WEST VIRGINIA CODE CHAPTER 18 ARTICLE 20

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§18-20-1. Establishment of special programs and teaching services for students with exceptionalities.

(a) In accordance with the following provisions, local educational agencies (LEAs), including all county boards of education, schools and facilities under the supervision of the State board, and public charter schools acting as their own local educational agency (LEA) throughout the state shall establish and maintain special education services for all exceptional school-age students between five and twenty-one years of age, including, but not limited to, services provided in general education classrooms, co-teaching classrooms, special education resource classes, self-contained classes, homebound services, and other placements determined appropriate to meet the unique needs of students with disabilities as determined by Individualized Education Program (IEP) teams. Special education programs must be provided to students until the end of the school year in which they reach the age of 21 years or until the student earns a regular high school diploma, whichever occurs first. Provisions shall be made for educating exceptional students (including students with disabilities and students identified as gifted or exceptionally gifted who differ from their non-disabled peers to the extent that they need specially designed instruction in order to access the curriculum and receive a free appropriate public education. The term "gifted" means exceptional intellectual abilities and potential for achievement that requires specially designed instruction and/or services beyond those normally provided in the general classroom instruction. The term "exceptional gifted" means those students in grades nine through twelve meeting the criteria for gifted with at least one of the additional criteria as identified in State Board Policy 2419. Exceptional gifted students shall be referred for identification pursuant to state board policy. Each local education agency (LEA) is mandated to provide gifted education to its students according to guidelines promulgated by the state board and consistent with the provisions of this chapter. In addition, county boards of education may establish and maintain other educational services for exceptional students as the State Superintendent of Schools may approve.

(b) Each local educational agency (LEA) shall establish and maintain special educational programs which include services outside the school environment for students who are homebound due to injury or who for any other reason as certified by a licensed physician are homebound for a period that has lasted or will last more than three weeks. The state board shall adopt rules to advance and accomplish this program and to assure that all exceptional students in the state, including students in mental health facilities, residential institutions, foster care, correctional facilities, and private schools, will receive an education in accordance with the mandates of state and federal laws.

(c) Each local educational agency (LEA) shall adopt a policy that allows a student with disabilities, whose individualized education program provides for an alternate diploma to participate in the graduation ceremony with their same-grade classmates if requested in writing by their parent or legal guardian, or the student who is subject to this request if the student is of the age of majority. The local educational agency (LEA) shall also permit the student to continue receiving special education services after the graduation ceremony until

the end of the school year in which the student reaches the age of 21 years. The local educational agency (LEA) may not terminate, deny, or declare the student ineligible for post-graduation ceremony special education services due to their participation in the graduation ceremony.

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§18-20-1a. Preschool programs for students with disabilities or developmental delays; rules and regulations.

(a) Each local educational agency (LEA) shall develop a coordinated service delivery plan in accordance with standards for preschool programs for students with disabilities or developmental delays and begin services where plans are already developed with IEPs in place by the student's 3rd birthday.

(b) Each local educational agency (LEA) shall establish and maintain a special educational program, including, but not limited to, universal Pre-K classes which integrate students with disabilities, special classes and services provided in out-of-school environments for all students with disabilities three through five years of age.

(c) As used in this section, the term "students with disabilities" means those eligible individuals who fall in any one of the disability categories as defined in federal or state special education regulations. Special education and related services for eligible students with a developmental delay will be provided as of the student's third birthday when eligibility is determined prior to the third birthday.

(d) This programming is available to all such students in the state, including in mental health facilities, residential institutions, and private entities who have entered into an agreement for collaborative programming with a local educational agency (LEA).

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§18-20-1b. Preschool programs for handicapped children; rules and regulations.

[Repealed.]

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§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to integrated classroom teachers.

(a) The general education classroom teacher is entitled to the following when a student with exceptional needs is placed into an integrated classroom and the student's individualized education program (IEP) requires curriculum modifications, including delivery of, instruction or services and accommodations to be provided by the regular classroom teacher:

(1) Training provided pursuant to the rules developed by the State Board of Education, if requested by the regular classroom teacher to prepare the teacher to meet the exceptional needs of individual students. Whenever possible, the training shall be provided prior to the placement. Where prior training is not possible, the training shall be commenced no later than ten days following the placement of the student into the integrated classroom. Unavoidable delays in the provision of training may not result in the exclusion of a student with exceptional needs from any class if the training cannot be provided in ten days;

(2) A signed copy of the individualized education program for the special education student prior to the placement of the student into the regular classroom. When possible, the receiving and referring teachers shall participate in the development of that student's individualized education program and shall also sign the individualized education program as developed. In all cases the teacher shall receive a copy of the individualized education program for the student with exceptional needs prior to or at the time of the placement of the student into the regular classroom. Any teacher or other member of the IEP team disagreeing with the individualized education program team's recommendation shall file a written explanation outlining his or her disagreement or recommendation;

(3) Participation by referring teachers in all eligibility committees and participation by referring and receiving teachers in all individualized education program committees which involve possible placement of a student with exceptional needs in an integrated classroom;

