A.E.R.O. Special Education Cooperative Special Education Procedures

Special Education Procedures Assuring the Implementation of Comprehensive Programming for Children with Disabilities REVISED December 2023 (ICSA Illinois Council of School Attorneys)

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Section 1. Provision of a Free Appropriate Public Education (FAPE) [1]

A. Comprehensive Program

The District provides and maintains appropriate and effective educational programs in order to afford every eligible child with a disability who is between the ages of three (3) and 21, inclusive (if the eligible student reaches the age of 22 during the school year, the student is eligible for such services through the end of the school year[2]), is enrolled in the District, and requires special education and related services to address the adverse effect of the disability on his/her education, a free appropriate public education (FAPE). The District makes available to all eligible children who are residents of the District a comprehensive program of special education that includes: [3]

1. A viable organizational and financial structure;
2. Systematic procedures for identifying and evaluating the need for special education and related services.
3. A continuum of appropriate alternative placements available to meet the needs of children for special education and related services which may include, but is not limited to, any of the following: [4]
    a. Regular classes;
    b. Special classes;
    c. Special schools;
    d. Home/hospital services; and
    e. State operated or nonpublic programs.
4. Qualified personnel who are employed in sufficient number to provide:
    a. Administration of the program;
    b. Supervisory services;
    c. Instructional and resource services;
    d. Related services; and

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1 Required by 23 Ill.Admin.Code §226.710(b)(1).
2 105 ILCS 5/14-1.02, amended by P.A. 102-172; 23 Ill.Admin.Code §§ 226.50, 226.700.
3 23 Ill.Admin.Code §226.700.
4 23 Ill.Admin.Code §226.300; 34 C.F.R. §§ 300.39, 300.115.

e. Transportation services.

5. Appropriate and adequate facilities, equipment, and materials.

6. Functional relationships with public and private agencies that can supplement or enhance the special education services of the public schools.

7. Interaction with Parents and other concerned persons that facilitates the educational development of children with disabilities.

8. Procedures for internal evaluation of the special education services provided.

9. Continuous planning for program growth and improvement based on internal and external evaluation.

B. Public Awareness

The District shall create public awareness of special education and related services and advise the public of the rights of children with disabilities pursuant to District developed procedures. In so doing, the District shall comply with the following:

1. Information provided to the public shall be made available in each of the major languages represented in the District and in the language that will be understandable to Parents regardless of ethnic or cultural background or hearing or visual abilities. [5]

2. Annual notification shall be provided to all Parents in the District regarding the special education services available in or through the District. [6]

3. Annual dissemination of information to the community served by the District regarding the special education services available in or through the District and the rights of children with disabilities.

4. The District will post on its website, if any, and incorporate into student handbooks/newsletters, notice that students with disabilities who do not qualify for special education and related services under the IDEA may qualify for services under Section 504 if the student: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of a physical or mental impairment; or (3) is regarded as having a physical or mental impairment. The notice will state that any Parent who is deaf or does not typically communicate using spoken

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[5] 23 Ill.Admin.Code §226.500; 34 C.F.R. §§ 300.504(d), 300.503(c).
[6] 23 Ill.Admin.Code §226.510; 34 C.F.R. §300.504.

English and who participates in a Section 504 meeting is entitled to the services of an interpreter. [7]

5. Documentation, including examples as appropriate, of the District's public awareness efforts shall be maintained in the District's files.

C. Providing Free Appropriate Public Education (FAPE)

The District will provide FAPE to all children with disabilities between the ages of three (3) and 21, inclusive (if the eligible student reaches the age of 22 during the school year, the student is eligible for such services through the end of the school year [8]), including children with disabilities who have been suspended or expelled from school for more than 10 consecutive school days[9] during the school year, or who receive a series of removals that constitute a change in placement. To meet these requirements, the District shall:

1. Actively seek out and identify all children from birth through age 21 within the District (and those parentally-placed private school children for whom the District is responsible (See Section 9)) who may be eligible for special education and related services. [10]

2. Ensure that FAPE is available to any individual child with a disability who needs special education and related services. [11]

3. Provide special education and related services according to the child's individualized education program (IEP)[12], which shall be developed in accordance with these procedures, at no cost to Parents. The IEP shall specify the special education and related services needed in order to ensure that the child receives FAPE, including any extended school year services, if appropriate.

4. Make FAPE available to all eligible children with disabilities no later than the child's third birthday. [13]

5. Identify the special education services and placement that constitute FAPE for a particular child based on the child's unique needs and not on the child's category of

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7 105 ILCS 5/14-6.01, amended by P.A. 102-1072.
8 105 ILCS 5/14-1.02, amended by P.A. 102-172; 23 Ill.Admin.Code §§ 226.50, 226.700.
9 *School day* means any day, including a partial day, that children are in attendance at school for instructional purposes. 23 Ill.Admin.Code §226.75; 34 C.F.R. §300.11.
10 23 Ill.Admin.Code §226.100(a); 34 C.F.R. §300.11.
11 23 Ill.Admin.Code §226.50; 34 C.F.R. §300.101.
12 23 Ill.Admin.Code §226.200.
13 23 Ill.Admin.Code §226.50; 34 C.F.R. §300.101(b).

disability. These services shall address all of the child's identified needs for special education and related services.

6. Provide nonacademic and extracurricular services and activities in a manner necessary to afford children with disabilities an equal opportunity to participate in those services and activities. [14]

7. Not delay implementing a child's IEP[15], including any case in which the source of payment or provision of services to the child is being determined. [16]

8. Not permanently exclude eligible children from three (3) through 21 years of age, inclusive (if the eligible student reaches the age of 22 during the school year, the student is eligible for such services through the end of the school year [17]), from the public schools, either by direct action by the Board of Education, by indication of the District's inability to provide an educational program, or by informal agreement between the Parents and the District to allow the child to remain without an educational program.

9. Not be required to provide a child with services during periods in which the child has been removed from his/her current placement for 10 school days or fewer in a particular school year, if services are not provided to a child without disabilities who has been similarly removed. However, an eligible child who has been suspended or expelled from school for more than 10 school days during a particular school year shall continue to receive services necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. [18]

10. Ensure that a child with a disability who is receiving special education from his/her current school district and transfers into this District, receives FAPE. [19] (See Section 4, E for applicable procedures).

11. Meet the requirements set forth in Subpart E of Illinois State Board of Education (ISBE) regulations in providing FAPE to children with disabilities who have been suspended or expelled from school. Such regulations require compliance with 34 C.F.R. §§ 300.530 through 300.536, Section 10-22.6 of the *School Code* [105 ILCS

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14 34 C.F.R. §300.107.
15 34 C.F.R. §300.323(c)(2).
16 34 C.F.R. §300.103(c).
17 105 ILCS 5/14-1.02, amended by P.A. 102-172; 23 Ill.Admin.Code §§ 226.50, 226.700.
18 23 Ill.Admin.Code §226.400; 34 C.F.R. 300.530(b)-(d).
19 23 Ill.Admin.Code §226.50(a); 34 C.F.R. §300.323(e)-(f).

5/10-22.6], and 23 Ill. Admin. Code §226.400. If a student with a disability is the subject of an expulsion or a suspension which is longer than 10 cumulative days, the District shall conduct an IEP meeting to either review or develop a behavioral intervention plan for the student. [20]

12. Not deny FAPE to any child for whom services are sought shall regardless of any jurisdictional disputes among Illinois agencies. [21]

13. Provide an eligible student who requires continued public school educational experience to facilitate his/her integration into society with services through age 21, inclusive (i.e., through the end of the school year in which the student turns 22 years old[22]). [23]

D. Exceptions to Providing FAPE

1. The District is not required to provide FAPE to a student with a disability who has graduated with a regular high school diploma.[24] Students who have participated in a graduation ceremony but have not been awarded a regular high school diploma continue to be eligible to receive FAPE through age 21, inclusive. If the eligible student reaches the age of 22 during the school year, the student is eligible for such services through the end of the school year. [25]

2. The District is required to provide FAPE to a student with a disability who has fulfilled the minimum State graduation requirements set forth in the *School Code* but whose IEP prescribes special education, transition planning, transition services, or related services beyond that point. In such cases, the issuance of the diploma shall be deferred so that the student will continue to be eligible for those services. [26]

3. Any child 18 through 21 (or, if applicable, 22) years of age who is incarcerated and who is not identified as eligible and did not have an IEP in his/her educational placement immediately prior to incarceration shall not be provided FAPE. [27]

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[20] 23 Ill.Admin.Code §226.400.
[21] 23 Ill.Admin.Code §226.50(a)(3).
[22] 105 ILCS 5/14-1.02, amended by P.A. 102-172.
[23] 23 Ill.Admin.Code §226.50(c)(1).
[24] 23 Ill.Admin.Code §226.50(c)(2); 34 C.F.R. §300.102(a)(3)(i).
[25] 105 ILCS 5/14-1.02, amended by P.A. 102-172; 23 Ill.Admin.Code §226.50(c), 226.700; 34 C.F.R. §300.102(a)(3)(ii).
[26] 23 Ill.Admin.Code §226.50(c)(3).
[27] 34 C.F.R. §300.102(a)(2); 23 Ill.Admin.Code §226.50(d).

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1413 (Local educational agency eligibility).

34 C.F.R. §§ 300.101 (Free appropriate public education (FAPE)), 300.102 (Limitation -- exception to FAPE for certain ages), 300.103 (FAPE - methods and payments), 300.106 (Extended school year services).

105 ILCS 5/14-1.02 (Children with disabilities).

23 Ill. Admin. Code §§ 226.50 (Requirements for a Free Appropriate Public Education (FAPE)), 226.700 (General).

Section 2. Child Find [28]

A. Child Find Responsibility

1. As noted in Section 1, the District is responsible for actively seeking out and identifying all children from birth through age 21 within the District (and those parentally-placed private school children for whom the District is responsible – see Section 9) who may be eligible for special education and related services.[29] This requirement relates to homeless children, children who are wards of the state, and highly mobile and migrant children.[30] Procedures developed to fulfill the child find responsibility shall include: [31]

    a. Annual and ongoing screenings of children under the age of five (5) for the purpose of identifying those who may need early intervention or special education and related services.

    b. Ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems that interfere with their educational progress or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services.

    c. Ongoing coordination with early intervention programs to identify children from birth through two (2) years of age who have or are suspected of having disabilities, in order to ensure provision of services in accordance with applicable timelines. The District shall participate in transition planning conferences arranged by the designated lead agency in order to develop a transition plan enabling the public school to implement an Individual Family Service Plan (IFSP) or IEP no later than the third birthday of each eligible child or, for a child with a birthday between May 1 and August 31 who continues to receive early intervention services past the third birthday, by the beginning of the school year following that birthday.

2. When District staff members conclude that an individual evaluation of a particular child is warranted based on factors such as a child's educational progress, interaction with

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28 Required by 23 Ill.Admin.Code §226.710(b)(2).
29 23 Ill.Admin.Code §226.100(a); 34 C.F.R. §300.111.
30 34 C.F.R. §300.111(c)(2).
31 23 Ill.Admin.Code §226.100(a).

others, or other functioning in the school environment, the requirements for evaluation set forth here shall apply. [32]

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1412(a)(3) (Child find), 1413 (Local educational agency eligibility), 1413(a)(1) (Consistency with State policies), 1413(a)(3) (Personnel development).

34 C.F.R. §§ 300.111 (Child find).

23 Ill. Admin. Code §226.100 (Child Find Responsibility).

[32] 23 Ill.Admin.Code §226.100(b).

Section 3. Evaluation and Determination of Eligibility [33]

A. Evaluation Procedures [34]

1. Definitions.

   a. The *date of referral* is the date the District receives a written request for an evaluation or reevaluation from Parent(s) or other person specified in 23 Ill.Admin.Code §226.110(b).

   b. Screening procedures used by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation are not considered an evaluation. (See also subsection (e)(2) below regarding screenings to determine if an evaluation is required.)

   c. *Domain* means an aspect of a child's functioning or performance that must be considered in the course of designing an evaluation. The domains to be considered are health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities. [35]

2. Procedures for Requesting an Initial Evaluation. [36] The District shall develop and make known to all concerned persons procedures by which an evaluation may be requested. These procedures shall:

   a. Designate the steps to be taken in making a request for an evaluation;

   b. Designate the persons to whom a request may be made;

   c. Identify the information that must be provided;

   d. Provide any assistance that may be necessary to enable persons making requests to meet any related requirements established by the District; and

   e. Identify the process for providing Parents with notice of their rights with respect to procedural safeguards.

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33 Required by 23 Ill.Admin.Code §226.710(b)(3).
34 23 Ill.Admin.Code §226.110.
35 23 Ill.Admin.Code §226.75.
36 23 Ill.Admin.Code §226.110(a).

3. Persons Who Can Request an Evaluation. [37] A request may be made by a Parent of a child or by an employee of a State educational agency, another State agency, a local educational agency, or a community service agency.

4. Dyslexia. Each child suspected of having dyslexia or identified as dyslexic shall be referred for an evaluation. [38]

5. District's Response to Request. [39]

    a. The District is responsible for processing the request, deciding what action should be taken, and initiating the necessary procedures.

    b. To determine whether the child requires an evaluation, the District may utilize screening data and conduct preliminary procedures such as observation of the child, assessment for instructional purposes, consultation with the teacher or other individual making the request, and a conference with the child.

    c. Within 14 school days[40] after receiving a request for an evaluation, the District shall determine whether an evaluation is warranted.

    d. If the District determines not to conduct an evaluation, it shall provide written notice to the Parents as required by State and federal law.

    e. If an evaluation is to be conducted:

        (1) The District shall convene a team of individuals (including the Parent(s)) having the knowledge and skills necessary to administer and interpret evaluation data. The composition of the team will vary depending upon the nature of the child's symptoms and other relevant factors.

        (2) The team shall identify the assessments necessary to complete the evaluation as described below and shall prepare a written notification for Parent(s) that describes any evaluation procedures to be conducted. For each domain, the notification shall either describe the needed assessments or explain why none are needed. The team may identify the assessments necessary without a meeting.

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37 23 Ill.Admin.Code §226.110(b).

38 23 Ill.Admin.Code §226.125(c).

39 23 Ill.Admin.Code §226.110(c).

40 *School day* means any day, including a partial day, that children are in attendance at school for instructional purposes. 23 Ill.Admin.Code §226.75; 34 C.F.R. §300.11.

(3) The District shall ensure that the notification of the team's conclusions is transmitted to Parent(s) within the 14-school-day timeline along with the District's request for Parent(s)' informed written consent to conduct the needed assessments and a copy of ISBE's *Notice of Procedural Safeguards for Parents/Guardians of Children with Disabilities*.

(4) Informed written consent for the initial evaluation shall be obtained from the Parent(s) of the child before conducting the evaluation.

6. Identification of Needed Assessments.

a. An evaluation shall cover all domains that are relevant to the child's known or suspected disability(ies) under consideration.

b. The following procedures shall be used for designing an evaluation:

(1) IEP Team members and other qualified professionals, as appropriate, shall review and evaluate existing information about the child, including the following if available:

(a) Information from a variety of formal and informal sources, including information provided by the child's Parent(s); [41]

(b) Current classroom-based, local, or State assessments, and classroom-based observations; [42]

(c) Observations by teachers and providers of related services; [43]

(d) Information, if any, provided by the child; and

(e) Information from specialized evaluations such as those performed by independent evaluators, medical evaluators, behavioral intervention specialists, bilingual specialists, etc.

(2) The IEP Team may conduct its review without a meeting within the time constraints of Section 3.A.1.e.(3), above. [44]

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41 34 C.F.R. §300.305(a)(1)(i).
42 34 C.F.R. §300.305(a)(1)(ii).
43 34 C.F.R. §300.305(a)(1)(iii).
44 34 C.F.R. §300.305(b).

c. After review of the information described above, the IEP Team shall determine whether additional evaluation data is needed in any relevant domain and from what source(s) to determine: [45]

(1) Whether the child has, or continues to have, one or more disabling conditions;

(2) The present levels of performance and educational needs of the child;

(3) Whether the disability is adversely affecting the child's educational performance;

(4) Whether the child needs or continues to need, special education and related services; and

(5) Whether any additions or modifications to the child's special education and related services are needed to enable the child to meet the goals and objectives of his/her IEP and to participate appropriately in the general curriculum.

