

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

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

§126-16-1. General.

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

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

1.3. Filing Date. August 13, 2007

1.4. Effective Date. September 11, 2007

1.5. Repeal of Former Rule. This legislative rule amends W. Va. 126CSR16, West Virginia Board of Education Policy 2419, *Regulations for the Education of Students with Exceptionalities*, filed April 16, 2007 and effective May 16, 2007.

§126-16-2. Purpose.

2.1. The Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446, herein after referred to as IDEA 2004 and the IDEA regulations (34 CFR Part 300), require that the State set forth policies and procedures to demonstrate that the State has established a goal providing full educational opportunity to all students with disabilities who are residents of West Virginia, aged birth through twenty-one years of age and a detailed timetable for accomplishing that goal. The State of West Virginia affirms the goal to provide full educational opportunities by 2014 for all students with disabilities, aged birth through twenty-one years of age, residing within its jurisdiction. The State works toward the realization of this goal through the implementation of, and compliance with, IDEA 2004 and any subsequent reauthorization, state policies and procedures and the implementation of the West Virginia Continuous Improvement and Focused Monitoring System (CIFMS).

2.2. West Virginia's mandatory special education statute legislates a child identification effort by county boards of education. Chapter 18, Article 20, Section 2, of the West Virginia Code states, "The board of education of each county is empowered and is responsible for providing suitable educational facilities, special equipment and such special services as may be necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type..." The mandated target group for the state child find requirements includes individuals with disabilities residing in West Virginia from birth through twenty-one years of age, gifted students from first through eighth grades, and exceptional gifted in grades nine through twelve. Part C of IDEA 2004 requires interagency collaboration in child find activities targeting children from birth through five years of age.

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

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

§126-16-3. Incorporation by Reference.

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

§126-16-4. Summary.

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

§126-16-5. Severability.

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