(4) Opportunity to reconvene the committee responsible for the individualized education program of the student with exceptional needs assigned to the regular classroom teacher. Any teacher may request an IEP meeting if the data after 45 days shows that a student is not in the least restrictive environment for academic growth. The meeting shall include all persons involved in a student's individualized education program and shall be held within twenty-one days of the time the request is made. If changes are made to a student’s IEP, affecting services and/or placement, the services shall be available immediately upon the change in placement; and

(5) A teacher may not be penalized in any way for advocating for his or her student and the teacher may work with the family or guardian of the student to recommend local advocates, share documentation and information, inform the guardians of his or her due process rights, and may call for an IEP meeting to review the information gathered form documentation to best address the student’s special education needs; and

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(6) Assistance from persons trained or certified to address a student's exceptional needs whenever assistance is part of the student's individualized education program as necessary to promote accomplishment of the program's goals and objectives: *Provided,* That aides in the area of special education cannot be reassigned to more than one school without the employee's consent.

(b) Except teachers already required to participate in the development of a student's individualized education program and sign it as provided in subdivision (2) of this section, all other teachers in whose class or program a student with exceptional needs is enrolled shall:

(1) Participate in the meeting to develop the student's individualized education program, or read and sign a copy of the student's individualized education program plan acknowledging that he or she has read and understands it; and

(2) Make appropriate accommodations and modifications for the student, if needed or identified, to help the student succeed in the class or program, and document, at minimum, the provision of these accommodations and modifications: *Provided,* That the general education teacher shall not be responsible for daily accommodation logs. The general education teacher shall only be responsible for acknowledging, at the end of each grading period, that each accommodation as required by the IEP has been met. All accommodations of the students shall be discussed before placement and it is the responsibility of the special education instructor to monitor progress: *Provided further,* That parents and guardians may request daily accommodation logs.

(3) Data to support the decision to place a student into an integrated classroom shall be included in the Individualized Education Plan.

(4) Nothing in this section may be construed as interfering with or limiting access to the Federal Individuals with Disabilities Education Act, and regulatory Due Process and complaint procedures available to students, families, and personnel.

(c) This requirement includes, but is not limited to, music education, art, driver education, health, foreign language, and other instruction offered.

(d) If the teacher provides a series of documentation within a 45-day grading period that shows that the student is not in their least restrictive environment, to the point that his or her placement does not ensure the student with exceptionalities makes appropriate progress toward meeting the student’s annual goals, the teacher may begin all available Federal and State process and complaint procedures. The teacher may not be penalized in any way for advocating for his or her student and the teacher may work with the family or guardian of the student to recommend local advocates, share documentation and information, inform the guardians of his or her due process rights, and may call for an IEP meeting to review the information gathered from documentation and address the concerns to best adjust the IEP, as necessary, to best address the student’s special education needs.

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§18-20-1d. Adoption of a state model for individualized education program.

The state board shall adopt a basic model for individualized education programs to be used by all special education teachers throughout the public schools of the state when preparing individualized education programs for students with exceptional needs.

The model achieved through the online IEP platform shall comply with, but may not exceed, all state laws and federal laws, policies, rules, and regulations relating to providing education services to students with exceptional needs and shall allow for the individualization of programming based on the unique needs of each student.

No professional educator may be required to prepare or implement an individualized education program which exceeds the requirements of federal and state laws, policies, rules or regulations.

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§18-20-2. Providing suitable educational facilities, equipment and services.

(a) Each county board shall provide suitable educational facilities, special equipment and special services that are necessary to implement the IEP of each student with a disability. Special services include provisions and procedures for finding and enumerating exceptional students of each type, diagnosis by appropriate specialists who will certify the student's need and eligibility for special education and make recommendations for treatment and prosthesis as may accommodate the disability, such as specially designed instruction by qualified teachers, transportation, and related services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the state board.

(b) A county board may provide for educating resident exceptional children by contracting with other counties or other educational agencies which maintain special education facilities. Fiscal matters shall follow policies approved by the state board.

(c) The county board shall provide a four-clock-hour program of training for any teacher aide employed to assist teachers in providing services to exceptional children under this article prior to the assignment. The program shall consist of training in areas specifically related to the education of exceptional children, pursuant to rules of the state board. The training shall occur during normal working hours and an opportunity to be trained shall be provided to a service person prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this code.

(d) The county board annually shall make available during normal working hours to all regularly employed teachers' aides twelve hours of training that satisfies the continuing education requirements for the aides regarding:

(1) Providing services to students who have displayed challenging or aggressive behavior or have demonstrated the potential for challenging or aggressive behavior; and

(2) Providing services to children diagnosed with autism spectrum disorder. This training shall be structured to permit the employee to qualify as an autism mentor after thirty hours of staff development related to providing instructional support to students with autism including prevention and de-escalation techniques with alternative to restraint. The county board shall:

(A) Notify in writing all teachers' aides of the location, date and time when training will be offered for qualification as an autism mentor; and

(B) Consider partial or full reimbursement of tuition for any regularly employed or substitute teacher's aide who elects to attend this training.

