriptions of what students should know and be able to do at each grade level in a content area.

Alternate Performance Task Assessment (APTA): An assessment that documents a student's efforts, achievement and progress on instructional activities aligned to specific Alternate Academic Achievement Standards (AAAS) and is linked to the Content Standards and Objectives (CSO). APTA is administered to students whose performance cannot be adequately addressed through the general assessment due to a significant cognitive disability. APTA results are used to make instructional decisions and to meet No Child Left Behind (NCLB) requirements.

Anecdotal Recording: Information obtained through personal accounts, examples and observations.

Assistive Technology Device: Any item, piece of equipment or product system, whether acquired commercially or 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.

Benchmarks/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.

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.

Bullying/Harassment/Intimidation: Any intentional gesture, or any intentional electronic, written, verbal or physical act, communication, transmission or threat that:

- A reasonable person under the circumstances should know [bullying/harassment] will have the effect of harming a student, damaging a student’s property, placing a student in reasonable fear of harm to his or her person, and/or placing a student in reasonable fear of damage to his or her property;
- Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or emotionally abusive educational environment for a student; or
- Disrupts or interferes with the orderly operation of the school.

Cognitive Strategies Instruction (CSI): CSI is an explicit instructional approach that emphasizes the development of thinking skills and processes as a means to enhance learning (Scheid, 1993). Students are taught metacognitive or self-regulation strategies in structured cognitive routines that help them monitor and evaluate their learning (Dole, Nokes, & Drits 2009). Specifically, three major concepts are associated with CSI:

1. Cognition – a student’s ability to know what to do in order to complete a task
2. Metacognition – a student’s ability to monitor his/her performance, and be flexible to change plans when the task is not being successfully completed
3. Problem solving – a student’s ability to plan, reason, select relevant information and monitor results

Content Area: The subject area most commonly taught in school. There are traditionally ten content areas built into the school-wide curriculum: the arts, civics, English/language arts, geography, history, math, science, skills for a healthy life, technology, and world languages.

Content standards and objectives: Content standards are broad descriptions of what students should know and be able to do in a content area. Content standards describe what students’ knowledge and skills should be at the end of a 1-12 sequence of study. Objectives are incremental steps toward accomplishment of content standards. Objectives are listed by grade level and are organized around the content standards. Objectives build across grade levels as students advance in their knowledge and skills.

Differentiated Instruction (DI): DI a comprehensive and flexible process that includes the planning, preparation and delivery of instruction to address the diversity of students’ learning needs within the classroom. Through DI, teachers take into account who they teach, what they teach, where they teach and how they teach.

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

Eligibility: The determination that must be made about “whether a child is a child with a disability,” as defined by the IDEA, and is therefore eligible to receive special education services.

Eligibility Committee: Considers the evaluation and reevaluation findings and determines whether the student meets or continues to meet the eligibility criteria for special education services.

Evaluation: The 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.

Exceptional Student: Any child who requires special instruction or related services to take full advantage of or to respond to educational programs and opportunities because of physical, mental, emotional, social, or learning exceptionality, as determined by a multi-disciplinary team.

Extended School Year (ESY): 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.

Free and Appropriate Public Education (FAPE): The special education and related services which: 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 requirement 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. An 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 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 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.

Harassment: See **bullying**

Health Care Plan: A written document developed by the certified school nurse which includes a nursing diagnosis, is individualized to the student's health needs and consists of specific goals and interventions delineating the school nursing actions, delegated procedures and student's role in self-care.

Homebound Services (Policy 2510): The educational services for students who cannot attend the public school setting due to an injury or for any other reason as certified in writing by a licensed physician or other licensed health care provider, or are temporarily confined to home or hospital for a period that lasts or will last more than three consecutive weeks.

Homeschool: A school in which parents (or other qualified adults of the parents' choosing) teach their children an academic curriculum at home instead of sending them out to a public or private school. West Virginia does not recognize homeschools as private schools.

Individualized Education Program (IEP): A written statement for an eligible student with an exceptionality that is developed, reviewed and revised in accordance with West Virginia Policy 2419 and IDEA 2004.

Illegal Drug: 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 of under any other provision of federal law.