7. Eligibility Determination Timeline. Upon completion of the assessments, but no later than 60 school days following the date Parent signs the informed written consent to perform the needed assessments (or prior to the first day of student attendance in the next school year, if there are fewer than 60 school days remaining in the school year after the date of parental consent), the determination of eligibility shall be made at an IEP meeting. [46]

8. Failure to Evaluate. If the District fails to conduct the evaluation, the Parent(s) of the child may appeal this failure in an impartial due process hearing or using ISBE complaint procedures. [47]

B. Evaluation Requirements

1. Conducting the Evaluation. In conducting the evaluation, the District must: [48]

a. Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the Parent(s) that may assist in determining:

(1) Whether the child is a child with a disability; and

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45 34 C.F.R. §300.305(a)(2).
46 23 Ill.Admin.Code §226.110(d).
47 23 Ill.Admin.Code §226.110(k).
48 34 C.F.R. §300.304(b).

(2) The content of the child's IEP;

b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;

c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;

d. Ensure it is nondiscriminatory with respect to language, culture, race, and gender; [49]

(1) The languages used to evaluate a child shall be consistent with the child's primary language or other mode of communication. The District will determine the child's language use pattern and general cultural identification by determining the languages spoken in the child's home and the languages used most comfortably and frequently by the child. [50] If the language use pattern involves two or more languages or modes of communication, the child shall be evaluated by qualified specialists or, when needed, qualified bilingual specialists using each of the languages or modes of communication used by the child.

(2) If the child has a non-English-speaking background, a determination shall be made of his or her proficiency in English. This determination shall be conducted in accordance with the provisions of 23 Ill. Admin. Code Part 228, which specifies the assessment procedures and eligibility criteria for bilingual education programs. [51]

(3) If documented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the District shall use an individual who possesses the professional credentials required under 23 Ill. Admin. Code §226.840 to complete the specific components of the evaluation. This qualified specialist shall be assisted by a District employee holding an educator license issued pursuant to 105 ILCS 5/21B or other individual who has demonstrated competencies in the language or modes of communication of the child.

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[49] 23 Ill.Admin.Code §226.150; 34 C.F.R. §300.304(c)(1)(i)-(ii).
[50] 23 Ill.Admin.Code §226.140(a).
[51] 23 Ill.Admin.Code §226.140(b).

(4) If documented efforts to locate and secure the services of a qualified bilingual specialist or a qualified specialist assisted by another individual are unsuccessful, the District shall conduct assessment procedures which do not depend upon language. Any special education resulting from such alternative procedures shall be reviewed annually until the student's proficiency is determined no longer to be limited pursuant to 23 Ill. Admin. Code §228.25.

(5) Tests given to a child whose primary language is other than English shall be relevant, to the maximum extent possible, to his/her culture.

(6) Determination of the child's mode of communication shall be made by assessing the extent to which the child uses verbal expressive language and the use he or she makes of other modes of communication (e.g., gestures, signing, unstructured sounds) as a substitute for verbal expressive language. [52]

(7) If the child's receptive and/or expressive communication skills are impaired due to hearing and/or language deficits, the District shall utilize test instruments and procedures that do not stress spoken language and one of the following:

(a) Visual communication techniques in addition to auditory techniques.

(b) An interpreter to assist the evaluative personnel with language and testing.

(8) The child's language use pattern, proficiency in English, mode of communication, and general cultural identification shall be noted in the child's temporary student record, and this information shall be used in the evaluation and in the development and implementation of the individualized education program. [53]

2. Assessments and Evaluation Materials. Assessments and their evaluation materials must be: [54]

a. Used for the purposes for which the assessments or measures are valid and reliable;

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[52] 23 Ill.Admin.Code §226.140(c).
[53] 23 Ill.Admin.Code §226.140(d).
[54] 34 C.F.R. §300.304(c)(1)(iii)-(v).

b. Administered by trained and knowledgeable personnel; and

c. Administered in accordance with any instructions provided by the producer of the assessments.

C. Determination of Eligibility

1. No later than 60 school days following the date Parent signs the informed written consent to conduct an evaluation (or prior to the first day of student attendance in the next school year if there are less than 60 school days remaining in the school year after the date of parental consent), an IEP meeting will be held to consider the results of the evaluation and, if the child is determined to be eligible for special education and related services, to develop an IEP. [55]

2. The IEP Team shall consist of a group of qualified professionals as set forth under State and federal law, including Parent(s). [56]

3. The IEP Team, after considering the evaluation and other information available regarding the child, shall determine whether the child is or continues to be eligible for special education and related services as a child with a disability as defined by federal and state law and the child's educational needs. In making this determination, the IEP Team shall: [57]

   a. Draw upon information from a variety of sources, including aptitude and achievement tests, parental input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

   b. Ensure that information obtained from all of these sources is documented and carefully considered; and

   c. Ensure that a psychological evaluation has been conducted and a recommendation for eligibility has been made by a school psychologist for all children suspected of or determined to have an intellectual disability. [58]

4. A child may not be determined eligible if the determinant factor for that determination is lack of instruction in reading or math or Limited English Proficiency and the child does not otherwise meet the eligibility criteria. [59]

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55 23 Ill.Admin.Code §226.110(d); 34 C.F.R. §300.306.
56 23 Ill.Admin.Code §226.210; 34 C.F.R. §§ 300.208, 300.321.
57 34 C.F.R. §300.306(c).
58 23 Ill.Admin.Code §226.135.
59 34 C.F.R. §300.306(b).

5. At the conclusion of the meeting convened to consider the results of the evaluation, the team shall prepare a report describing its consideration of pre-existing information about the child, all new evaluation reports obtained, and any other information relevant to the decision about the child's eligibility. This description shall relate the information considered to the child's needs and shall further conform to the requirements relating to identifying students suspected of or having a specific learning disability, if applicable. The IEP Team's report shall also include: [60]

    a. The date of the meeting;

    b. The signatures of the participants, indicating their presence at the meeting; and

    c. Any separate written statement provided by a participant who wishes to be on record as disagreeing with the conclusions expressed in the team's report.

6. If an assessment is conducted under nonstandard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report. This information is needed so that the team of evaluators can assess the effects of these variances on the validity and reliability of the information reported and determine whether additional assessments are needed. [61]

7. If any needed portion of the evaluation cannot be completed due to lack of parental involvement, religious convictions of the family, or inability of the child to participate in an evaluative procedure, the District shall note the missing portions in the child's evaluation report and state the reasons why those portions could not be completed. [62]

8. In the event that the student is determined to be eligible for special education and related services, the IEP meeting shall be conducted within 30 calendar days (and no later than 60 school days from the date the District receives the informed written consent for the evaluation or reevaluation from Parent(s)) after the date of that determination. [63]

9. A copy of the IEP Team's report, together with all documentation upon which it is based will be maintained in the child's temporary education record in accordance with confidentiality requirements. [64]

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60 23 Ill.Admin.Code §226.110(e).
61 23 Ill.Admin.Code §226.110(h).
62 23 Ill.Admin.Code §226.110(i).
63 23 Ill.Admin.Code §226.110(j).
64 23 Ill.Admin.Code §226.110(g).

10. A copy of the completed document will be provided to Parent(s). If requested, a copy of any evaluation reports will also be provided. [65]

11. No later than 10 calendar days following the IEP meeting, Parent(s) will be provided a written notice of the determination of the team, in compliance with 23 Ill. Admin. Code §226.520. If the IEP contains a proposal or refusal to initiate or change the child's educational placement, the Conference Recommendations will be provided in writing in the preferred language of Parent(s) or other mode of communication used by Parent(s) (such as orally if Parent is illiterate). [66]

D. Additional Requirements for Identifying Children with Specific Learning Disabilities [67]

1. The criteria for identifying children with specific learning disabilities:

   a. Must use of a process that determines how the child responds to scientific, research-based interventions or multi-tiered systems of support as part of the evaluation procedure; [68]

      (1) The response to scientific, research-based intervention or a multi-tiered system of support process should use a collaborative team approach and include the engagement of and regular communication with the child's Parent(s).

      (2) The Parent(s) of a child shall be provided with written notice of the District's use of scientific, research-based intervention or a multi-tiered system of support for the child and may be part of the collaborative team approach at the discretion of the District.

      (3) The Parent(s) shall be provided all data collected and reviewed by the District with regard to the child in the scientific, research-based intervention or multi-tiered system of support process.

   b. May permit the use of other alternative research-based procedures to determine whether a child has a specific learning disability, as defined in federal law[69]; and

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65 23 Ill.Admin.Code §226.110(f).
66 23 Ill.Admin.Code §226.520; 34 C.F.R. §300.503.
67 23 Ill.Admin.Code §226.130; 34 C.F.R. §§ 300.307-300.311.
68 105 ILCS 5/14-8.02h.
69 34 C.F.R. §300.307(a)(1)(3).

c. May permit the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. [70]

2. Additional group members required to determine specific learning disability eligibility [71]

   The determination of whether a child suspected of having a specific learning disability is a child with a disability must be made by the child's Parent(s) and a team of qualified professionals, which must include:

   a. The child's general education teacher; or

   b. If the child does not have a general education teacher, a general education classroom teacher qualified to teach a child of his/her age; or

   c. For a child less than school age, an individual qualified by ISBE to teach a child of his/her age; and

   d. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

3. Determining the existence of a specific learning disability [72]

   a. The group described above may determine that a child has a specific learning disability, if:

      (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

         (a) Oral expression.

         (b) Listening comprehension.

         (c) Written expression.

         (d) Basic reading skills.

         (e) Reading fluency skills.

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[70] 23 Ill.Admin.Code §226.130(d).
[71] 34 C.F.R. §300.308.
[72] 34 C.F.R. §300.309.

(f) Reading comprehension.

(g) Mathematics calculation.

(h) Mathematics problem solving.

(2) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified above when using a process based on the child's response to scientific, researched-based intervention; or

The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments; and

(3) The group determines that its findings above are not primarily the result of:

(a) A visual, hearing, or motor disability;

(b) Cognitive disability;

(c) Emotional disability;

(d) Cultural factors;

(e) Environmental or economic disadvantage; or

(f) Limited English Proficiency.

b. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group has considered, as part of the evaluation, and provided to the child's Parent(s):

(a) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction.

c. The District must promptly request parental informed written consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes, unless extended by mutual written agreement of the child's Parent(s) and a group of qualified professionals:

(a) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described above; and

(b) Whenever a child is referred for an evaluation.

4. Observation [73]

a. The District must ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

b. The group meeting to determine whether a child has a specific learning disability, must decide to:

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental informed written consent is received.

c. In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

5. Specific documentation for a determination of specific learning disability [74]

a. For a child suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

(1) Whether the child has a specific learning disability;

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[73] 34 C.F.R. §300.310.
[74] 34 C.F.R. §300.311.

(2) The basis for making the determination, including assurance that the determination has been made in accordance with Section 3, C (3) (a & b);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether:

(a) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards as provided above; and

(b)

i. The child does not make sufficient progress to meet age or State-approved grade-level standards as provided above; or

ii. The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development as provided above;

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disability; cultural factors; environmental or economic disadvantage; or Limited English Proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:

(a) The instructional strategies used and the student-centered data collected; and

(b) The documentation that the child's Parent(s) were notified about:

i. The State's policies regarding the amount and nature of student performance data that would be collected and the regular education services that would be provided;

ii. Strategies for increasing the child's rate of learning; and

iii. The Parent(s)' right to request an evaluation.

b. Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

E. Reevaluations [75]

1. The District must ensure that a reevaluation of each child with a disability is conducted in accordance with the procedures for an evaluation in accordance with Section 3, A (1) (a), (d), (e), (f) and Section 3, B:

   a. If the District determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

   b. If the child's Parent(s) or teacher requests a reevaluation.

2. A reevaluation conducted as described above:

   a. May occur not more than once a year, unless Parent(s) and the public agency agree otherwise; and

   b. Must occur at least once every three (3) years, unless Parent(s) and the District agree that a reevaluation is unnecessary.

F. Independent Educational Evaluation [76]

See Section 10, N.

[75] 23 Ill.Admin.Code §226.120; 34 C.F.R. §300.303.
[76] 23 Ill.Admin.Code §226.180; 34 C.F.R. §300.502.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1412(a)(3) (Child find), 1413 (Local educational agency eligibility), 1413(a)(1) (Consistency with State policies), 1413(a)(3) (Personnel development).

34 C.F.R. §§ 300.8 (Child with a disability), 300.122 (Evaluation), 300.201 (Consistency with State policies), 300.301- 300.306 (Evaluations and Reevaluation), 300-307-300.311 (Additional Procedures for Identifying Children with Specific Learning Disabilities).

105 ILCS 5/14-8.02 (Identification, evaluation, and placement of children), 5/14-8.02h (Response to scientific, research-based intervention).

23 Ill.Admin.Code §§ 226.110 (Evaluation Procedures), 226.120 (Reevaluations), 226.130 (Additional Procedures for Students Suspected of or Having a Specific Learning Disability), 226.135 (Additional Procedures for Students Suspected of or Having an Intellectual Disability), 226.140 (Modes of Communication and Cultural Identification), 226.150 (Evaluation to be Nondiscriminatory), 226.180 (Independent Educational Evaluation).

Section 4. Individualized Education Programs [77]

A. Development of IEP

1. IEP Meeting Timeline. An IEP meeting will be conducted within 30 calendar days (and no later than 60 school days from the date the District receives the informed written consent for the evaluation or reevaluation from Parent(s)) after a child is determined to be eligible. [78] The child receiving special education and related services must have an IEP developed in compliance with these procedures and in effect at the beginning of each subsequent school year.

2. IEP Team. The group of persons responsible for the development of the IEP (IEP Team) includes: [79]

    a. A representative of the District (other than the child's teacher) who is qualified to provide or supervise the provision of special education, is knowledgeable about the general curriculum, is knowledgeable about the District's resources, has the authority to make commitments for the provision of resources set forth in the IEP, and is able to ensure that the services in the IEP will be implemented.

    b. At least one of the child's special education teachers, or where appropriate, at least one special education provider of the child. If the child is receiving only speech and language services, the speech and language pathologist shall fulfill this role.

    c. At least one regular education teacher of the child (if the child is, or may be, participating in general education environment) who is, or may be, responsible for implementing a portion of the IEP.

    d. For a child age three (3) through five (5) who has not yet entered the primary grades, an individual qualified to teach preschool children without disabilities.

    e. One or more of the child's Parent(s).

    f. If appropriate, the child may be invited by either the District or Parent(s). The District shall invite the child when the purpose of the IEP meeting is to consider and plan transition services or when the child has reached the age of 18. When the child does not attend the IEP meeting where transition services are discussed,

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77 Required by 23 Ill.Admin.Code §226.710(b)(4).
78 23 Ill.Admin.Code §226.110(j); 34 C.F.R. §300.323(c)(1).
79 23 Ill.Admin.Code §226.210; 34 C.F.R. §300.321.

the District shall take other steps to ensure that the child's preferences and interests are considered.

g. Other individuals, at the discretion of Parent(s) or the District, who have knowledge or special expertise regarding the child, including related services personnel as appropriate.

h. An individual who is qualified to interpret the instructional implications of the evaluation results (who may be one of the individuals listed herein).

i. A qualified bilingual specialist or bilingual teacher (who may be one of the individuals listed herein), if needed to assist meeting participants in understanding the child's language or cultural factors as related to the child's instructional needs. If documented efforts to locate such a person are unsuccessful, the District shall meet the requirements for nondiscriminatory evaluations (see Section 3, B 1(d)).

j. In those cases where the child's behavior impedes his/her learning or the learning of others, a person knowledgeable about positive behavior strategies.

k. If transition services will be discussed and with the informed written consent of Parents (or child who has reached the age of majority), the District shall invite representative(s) of any participating agencies that are likely to be responsible for providing or paying for transition services. This may include, without limitation, a representative from the Department of Human Services or another State agency, a case coordinator, or persons representing other public or community agencies or services, such as adult service providers, disability services coordinators of public community colleges, and a career and technical education (CTE) coordinator. [80]

l. For a child who was previously served under Part C of the IDEA, upon request of the Parent, the Part C service coordinator or other representative of the Part C system shall be invited to the initial IEP meeting to assist with the smooth transition of services.

3. IEP Team Attendance. [81]

a. A member of the IEP Team described above is not required to attend an IEP meeting, in whole or in part, if Parent(s) and the District agree in writing that the attendance of the Team member is not necessary because the member's area of

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[80] 105 ILCS 5/14-8.03(b), amended by P.A. 102-516
[81] 34 C.F.R. §300.321(e).

the curriculum or related services is not being modified or discussed in the meeting.

b. If an IEP meeting involves a modification to or discussion of an IEP Team member's area of the curriculum or related services, that IEP Team member may be excused from attending the meeting, in whole or in part, if (1) Parent(s) and the District consent to the excusal in writing and (2) the IEP Team member submits, in writing to Parent(s) and the IEP Team, input into the development of the IEP prior to the meeting.