(e) For any student whose individualized education plan (IEP) or education plan established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, requires the services of a sign support specialist or an educational sign language interpreter

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I or II:

(1) Any educational sign language interpreter I or II assigned to assist that student is a related service provider member of the education team who participates in IEP meetings and works with the team to implement the IEP;

(2) A sign support specialist may be assigned to a student with an exceptionality other than deaf or hard of hearing if it is determined that the student needs signs to support his or her expressive communication; and

(3) A sign support specialist may be assigned to a student who is deaf or hard of hearing in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and the sign support specialist is executing a professional development plan while actively seeking certification as an educational sign language interpreter I or II. After two years the sign support specialist may remain in the assignment only if an educational sign language interpreter I or II remains unavailable, and with an approved waiver by the West Virginia Department of Education. An employee in this situation is entitled to full payment of the costs of certification acquisition or renewal pursuant to the certification renewal provisions of section four, article two, chapter eighteen-a of this code.

(f) Every teacher of a student for whom a school or local educational agency (LEA) prepares a plan of accommodation pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, shall receive specific instruction from the school regarding the contents and requirements of the plan and the teacher shall receive a copy of the written plan and every update thereto and the teacher shall sign an acknowledgment of receipt of each plan and update.

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§18-20-3. Local educational agency reports.

(a) Each local educational agency (LEA) shall, after having received from the faculty Senates in its schools, the strategic plans mandated by subsection (13), section five, article five-a of this chapter, develop a local educational agency (LEA) strategic plan which includes the integration of students with exceptional needs into the regular classroom to the maximum extent appropriate and addresses steps to improve proficiency in all subgroups, including the students with disabilities subgroup, and submit said strategic plan to the State Superintendent of Schools annually.

Each local educational agency (LEA) must maintain a continuum of services for students with disabilities including, but not limited to, general education full-time, which encompasses the integrated classroom and services in out of school environments. Relevant training shall be provided related to integrated education, basic and specialized health care procedures including the administration of medications, receiving or requesting reimbursement from state appropriated funds, and submitting annual reports and such other reports as the State Superintendent of Schools may require.

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§18-20-4. Examination and report by medical or other specialists.

Each student prior to receiving a special education program shall be evaluated by a qualified professional, including but not limited to, a psychologist, educational specialist (reading specialist, speech and language clinician, or other specialists as required by the state Board of Education for specific areas of exceptionality) who shall report to the local educational agency (LEA) superintendent of schools. The specialists' report shall include relevant data and recommendations for individualized interventions.

No educationally exceptional student eligible for a free appropriate public education shall be excluded from attending public schools.

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§18-20-5. Powers and duties of state superintendent.

(a) The State Superintendent of Schools shall organize, promote, administer and be responsible for:

(1) Providing leadership and support to local educational agencies (LEA) in establishing, organizing and maintaining a continuum of services for students with exceptionalities.

(2) Cooperating with all other public and private agencies engaged in providing medical, mental health, educational, or respite services for students with exceptionalities, and in helping coordinate the services of such agencies.

(3) (A) Preparing the necessary rules, policies, and formulas for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of students with exceptionalities and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the State Board of Education: *Provided*, That no state rule, policy or standard under this article or any county board rule, policy or standard governing special education may exceed the requirements of federal law or regulation.

(B) A separate appropriation shall be made to the Department of Education to be disbursed to county boards and public charter schools authorized pursuant to §18-5G-1 *et seq*. of this code to assist them with serving exceptional students with high cost/high acuity exceptional needs that exceed the capacity of the local educational agency (LEA) to provide with funds available. Each local educational agency (LEA) shall apply to the state superintendent to receive this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the students with exceptionalities. Any remaining funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be disbursed to local educational agencies (LEAs) for this purpose before any of the state appropriation is disbursed. The state board shall promulgate a rule in accordance with the provisions of §29A-3B-1 *et seq*. of this code that implements the provisions of this subdivision relating to disbursing the funds to the local educational agencies (LEAs). The rule at least shall include a definition for "children with high acuity needs".

(4) Receiving from local educational agencies (LEAs), their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims, and preparing vouchers to reimburse said local educational agencies the amounts reimbursable to them.

(5) Assuring that all students with exceptionalities in the state, including students in mental health facilities, residential institutions, private schools receiving public funds and correctional facilities as provided in §18-2-13f of this code receive an education in accordance with state and federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the

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extent funds are provided therefor and to the extent that those adult students are still eligible to receive a free appropriate public education (FAPE).

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

(b) Nothing contained in this section shall be construed to prevent any local education agency (LEA) from establishing and maintaining a full continuum of services for students with exceptionalities out of funds available from local revenue.

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§18-20-6. Advisory council for the education of exceptional children.