Independent Educational Evaluation (IEE): 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.

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

Informed Consent: The process in which a parent is fully informed about the action the school district plans to take and for which consent is being requested.

Interim Alternate 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 (FBA) and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

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.

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.

Intimidation: See bullying

Least Restrictive Environment (LRE): 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.

Manifestation Determination Review: A meeting of IEP Team members (determined by the district and parent) including the parent(s) to review the relationship of the student's disability and the behavior resulting in disciplinary action. The team will determine if the behavior is related to the student's disability and review information in the student's file, the IEP, teacher observations, and important information from the parents.

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.

Modifications: Changes in what a student is expected to learn. The changes are made to provide a student the opportunity to participate meaningfully and productively along with other students in classroom and school learning experiences. Modifications might include changes in the following: instructional level, content, and performance.

Modified 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 modified diploma. These students participate in the alternate assessment based on alternate academic achievement standards.

Objectives: see **Benchmarks**

Out-of-School Environment (OSE) Services: Instruction, therapy or interventions provided one-on-one or in groups at a location outside of the school, such as home or community.

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, Special Education – Residential Facility, Special Education – Parentally Placed in Private School, and Special Education – Correctional Facilities.

Positive Behavior 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 behaviors. *See Policy 2419 for a more extensive definition.*

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.

Procedural Safeguards: The due process protections afforded in the implementation of the West Virginia special education process.

Referral: A written statement to the school district requesting that a child be evaluated to determine if he or she needs special education services.

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/language therapy, psychological services, physical therapy, occupational therapy, clean intermittent catheterization, recreation (including therapeutic recreation), counseling (including rehabilitation counseling), orientation and mobility services. Related services do not include a medical device that is surgically implanted.

Scaffolding: Tailored support given during the learning process. Scaffolding provides support for children while they are in the initial stages of learning a new task. This support allows the child to connect to the whole experience even before he or she is entirely capable of managing all the demands. Typically, this type of support is tapered off or withdrawn as the learner becomes increasingly capable of independently managing all aspects of the task.

Self-Advocacy: People with intellectual and developmental disabilities, individually or in groups, speaking or acting on behalf of themselves or others concerning issues that affect people with disabilities.

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(4)(h)*).

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.

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.

Special Transportation: Modification made in regular school transportation to assure accessibility of special education and other related services for students with disabilities. This includes special equipment and care. **See Policy 2419 for a more extensive definition.**

Student Assistance Team (SAT): 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. **See Policy 2419 for a more extensive definition.**

Surrogate Parent: An individual assigned by the school district to assume the rights and responsibilities of a parent under IDEA 2004, including attending IEP meetings. The surrogate parent may represent a student in all matters relating to the identification, evaluation, educational placement, and the provision of FAPE to the student.

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. **See Policy 2419 for a more extensive definition.**

Universal Design for Learning (UDL): (UDL) is an approach to teaching and learning and the development of curriculum and assessment that draws on current brain research and new media technologies to respond to individual differences.

Weapon: A 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)*).

Acronyms

Acronyms

ACRONYM	MEANING
AIM	Accessible Instructional Material
AAAS	Alternate Academic Achievement Standards
ADA	Americans with Disabilities Act
ABA	Applied Behavioral Analysis
ADHD	Attention Deficit Hyperactivity Disorder
APTA	Alternate Performance Task Assessment
AT	Assistive Technology
BIP	Behavior Intervention Plan
BOE	Board of Education (WV)
CSO	Content Standards and Objectives
CTE	Career Technical Education
DARF	Disciplinary Action Review Form
DOE	Department of Education (US)
DRS	Division of Rehabilitation Services
EC	Eligibility Committee
ESY	Extended School Year
FAPE	Free and Appropriate Public Education
FERPA	Family Education Rights and Privacy Act
FT	Full-Time
FBA	Functional Behavioral Assessment
GEE	General Education Environment
IAES	Interim Alternate Educational Setting
IDEA	Individuals with Disabilities Education and Improvement Act of 2004
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IQ	Intelligence Quotient
LRE	Least Restrictive Environment
LEA	Local Education Agency
MDR	Manifestation Determination Review
MDT	Multi-Disciplinary Team
MDET	Multidisciplinary Evaluation Team
NCLB	No Child Left Behind
OCR	Office for Civil Rights
OSP	Office of Special Programs
OSE	Out-of-School Environment
OT	Occupational Therapy
PT	Part-Time
PLAAFP	Performance Levels of Academic Achievement and Functional Performance
PBIS	Positive Behavior Interventions and Supports
PECS	Picture Exchange Communication System