4. Parental Participation. The District will take the following steps to encourage parental participation in the IEP process: [82]

   a. The District will schedule each IEP meeting at a mutually agreed upon time and place, whenever possible.

   b. The District will notify Parents at least 10 calendar days prior to any IEP meeting of the purpose, time and location of the meeting, the titles of the persons who will be in attendance, and Parents' right to invite other individuals with knowledge or special expertise regarding the child. The notice will also inform Parents:

      (1) Of their right to review and copy their child's school student records; [83]

      (2) Of the availability of interpretation services at IEP meetings; [84]

      (3) How Parents can request an interpreter;

      (4) That Parents have a right to request that the interpreter provided by the District serve no other role in the IEP meeting than as an interpreter and that the District should make reasonable efforts to fulfill this request;

      (5) Of a point of contact for any questions or complaints about interpretation services; and

      (6) That written translations of Vital IEP Process Documents (see Section 14, below) are available, how to request translated documents, and whom to contact with any questions or complaints about the translations.

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82 23 Ill.Admin.Code §226.530; 34 C.F.R. §300.322. ISBE form 34-57D, Parent/Guardian Notification of Conference, was updated on March 24, 2021 to include this notice.

83 105 ILCS 5/14-8.02f(c); 23 Ill.Admin.Code §226.530(a).

84 23 Ill.Admin.Code §226.530(b) for Nos. (2)-(6).

Nos. (2) and (6) shall be provide in English, in all common languages, and in Parents' preferred language, if known and practicable. See Section 14, below, for definitions of *common languages* and *preferred language*.

c. At least three (3) school days prior to any IEP meeting, or as soon as possible if an IEP meeting is scheduled within three (3) school days with written consent of the Parents, the District will provide Parents with copies of all written material that will be considered by the IEP Team at the meeting so that Parents may participate in the meeting as a fully-informed member. Parents will have the option of choosing from the available methods of delivery, including regular mail and picking up materials at school. For a meeting to determine the child's eligibility for special education, the written material must include all evaluations and collected data that will be considered at the meeting. For a child who is already eligible for special education and related services, the written material must include a copy of all IEP components that will be discussed by the IEP Team, other than the components related to the educational and related service minutes proposed for the child and the child's placement. [85]

d. The District may conduct an IEP meeting without a Parent in attendance if the District is unable to convince Parents that they should attend.

e. If neither Parent is present at an IEP meeting, the District will maintain a record of its attempts to arrange a mutually agreed on time and place.

f. The Parent(s) and District may agree to use alternative means of meeting participation, such as video conferences and conference telephone calls.

g. The District will take whatever action is necessary and reasonable to facilitate Parent(s)' understanding of and participation in the IEP meeting, including arranging and paying for the expense of a qualified interpreter for Parent(s) whose native language is other than English, or for an interpreter licensed pursuant to the Interpreter for the Deaf Licensure Act of 2007 for Parent(s) who are deaf.

   (1) All interpreters for the common languages and American Sign Language shall be qualified interpreters that meet the criteria established by ISBE. If a qualified interpreter is not available, the District may use outside vendors,

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[85] 23 Ill.Admin.Code §226.530(a).

including telephonic interpreters, that are commercially recognized as providing competent interpretation services. [86]

(2) For the less common languages, the District will make all reasonable efforts to provide an interpreter that meets criteria established by ISBE (see Section 14, below). The District may use outside vendors, including telephonic interpreters, that are commercially recognized as providing competent interpretation services. [87]

5. General Considerations. In developing a child's IEP, the IEP Team shall consider the strengths of the child, the concerns of the Parent(s) regarding the child's education, the results of the most recent evaluations, and the academic, developmental, and functional needs of the child. [88]

6. Consideration of Special Factors. The IEP Team also shall consider the following factors: [89]

   a. The use of positive behavioral interventions and supports, and other strategies, to address that behavior for a child whose behavior impedes the child's learning or that of others;

   b. The language needs of a child with Limited English Proficiency as those needs relate to the child's IEP;

   c. Instruction in Braille and the use of Braille, unless the IEP Team determines that, after an evaluation of the child's reading and writing skills, needs and appropriate reading and writing media, it is not needed, for children who are blind or visually impaired;

   d. Communication needs;

   e. For a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communication with peers and professionals in the child's language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

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86 23 Ill.Admin.Code §§ 226.530(a)(1), 226.800(k).
87 23 Ill.Admin.Code §226.530(a)(2).
88 34 C.F.R. §320.324(a)(1).
89 34 C.F.R. §320.324(b)(2).

f. Whether the child needs assistive technology devices and services;

g. For students on the autism spectrum (which includes autistic disorder, Asperger's disorder, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Rett Syndrome, as defined in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM IV, 2000)), the IEP Team shall also consider all of the following factors: [90]

(1) The verbal and nonverbal communication needs of the child;

(2) The need to develop social interaction skills and proficiencies;

(3) The needs resulting from the child's unusual responses to sensory experience;

(4) The needs resulting from resistance to environmental change or change in daily routines;

(5) The needs resulting from engagement in repetitive activities and stereotyped movements;

(6) The need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting from autism spectrum disorder; and

(7) Other needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development.

h. If the student may be eligible to participate in the Home-Based Support Services Program for Mentally Disabled Adults authorized under the *Developmental Disability and Mental Disability Services Act* [405 ILCS 80] upon becoming an adult, the student's IEP shall include plans for: [91]

(1) Determining the student's eligibility for those home-based services,

(2) Enrolling the student in the program of home-based services, and

(3) Developing a plan for the student's most effective use of the home-based services after the student becomes an adult and no longer receives special

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[90] 105 ILCS 5/14-8.02(b)(1)-(7); 23 Ill.Admin.Code §226.220(d).
[91] 105 ILCS 5/14-8.02; 23 Ill.Admin.Code §226.230(d).

educational services. The plans developed under this paragraph shall include specific actions to be taken by specified individuals, agencies, or officials.

i. If the student needs extra accommodation during emergencies, including natural disasters or an active shooter situation, that accommodation will be considered when developing the student's IEP. [92]

7. IEP Components. The IEP shall include the following components: [93]

a. A statement of the child's present levels of academic achievement and functional performance. This must include:

(1) A statement of how the child's disability affects his/her involvement and progress in the general curriculum; or

(2) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

b. A statement of measurable annual goals that reflect consideration of the State Goals for Learning and the Illinois Learning Standards, as well as benchmarks or short-term objectives, developed in accordance with the child's present levels of academic and functional performance, designed to:

(1) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum, or for preschool children to participate in age-appropriate activities; and

(2) Meet each of the child's other educational needs that result from the child's disability.

c. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, and program modifications or supports that will be provided for the child to:

(1) Advance appropriately toward attaining the annual goals; and

(2) Be involved in and make progress in the general curriculum and participate in extracurricular and other nonacademic activities; and

(3) Be educated and participate with other children with and without disabilities.

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92 105 ILCS 5/14-8.02(h), added by P.A. 103-197 (eff. 1-1-24).
93 23 Ill.Admin.Code §226.230; 34 C.F.R. §300.320.

d. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments, or a statement of why the child cannot participate in such assessments and why the particular alternate assessment selected is appropriate (see Section 5).

e. The projected beginning date for the beginning of the services and modifications, and the amount, frequency, and anticipated duration of those services and modifications.

f. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and nonacademic activities.

g. A statement as to whether the child requires extended school year services and, if so, a description of those services that includes their amount, frequency, duration, and location.

h. A description of how the child's progress towards annual goals will be measured, and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

i. A statement as to the languages or modes of communication in which special education and related services will be provided, if other than or in addition to English.

j. Beginning not later than the first IEP to be in effect when the child turns age 14 1/2, and updated annually thereafter, the IEP shall include (1) appropriate, measurable, postsecondary goals based upon age-appropriate assessments related to employment, education or training, and independent living; (2) the transition services that are needed to assist the child in meeting those goals, including courses of study and any other needed services to be provided by entities other than the District; (3) information about the District's career and technical education (CTE) opportunities and postsecondary CTE opportunities; (4) information about dual credit courses offered by the District, including courses offered for dual credit under Section 16 of the *Dual Credit Quality Act* [110 ILCS 27/16] and for high school credit only, and entry criteria; and (5) any additional

requirements contained in Section 14-8.03 of the *School Code* [105 ILCS 5/14-8.03].[94]

k. Beginning not later than one year before the child reaches the age of 18, the IEP must include a statement that the child has been informed of the rights under IDEA that will transfer to the child when he or she reaches the age of 18.

l. The IEP of a student who may, after reaching age 18, become eligible to participate in the home-based support services program for adults with intellectual disabilities that is authorized by the *Developmental Disability and Mental Disability Services Act* [405 ILCS 80] shall set forth specific plans related to that program pursuant to the requirements of Section 14-8.02 of the *School Code* [105 ILCS 5/14-8.02].

8. Behavior Intervention Plan. The IEP of a student who requires a behavioral intervention plan shall:

   a. Summarize the findings of the functional behavioral assessment;

   b. Summarize prior interventions implemented;

   c. Describe any behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors;

   d. Identify the measurable behavioral changes expected and methods of evaluation;

   e. Identify a schedule for a review of the interventions' effectiveness; and

   f. Identify provisions for communicating with the Parents about their child's behavior and coordinating school-based and home-based interventions.

9. Private School Placements. When an IEP Team determines that no less restrictive setting on the continuum of alternative placements will meet a child's needs, the child may be placed in a State-operated or nonpublic special education facility. In such a case, the use of a State-operated program should be given first consideration if appropriate. The determination shall be based on recent diagnostic assessments and other pertinent information and made in light of other factors such as proximity to the child's home.[95] Before the District places a child or refers a child to such a facility: [96]

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94 105 ILCS 5/14-8.03, amended by P.A.s 102-516 and 103-181.
95 23 Ill.Admin.Code §226.330.
96 34 C.F.R. §300.325.

a. The District will convene an IEP meeting and invite representative(s) of the State-operated or nonpublic school to attend to assist in identifying or verifying the appropriate placement for that child. If one or more needed representatives cannot attend, the District will use other methods to ensure their participation.

b. With respect to the annual review and revision of the IEP of a child with a disability placed or referred to a State-operated or nonpublic school by the District, the District may permit the nonpublic school to initiate IEP meetings which will be conducted as described above, provided that Parent(s) of the child and a representative of the District are invited to participate in any decision about the child's IEP and agree to any proposed changes in the IEP. The District remains responsible for the development and implementation of the child's IEP and for convening any needed IEP meetings, including annual reviews.

10. Determination of Placement. The IEP shall state the placement the IEP Team has determined to be appropriate for the child. The IEP Team shall take into consideration the student's eligibility for other educational programs and services such as bilingual education, career and technical education, gifted education, and federal Title I programs. The placement determination shall be reviewed at least annually or at any time the IEP is revised. [97]

11. Initial IEPs. Each initial IEP must be completed by the IEP Team no later than 30 calendar days after the determination of eligibility and in no case later than 60 school days from the date the Parent(s) sign written consent to perform the needed assessments. When a child is referred for an evaluation with fewer than 60 days of pupil attendance left in the school year, the eligibility determination shall be made and, if the child is eligible, an IEP shall be in effect prior to the first day of student attendance in the next school year. [98]

12. Provision of Services. The District shall provide special education and related services to eligible children in accordance with their IEPs. [99]

13. Provision of IEP Copies. The District shall provide Parent(s) with a copy of the IEP at the conclusion of the IEP Team meeting at no cost to Parent(s). [100] If the child is in the legal custody of the Department of Children and Family Services (DCFS), the District

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97 23 Ill.Admin.Code §226.240.
98 23 Ill.Admin.Code §226.110(d), (j); 34 C.F.R. §300.323(c)(1).
99 23 Ill.Admin.Code §226.200; 34 C.F.R. §300.323(c)(2).
100 23 Ill.Admin.Code §226.110(f); 34 C.F.R. §300.322(f).

shall provide the DCFS Office of Education and Transition Services with a copy of the IEP at the conclusion of the IEP Team meeting at no cost.[101]

B. Determination of Related Services [102]

1. Participants in IEP Team meetings held to develop, review, or revise the IEP shall determine what related services are necessary to assist a child in benefiting from special education, as defined in 34 C.F.R. §300.34.

2. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance or replacement of that device.

C. Implementation of the IEP

1. Implementation of the IEP shall occur no later than 10 school days after Parent(s) have been provided notice, unless otherwise agreed by the IEP Team; or by the beginning of the following school year if the IEP is developed or revised with fewer than 10 school days remaining in the school year. If the new or revised IEP requires extended-year services, those services shall be provided in accordance with the provisions of the IEP. [103]

2. Informed written parental consent is required at least 10 calendar days prior to the initial provision of special education and related services to a child. Parent(s) may waive the 10-calendar-day interval before placement. [104]

3. The IEP must be accessible to all staff members who are responsible for implementing the IEP; each shall be informed of his/her specific responsibilities relating to the IEP and the specific accommodations, modifications and supports to be provided to the child in accordance with the IEP. [105]

4. The District must make logs that record the delivery of related services administered under the child's IEP, including the type of related service and the minutes provided. The District must make the logs available to the child's Parent(s) at any time upon request of the child's Parent(s). Related services for which a log must be made are: speech and language services, occupational therapy services, physical therapy services, school social work services, school counseling services, school psychology

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101 105 ILCS 6/14-8.02(b), amended by P.A. 102-199.
102 23 Ill.Admin.Code §226.310; 34 C.F.R. §300.34.
103 23 Ill.Admin.Code §226.220(a).
104 23 Ill.Admin.Code §226.520.
105 34 C.F.R. §300.323(d).

services, and school nursing services. The District must inform the child's Parent(s) within 20 school days from the beginning of the school year or upon establishment of an IEP of his or her ability to request those related service logs. [106]

5. If a service required by an IEP is not implemented within 10 school days after the service was to be initiated as set forth by the child's IEP, then the District shall provide the child's Parent(s) with written notification that the service has not yet been implemented. The notification must be provided to the child's Parent(s) within three (3) school days of the District's non-compliance with the child's IEP and must inform the Parent(s) about the District's procedures for requesting compensatory services. For purposes of this section, *school days* does not include days in which a child is absent from school for reasons unrelated to a lack of IEP services or when the service is available but the child is unavailable. [107]

6. The District may not use any measure that would prevent or delay an IEP Team from adding a service to the IEP or create a time restriction in which a service is prohibited from being added to the IEP. The District may not build functions into its computer software that would remove any services from a student's IEP without the approval of the IEP Team and may not prohibit the IEP Team from adding a service to the program. [108]

D. Review and Revision of the IEP

1. The IEP of each child with a disability currently receiving special education and related services must be reviewed at least annually to determine whether the annual goals are being achieved. The IEP should be revised as appropriate to address any lack of expected progress toward the annual goals; the results of a reevaluation; information about the child provided to, or by, the Parent(s); the child's anticipated needs; or other matters. [109]

2. A child's teacher or Parent(s) may request a review of the child's IEP at any time. Within 10 calendar days after receipt of such request, the District will either agree and notify Parent(s) of the meeting, or notify Parent(s) in writing of its refusal to meet. Notice of a refusal will include an explanation of the reason no meeting is necessary to ensure a FAPE to the child. Parent(s) may revoke their consent for special

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106 105 ILCS 5/14-8.02f(d); 23 Ill.Admin.Code §226.310.
107 105 ILCS 5/14-8.02f(d-5); 23 Ill.Admin.Code §226.220(b).
108 105 ILCS 5/14-8.02f(f).
109 23 Ill.Admin.Code §226.220; 34 C.F.R. §300.324(b)(1).

education services in accordance with their procedural safeguards.[110] (See Section 10, G.)