In accordance with the Individuals with Disabilities Education Act, there shall be an advisory council for the education of students with exceptionalities which shall advise and consult with the state Board of Education on matters pertinent thereto. The advisory council shall be composed of twelve members appointed by the state superintendent of schools, four of which shall be parents of students with exceptionalities utilizing or eligible for the services of the special educational programs established hereunder. Other members of the advisory council shall include at least one individual with a disability, teacher of students with exceptionalities, state education official, local education official, and an administrator of programs for students with exceptionalities. No more than two officers and employees of the state may be eligible for appointment to the advisory council. Members shall be appointed for terms of three years except for initial terms which may be for one, two or three years. Each year the terms of office of one third of the advisory council shall expire. The members of the advisory council shall be citizens and residents of this state, who by reason of their training, education or experience are qualified to carry out the functions of the advisory council under this article.

The advisory council shall elect a chairperson annually.

All members shall be eligible for reappointment. A member shall, unless sooner removed, continue to serve until the member’s term expires and the member’s successor has been appointed and has qualified. A vacancy caused by the death, resignation or removal of a member prior to the expiration of the member's term shall be filled only for the remainder of such term.

For the purpose of carrying out its functions under this article, six members of the advisory council shall constitute a quorum. The advisory council shall meet at least four times each year and at a time designated by the chairperson. Additional meetings may be held when called by the chairperson or when requested by six members of the advisory council.

The time and place of all meetings and agenda items must be publicly announced and available to the public upon request at least ten days prior to the meeting, and meetings must be open to the public. Official minutes must be kept of all council meetings and shall be made available to the public upon request.

Members of the council shall not receive any compensation for their services on the council, but shall be reimbursed any actual expenses incurred by them in carrying out their duties from funds appropriated to the Department of Education.

The council shall:

(a) Consult with the state Board of Education concerning and comment publicly upon any rules and regulations formulated by such board regarding the education of students with exceptionalities;

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(b) Consult with and advise the state board and superintendent and the Legislature concerning any problems presented to the council including unmet needs within the state in the education of students with exceptionalities;

(c) Hold public meetings at such times and places as the advisory council deems appropriate;

(d) Periodically review and comment publicly upon the state plan for special programs and make any recommendations it may have concerning changes it may deem proper. Annually, the advisory council shall submit an annual report of its activities and suggestions to the state Board of Education and the superintendent, and shall make such report available to the public.

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§18-20-7. Exceptional children program compliance monitoring and accountability review teams.

The state board shall establish exceptional children program compliance monitoring and accountability review teams to conduct cyclical on-site reviews of such programs at least every four years in each local educational agency (LEA) for the purpose of reviewing identification procedures, complying with any or all applicable laws and policies, delivering services, verifying enrollment and attendance reports, recommending changes, providing support for continuous improvement, and fulfilling such other duties as may be established by the state board.

Each monitoring and accountability review team unit shall consist of individuals with expertise in state and federal laws applicable to the education of students with disabilities, as well as the identification and delivery of special education services to students with disabilities.

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§18-20-8. Interagency plan for exceptional children; advisory council.

(a) The state departments of human services and education shall enter into a collaborative agreement for the purpose of developing a statewide plan of coordinating comprehensive, multidisciplinary interagency programs providing appropriate early intervention services to all developmentally delayed and at-risk children, ages birth through five years, and their families.

This comprehensive, coordinated statewide plan shall include, at a minimum:

(1) Specification of the population to be served;

(2) The development of regulations and procedural safeguards;

(3) The development of procedures for administration, supervision and monitoring;

(4) The identification and coordination of all available resources; and

(5) The development of formal interagency agreements that define the financial responsibility of each agency and all additional components necessary to ensure meaningful cooperation and coordination.

(b) To assist in the development of such a plan, an advisory council consisting of twelve members shall be created. The departments of health, human services and education shall each appoint four members, and each shall include in such appointments one parent of a child with a disability under the age of six; one public or private provider of early intervention services for developmentally delayed and at-risk children; one individual involved in the education training of personnel who work with preschool special needs; and one other person.

The functions of the council shall include the following:

(1) Meet at least quarterly;

(2) Solicit information and opinions from concerned agencies, groups and individuals; and

(3) Advise and assist the departments of health, human services and education in the development of the statewide plan herein required.

Following the submission of the advisory council's first annual report, the joint committee on education is authorized and empowered to disband the council or alter its functions as it deems advisable.

The members of the council may be reimbursed for actual and necessary expenses incurred in the performance of their official duties in accordance with state law from appropriations to the departments of health, human services and education or available federal funds.

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§18-20-9. Gifted education caseload review.

Notwithstanding any other provision of this code to the contrary, the teacher-student ratio for gifted, honors, and advanced placement education in grades nine through twelve shall be the same as regular classroom education and not as required for special education of students with exceptionalities: *Provided*, That this shall not apply to education of exceptional gifted, as defined in section one, article twenty of this chapter.

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§18-20-10. Dyslexia and dyscalculia defined.