ACRONYM	MEANING
PERC	Parent Educator Resource Center
PT	Physical Therapy
PWN	Prior Written Notice
RESA	Regional Education Service Agency
RF	Residential Facility
SC	Separate Class
SEE	Special Education Environment
SS	Special School
SLT	Speech/Language Therapy
SAT	Student Assistance Team
WVATS	West Virginia Assistive Technology System
WVBTT	West Virginia Birth To Three Program
WVDE	West Virginia Department of Education

Quick Reference Guide to Important Timelines

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Event	Timeline
IEP Team Meeting	At least once (1) every year
<ul style="list-style-type: none"> ➤ IEP Meetings can be scheduled at any time throughout the school year by written request of the parent or school. 	
<ul style="list-style-type: none"> ➤ Member(s) can be excused from the IEP Meeting if the parent(s) and school agree before the meeting is scheduled. 	
<ul style="list-style-type: none"> ➤ If the absentee member's area of responsibility is being discussed, that member must submit recommendations in writing prior to the meeting. 	
Invitation to Attend IEP Meeting	Eight (8) days prior to IEP meeting
<ul style="list-style-type: none"> ➤ School must contact parent(s) by written invitation. 	
<ul style="list-style-type: none"> ➤ If parent(s) cannot attend, it is their responsibility to contact the school and arrange a mutually agreeable time. You can use a meeting notice form to do this. 	
<ul style="list-style-type: none"> ➤ Members can participate by teleconferencing and videoconferencing with prior agreement and arrangement. 	
<ul style="list-style-type: none"> ➤ If parents do not attend the IEP Meeting, the IEP Team can complete the IEP without them. 	
Physical Restraint	Written report provided to parent(s) within 24 hours of incident
<ul style="list-style-type: none"> ➤ School staff must attempt to notify the parent(s) as soon as possible. 	
State Complaint	Within one (1) year of violation
<ul style="list-style-type: none"> ➤ File State Complaint with the West Virginia Department of Education, Office of Assessment and Accountability, Compliance Management. 	
<ul style="list-style-type: none"> ➤ Complaint must be investigated and completed within sixty (60) days. 	
<ul style="list-style-type: none"> ➤ Complaint must be written/typed, dated and signed. 	
<ul style="list-style-type: none"> ➤ Copy must be provided to the County Special Education Director at the same time. 	
<ul style="list-style-type: none"> ➤ Complaint should contain explanation of the problem, facts, and law/regulation violations or due process hearing decision violation. (Also referred to as Due Process Implementation Complaint.) 	
Due Process Complaint	Within two (2) years of violation
Due Process Resolution Meeting	Fifteen (15) calendar days or less from date complaint is filed
<ul style="list-style-type: none"> ➤ When a due process complaint is filed, a resolution meeting will be held. 	