3. After the annual review IEP Team meeting, Parent(s) and the District may agree not to convene an IEP Team meeting for the purpose of making changes to a child's IEP and instead may develop a written document to amend or modify the current IEP, rather than redrafting the entire IEP. The District must ensure that the child's IEP Team is informed of those changes. [111] Upon request, a Parent must be provided with a revised copy of the IEP with the amendments incorporated. [112]

4. If a participating agency, other than the District, fails to provide the transition services described in the IEP, the IEP Team must reconvene to identify alternative strategies to meet the transition objectives for the child set out in the IEP. [113]

5. At the student's annual IEP review meeting the District will provide Parents a copy of the Department of Human Services' guide *Understanding PUNS: A Guide to Prioritization for Urgency of Need for Services*.[114]

6. At the annual IEP review meeting for a student with an intellectual disability or a developmental disability, the IEP Team shall determine the student's PUNS database registration status based on information provided by the student or Parent(s). If the IEP Team determines the student is not registered for the PUNS database or if it is unclear whether the student is registered for the PUNS database, Parent(s) shall be referred to a designated District employee trained on the PUNS database. The designated District employee will:
   a. Provide the student and Parent(s) with the name, location, and contact information of the appropriate Independent Service Coordination agency to contact to register the student for the PUNS database;
   b. Identify for the student and Parent(s) the information and documentation they will need to complete PUNS database registration; and
   c. Provide the student and Parent(s) with information about organizations and programs available in Illinois that offer information to families about the PUNS database and its registration process. [115]

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110 23 Ill.Admin.Code §226.220(c).
111 34 C.F.R. §300.324(a)(4).
112 34 C.F.R. §300.324(a)(6).
113 34 C.F.R. §300.324(c).
114 105 ILCS 5/2-3.162(d), added by P.A. 102-057.
115 105 ILCS 5/2-3.163(c-5), added by P.A. 103-504 (eff. 1-1-24).

7. At the student's annual IEP review meeting the District will provide Parent(s) with informational material prepared by the Office of the State Treasurer about the Achieving a Better Life Experience (ABLE) account program for people with disabilities. [116]

E. Transfer Students

1. If a child receiving special education transfers into the District, the District will ensure FAPE in consultation with the Parent(s) by providing special education and related services in conformity with an IEP. [117]

   a. For transfers from within Illinois, the District shall enroll the child and provide FAPE, including education services comparable to those in the IEP from the former District, until the District either: (1) adopts the IEP from the former District, or (2) develops, adopts, and implements a new IEP. [118]

   b. For transfers from another state, the District shall enroll the child and provide FAPE, including services comparable to those in the IEP from the former District, until the District: (1) conducts an evaluation, if determined to be necessary, and (2) develops, adopts, and implements a new IEP, if appropriate. [119]

   c. If the District does not adopt the former IEP and plans to develop a new one, within 10 calendar days after the date of the child's enrollment the District must provide written notice to the Parent(s), including the proposed date of the IEP meeting. While the new IEP is under development, the District shall implement services comparable to those described in the IEP from the former school district.

2. The District must take reasonable steps to obtain the child's records, including the IEP, from the former District.[120] If the District does not receive a copy of the transfer child's IEP or verbal or written confirmation of requirements of the IEP from the former school district, the child will be enrolled and served in the setting that the District believes will meet the child's needs until the current IEP is obtained or a new IEP is developed.

F. Children Aged Three (3) Through Five (5) [121]

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116 105 ILCS 5/14-8.02i, added by P.A. 102-841. See the Illinois ABLE brochure for public education at: https://illinoisable.com/Docs/IL%20ABLE%20ISBE%20Brochure.pdf.
117 23 Ill.Admin.Code §226.50(a).
118 34 C.F.R. §300.323(e).
119 34 C.F.R. §300.323(f).
120 34 C.F.R. §300.323(g).
121 23 Ill.Admin.Code §226.250.

1. For a child with a disability aged three (3) through five (5), an Individualized Family Service Plan (IFSP) may serve as the child's IEP if using that plan is agreed to by the District and Parent(s). If the District proposes to use an IFSP, it shall:

    a. Provide a detailed explanation of the differences between an IFSP and an IEP to the Parents(s);

    b. Obtain informed, written parental consent for the use of an IFSP; and

    c. Ensure that the IFSP is developed in accordance with IEP requirements.

LEGAL REF.: 20 U.S.C. §§ 1400(c) (Findings), 1412(a)(4) (Individualized education program), 1414(d) (Individualized education programs).

34 C.F.R. §§ 300.34 (Related services), 300.39 (Special education), 300.114-117 (Least restrictive environment), 300.320-300.323 (Individualized Education Programs), 300-324-300.328 (Development of IEP), 300.503 (Prior notice by the public agency; content of notice).

105 ILCS 5/2-3.64a-5 (State goals and assessment), 5/14-8.02 (Identification, evaluation, and placement of children), 5/14-8.02(b), 5/14-8.02(g), 5/14-8.02f (Individualized education program meeting protections).

23 Ill. Admin. Code §§ 226.50 (Requirements for a Free Appropriate Public Education (FAPE)), 226.200 (General Requirements), 226.210 (IEP Team), 226.220 (Development, Review, and Revision of the IEP), 226.230 (Content of the IEP), 226.240 (Determination of Placement), 226.250 (Child Aged 3 Through 5), 226.260 (Child Reaching Age Three), 226.300 (Continuum of Placement Options), 226.310 (Related Services), 226.330 (Placement by School District in State-Operated or Nonpublic Special Education Facilities), 226.530 (Parents' Participation).

Section 5. Students' Participation in Assessments [122]

Each IEP of an eligible child shall include a statement of the child's ability to participate in State and District-wide assessments.[123] This statement must include any individual accommodations that are necessary to measure the academic achievement and functional performance of the child on the assessments. If the IEP Team determines that the child must take an alternate assessment, a statement must be included in the IEP documenting why the child cannot participate in the regular assessment and why the particular alternate assessment is appropriate for the child. [124]

To the extent that individual accommodations are necessary for the child's participation in classroom-based assessments, they shall also be noted in the IEP.

LEGAL REF.: 20 U.S.C. §§ 1400(c) (Findings), 1412(a)(4) (Individualized education program), 1414(d) (Individualized education programs).

34 C.F.R. §§ 300.34 (Related services), 300.39 (Special education), 300.114-117 (Least Restrictive Environment (LRE)), 300.320-323 (Individualized Education Programs), 300.325-300.328 (Development of IEP), 300.503 (Prior notice by the public agency; content of notice).

105 ILCS 5/2-3.64a-5 (State goals and assessment), 5/14-8.02 (Identification, evaluation, and placement of children).

23 Ill. Admin. Code §§ 226.50 (Requirements for a Free Appropriate Public Education (FAPE)), 226.200 (General Requirements), 226.210 (IEP Team), 226.220 (Development, Review, and Revision of the IEP), 226.230 (Content of the IEP), 226.240 (Determination of Placement), 226.250 (Child aged Three Through Five), 226.260 (Child Reaching age Three), 226.300 (Continuum of Alternative Placement Options), 226.310 (Related Services), 226.330 (Placement by School District in State-Operated or Nonpublic Special Education Facilities), 226.530 (Parents' Participation).

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122 Required by 23 Ill.Admin.Code §226.710(b)(5).
123 23 Ill.Admin.Code §226.230(a)(2).
124 34 C.F.R. §300.320(a)(6).

Section 6. Serving Students in the Least Restrictive Environment (LRE) [125]

A. Overview of Placement [126]

1. The District ensures the right of children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

2. The child's placement shall be based on the child's IEP and shall be as close as possible to the child's home. Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled. A placement determination based solely upon the category of a child's disability or on the current configuration of the District's service delivery system is prohibited. In selecting the least restrictive environment (LRE), consideration shall be given to any potential harmful effect on the child or on the quality of services received. [127]

3. Children with disabilities must be allowed to participate to the maximum extent appropriate with nondisabled children in nonacademic and extracurricular activities (including, but not limited to meals, recess periods, athletics, clubs, and recreational activities). [128]

4. Parental participation shall be encouraged. Informed written parental consent is required before special education placement. In cases in which informed written parental consent cannot be obtained, the District may not use a due process hearing to compel consent for initial provision of special education and related services. [129]

B. Participation in General Education Programs

1. The District shall take steps to ensure that children with disabilities have equal access to the variety of educational programs and services available to nondisabled children.

2. Steps taken by the District to ensure the availability of general educational programs and services to children with disabilities may include, but not be limited to:

   a. Modification of instructional methodologies, staffing, materials and equipment to permit effective participation as appropriate; and

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125 Required by 23 Ill.Admin.Code §226.710(b)(6).
126 23 Ill.Admin.Code §226.240; 34 C.F.R. §300.114.
127 34 C.F.R. §300.116.
128 34 C.F.R. §300.117.
129 34 C.F.R. §300.300(b).

b. Individualization of the instructional program including staffing, curriculum modifications, classroom accommodations, modified grading, assistive technology, and instructional materials to permit the effective participation of children with disabilities.

3. The IEP must include a statement describing how the child's disability adversely affects the child's participation in, and progress toward regular education curriculum objectives, including: [130]

   a. Participation in extracurricular and other nonacademic activities;

   b. The extent to which the child will be educated and participate with nondisabled children;

   c. An explanation of the extent, if any, to which the child will not participate with nondisabled children; and

   d. A statement of any individual modifications in the administration of State or District-wide assessments necessary in order for the child to participate in the assessments. If the IEP Team determines that the child cannot participate in State or District-wide assessments, the IEP Team must explain why and describe how the child will be alternately assessed. (See Section 5, Students' Participation in Assessments).

C. State-Operated or Nonpublic Special Education Facility [131]

When an IEP Team determines that no less restrictive setting on the continuum of alternative placements will meet a child's needs, the child may be placed in a State-operated or nonpublic special education facility. In such a case, the use of a State-operated program should be given first consideration if appropriate. The determination shall be based on recent diagnostic assessments and other pertinent information and made in light of other factors such as proximity to the child's home. Before the District places a child or refers a child to such a facility:

1. The District will convene an IEP meeting and invite representative(s) of the State-operated or nonpublic school to attend to assist in identifying or verifying the appropriate placement for that child. If one or more needed representatives cannot attend, the District will use other methods to ensure their participation.

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130 34 C.F.R. §300.320
131 23 Ill.Admin.Code §226.330.

2. With respect to the annual review and revision of the IEP of a child with a disability placed or referred to a State-operated or nonpublic school by the District, the District may permit the nonpublic school to initiate IEP meetings which will be conducted as described above, provided that the Parent(s) of the child and a representative of the District are invited to participate in any decision about the child's IEP and agree to any proposed changes in the IEP. The District remains responsible for the development and implementation of the child's IEP and for convening any needed IEP meetings, including annual reviews.

D. Continuum of Placement Options [132]

1. The District will ensure that a continuum of alternative placement options is available to meet the needs of children with disabilities. This continuum will include, but is not limited to, instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. The continuum will also make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.
2. If a child is deaf, hard of hearing, blind, visually impaired, or has an orthopedic impairment or physical disability and the child may be eligible to receive services from the Illinois School for the Deaf, Illinois School for the Visually Impaired, or Illinois Center for Rehabilitation and Education-Roosevelt, the District will notify Parent(s) in writing of the existence of these schools and their services, as well as the existence of other, local schools that provide similar services. This notice will include information on school services, admissions criteria, and contact information.[133]

E. Determining Educational Placement [134]

1. In determining any educational placement of a child, the District shall ensure that:

   a. The placement decision is made by a group of persons, including Parent(s), and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and is made in conformity with the least restrictive environment requirements;

   b. The child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home;

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132 23 Ill.Admin.Code §226.300.
133 105 ILCS 5/14-8.02(b), amended by P.A. 102-264.
134 34 C.F.R. §300.116

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school he/she would attend if nondisabled;

d. In selecting the LRE, consideration is given to any potentially harmful effect on the child or on the quality of services that the child needs; and

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. When making a placement determination on behalf of a child with a disability between the ages of 3-5, the District must provide FAPE in the LRE. LRE alternatives may include but are not limited to:

a. Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);

b. Placing children with disabilities in private school programs for nondisabled preschool children or private preschool programs that integrate children with disabilities and nondisabled children; or

c. Locating classes for preschool children with disabilities in elementary schools.

3. In the event the District must remove a special education child from his/her current program because of behavior that causes serious bodily injury or due to a weapons or drug violation, the IEP Team shall identify an interim alternative educational setting (IAES). This setting will enable the child to continue to progress in the general curriculum and to receive those services and modifications as described in the child's current IEP.

4. Home instruction may be recommended by the IEP Team in accordance with subsection D of this Section or homebound instruction may be provided if the child meets the eligibility requirements under 23 Ill. Admin. Code §226.300.

F. Nonacademic and Extracurricular Services [135]

1. The placement decision shall permit the child to participate, as appropriate, in nonacademic and extracurricular services and activities (e.g., meals, recess, recreational activities, and clubs sponsored by the District). According to the needs of the child, as articulated in his/her IEP, the District may provide service(s) to a child in

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[135] 34 C.F.R. §300.117.

order to allow him/her to access participation in nonacademic or extracurricular activities.

2. A child with a disability may be excluded from participation in nonacademic and extracurricular activities for misconduct provided the exclusion is consistent with the District's disciplinary code, is applied to children without disabilities and takes into consideration the special needs of the child, and that the misconduct was not related to a failure to provide appropriate supplementary aids and services to a child per his/her IEP.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1412 (a)(7), 1413 (Local educational agency eligibility).

34 C.F.R. §§ 300.110 (Program options), 300.322 (Parent participation), 300.324 (Development, review, and revision of IEP), 300.320 (Definition of IEP), 300.114 (LRE requirements), 300.115 (Continuum of alternative placements), 300.116 (Placements), 300.117 (Nonacademic settings).

105 ILCS 5/14-1.02 (Children with disabilities), 5/14-8.02 (Identification, evaluation, and placement of children).

23 Ill. Admin. Code. §§ 226.240 (Determination of Placement), 226.300 (Continuum of Alternative Placement Options), 226.310 (Related Services), 226.530 (Parents' Participation), 226.720 (Facilities and Classes), 226.220 (Development, Review, and Revision of the IEP), 226.230 (Content of the IEP).

Section 7. Provision of Extended School Year Services [136]

A. Extended school year services are special education and related services, which are provided by the District to an IDEA eligible child with a disability beyond the District's regular school year in accordance with the child's IEP at no cost to the child's Parent(s) and meet the standards of ISBE. [137]

B. Extended school year services shall be provided to each child eligible for special education whose unique needs require special education and related services in excess of the regular school year. Children eligible for special education who may require extended school year services are those whose IEPs specify an extended school year program and/or related services as determined by the child's IEP Team in accordance with the IDEA and ISBE standards and regulations. The child's IEP Team shall determine the type, amount, and/or duration of the services necessary as part of the child's extended school year program on an individualized basis. [138]

C. The District shall not limit the provision of extended school year services to children with a particular category or categories of disability or unilaterally limit the type, amount, or duration of those services. [139]

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1413 (Local educational agency eligibility).

34 C.F.R. §300.106 (Extended school year services)

23 Ill. Admin. Code §226.75 (Definitions).

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136 Required by 23 Ill.Admin.Code §226.710(b)(7).
137 23 Ill.Admin.Code §226.75; 34 C.F.R. §300.106(b).
138 23 Ill.Admin.Code §226.230(a)(4).
139 34 C.F.R. §300.106(a)(3).

Section 8. Transition of Children Served Under Part C of IDEA into Preschool Programs [140]

A. Children Reaching Age Three (3) [141]

1. For a child with an IFSP who will be making the transition from an early intervention program into the special education program of the District at age three (3), the District shall ensure that either an IEP or the child's IFSP is in effect on the child's third birthday. A representative of the District shall participate in the transition meeting. If a child continues to receive early intervention services until the beginning of the school year following the child's third birthday, the District shall ensure that either an IEP or the child's IFSP is in effect on the first day of the following school year.

2. For a child without an IFSP:

    a. If the child is referred at least 60 school days prior to his/her third birthday, and determined eligible, the District shall ensure that either an IEP or an IFSP is in effect on the child's third birthday.

    b. If the child is referred with fewer than 60 school days remaining before the child's third birthday, or after that date, the District shall follow these procedures to determine whether or not an evaluation is warranted, and if so, to conduct an evaluation.

3. If a child's third birthday occurs during the summer, the IEP Team shall determine when the District's services to the child will begin. If the child's birthday falls between May 1 and August 31, the child may continue to receive early intervention services until the beginning of the school year following the child's third birthday.

B. Children Reaching Age Six (6)

The District may permit an eligible child in an Early Childhood class who reaches his/her sixth birthday during the school year to complete that school year in the Early Childhood class.

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140 Required by 23 Ill.Admin.Code §226.710(b)(8).

141 23 Ill.Admin.Code §226.260.