(a) The Legislature finds as follows:

(1) Reading difficulties are the most common cause of academic failure and underachievement;

(2) There are many students who demonstrate significant weaknesses with reading, writing and mathematics that are influenced by specific learning disabilities, including dyslexia, dyscalculia, and related learning difficulties. Of those who are referred to special education services in public schools, the majority are referred because of problems with language, reading, writing, or a combination of each;

(3) Teaching reading effectively, especially to students experiencing difficulty, requires considerable knowledge and skill. Informed and effective classroom instruction, especially in the early grades, can prevent and relieve the severity of language difficulties, and significantly improve literacy development;

(4) For those students with specific learning disabilities, including dyslexia and dyscalculia, who need specialized instruction, competent intervention can lessen the impact of the disorder and help the student overcome the most debilitating symptoms;

(5) While programs for specific learning disabilities, including dyslexia and dyscalculia, that certify or support teachers, clinicians or specialists differ in their preparation methodologies, teaching approaches and organizational purposes, they should ascribe to a common set of professional standards for the benefit of the students they serve. Compliance with such standards can assure the public that individuals who serve students with specific learning disabilities in public schools are prepared to implement scientifically based and clinically proven practices;

(6) The International Dyslexia Association (IDA) offers widely-adopted and consistent standards to guide the preparation, certification, and professional development for teachers of reading and related literacy skills in classroom, remedial and clinical settings; and

(7) The basis of ascribing to common standards to benefit students with specific learning disabilities, including dyslexia and dyscalculia, requires recognizing common characteristics of the disabilities. The Legislature finds that the definitions of dyslexia and dyscalculia prescribed by the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) are the appropriate measures for recognizing characteristics of dyslexia and dyscalculia in students.

(b) The Legislature recognizes the following regarding dyslexia and dyscalculia:

(1) Dyslexia and dyscalculia are conditions that may be considered under the specific learning disability category, and their definitions are consistent with IDEA and state board policy. State board policy provides that "specific learning disability" means a disorder in one

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or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia;

(2) Dyslexia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities. If dyslexia is used to specify this particular pattern of difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with reading comprehension or math reasoning; and

(3) Dyscalculia is an alternative term used to refer to a pattern of learning difficulties characterized by problems processing numerical information, learning arithmetic facts, and performing accurate or fluent calculations. If dyscalculia is used to specify this particular pattern of mathematic difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with math reasoning or word reasoning accuracy.

(c) The state board shall:

(1) Develop a list of appropriate screeners, early assessments, and professional development that address and ensure that all students receive the necessary and appropriate screenings, evaluations, and early assessments for specific learning disabilities, including dyslexia and dyscalculia which contain information related to the following:

(A) Appropriate literacy and numeracy screening tools for identifying students who are at risk for academic difficulty in reading and/or math, including dyslexia and dyscalculia, and who require tiered intervention;

(B) Appropriate diagnostic assessment components that can be used to help identify and diagnose;

(C) Appropriate evidence-based instruction and intervention strategies for students who are at risk for academic difficulty in reading and/or mathematics, including students who exhibit possible indicators of risk for dyslexia and/or dyscalculia;

(D) Appropriate accommodations for students who exhibit possible indicators of risk for, or who have been diagnosed with, dyslexia, dyscalculia, and/or other specific learning disabilities;

(E) Connecting a multi-tiered system of support framework to specific learning disability identification; and

(F) The use of the terms "dyslexia" and "dyscalculia" in Individualized Education Programs, and in evaluation reports by professionals qualified to render these diagnoses; and

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(2) Explore options to assist any local educational agency (LEA) with acquiring approved literacy and/or numeracy screening tools: *Provided*, That the local educational agency is unable to acquire its own literacy and/or numeracy screening tools that are consistent with state educational agency recommendations;

(3) Adopt and make publicly available guidelines for including dyslexia diagnostic evaluation components in comprehensive assessments for special education and related services. These guidelines shall:

(A) Recommend at least one person on each multidisciplinary evaluation team be knowledgeable about dyslexia and be able to recognize when a dyslexia diagnostic component should be requested in the evaluation process;

(B) Recommend that a diagnosis of dyslexia be given when the data from the comprehensive evaluation components indicate such a diagnosis is appropriate;

(C) Include recommendations for how to document a dyslexia diagnosis in an IEP; and

(D) Include that a Section 504 Plan be considered if a student has a dyslexia diagnosis but does not qualify for special education services;

(4) Adopt and make publicly available a list of approved diagnostic assessment components that can be used to help identify and diagnose dyslexia during comprehensive multidisciplinary evaluations;

(5) Adopt and make publicly available guidelines and a list of resources for dyslexia intervention practices that are evidence-based, including practices consistent with the Science of Reading and Structured Literacy, that are explicit, direct, sequential, systematic, and multisensory;

(6) Adopt and make publicly available a list of recommended accommodations and instructional practices to be used with students who exhibit signs of dyslexia or have been diagnosed with dyslexia. These shall reflect contemporary research and guidelines of the Science of Reading related to dyslexia. These recommendations shall include, but are not limited to, structured literacy approaches that are explicit, direct, sequential, systematic, and multisensory;

(7) Adopt and make publicly available a list of available professional development resources that support evidence-based intervention for struggling readers, including the Science of Reading and Structured Literacy. This list shall be made publicly available and include resources endorsed or espoused by technical assistance centers, research organizations, and professional associations that support the Science of Reading and Structured Literacy regarding dyslexia, including the International Dyslexia Association; and

(8) Develop and make publicly available informational materials related to dyslexia for parents and guardians that include information about the multidisciplinary evaluation

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process, updated regularly.