Event	Timeline
<ul style="list-style-type: none"> ➤ If no resolution is reached, a hearing will be scheduled. 	
Due Process Hearing	Within forty five (45) Days
<ul style="list-style-type: none"> ➤ Hearing officer must issue a written decision not later than 45 days after the timeline for resolution meeting ends. 	
<ul style="list-style-type: none"> ➤ The school district has thirty (30) days from the receipt of a complaint to resolve the problem (resolution session). 	
<ul style="list-style-type: none"> ➤ Complaint must be written/typed, dated and signed. 	
<ul style="list-style-type: none"> ➤ Complaint should contain explanation of the problem, facts, and law/regulation violations. 	
<ul style="list-style-type: none"> ➤ Must be filed within two (2) years of violation. 	
<ul style="list-style-type: none"> ➤ Any party has the right to prohibit the introduction of evidence not disclosed at least five (5) days prior to the hearing. 	
Expedited Due Process Hearing	<p>Within twenty (20) school days of date the hearing is requested</p> <p>Determination within ten (10) school days after the hearing</p>
<ul style="list-style-type: none"> ➤ Expedited due process hearings are used in discipline situations. 	
Due Process Implementation Complaint	Investigation completed within sixty (60) calendar days
<ul style="list-style-type: none"> ➤ If a due process hearing decision is not implemented, you can file a complaint with the West Virginia Department of Education Office of Assessment and Accountability. 	
<ul style="list-style-type: none"> ➤ An investigation will be completed and a letter of findings will be issued within sixty (60) calendar days of receipt of written complaint. 	
<ul style="list-style-type: none"> ➤ Also referred to as a State Complaint. 	
Due Process Hearing Appeal	Appeal must be filed within ninety (90) days of decision
<ul style="list-style-type: none"> ➤ Appeal must be filed within ninety (90) days of the hearing officer's decision. 	
<ul style="list-style-type: none"> ➤ Decision is final unless the losing party brings a complaint in court. 	
Transition Planning and Services	Sixteen (16) years of age or earlier
<ul style="list-style-type: none"> ➤ At age 16, the school must offer assessment and services to help your child prepare for life after school, including work and other community activities. 	
<ul style="list-style-type: none"> ➤ Student must be invited to attend IEP Meetings. 	
<ul style="list-style-type: none"> ➤ Transition goals and services must be included in a student's IEP. 	

Event	Timeline
<ul style="list-style-type: none"> ➤ At age 17, the school must notify the student of his or her right to make educational decisions upon reaching 18. 	
Due Process Protection	Ten (10) school days or less of suspension
<ul style="list-style-type: none"> ➤ Due process requires an informal notice of charges and the opportunity to refute the charges (e.g., informal conversation). 	
<ul style="list-style-type: none"> ➤ Obtain copy of school district's Student Code of Conduct. 	
<ul style="list-style-type: none"> ➤ Request an IEP Meeting and/or Manifestation Determination Review to address the issues. 	
<ul style="list-style-type: none"> ➤ If you do not agree with the Functional Behavior Assessment, request an Independent Educational Evaluation (IEE). 	
Due Process Protection	More than ten (10) school days of suspension or expulsion
<ul style="list-style-type: none"> ➤ Due process requires a formal notice of charges and the opportunity to refute the charges (e.g., written statement, refute charges before Board of Education). 	
<ul style="list-style-type: none"> ➤ Obtain copy of school district's Student Code of Conduct. 	
<ul style="list-style-type: none"> ➤ Request an IEP Meeting and/or Manifestation Review to address the issues. 	
<ul style="list-style-type: none"> ➤ If you do not agree with the Functional Behavior Assessment, request an Independent Educational Evaluation (IEE). 	
<ul style="list-style-type: none"> ➤ Students can be moved to an alternative educational setting by school officials or a hearing officer. 	
Manifestation Determination Review (MDR)	Within ten (10) school days of disciplinary change of placement
School Records Accessed by Parent(s)	No more than forty five (45) calendar days of the request
<ul style="list-style-type: none"> ➤ Schools must permit parents to inspect and review education records relating to their children collected, maintained, or used by the school district. 	
<ul style="list-style-type: none"> ➤ Parents should make requests in writing. 	
<ul style="list-style-type: none"> ➤ Schools must comply immediately if requested for use at an IEP Meeting, hearing or appeal. 	
<ul style="list-style-type: none"> ➤ In all other instances, no later than forty five (45) calendar days after the request. 	
<ul style="list-style-type: none"> ➤ Parent(s) have the right to obtain copies of records. 	
Complaints About Records	One hundred eight (180) calendar days or less after learning of the violation

Event	Timeline
➤ IDEA complaints about records should be directed to West Virginia Department of Education, Office of Assessment and Accountability.	
➤ FERPA complaints about records should be directed to US Department of Education Family Policy Compliance Office.	

A Parent's Advocacy Guide to Special Education

A Companion Guide to
West Virginia Department of Education Policy 2419

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