LEGAL REF.: 20 U.S.C. §1412(a)(9) (Transition from subchapter III to preschool programs).

34 C.F.R. §300.124 (Transition of children from the Part C program to preschool programs).

23 Ill. Admin. Code §226.260 (Child Reaching Age Three).

Section 9. Serving Students Who Attend Nonpublic Schools [142]

A. Placements by the District in Nonpublic Special Education Programs/Facilities

1. The IEP Team shall conduct a meeting(s) and complete an IEP before placing a child in a nonpublic special education program or facility. *Nonpublic special education facility* includes residential facilities, within or outside the State of Illinois, which provide special education and related services to meet the needs of a child by using private schools or public schools, whether located on or off the site of the residential facility.

    a. The District is responsible for arranging participation of a representative of the private school/facility in the IEP meeting.

    b. The District remains responsible for the development and implementation of the child's IEP.

2. Except for emergency and student-specific placements made under subsection 4, below, the District will determine, for those children placed in a nonpublic special education program or facility, that the conditions contained in 23 Ill. Admin. Code §226.330(c) are satisfied.

3. Before placing a child in an out-of-state residential facility, the District shall offer the option to place the child in an in-state residential facility, if any, that provides treatment or services comparable to those provided by the out-of-state residential facility. This offer shall occur at every annual review for children placed in an out-of-state residential facility.[143]

4. Before a nonpublic special education facility terminates a student's placement in that facility, it must request an IEP meeting from the District. If the nonpublic special education facility terminates the student's placement following the IEP meeting, it must provide written notice to the Parent, District, and ISBE no later than 20 business days before the termination date, unless the health and safety of any student is endangered. The written notice must include detailed reasons for termination and any actions taken to address the reason for the termination. [144]

5. The District may place a student in a nonpublic special education facility providing educational services, but not approved by ISBE, provided that ISBE provides an

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142 Required by 23 Ill.Admin.Code §226.710(b)(9).
143 105 ILCS 5/14-7.02(c), amended by P.A. 102-254; 23 Ill.Admin.Code §226.330(c).
144 105 ILCS 5/14-7.02(c-5), added by P.A. 103-546.

emergency and student-specific approval for placement. In such cases the District will demonstrate to ISBE that the conditions contained in 23 Ill. Admin. Code §226.330(g) are satisfied.[145]

B. Children With Disabilities Enrolled by Their Parents in Private Schools Where FAPE is at Issue [146]

1. The District is not responsible for educational costs, including special education and related services, of children placed in nonpublic special education programs or facilities by their Parent(s) if the District made FAPE available to the child and the Parent(s) elected to place the child in a nonpublic special education program or facility.

2. If the Parent(s) of a child with a disability, who previously received special education and related services from or through the District, enroll the child in a private school without the consent of or referral by the District, a court or hearing officer may require the District to reimburse the Parent(s) for the cost of the private school if there are findings that:

   a. The District did not make a FAPE available to the child in a timely manner prior to the private school enrollment; and

   b. The private placement is appropriate.

3. The District will notify Parent(s) of the conditions under which reimbursement for the cost of a unilateral placement in a nonpublic special education program or facility may be reduced or denied. Those conditions include: [147]

   a. Failure of Parent(s) to inform the IEP Team at the most recent IEP meeting prior to the removal of the child from the public school of the Parent(s)' rejection of the placement proposed by the District and a statement of their concerns and their intent to enroll their child in a nonpublic special education program or facility at public expense at least 10 business days[148] prior to the removal of the child from the public school; or

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145 105 ILCS 5/14-7.02(e), amended by P.A. 102-703; 23 Ill.Admin.Code §226.330(g).

146 23 Ill.Admin.Code §226.340; 34 C.F.R. §300.148.

147 34 C.F.R. §300.148(d).

148 *Business day* means Monday through Friday, except for federal and State holidays. 23 Ill.Admin.Code §226.75. See also 34 C.F.R. §300.11.

b. At least 10 business days before the removal of the child from the public school, Parent(s) did not give written notice to the District of the information described in subparagraph 3 a, above; or

c. If, prior to Parent(s)' removal of the child from the public school, the District informed Parent(s), through the notice requirements, of its intent to evaluate the child, but Parent(s) did not make the child available for the evaluation; or

d. Any judicial finding of unreasonableness with respect to the actions taken by Parent(s).

C. Children With Disabilities Enrolled by Their Parents in Private Schools Where FAPE is Not an Issue [149]

1. The District shall develop and implement a system to locate, identify, and evaluate children with disabilities who attend private schools (including religiously affiliated schools and home-schools) located within the District. The District will conduct child find activities for private school children with disabilities that are similar to those for children with disabilities in public schools. [150]

2. Upon evaluation or reevaluation and determination that a private school child is eligible or still eligible for special education and related services, the District will develop a services plan for the child if he/she is designated by the District to receive special education and related services. [151]

3. The District is not obligated to provide the special education and related services the child would receive if enrolled in a public school. [152]

4. The District shall consult annually with private school representatives and representatives of Parent(s) of private school children regarding the following: [153]

   a. The child find process, including how parentally placed private school children can participate equitably and how Parent(s), teachers, and private school officials will be informed of the process;

   b. The determination of proportionate share of funds available to serve parentally-placed private school children with disabilities;

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149 23 Ill.Admin.Code §226.350.
150 34 C.F.R. §300.131.
151 34 C.F.R. §300.132.
152 34 C.F.R. §§ 300.137(a), 300.138(a)(2).
153 34 C.F.R. §300.134.

c. The consultation process;

d. The provision of special education and related services; and

e. A written explanation by the District regarding services.

5. The District shall make final decisions with respect to the services to be provided to eligible children who are enrolled in private schools. The services to be provided to such children are those services that the District has determined, through the consultation process, it will make available. [154]

6. The District shall assure that the providers of services to private school children with disabilities meet the same standards as personnel providing services in the public schools, except that private elementary and secondary school teachers who provide equitable services to parentally-placed private school children with disabilities do not have to meet the "highly qualified" requirements of law. [155]

7. The District shall be responsible for providing Parent(s) with all notifications required to be provided to parents of students with disabilities who attend the public schools. [156]

8. By December 1 of each year, the District will conduct a census of the number of nonpublic school children eligible under IDEA, who may or may not be receiving special education and related services. [157]

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154 34 C.F.R. §300.137(b).
155 34 C.F.R. §300.138(a).
156 23 Ill.Admin.Code §226.530.
157 34 C.F.R. §300.133(c)(ii).

LEGAL REF.: 20 U.S.C. §§ 1412(a)(10) (Children in private schools), 1413(a)(1) (Consistency with State policies).

34 C.F.R. §§ 300.115 (Continuum of alternative placements), 300.325 (Private school placements by public agencies), 300.130-300.144 (Children With Disabilities Enrolled by Their Parents in Private Schools), 300.145-300.147 (Children with Disabilities in Private Schools Placed or Referred by Public Agencies), 300.148 (Children with Disabilities Enrolled by Their Parents in Private Schools when FAPE Is at Issue).

105 ILCS 5/29-4 (Pupils attending a charter school or nonpublic school), 5/14-6.01 (Powers and duties of school boards), 5/14-7.01 (Children attending classes in another district), 5/14-7.02 (Children attending private schools, public out-of-state schools, public school residential facilities or private special education facilities).

23 Ill. Admin. Code §§ 226.300 (Continuum of Alternative Placement Options), 226.310 (Related Services), 226.320 (Service to Students Living in Residential Care Facilities), 226.330 (Placement by School District in State-Operated or Nonpublic Special Education Facilities), 226.340 (Nonpublic Placements by Parents Where FAPE is at Issue), 226.350 (Service to Parentally-Placed Private School Students).

Section 10. Procedural Safeguards [158]

A. Procedural Safeguards Notice

1. Written notification of the procedural safeguards available to Parent(s) of a child with a disability shall be given to Parent(s) one time per school year, and: [159]

    a. Upon referral for an initial evaluation or reevaluation or Parent request for evaluation or reevaluation;

    b. In accordance with certain disciplinary removals (see Section 10.5);

    c. Upon request by a Parent; and

    d. Upon receipt of the first State complaint and upon first request for a due process hearing in a school year.

    The District may place a copy of the procedural safeguards on its website, if any[160], and Parent(s) may also elect to receive a copy of the procedural safeguards by electronic mail. [161]

2. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards relating to: [162]

    a. Independent education evaluation;

    b. Prior written notice to Parents as required by State and federal law;

    c. Parental consent;

    d. Access to educational records;

    e. Opportunity to present and resolve complaints through the due process and State complaint procedures;

    f. The availability of mediation;

    g. The child's placement during the pendency of any due process complaint;

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158 Required by 23 Ill.Admin.Code §226.710(b)(10). 23 Ill.Admin.Code Part 226, Subpart F; 34 C.F.R. Part 300, Subpart E.
159 23 Ill.Admin.Code §226.510; 34 C.F.R. §300.504(a).
160 34 C.F.R. §300.504(b).
161 34 C.F.R. §300.505.
162 34 C.F.R. §300.504(c).

h. Procedures for children who are subject to placement in an interim alternative educational setting;

i. Requirements for unilateral placement by Parent(s) of children in private schools at public expense;

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;

k. Civil actions; and

l. Attorneys' fees.

B. Prior Written Notice by the District [163]

1. The District shall provide 10 calendar days written notice to the Parent(s) as required by State and federal law before proposing or refusing to initiate or change the identification, evaluation, or educational placement of, or the provision of free, appropriate public education to, a child.[164] If the notice is related to an action proposed by the District that also requires informed written parental consent, the District may give notice at the same time as it requests informed written consent.

2. The notice required by this Section shall include:

   a. A description of the action proposed or refused by the District;

   b. An explanation of why the District proposes or refuses to take the action;

   c. A description of each evaluation procedure, assessment, record, or report the District used as a basis for the proposed or refused action;

   d. A statement that the Parent(s) of a child with a disability have protection under the procedural safeguards of the IDEA, Article 14 of the *School Code* [105 ILCS 5/14] and their respective implementing regulations, and an indication of the means by which a description of those procedural safeguards may be obtained;

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[163] 23 Ill.Admin.Code §226.520; 34 C.F.R. §300.503.

[164] 23 Ill.Admin.Code §226.520 states that a "'[r]easonable time', for purposes of 34 CFR 300.503(a), is defined as ten days," and 23 Ill.Admin.Code §226.75 specifies that "day" means a calendar day. This is consistent with federal regulations at 34 C.F.R. Part 300, which also specify that "*day* means calendar day unless otherwise indicated as business day or school day." 34 C.F.R. §300.11. Throughout this document, all timelines will be stated in calendar days unless otherwise indicated as a business day or school day.

e. Sources for Parents to contact to obtain assistance and understanding of the provisions of the IDEA, Article 14, and their respective implementing regulations;

f. A description of any other options that the IEP Team considered and the reason why those options were rejected; and

g. A description of any other factors that are relevant to the District's proposal or refusal.

C. Notice of Issuance of Diploma [165]

If a student is to receive a regular high school diploma, at least one year prior to the anticipated date of its issuance, both the Parents(s) and the student shall receive written notification that eligibility for public school special education services ends following the granting of a diploma and that the Parent (or student if he or she is 18 or over) may request an IEP meeting to review the recommendation that the student receive a regular diploma.

D. Language of Notifications [166]

1. The notices required under the "Procedural Safeguards Notice" and "Notice by School District" Sections above shall be written in language understandable to the general public and provided in the native language of Parent(s) or other mode of communication used by Parent(s), unless it is clearly not feasible to do so.

2. If the native language or other mode of communication of Parent(s) is not a written language, the District shall take steps to ensure and document that the notice is translated orally or by other means to Parent(s) in his/her native language or other mode of communication and that Parent(s) understand the content of the notice.

3. Written translation of Vital IEP Process Documents (see Section 14, below) in the ten most commonly spoken languages in Illinois, other than English, shall be provided to Limited English Proficiency parents of children with disabilities.

4. Parent(s) may request translation of documents not on the Vital IEP Process Documents list that have a vital relation to the child's educational planning through the same process identified on the Parent/Guardian Notification of Conference form (ISBE 34-57D), and the District shall make reasonable efforts to provide the requested translations in a timely manner.

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165 23 Ill.Admin.Code §226.50(c)(3)(B).
166 23 Ill.Admin.Code §226.500; 34 C.F.R. §300.503(c).

5. All translations shall be performed in accordance with 23 Ill. Admin. Code §226.500.

E. Opportunity to Examine Records; Parental Participation in Meetings [167]

1. The Parent(s) of a child with a disability shall be afforded an opportunity to inspect and review all education records with respect to their child. Parent(s) shall also be informed of their right to review and copy their child's school student records prior to any special education eligibility or individualized education program review meeting. The District shall ensure that parents of children with disabilities have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of, and the provision of FAPE to, the child. A meeting does not include informal or unscheduled conversations involving District employees or officials or other routine communications or consultation between District employees or officials, including preparatory activities that school personnel engage in to develop a proposal or a response to a Parent's proposal that will be discussed at an IEP meeting.

2. Whenever a meeting is to be held which a Parent has a right to attend, the following requirements shall apply:

    a. The District shall notify in writing the Parent(s) at least 10 calendar days prior[168] to the proposed date of the meeting of: the purpose of the meeting, the proposed date, time, and place for the meeting, who will be in attendance; and Parent(s)' right to invite other individuals whom Parent(s) believe have knowledge or special expertise regarding the child. [169] If applicable, this notification shall also:

        (1) For the initial IEP meeting of a child who was previously served under Part C of the IDEA, inform Parent(s) that upon their request, the Part C service coordinator or other representative of the Part C system shall be invited to attend. [170]

        (2) Beginning not later than the first IEP to be in effect when the child turns 14½, or younger if deemed appropriate by the IEP Team, inform Parent(s) that post-secondary goals and services will be considered, that the student will be invited, and of the identity of any other agency that will be invited to send a representative. [171]

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167 34 C.F.R. §§ 300.501, 300.322.
168 23 Ill.Admin.Code §226.530(a).
169 34 C.F.R. §300.322(b)(1).
170 34 C.F.R. §§ 300.321(f), 300.322(b)(1).
171 34 C.F.R. §§ 300.321(b), 300.322(b)(2).

b. As set forth in Section 4, above, this notification will also inform Parent(s):

(1) Of their right to review and copy their child's school student records, [172]

(2) Of the availability of interpretation services at IEP meetings, [173]

(3) How Parents can request an interpreter,

(4) That Parents have a right to request that the interpreter provided by the District serve no other role in the IEP meeting than as an interpreter and that the District should make reasonable efforts to fulfill this request. If Parent believes that the District unreasonably denied their request for an interpreter who serves no other role in the IEP meeting, Parent has all rights under the IDEA and Article 14 of the School Code, including a due process hearing, the state's special education complaint investigation process, mediation, ISBE monitoring, and the ability to file a complaint with the U.S. Department of Education's Office for Civil Rights,

(5) Of a point of contact for any questions or complaints about interpretation services, and

(6) That written translation of Vital IEP Process Documents (see Section 14, below) are available, how to request translated documents, and whom to contact with any questions or complaint about the translations.

Nos. (2) and (6) must be provide in English, in all common languages, and in the parent's preferred language, if known and practicable. See Section 14, below, for definitions of *common languages* and *preferred language*.

c. If Parent(s) indicates that the proposed date or time is inconvenient, the District shall make reasonable efforts to accommodate the Parent(s)' schedule.

d. If neither Parent can attend, the District shall use other methods to ensure at least one Parent's participation. [174]

e. A meeting may be conducted without a Parent in attendance if the District is unable to convince Parent(s) that they should attend. In this case, the District shall

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172 105 ILCS 5/14-8.02f(c); 23 Ill.Admin.Code §226.530(a).
173 23 Ill.Admin.Code §226.530(b) for Nos. (2)-(6).
174 34 C.F.R. §§300.322(c), 300.501(c)(3)

maintain a record of its attempt to arrange a mutually agreed-upon time and place. [175]

f. The District shall take whatever action is necessary and reasonable to facilitate Parent(s)' understanding of and participation in the meeting including arranging for and paying for the expense of a qualified interpreter for Parent(s) whose native language is other than English, or for an interpreter licensed pursuant to the Interpreter for the Deaf Licensure Act of 2007 for Parent(s) who are deaf.