(d) The local education agency shall:

(1) Develop a system for parents and guardians to annually receive digital and print informational materials related to dyslexia;

(2) Ensure at least one educator at each school is trained to administer, score, and interpret the data from the literacy screening instrument or instruments, and to recognize signs of dyslexia;

(3) Notify parents of the results of these literacy screeners while emphasizing that not all students who perform poorly on these screening instruments have dyslexia. Also, not all students with dyslexia will perform poorly on the screeners;

(4) Provide evidence-based reading intervention to students who exhibit academic risk in future reading performance, including indicators of dyslexia;

(5) Conduct comprehensive assessments to determine eligibility for special education services when a student does not respond or only minimally responds to intervention strategies and/or when there is a suspected disability of dyslexia. If a determination is made through the evaluation process that a student needs to be assessed for dyslexia, provide assessment and diagnosis as necessary per West Virginia Department of Education guidelines;

(6) Employ appropriate accommodations and instructional practices recommended by the West Virginia Department of Education based upon the students' needs. When those needs are related to dyslexia, these accommodations and instructional techniques or strategies shall also meet the West Virginia Department of Education-approved guidelines for dyslexia accommodations and instructional practices;

(7) Require all elementary educators, special educators, reading interventionists or specialists, and other personnel determined appropriate by the local education agency to receive professional development on the possible signs of dyslexia and the related classroom accommodations and instructional practices approved by the West Virginia Department of Education;

(8) Administer a literacy screening instrument or instruments to students in grades 3-5 who transfer from a local education agency where literacy screening instruments were not administered. If the literacy screening instrument indicates a deficit in reading, the school will provide intervention according to current policy. If a student does not respond or only minimally responds to intervention, a referral for multidisciplinary evaluation shall be made; and

(9) Require all appropriate personnel, as determined by the local education agency, to annually receive professional development relating to the possible indicators for dyslexia

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and dyscalculia, accommodations and modifications in the classroom environment, proper instructional practices for educating students who exhibit possible indicators of risk for, or who have been, diagnosed with dyslexia, dyscalculia, and/or other specific learning disabilities. Local education agencies may create more than one module to satisfy the requirements of this subdivision.

(e) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq*. of this code to implement this section. In addition to other provisions to implement this section, the rule shall at least include the following:

(1) If a student is reading substantially below grade level according to formal and/or informal assessments, including benchmark assessments, and has never been evaluated for special education, a request may be made by a school, parent, or teacher for the administration of an age- or grade-appropriate West Virginia Department of Education-approved literacy screening instrument or instruments. These points of data may be used to either start intervention and progress monitoring per West Virginia Department of Education guidance, or make a referral for a special education evaluation;

(2) Acknowledgement that each local education agency may have one certified Literacy and Numeracy Specialist in each local educational agency, or another appropriate professional designated by relevant local educational agency leadership, to be appropriately trained, or be seeking appropriate training, in intervention, accommodations, and instructional strategies for students with dyslexia or a related disorder. The trained individual(s) shall serve as an advisor and trainer for dyslexia and related disorders for the local educational agency. The reading specialist(s) or other designated professional(s) shall have an understanding of the definition of dyslexia and a working knowledge of:

(A) Techniques to help a student on the continuum of skills with dyslexia;

(B) Dyslexia characteristics that may manifest at different ages and levels;

(C) The basic foundation of the keys to reading, including multisensory, explicit, systematic, and structured literacy instruction; and

(D) Appropriate interventions, accommodations, and assistive technology supports for students with dyslexia.

(f) Legislative Oversight Commission on Education Accountability (LOCEA):

(1) The final draft of the state board’s literacy and numeracy rule shall be submitted to the Legislative Oversight Commission on Education Accountability (LOCEA) by August 1, 2023.

(2) The following shall be submitted to the Legislative Oversight Commission on Education

Accountability (LOCEA) annually:

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(A) Disaggregated data concerning literacy and numeracy patterns statewide;

(B) Statewide interventions implemented; and

(C) The statewide professional development plan.

(3) Progress monitoring regarding K-2 screening and 3-8 formative assessments shall be presented to the Legislative Oversight Commission on Education Accountability (LOCEA) after data is collected for the beginning, middle, and end of the school year.

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§18-20-11. Video cameras required in certain special education classrooms; audio recording devices required in restroom of a self-contained classroom.