   (1) All interpreters for the common languages and American Sign Language shall be qualified interpreters that meet the criteria established by ISBE. If a qualified interpreter is not available, the District may use outside vendors, including telephonic interpreters, that are commercially recognized as providing competent interpretation services. [176]

   (2) For the less common languages, the District will make all reasonable efforts to provide an interpreter that meets criteria established by ISBE (see Section 14, below). The District may use outside vendors, including telephonic interpreters, that are commercially recognized as providing competent interpretation services. [177]

g. No later than three (3) school days prior to a meeting to determine a child's eligibility for special education and related services or to review a child's IEP, or as soon as possible if an IEP meeting is scheduled within three (3) school days with the written consent of the child's Parent(s), the District must provide Parent(s) with copies of all written material that will be considered by the IEP Team at the meeting so that Parent(s) may participate in the meeting as a fully-informed member. Parent(s) shall have the option of choosing from the available methods of delivery, which must include regular mail and picking up the materials at school. For a meeting to determine the child's eligibility for special education, the written material must include all evaluations and collected data that will be considered at the meeting. For a child who is already eligible for special education and related services, the written material must include a copy of all IEP components that will be discussed by the IEP Team, other than the components related to the

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175 34 C.F.R. §300.322(d).
176 23 Ill.Admin.Code §§ 226.530(a)(1), 226.800(k); 34 C.F.R. §300.322(e).
177 23 Ill.Admin.Code §226.530(a)(2).

educational and related service minutes proposed for the child and the child's placement. [178]

h. Any document generated during the meeting shall be provided to Parent(s) upon request, unless applicable federal or State statute or federal regulation requires its automatic provision without a request.

3. At the child's initial IEP meeting and at each annual review meeting, the IEP Team shall provide Parent(s) with a written notification that informs Parent(s) that the IEP Team is required to consider whether the child requires assistive technology in order to receive FAPE. The notification must also include a toll-free telephone number and internet address for the State's assistive technology program. [179]

F. Consent [180]

1. The District shall document that informed written parental consent is obtained prior to:

   a. Conducting any initial evaluation; [181]

   b. The initial provision of special education and related services to a child; [182]

   c. Conducting any reevaluation; [183]

   d. Using Parent(s)' private insurance or Medicaid or other public benefits or insurance programs to pay for services required by the child's IEP; [184]

   e. Using an IFSP instead of an IEP; [185]

   f. Disclosing personally identifiable information about a child, consistent with the requirements of federal and State law; [186]

   g. Disclosing information to officials of participating transition agencies;[187] and

   h. Disclosing information to officials of a private school or a private school student's district of residence. [188]

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178 105 ILCS 5/14-8.02f(c); 23 Ill.Admin.Code §226.530(a).
179 105 ILCS 5/14-8.02(b).
180 23 Ill.Admin.Code §226.540.
181 34 C.F.R. §300.300(a).
182 34 C.F.R. §300.300(b).
183 34 C.F.R. §300.300(c).
184 34 C.F.R. §300.154(d), (e).
185 23 Ill.Admin.Code §226.250.
186 34 C.F.R. §300.622(a).
187 34 C.F.R. §300.622(b)(2).
188 34 C.F.R. §300.622(b)(3).

2. *Consent* for a proposed action is written agreement provided by a Parent(s) who has been fully informed of all information relevant to the activity for which consent is sought in his/her native language or mode of communication; who understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes the activity and lists the records (if any) that will be released and to whom; and that the agreement is voluntary and may be revoked at any time. [189]

3. Parental informed written consent is not required before reviewing existing data as part of an evaluation or a reevaluation or administering a test or evaluation that is administered to all children unless parental informed written consent is required of all children taking the test. [190]

G. Revocation of Consent for Evaluations and Reevaluations [191]

1. Revocation of informed written consent for evaluations or reevaluations may be communicated orally or in writing. If communicated orally, the District will commit it to writing and provide Parent(s) with a copy within five (5) calendar days. Any revocation of informed written consent for evaluations or reevaluations is effective immediately, but is not retroactive. The District will promptly inform all staff members whose activities are affected by the revocation. If the District disagrees with a Parent's revocation of informed written consent for evaluations or reevaluations, the District may request a due process hearing.

H. Revocation of Consent for Special Education and Related Services

1. A Parent may revoke consent for special education and related services. [192]

2. Revocation of consent for special education and related services may be communicated by a Parent in writing or orally. The District will memorialize the Parent's oral revocation of consent in writing and provide a copy to the Parent within five (5) calendar days. [193]

3. Within 10 calendar days after the District's receipt of oral or written revocation of consent, the District will provide the Parent with prior written notice at which time all

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189 34 C.F.R. §300.9.
190 34 C.F.R. §300.300(d)(1).
191 23 Ill.Admin.Code §226.540.
192 23 Ill.Admin.Code §226.540(a).
193 Id.

IEP services shall cease. The District will promptly inform all staff members whose activities are affected by the revocation. [194]

4. When a Parent revokes consent for special education and related services:

   a. The District may not utilize mediation or the due process procedures to obtain agreement or a ruling that the services may be provided to the child. [195]

   b. The District is not required to convene an IEP meeting or develop an IEP for the child for further provision of special education and related services. [196]

   c. The District will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services. [197]

   d. The District is not required to amend the child's education records to remove any reference to the child's receipt of special education and related services because of the revocation of consent. [198]

I. Due Process Complaints [199]

1. Filing a Due Process Complaint. Parent(s) or the District may file a due process complaint regarding: the District's proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or the District's refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The due process complaint must allege a violation that occurred not more than two (2) years before the date Parent(s) or the District knew or should have known about the alleged action that forms the basis of the due process complaint. This two-year limitations period does not apply to a Parent(s) if the Parent(s) was prevented from filing a due process complaint due to a specific misrepresentation by the District that it had resolved the problem forming the basis of the due process complaint or due to the District's withholding of information from the Parent(s) that was required to have been provided.

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194 23 Ill.Admin.Code §226.540(b); 34 C.F.R. §300.300(b)(4)(i).
195 34 C.F.R. §300.300(b)(4)(ii).
196 34 C.F.R. §300.300(b)(4)(iv).
197 34 C.F.R. §300.300(b)(4)(iii).
198 34 C.F.R. §300.9(c)(3).
199 23 Ill.Admin.Code §226.615; 34 C.F.R. §300.507.

2. Notification to Parent(s). [200] The District shall notify Parent(s) in writing of the procedures for requesting a due process hearing which includes a requirement that the due process complaint contain the following information:

   a. The name and address of the residence of the child or, in the case of a homeless child or youth (within the meaning of the *McKinney-Vento Homeless Assistance Act* [42 U.S.C. §11431 *et seq.*]), the available contact information for the child;

   b. The name of the school that the child attends;

   c. A description of the nature of the problem of the child relating to the proposed or refused initiation or change of the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, including facts relating to such problem; and

   d. A proposed resolution of the problem to the extent known and available to the party filing the due process complaint at the time.

   This written notice must be provided to the Parent by the District upon the District's receipt of a due process complaint.

3. Content of Due Process Complaint. [201] The filing, basis for, and content of the due process complaint, whether by a Parent, a student, or the District, must contain items specified in Section 10, L and a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets these requirements. If a party believes that the due process complaint does not meet these requirements, a party can challenge the sufficiency of the due process by notifying the hearing officer and the other party in writing within 15 calendar days[202] of receipt of the due process complaint. The due process complaint must be deemed sufficient unless such a challenge is made. The hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements within five (5) calendar days of receipt of the challenge and must immediately notify the parties in writing of that determination.

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200 23 Ill.Admin.Code §226.610; 34 C.F.R. §300.508(b).

201 105 ILCS 5/14-8.02a(f); 23 Ill.Admin.Code §226.615; 34 C.F.R. §300.508.

202 34 C.F.R. §300.508(d) provides the timeline is "15 days," and 34 C.F.R. §300.11 specifies that "*day* means calendar day unless otherwise indicated as business day or school day." This is consistent with Illinois regulations at 23 Ill.Admin.Code Part 226, which also specify that "day" means a "calendar day." 23 Ill.Admin.Code §226.75. Throughout this document, all timelines will be stated in calendar days unless otherwise indicated as a business day or school day.

4. Notification of Free or Low-Cost Legal Services or Other Related Services in the Area [203]

   The District shall inform Parent(s) in writing of any free or low-cost legal services and other publicly-funded services available in the area if the Parent(s) requests the information or Parent(s) or the District files a due process complaint.

5. Forwarding of Parent Due Process Complaint to ISBE. [204] The District's Superintendent shall, within five (5) calendar days after its receipt of the due process complaint, forward the complaint by certified mail or another means that provides written evidence of delivery to ISBE in Springfield.

6. District Response to Due Process Complaint. [205] If the District has not sent a "prior written notice" under IDEA's implementing regulations at 34 C.F.R. §300.503 to Parent(s) regarding the subject matter contained in Parent(s)' due process complaint, the District must, within 10 calendar days of receiving the due process complaint, send to Parent(s) a response that includes:

   a. An explanation of why the District proposed or refused to take the action raised in the due process complaint;

   b. A description of other options that the IEP Team considered and the reasons why those options were rejected;

   c. A description of each evaluation procedure, assessment, record, or report the District used as the basis for the proposed or refused action; and

   d. A description of the other factors that are relevant to the District's proposed or refused action.

   e. The District's submission of a response to the Parent(s)' due process complaint does not preclude the District from challenging the sufficiency of such complaint, where appropriate.

7. Other Party Response to Due Process Complaint. [206] The party receiving a due process complaint must, within 10 calendar days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

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[203] 34 C.F.R. §300.507(b).
[204] 23 Ill.Admin.Code §226.615.
[205] 105 ILCS 5/14-8.02a(g-5); 34 C.F.R. §300.508(e).
[206] 105 ILCS 5/14-8.02a(g-10); 34 C.F.R. §300.508(f).

8. Resolution Meeting. [207] Within 15 calendar days of receiving notice of Parent(s)' due process complaint, and prior to the initiation of a due process hearing, the District must convene a meeting with Parent(s) and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint. This meeting must include a representative of the District who has decision-making authority on its behalf and cannot include the District's attorney unless Parent is accompanied by an attorney. The purpose of this meeting is for Parent to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the District has an opportunity to resolve the dispute that is the basis of the complaint. The Resolution Meeting need not be held if Parent(s) and the District agree in writing to waive the meeting or to use the mediation process. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of Parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. If the District is unable to obtain the participation of Parent in the Resolution Meeting after reasonable efforts have been made, the District may, at the conclusion of the 30-calendar-day period, request that a hearing officer dismiss the Parent's due process complaint. If the District fails to hold the Resolution Meeting within 15 calendar days of receiving notice of a Parent's due process complaint or fails to participate in the Resolution Meeting, Parent may seek the intervention of the hearing officer to begin the due process hearing timeline. If a resolution to the dispute is reached at the Resolution Meeting, the parties must execute a legally binding agreement that is signed by both Parent and a representative of the District who has the authority to bind the District. The Resolution Agreement shall be enforceable in a State court of competent jurisdiction or a Federal district court. A party may void the Resolution Agreement within three (3) business days of its execution.

9. Amendment of Due Process Complaint. [208] A party may amend its due process complaint only if: the other party consents in writing to the amendment and is given an opportunity to resolve the due process complaint through a resolution meeting; or, the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) calendar days before the due process hearing begins.

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207 105 ILCS 5/14-8.02a(g-20); 34 C.F.R. §300.510.
208 34 C.F.R. §300.508(d)(3).

10. Rights of the Parties Related to the Due Process Hearing. Any party to a due process hearing has the following rights:

    a. To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

    b. To present evidence and confront, cross-examine, and compel the attendance of witnesses;

    c. To prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;

    d. To obtain a written, or, at the option of Parent(s), electronic, verbatim record of the hearing;

    e. To obtain written, or, at the option of Parent(s), electronic findings of fact and decisions within 10 calendar days, excluding Saturday, Sunday, and any State holiday, after the conclusion of the hearing; and

    f. To receive disclosure of all evaluations completed by five (5) business days prior to the hearing and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

11. Parental Rights Related to the Due Process Hearing. Parent(s) involved in hearings must be given the right: [209]

    a. To have the child who is the subject of the hearing present;

    b. To open the hearing to the public;

    c. To have the record of the hearing and the findings of fact and decisions provided at no cost to Parent(s); and

    d. To have access to the District's list of independent evaluators and may obtain an independent evaluation of their child at their own expense. Parent(s) may ask the hearing officer to determine whether an independent evaluation is needed. If the hearing officer concludes, after reviewing the available information, that an independent evaluation is necessary, the hearing shall be delayed. [210]

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[209] 34 C.F.R. §300.512(c).
[210] 23 Ill.Admin.Code §226.625(a).

12. Participant's Right to Interpreter. [211] At all stages of the hearing or mediation, the hearing officer or mediator must require that interpreters licensed pursuant to the Interpreter for the Deaf Licensure Act of 2007 be available for persons who are deaf or qualified interpreters be available for persons whose normally spoken language is other than English. Interpreters shall be provided at the expense of the District.

13. Stay-Put. [212] During the pendency of any administrative or judicial proceeding, including mediation (if the District voluntarily agrees to participate in mediation), except as provided below, unless the District and Parent(s) of the child agree otherwise, the child shall remain in his/her current educational placement. If mediation fails to resolve the dispute between the parties, Parent(s) or child (if 18 years of age or emancipated) will have 10 calendar days after the mediation concludes to file a request for a due process hearing in order to continue to invoke the "stay-put" provisions of federal and State law. If the hearing involves the initial admission of the child to the public school, the child must be placed in the public school, with the Parent's informed written consent, until the completion of all the proceedings. If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from Part C of IDEA and is no longer eligible for Part C services, the District is not required to provide Part C services that the child has been receiving. If the child is found eligible for special education and related services under Part B and the informed Parent consents in writing to the initial provision of special education and related services, then the District must provide those special education and related services that are not in dispute between Parent(s) and the District. If the decision of the hearing officer agrees with Parent(s) that a change of placement is appropriate, that placement shall be treated as agreement between the State or District and Parent(s) for purposes of this Section.

14. District Authority to Change a Student's Placement. [213] School personnel have the authority to change the current educational placement of a child with a disability:

    a. For not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do

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211 105 ILCS 5/14-8.02a(l), amended by P.A. 102-1072; 23 Ill.Admin.Code §226.625(b).
212 34 C.F.R. §300.518.
213 23 Ill.Admin.Code §226.400.

not constitute a change of placement as defined in the IDEA and related federal and State regulations);[214] and

b. To an appropriate interim alternative educational setting (IAES) for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days, if: [215]

(1) The child carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function; or

(2) The child 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) The child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function; or

(4) Ordered by a hearing officer in accordance with the expedited hearing procedures set forth below. [216]

15. Hearing Timelines. [217] The District will fully cooperate with the timelines set forth by the hearing officer to ensure that the hearing process is completed within 45 calendar days from: the expiration of the 30 calendar day resolution period; or, the date both parties agree in writing to waive the Resolution Meeting; or, after either the Mediation or Resolution Meeting starts but before the end of the 30 calendar day period, the parties agree in writing that no agreement is possible.

16. Right to Appeal Hearing Decision. [218] Parent(s) or the District may appeal the due process hearing findings and decision, within 120 calendar days from the date the decision was mailed to the parties, by commencing a civil action in any court of competent jurisdiction.

J. Expedited Due Process Hearings [219]

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214 34 C.F.R. §300.530(b)(1).
215 34 C.F.R. §300.530(g).
216 34 C.F.R. §300.532(b).
217 105 ILCS 5/14-8.02a(g-35)-(h); 23 Ill.Admin.Code §226.670; 34 C.F.R. §300.515.
218 105 ILCS 5/14-8.02a(i); 34 C.F.R. §300.514.
219 105 ILCS 5/14-8.02b; 23 Ill.Admin.Code §226.655; 34 C.F.R. §300.532.

1. The District may request an expedited due process hearing if school personnel believe that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

2. Parent(s) or child (if 18 years of age or emancipated) may request an expedited due process hearing if there is disagreement with regard to:

    a. The District's determination that a child's behavior was not a manifestation of his/her disability;

    b. The decision of the District to move the child to an IAES; or

    c. The IAES selected.

3. When requesting an expedited hearing the requesting party must provide the following:

    a. Name of legal counsel if the party is represented by counsel or intends to retain counsel;

    b. Matters in dispute and specific relief sought;

    c. Names of all witnesses to be called to testify at the hearing; and

    d. Relevant documents.

4. No later than two (2) calendar days prior to the hearing, both parties involved in the expedited hearing must disclose to the hearing officer and to each other any evidence, which is intended to be submitted into the hearing record.