(a) A local educational agency (LEA) shall ensure placement of video cameras in self-contained classrooms and audio recording devices in the restrooms of self-contained classrooms as defined in state board policy.

(b) As used in this section:

(1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a student, of bullying, abuse, or neglect of a student or of harm to an employee of a public school by:

(A) An employee of a public school or local educational agency (LEA); or

(B) Another student;

(2) "Self-contained classroom" means a classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy; and

(3) "Special education" means the same as defined in §18-20-1 *et seq*. of this code.

(c) (1) A local educational agency (LEA) shall provide a video camera to a public school for each self-contained classroom that is a part of that school which shall be used in every self-contained classroom.

(2) Prior to August 1, 2023, a local educational agency (LEA) shall provide an audio recording device to a public school to be used in the restroom of each self-contained classroom that is a part of that school. If the public school is not able to receive the audio recording device by August 1, 2023, the public school may apply to the state Department of Education for a waiver to extend that date to August 1, 2024.

(3) The principal of the school or other school administrator whom the principal assigns as a designee shall be the custodian of the video camera and audio recording device, all recordings generated by the video camera and audio recording device, and access to those recordings pursuant to this section.

(d)(1) Every public school that receives a video camera under this section shall operate and maintain the video camera in every self-contained classroom that is part of that school.

(2) Every public school that receives an audio recording device under this section shall operate and maintain the audio recording device in every restroom that is a part of a self-contained classroom that is part of that school: *Provided*, That each restroom of a self-contained classroom shall have posted on its door a notice that states: "Pursuant to state law, this restroom is equipped with an audio recording device for the protection of the students."

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(3) If there is an interruption in the operation of the video camera or audio recording device for any reason, a written explanation should be submitted to the school principal and the local educational agency (LEA) board explaining the reason and length for which there was no recording. The explanation shall be maintained at the local educational agency (LEA) board office for at least one year. Notice shall also be provided to any parent or guardian whose child was present at the time of the interruption.

(e)(1) A video camera placed in a self-contained classroom shall be capable of:

(A) Monitoring all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes; and

(B) Recording audio from all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes.

(2) A video camera placed in a self-contained classroom shall not monitor a restroom or any other area in the self-contained classroom where a student changes his or her clothes except, for incidental monitoring of a minor portion of a restroom or other area where a student changes his or her clothes because of the layout of the self-contained classroom.

(3) An audio recording device shall be placed in the restroom of the self-contained classroom and notice provided pursuant to §18-20-11(d)(2) of this code.

(4) A video camera or audio recording device required by this section is not required to be in operation during the time in which students are not present in the self-contained classroom.

(f) Before a public school initially places a video camera in a self-contained classroom or an audio recording device in the restroom of a self-contained classroom pursuant to this section, the local educational agency (LEA) shall provide written notice of the placement, including a written copy of this section of code, to:

(1) The parent or legal guardian of a student who is assigned to the self-contained classroom: *Provided*, That the parent or guardian be allowed the opportunity to opt out of the bathroom audio monitoring for their student. An Individual Education Plan or 504 plan shall outline the opt out and an alternative arrangement for the student or parent needs and requested accommodation; and

(2) The school employee(s) who is assigned to work with one or more students in the self-contained classroom.

(g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain video and audio recorded pursuant to this section for at least three months after the date of the recording, subject to the following:

(A) If the minimum three-month period overlaps the summer break occurring between the last day of one instructional term and the first day of the next instructional term, the

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minimum three-month period shall be extended by the number of days occurring between the two instructional terms;

(B) For any school-based camera system or audio device recording device that is installed or replaced after April 1, 2022, the public school shall retain video recorded from a camera or audio device recording for at least 365 days after the date the video or audio was recorded and no extension of this time period during the summer break is required.

(2) If a person requests to review a recording under subsection (k) or subsection (l) of this section, the public school shall retain the recording from the date of the request until:

(A) The earlier of the person reviewing the recording or 60 days after the person who requested the video or audio recording was notified by the public school that the video or audio recording is available; and

(B) Any investigation and any administrative or legal proceedings that result from the recording have been completed, including, without limitation, the exhaustion of all appeals.

(3) In no event may the recording be deleted or otherwise made unretrievable before the time period set forth in subdivision (1) of this subsection elapses.

(h) This section does not:

(1) Waive any immunity from liability of a public local educational agency (LEA) or employee of a public local educational agency (LEA);

(2) Create any liability for a cause of action against a public school or local educational agency (LEA) or employee of a public school or local educational agency (LEA); or

(3) Require the principal or other designated school administrator to review the recording absent an authorized request pursuant to this code section or suspicion of an incident except as otherwise provided in subsection (j) of this section.

(i) A public school or local educational agency (LEA) shall not use video or audio recorded under this section for

(1) Teacher evaluations: *Provided*, That this subdivision does not prohibit the use of video or audio recordings under this section for purposes of the suspension and dismissal of school personnel pursuant to §18A-2-8 of this code; or

(2) Any purpose other than the promotion and protection of the health, wellbeing, and safety of students receiving special education and related services in a self-contained classroom or restroom of a self-contained classroom.