5. Unless Parents and the District agree in writing to waive a Resolution Meeting, a Resolution Meeting must occur within seven (7) calendar days of receiving notice of the due process complaint and the due process may proceed unless the matter has been resolved to the satisfaction of both parties.

K. Mediation [220]

1. The purpose of mediation is to attempt to informally resolve disputes regarding the identification, evaluation, or placement of, or the provision of free, appropriate public education to, a child. The District shall inform Parent(s), at least whenever a due process hearing is requested, that ISBE offers a process of mediation that may be used to resolve such disputes.

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[220] 105 ILCS 5/14-8.02a(g-25); 23 Ill.Admin.Code §226.560.

2. ISBE's Special Education Department shall appoint a trained impartial mediator upon the request of Parent(s) or the District. Mediation sessions shall be scheduled in a timely manner and held in a location that is convenient to the parties.

3. Mediation is entirely voluntary. In no way shall mediation be used as a means to deny or delay a Parent's right to a hearing or any other rights afforded under IDEA, Article 14 of the *School Code* [105 ILCS 5/14], or their implementing regulations.

4. Any resolution reached as part of the mediation process must be set forth in writing, is legally binding, and is enforceable by a court of competent jurisdiction.

5. Discussions that occur during mediation shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

L. ISBE Complaints [221]

1. A Parent, individual, organization, or advocate may file a signed, written complaint with ISBE alleging that the District has violated the rights of one or more children with disabilities. Such a complaint must include:

   a. A statement that the District has violated a requirement of the IDEA, Article 14 of the *School Code* [105 ILCS 5/14], or their implementing regulations;

   b. The facts on which the statement is based;

   c. The signature and contact information for the complainant;

   d. The names, addresses, and schools of attendance of the students involved, if known;

   e. A description of the nature of the problem of the child, including facts relating to the problem; and

   f. A proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.

2. A complaint to ISBE must allege only violations that occurred not more than one year prior to the date on which ISBE receives the complaint.

3. Consistent with ISBE procedures, the District will submit a written response to a complaint. A copy of the response and all documentation submitted by the District to ISBE will be simultaneously provided to the complainant. If the complaint was filed by

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[221] 105 ILCS 5/14-8.02c; 23 Ill.Admin.Code §226.570.

someone other than the parent of a child who is the subject of the complaint (or the child if he or she has reached majority or is emancipated and has assumed responsibility for his or her own educational decisions) and the complaint is about a specific identifiable child or children, appropriate written signed releases must be obtained prior to the release of any documentation or information to the complainant or the attorney representing the complainant.

M. Surrogate Parents [222]

1. The District shall ensure that the rights of a child with a disability are protected through the appointment of a qualified surrogate parent(s) when: [223]

   a. The Parent(s) cannot be identified or located; or

   b. The child is a ward of the State; or

   c. The child is an unaccompanied youth as defined in the *McKinney-Vento Homeless Assistance Act* (42 U.S.C. §11434a(6)).

2. The District shall undertake reasonable efforts to identify and discover the whereabouts of Parent(s) of the child with a known or suspected disability. Such reasonable efforts may include documented phone calls, letters, certified letters with return receipts, visits to the home, and interviews with relatives and other individuals who may have knowledge of the whereabouts of the child's Parent(s).

3. If, after reasonable efforts have been made, Parent(s) cannot be located, the District shall take similar steps to establish contact with a relative, or an individual with whom the child resides and/or the individual or agency which is legally responsible for the child's care and education.

4. If, after reasonable efforts have also been made to identify a guardian of the child or a person acting as Parent(s) of the child, no such person has been either identified or located, the District shall make a written request to ISBE to appoint a surrogate Parent(s) for the child in matters relating to the identification, evaluation, and educational placement of, and provision of free, appropriate public education to, him or her.

5. The written request to ISBE shall include information on the racial, linguistic or cultural background of the child.

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222 105 ILCS 5/14-8.02a(k); 23 Ill.Admin.Code §226.550; 34 C.F.R. §300.519.
223 34 C.F.R. §300.519(a).

N. Independent Educational Evaluations [224]

1. An *Independent Educational Evaluation* (IEE) means an evaluation conducted by a qualified examiner who is not employed by the District.

2. Parent(s) have the right to obtain an IEE of their child, conducted either at public or private expense. An IEE at public expense means that the District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to Parents.

3. The District shall provide to Parent(s), upon their request, the list of independent educational evaluators developed by ISBE.

4. If Parent(s) disagree with the District's evaluation and wish to obtain an IEE at public expense, they shall submit to the superintendent a written request to that effect. Upon receipt of a request for an IEE, the District shall provide Parent(s) with information about where an IEE may be obtained and the District's criteria applicable to IEEs. [225]

5. If the District disagrees with the need for an IEE, it shall initiate a due process hearing to demonstrate that its evaluation is appropriate. Such a hearing shall be initiated by the District within five (5) calendar days following receipt of a written parental request.

6. An IEE at public expense shall be completed within 30 calendar days after receipt of a Parent's written request, unless the District initiates a due process hearing or the parties agree that the 30-calendar-day period should be extended. If either party wishes such an extension and is unable to obtain the other party's agreement, the District shall initiate a due process hearing.

7. If the final decision of the hearing and review process is that the District's evaluation is appropriate, Parent(s) shall have the right to an IEE, but not at public expense.

8. If the District's evaluation is shown to be inappropriate, the District shall pay for the IEE or reimburse Parent(s) for the cost of said evaluation.

9. If Parent(s) are entitled to an IEE at public expense, it shall be completed within 30 calendar days after the decision is rendered, unless the parties agree that the 30-calendar-day period should be extended. If either party wishes such an extension and is unable to obtain the other party's agreement, the District shall initiate a due process hearing.

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224 105 ILCS 5/14-8.02(b), (g-5); 23 Ill.Admin.Code §226.180; 34 C.F.R. §300.502.
225 34 C.F.R. §300.502(a)(2).

10. When an IEE is obtained at public expense, the party chosen to perform the evaluation shall be either:

    a. An individual whose name is included on the list provided by ISBE with regard to the relevant type(s) of evaluation; or

    b. Another individual possessing the credentials required by 23 Ill. Admin. Code § 226.840.

11. If Parent(s) wish an evaluator to have specific credentials in addition to those required by 23 Ill. Admin. Code §226.840, Parent(s) and the District shall agree on the qualifications of the examiner and the specific evaluation(s) to be completed prior to the initiation of an IEE at public expense. If agreement cannot be reached, the District shall initiate a due process hearing subject to the time constraints set forth in this Section.

12. The conditions under which an IEE is obtained at public expense, including the location of the evaluation and the qualifications of the examiner, shall meet the criteria that the District uses when it initiates an evaluation, to the extent that those criteria are consistent with Parent(s)' right to an independent evaluation.

13. If Parent(s) obtain an IEE, the written results of that evaluation shall be considered by the IEP Team and may be presented as evidence at a due process hearing as provided by law. The District shall send the notice convening the IEP Team's meeting within 10 calendar days after receiving the evaluation report or after Parent(s) request a meeting to consider the results of an IEE.

O. Transfer of Parental Rights [226]

1. All rights accorded to Parent(s) under the IDEA, Article 14 of the *School Code*, and their implementing regulations transfer to the child when he or she reaches 18 years of age or becomes an emancipated minor, unless a legal guardian has been appointed for the child or the child delegates his/her rights to Parent(s) or another adult after the child turns 18 years of age. The District shall notify the child and Parent(s) of such transfer of rights and the process for delegating such rights, and shall provide the student with a Delegation of Rights form, at least one year prior to the date that the child reaches the age of majority.

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[226] 105 ILCS 5/14-6.10; 23 Ill.Admin.Code §226.690; 34 C.F.R. §300.520.

2. The District shall provide any notice required by the IDEA, Article 14 of the *School Code*, and their implementing regulations to the child and Parent(s).

LEGAL REF.: 20 U.S.C. §§ 1412(a)(6) (Procedural safeguards), 1412(a)(7) (Evaluation), 1413(a)(1) (Consistency with State policies), 1415 (Procedural safeguards).

34 C.F.R. §§300.500-300.520 (Procedural Safeguards and Due Process), 300.610-300.627 (Confidentiality of Information), 300.322 (Parent participation), 300.154(d) (Children with disabilities who are covered by public benefits or insurance), 300.320(c) (Transfer of rights at age of majority).

105 ILCS 5/14-8.02 (Identification, evaluation, and placement of children), 8.02(g), 5/14-8.02a (Impartial due process hearing; civil action), 5/14-8.02b (Expedited Hearings), 5/14-8.02f (Individualized education program meeting protections), 5/14-6.10 (Transfer of parental rights at the age of majority).

23 Ill. Admin. Code §§ 226.500-226.690 (Procedural Safeguards and Due Process), 226.180 (Independent Educational Evaluations), 226.230(d) (age of majority for transfer of rights).

Section 10.5 Behavioral Intervention and Discipline

A. Behavioral Interventions [227]

1. Behavioral interventions shall be used with eligible children with disabilities to promote and strengthen desirable behaviors and reduce identified inappropriate behaviors.

2. A committee shall be established to develop and monitor procedures on the use of behavioral interventions for children with disabilities in accordance with the requirements of Section 5/14-8.05 of the *School Code* [105 ILCS 5/14-8.05]. The committee shall review ISBE's guidelines on the use of behavioral interventions and use them as a non-binding reference. The behavioral intervention procedures shall be furnished to the parents of all children with IEPs within 15 calendar days after their adoption or amendment by, or presentation to, the Board of Education or at the time an IEP is first implemented for a student; parents of all children shall be informed annually of the existence of the procedures. At the annual IEP review, a copy of the District's behavioral intervention policy and procedures shall be given and explained to Parent(s). A copy of the procedures shall be available at any time and provided upon request of Parent(s).

3. A behavioral intervention plan shall be based on a functional behavior assessment and shall include positive behavioral intervention strategies, and supports to address the inappropriate behavior. A functional behavioral assessment shall be completed, if appropriate, in relationship to the development or modification of a student's behavioral intervention plan. A functional behavioral assessment is an assessment process for gathering information regarding a student's target behavior, its antecedents and consequences, controlling variables, the student's strengths, and the communicative and functional intent of the behavior, for use in developing behavioral interventions. The conduct of the functional behavioral assessment does not require parental informed written consent unless the IEP Team decides to conduct individualized assessments that go beyond the review of existing data and the administration of tests or other evaluations that are administered to all children. [228]

4. If the District's board policy authorizes the use of isolated time out, time out, and/or physical restraint with students, the District shall comply with ISBE requirements regarding the use of isolated time out, time out, and physical restraint. Isolated time out, time out, and physical restraint shall be used only if:

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227 105 ILCS 5/14-8.05; 23 Ill.Admin.Code §§ 1.280, 226.75, 226.230(b), 226.750(a).
228 34 C.F.R. §300.300(d)(1).

a. The student's behavior presents an imminent danger of serious physical harm to the student or others;

b. Other less restrictive and intrusive measures have been tried and proven ineffective in stopping the imminent danger of serious physical harm;

c. There is no known medical contraindication to its use on the student; and

d. School personnel applying the use of isolated time out, time out, or physical restraint have been trained in its safe application under 23 Ill.Admin.Code §1.285.

Isolated time out, time out, or physical restraint shall not be used as discipline or punishment, convenience for staff, retaliation, a substitute for appropriate educational or behavioral support, a routine safety matter, or to prevent property damage in the absence of imminent danger of serious physical harm to the student or others. The District's behavioral intervention procedures (or separate procedures on the use of isolated time out, time out, and/or physical restraint) shall include the requirements for the use of isolated time out, time out, and physical restraint, the training requirements for school personnel, the documentation and record-keeping procedures, and notification of Parent(s). [229]

B. Discipline of Children with Disabilities [230]

1. The District shall comply with the provisions of the IDEA when disciplining students with disabilities. No special education student will be expelled if the student's particular act of gross disobedience or misconduct is a manifestation of his/her disability. Any special education student whose gross disobedience or misconduct is not a manifestation of his/her disability may be expelled pursuant to the expulsion procedures, except that such student shall continue to receive educational services as provided in IDEA during the period of expulsion.

2. A special education student may be suspended for periods of no more than 10 consecutive school days each in response to separate incidents of gross disobedience or misconduct, regardless of whether the student's gross disobedience or misconduct is a manifestation of his/her disability, as long as the repeated removals do not constitute a pattern that amounts to a change in placement (considering factors such as the length of each removal, the total amount of time the child is removed, and

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229 105 ILCS 5/10-20.33; 23 Ill.Admin.Code §1.285.
230 23 Ill.Admin.Code §226.400; 34 C.F.R. §§ 300.530-300.536.

the proximity of the removals to one another) and provided that such student receives educational services to the extent required by IDEA during such removals.

3. Any special education student may be temporarily excluded from school by court order or by order of a duly appointed State of Illinois impartial due process hearing officer changing the student's placement to an appropriate IAES for up to 45 school days, if the District demonstrates that maintaining the student in his/her current placement is substantially likely to result in injury to the child or others.

4. A special education student who has carried a weapon to school or to a school function or who knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substance while at school or a school function or who has inflicted serious bodily injury upon another person while at school or at a school related activity may be removed from his/her current placement. All such students shall be placed in an appropriate IAES for no more than 45 school days in accordance with IDEA. The length of time a child with a disability is placed in an alternative educational setting must be the same amount of time that a student without a disability would be subject to discipline.

5. Upon the occurrence of any act that may subject the student either to expulsion from school or suspension resulting in more than 10 cumulative days of suspension during any one school year, the District shall convene a meeting of the IEP Team to review the student's behavioral intervention plan or, if a behavioral intervention plan has not yet been developed, to develop one.

C. Change of Placement

1. For purposes of this subsection, a disciplinary removal constitutes a "change of placement" if: [231]

   a. A student is removed from his/her current educational placement for more than 10 consecutive school days; or

   b. The student has been subjected to a series of removals that constitute a pattern:

      (1) Because the series of removals total more than 10 school days in a school year;

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[231] 34 C.F.R. §300.536.

(2) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

(3) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

D. Special Education Suspension Procedures

1. All suspension notices and suspension review procedures established by the *School Code* shall be followed when suspending a special education student.[232] In addition, a special education student who is suspended from school for more than 10 cumulative school days in a school year shall receive educational services in accordance with IDEA. [233]

2. For all subsequent removals of the student that do not constitute a change in placement, the IEP Team members must review the behavioral intervention plan and its implementation. If any team member indicates that the plan may need to be modified, the IEP Team must be convened to review the plan and revise it, if appropriate. If a subsequent removal does constitute a change in placement, a manifestation determination review is required, consistent with Section 10.5, B, above.

3. For all removals that exceed 10 cumulative school days during one school year, the District must provide services to the student. School personnel, in consultation with at least one of the child's teachers, shall determine the services to be provided. Such services must be designed to enable the child to progress in the general curriculum and advance toward his/her IEP goals.

E. Special Educational Expulsion Procedures

1. The District shall promptly notify the student's Parent(s) of the gross disobedience or misconduct and whether the student shall be recommended for expulsion. All procedural protections pertaining to notice provided under the District's discipline policy shall apply to a notice of recommended expulsion in the case of a special education student.[234] Parent(s) shall also receive a copy of the procedural safeguard and written notification that a manifestation determination review must be made to determine whether the student's act of gross disobedience or misconduct is a manifestation of his/her disability. The manifestation determination review shall take

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232 105 ILCS 5/10-22.6(b).
233 34 C.F.R. §300.530(b)(2).
234 105 ILCS 5/10-22.6(a).

place as soon as possible, but no later than 10 school days after the decision related to the discipline of the student is made. [235]

2. The manifestation determination review must be completed by Parent(s) and relevant members of the student's IEP Team (as determined by Parent(s) and the District). [236]

3. In carrying out the manifestation determination review, the IEP Team shall consider, in terms of the behavior subject to the disciplinary action, all relevant information in the student's file, including: [237]

    a. The student's IEP;

    b. Any teacher observations of the student; and

    c. Any relevant information provided by Parent(s).

4. The conduct must be determined to be a manifestation of the student's disability if it is determined that: [238]

    a. The conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

    b. The conduct in question was the direct result of the District's failure to implement the student's IEP.