(j) Except as provided under subsections (k) and (l) of this section, a recording made under this section is confidential and shall not be released or reviewed by anyone except the school

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principal, other school administration designee, or local educational agency (LEA) designee if the school principal or other school administration designee is unable to review the video or audio recording pursuant to this subsection. The school principal, other school administration designee, or local educational agency (LEA) designee shall review no less than 15 minutes of the video and no less than 15 minutes of audio of each self-contained classroom and restroom at the school no less than every 30 calendar days. The state board shall include in its rule authorized by this section requirements for documentation of compliance with the video and audio reviewing requirements of this subsection.

(k) Within seven days of receiving a request, a public school or local educational agency (LEA) shall allow review of a recording by:

(1) A public school or local educational agency (LEA) employee who is involved in an alleged incident that is documented by the recording and has been reported to the public school or local educational agency (LEA);

(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the recording and has been reported to the public school or local educational agency (LEA); or

(3) An employee of a public school or local educational agency (LEA) as part of an investigation into an alleged incident that is documented by the recording and has been reported to the public school or local educational agency (LEA).

(l) Within seven days of receiving a request, a public school or local educational agency (LEA) shall allow review of a recording by and comply with all subsequent requests for review or release of the recording, by:

(1) A law-enforcement officer or employee of the Department of Human Services, as part of an investigation into an alleged incident that is documented by the recording and has been reported to the agency: *Provided*, That if a release of the recording is requested pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict confidentiality of the recording and not further release the recording without authorization from the public local educational agency (LEA) through its superintendent; or

(2) A judge, counsel, or other legal entity that is charged with deciding or representing either the school board, students, or employees in any matters related to legal issues arising from an incident: *Provided*, That the recording may only be released pursuant to an appropriate protective order or under seal.

(m) If an incident is discovered while initially reviewing a recording that requires a report to be made under §49-2-803 of this code, that report shall be made by the reviewer pursuant to that section within 24 hours of viewing the incident.

(n) When a recording is under review as part of the investigation of an alleged incident, and

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the recording reveals a student violating a disciplinary code or rule of the school, which violation is not related to the alleged incident for which the review is occurring, and which violation is not already the subject of a disciplinary action against the student, the student is not subject to disciplinary action by the school for such unrelated violation unless it reveals a separate incident as described in §18-20-11(b)(1) of this code.

(o) It is not a violation of subsection (j) of this section if a contractor or other employee of a public school or local educational agency (LEA) incidentally reviews a recording under this section if the contractor or employee of a public school or local educational agency (LEA) is performing job duties related to the:

(1) Installation, operation, or maintenance of video or audio equipment; or

(2) Retention of video or audio recordings.

(p) This section applies solely to cameras and audio recording devices installed pursuant to this code section and does not limit the access of a student's parent or legal guardian to a recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(q) A public school or local educational agency (LEA) shall:

(1) Take necessary precautions to conceal the identity of a student who appears in a video recording but is not involved in the alleged incident documented by the video recording for which the public school allows viewing under subsection (j) of this section, including, without limitation, blurring the face of the uninvolved student; and

(2) Provide procedures to protect the confidentiality of student records contained in a recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(r) (1) Any aggrieved person may appeal to the State Board of Education an action by a public school or local educational agency (LEA) that the person believes to be in violation of this section.

(2) The state board shall grant a hearing on an appeal under this subsection within 45 days of receiving the appeal.

(s) (1) A public school or local educational agency (LEA) may use funds distributed from the Safe Schools Fund created in §18-5-48 of this code or any other available funds to meet the requirements of this section.

(2) A public school or local educational agency (LEA) may accept gifts, grants, or donations to meet the requirements of this section.

(t) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code

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to clarify the requirements of this section and address any unforeseen issues that might arise relating to the implementation of the requirements of this section.

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§18-20-12. Special education student instructor ratio; waiver; compensation to teacher when ratio exceeded.

(a) Self-contained and resource classrooms, as well as any special education environment, shall not have a student/instructor ratio over the current limit provided for in the Individuals with Disabilities Education Act 2004 and State Board Policy 2419. A two-week waiver may be signed with the understanding that the local county board is responsible to remediate the situation while compensating the teacher with overage pay provided by the county per county or federal funds. This waiver shall be good for two weeks to allow the district time to find an additional classroom teacher. Should the district be unable to find an additional classroom teacher, the district, upon the agreement of the teacher, may submit a waiver to the state board of education. This waiver shall have the teachers signature acknowledging that although they are over the limit, they recognize that this is a dire situation.

(b) The county may not submit a waiver to exceed the current limit of students set forth in Individuals with Disabilities Education Act 2004 and Policy 2419 without the written consent of the special education instructor. If the instructor chooses to sign the waiver to exceed the limit, that instructor shall be entitled to the full amount of compensation as provided per county.

(c) The county may not allow more than three students over the limit, even with the additional pay for the teacher.

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