5. If, at the manifestation determination review conference, it is determined that the behavior of the student was a manifestation of his/her disability, the authorized administrator shall not continue with his/her recommendation for expulsion.[239] The authorized administrator may request a review of the appropriateness of the educational placement of the student in accordance with the federal and State law. During the period necessary to propose a new placement, the student will remain in his/her then-current placement unless: [240]

    a. The student has not served a full 10 school day suspension imposed for the gross disobedience or misconduct, in which case the student may be required to serve the remaining days of his/her suspension; or

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235 34 C.F.R. §300.530(e)(1).
236 Id.
237 Id.
238 34 C.F.R. §300.530(e)(2).
239 34 C.F.R. §300.530(f).
240 34 C.F.R. §300.530(f)(2).

b. Parent(s) and the District agree on an interim placement; or

c. The District obtains an order from a court of competent jurisdiction or a State of Illinois impartial due process hearing officer decision changing the then-current placement or providing for other appropriate relief.

6. If, at the manifestation determination review conference, it is determined that the behavior of the student was not a manifestation of his/her disability, the authorized administrator may continue with his/her recommendation that the student be considered for expulsion by the Board of Education. In addition to issues regularly determined at an expulsion hearing, the authorized administrator must present evidence that the manifestation determination review team met and concluded that the student's misconduct was not a manifestation of his/her disability, which shall be duly noted by the Board of Education. The administration shall ensure that relevant special education and disciplinary records of the student are transmitted for consideration by the Board of Education.

7. If a special education student is expelled from school in accordance with the procedures set forth above, the District shall convene an IEP meeting to develop an educational program to deliver educational services to the student during such period of expulsion.

F. Misconduct Involving Weapons, Drugs, or Infliction of Serious Bodily Injury

1. In accordance with the above procedures, the District may take one or more of the following steps when a student with a disability carries a weapon to school or to a school function, or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school-related function, or has inflicted serious bodily injury upon another person while at school or a school-related function: [241]

   a. Suspend the student from school for 10 school days or less.

   b. Convene an IEP conference to: (a) determine placement in an IAES for up to 45 school days, (b) review and, if appropriate, modify the student's behavior intervention plan, as necessary, to address the student's behavior (if no behavior intervention plan is in place, the IEP Team shall develop a plan for a functional

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[241] 34 C.F.R. §§ 300.530, 300.531.

behavioral assessment that must be used to develop a behavior intervention plan), and (c) conduct a manifestation determination review.

(1) The student may be placed in an IAES even if the behavior is a manifestation of the student's disability.

(2) The IAES must:

(a) Enable the student to continue to progress in the general curriculum;

(b) Enable the student to receive the services and modifications set forth in his/her IEP; and

(c) Include services and modifications designed to address the misconduct to prevent it from recurring.

2. If Parent(s) disagree with the IAES placement or with the District-proposed placement and initiate a due process hearing, the student must remain in the IAES during the authorized review proceedings, unless Parent(s) and the District agree on another placement. [242]

G. Change of Placement if Maintenance of Current Placement Is Likely to Result in Injury

1. In the event that maintenance of a student's current placement is substantially likely to result in injury to the student or to others, the District may seek an order from a court of competent jurisdiction or a State of Illinois impartial due process hearing officer to change the student's placement to an appropriate IAES for one or more 45 school day periods after convening an IEP meeting to:

a. Conduct a manifestation determination review following procedures described under sub-heading "Special Education Expulsion Procedures," above; and

b. Determine a proposed IAES that meets the requirements under sub-heading "Misconduct Involving Weapons, Drugs, or Infliction of Serious Bodily Injury," above.

2. The length of time a child with a disability is placed in an alternative educational setting must be the same amount of time that a child without a disability would be subject to discipline.

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[242] 34 C.F.R. §§ 300.532, 300.533.

H. Protections for Children Not Yet Eligible Under IDEA [243]

1. Any child who has not been determined to be eligible for special education and related services and who engages in behavior that violates the District's code of conduct shall be disciplined in accordance with the District's discipline policy for nondisabled students, unless the District had knowledge that the child was a child with a disability.

2. The District will be deemed as having knowledge that a student may be eligible for special education and related services prior to the disciplinary incident, if any one of the following conditions exists:

    a. Parent(s) of the student expressed concern in writing (or orally if Parent(s) does not know how to write or has a disability that prevents a written statement) to supervisory or administrative District personnel that the student is in need of special education and related services;

    b. Parent(s) of the student have requested an evaluation of the student; or

    c. The student's teacher or other District personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the District's Director of Special Education or to other District supervisory personnel.

3. The District will not be deemed to have knowledge if:

    a. Parent(s) of the student have not allowed their child to be evaluated after he/she was referred for such evaluation by the District;

    b. Parent(s) has refused special education services; or

    c. Documentation maintained in the school student records affirm that an evaluation to determine the presence of a disability was either conducted and the student was found not eligible for special educational and related services or Parent(s) was provided with written notice that the District had considered the need to conduct an evaluation and had determined that an evaluation was not warranted.

4. If, following the District's decision to discipline a student who has not been determined to be eligible for special education and related services, the student's Parent(s) request a full and individual evaluation, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the

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[243] 34 C.F.R. §300.534.

educational placement determined by the District, which may include suspension or expulsion without educational services.

I. Referral to and Action by Law Enforcement and Judicial Authorities [244]

The District is not prohibited from reporting a crime committed by a child with a disability to appropriate authorities. The District shall ensure that copies of special education and disciplinary records are also transmitted to the authorities in such instances, subject to the requirements of federal and State law.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1413 (Local educational agency eligibility), 1415 (Procedural safeguards).

34 C.F.R. §§ 300.101 (Free appropriate public education (FAPE)), 300.530-300.535 (Discipline Procedures).

105 ILCS 5/10-22.6 (Suspension or expulsion of pupils; school searches), 5/14-8.05 (Behavioral intervention).

23 Ill. Admin. Code §§ 226.50 (Requirements for a Free Appropriate Public Education (FAPE)), 226.75 (Definitions), 226.220 (Development, Review, and Revision of the IEP), 226.400 (Disciplinary Actions), 226.655 (Expedited Due Process Hearing).

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[244] 34 C.F.R. §300.535.

Section 11. Establishing the Goal of Full Educational Opportunity; Performance Goals and Indicators [245]

A. Establishment of the Goal [246]

The District has established a goal of providing full educational opportunity to children with disabilities ages birth through 21. Attainment of the full educational opportunity goal for children, ages birth through two (2), will be accomplished through full participation in, and full implementation of the *Infants and Toddlers with Disabilities Act*.

B. Annual Data Collection Requirements [247]

1. The District shall annually collect the following information regarding children with disabilities residing within the jurisdiction of the District:

    a. The number of children with disabilities, by race, ethnicity, and disability category, who are receiving a free appropriate public education;

    b. The number of children with disabilities, by race and ethnicity, who are receiving early intervention services;

    c. The number of children with disabilities, by race, ethnicity, and disability category, who are participating in regular education;

    d. The number of children with disabilities, by race, ethnicity, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

    e. The number of children with disability, by race, ethnicity, and disability category, who, for each year of age from age 14 to 21, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services;

    f. The number of children with disabilities, by race and ethnicity, who from birth through age two (2), stopped receiving early intervention services because of program completion or for other reasons;

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245 Required by 23 Ill.Admin.Code §226.710(b)(11).

246 34 C.F.R. §300.109.

247 See 23 Ill.Admin.Code §226.760, *Evaluation of Special Education*; 34 C.F.R. §§ 300.170, 600, 601, 602, and 646.

g. The number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of §1415(k)(1) of IDEA, are removed to an IAES; the acts or items precipitating those removals; and the number of children with disabilities who are subject to long-term suspensions or expulsions;

h. The number of special education teachers;

i. The number of related services personnel;

j. The cost of all personnel;

k. The number of children receiving special education transportation;

l. The types of alternative placements available for children with disabilities; and

m. The number of children served in each type of placement.

2. The District shall also annually collect information regarding the facilities, personnel[248] and services necessary to accomplish the full educational opportunity goal.

C. Performance Goals and Indicators [249]

1. The District has established goals for the performance of children with disabilities that:

   a. Promote the purposes of IDEA, as stated in 34 C.F.R. §300.1, *Purposes*;

   b. Are the same as the State's long-term goals and measurements of interim progress for children with disabilities under §1111(c)(4)(A)(i) of the Elementary and Secondary Education Act and are consistent, to the extent appropriate with any other goals and academic standards for children established by the State; and

   c. Address graduation and dropout rates.

2. The District has established performance indicators that will be used to assess progress towards achieving the goals described in subparagraph C 1, above.

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248 23 Ill.Admin.Code §226.800(a).
249 34 C.F.R. §300.157.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1413 (Local educational agency eligibility), 1418 (Program information).

34 C.F.R. §§ 300.109 (Full educational opportunity goal (FEOG)), 300.111 (Child find); 300.157 (Performance goals and indicators)

23 Ill. Admin. Code §§ 226.700 (General), 226.760 (Evaluation of Special Education), 226.800 (Personnel Required to be Qualified).

Section 12. Confidentiality of Personally Identifiable Information [250]

The school student records of a child with disabilities shall be maintained confidentially in accordance with the requirements of the *Individuals with Disabilities Education Act*, [251] the *Family Educational Rights and Privacy Act*,[252] the *Illinois School Student Records Act*,[253] the *Illinois School Code*,[254] the *Illinois Mental Health and Developmental Disabilities Confidentiality Act*,[255] the *Illinois Domestic Violence Act of 1986*,[256] and their respective implementing regulations. All information maintained concerning a student receiving special education is directly related to the provision of services to that child. For information regarding the types of personally identifiable information concerning all students, including students with disabilities, that is collected, the maintenance period, persons to whom the information may be available, and under what circumstances the information may be disclosed, see the following District policies and procedures: *[insert reference to the District's relevant policies and procedures*].

LEGAL REF.: 20 U.S.C. §§ 1232g (Family Educational Rights and Privacy Act), 20 U.S.C. §§ 1412 (State eligibility), 1413 (Local educational agency eligibility).

34 C.F.R. §§ 300.123 (Confidentiality of personally identifiable information), 300.610-627 (Confidentiality of Information).

34 C.F.R. Part 99 (Family Educational Rights and Privacy).

105 ILCS 5/14-8.02f (Individualized education program meetings protections), 105 ILCS 10/1 *et seq*. (Illinois School Student Records Act); 740 ILCS 110/1 *et seq*. (Mental Health and Developmental Disabilities Confidentiality Act); 50 ILCS 205/1 *et seq.* (Local Records Act).

23 Ill. Admin. §§ 226.50 (Requirements for Free Appropriate Public Education (FAPE)), 226.75 (Definitions), 226.220 (Development, Review, and Revision of the IEP), 226.740 (Records; Confidentiality).

23 Ill. Admin. Code Part 375 (Student Records).

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250 Required by 23 Ill.Admin.Code §226.710(b)(12). 23 Ill.Admin.Code §226.740.
251 20 U.S.C. §§ 1412, 1413; 34 C.F.R. §§ 300.123, 300.610-300.627.
252 20 U.S.C. §1232g; 34 C.F.R. Part 99.
253 105 ILCS 10/; 23 Ill.Admin.Code Part 375.
254 105 ILCS 5/; 23 Ill.Admin.Code Part 1 et seq.
255 740 ILCS 110/.
256 750 ILCS 60/.

Section 13. Use of Federal Matching Funds Under The Medicaid (Title XIX) or Children's Health Insurance (All Kids; Title XXI) Program to Supplement Special Education Programs and Services (if the School District is Participating in One or More of those Federal Programs); Supplementation of State, Local, Other Federal Funds; Maintenance of Financial Support [257]

A. The District may look to non-educational entities, such as Medicaid and insurance programs, to pay for required special education services for which such entities are otherwise responsible. [258]

B. The District will use federal matching funds received under Medicaid or a children's health insurance program (e.g., State Children's Health Insurance Program, known as All Kids in Illinois) only to supplement special education programs and services. [259]

C. In seeking matching funds under Medicaid or a children's health insurance program, the District: [260]

1. May not condition a child's receipt of FAPE on their Parent(s)' enrollment in Medicaid or insurance programs;

2. May not require Parent(s) to incur an out-of-pocket expense (e.g., payment of a deductible or co-pay amount) for services rendered in providing FAPE, except the District may use Part B funds to pay Parent(s)' costs for such services;

3. May not use a child's Medicaid or health insurance benefits if such use would:

    a. Decrease available lifetime coverage or any other insured benefit;

    b. Result in the family paying for services that would otherwise be covered by Medicaid or health insurance and that are required for the child outside of the time the child is in school;

    c. Increase premiums or lead to the discontinuation of benefits or insurance; or

    d. Risk loss of home and community-based waiver eligibility, based on aggregate health-related expenditures;

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257 Required by 23 Ill.Admin.Code §226.710(b)(13).
258 23 Ill.Admin.Code §226.770(a)(2); 34 C.F.R. §300.154.
259 23 Ill.Admin.Code §226.770(c).
260 34 C.F.R. §300.154(d).

4. Must obtain voluntary, informed, written parental consent prior to accessing Medicaid or insurance benefits for the first time; and

5. Prior to accessing Medicaid or insurance benefits for the first time, and annually thereafter, must provide written notification to Parent(s) that includes:

    a. A statement of the parental consent provisions of 34 C.F.R. §§ 99.30, 300.9 and 300.622;

    b. A statement of the "no cost" provisions of 34 C.F.R. §300.154(d)(2)(i)-(iii);

    c. A statement of Parent(s)'s right to withdraw their consent to disclosure of their child's student record information to Medicaid or other insurance programs at any time; and

    d. A statement that the withdrawal of or refusal to provide consent to disclosure of their child's student record information to Medicaid or other insurance programs does not relieve the District of its responsibility to ensure that all required services are provided at no cost to the parents.

6. Except as otherwise permitted by law, funds provided to the District under the IDEA, Part B, shall be used to supplement the level of federal, State, and local funds (including funds that are not under the direct control of the District) expended for the provision of special education and related services provided to children with disabilities, and in the case to supplant those federal, State, and local funds. [261]

7. Except as otherwise permitted by law, the District will not reduce the amount of financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. [262]

LEGAL REF.: 34 C.F.R. §§ 300.154 (Methods of ensuring services), 300.162 (Supplementation of State, local, and other Federal funds), 300.163 (Maintenance of State financial support).

23 Ill. Admin. Code §226.770 (Fiscal Provisions).

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[261] 34 C.F.R. §300.162.
[262] 34 C.F.R. §300.163.

Section 14. Competent Interpretation Services at IEP Meetings and Translation of Vital IEP Process Documents [263]

A. Competent Interpretation Services at IEP Meetings

1. A *qualified interpreter* is a District staff member or other personnel who is: [264]

   a. Bilingual and demonstrably qualified and competent to interpret;

   b. Trained in providing the interpretations requested and sufficiently knowledgeable in both languages and of any specialized terminology needed; and

   c. Trained in the ethics of interpretation.

2. A qualified interpreter must: [265]

   a. Meet all District employment eligibility requirements.

   b. Demonstrate that they are competent to interpret into and out of the second language in accordance with 23 Ill. Admin. Code §226.800(k)(1)(B).

   c. Complete at least six hours of training on special education terminology and protocol, including successful completion of a written examination to demonstrate knowledge of such terminology and protocol, except that teachers with bilingual special education license endorsements are exempt from this requirement.

   d. Receive training on the interpreter Code of Ethics adopted by ISBE, including successful completion of a written examination.

   e. After completing the required training:

      (1) Successfully complete, with a score of 80% or higher, a written examination to demonstrate knowledge of special education terminology and protocol, interpretation standards and techniques, and interpretation ethics; and

      (2) Successfully complete, with a score of 70% or higher, an oral examination to demonstrate proficiency in interpreting in and out of English, through consecutive or simultaneous interpretation, and sight translation.

3. To maintain the qualified interpreter designation, an individual must, at least once every two years, participate in at least six hours of ongoing professional development related to interpretation in the following categories: confidentiality, accuracy, impartiality, interpreter ethics and professionalism, cultural awareness, special education processes, special education vocabulary, and language acquisition. [266]

4. An interpreter for less common languages must be: [267]

(1) Demonstrably qualified and competent to interpret into and out of the less common language;

(2) Trained in providing the interpretations requested and sufficiently knowledgeable in both languages and of any specialized terminology needed; and

(3) Trained in the ethics of interpretation.

B. Translation of Vital IEP Process Documents

1. The District shall provide, to Limited English Proficiency parents of children with disabilities, written translation of Vital IEP Process Documents into the ten most commonly spoken languages in Illinois, other than English. This includes translation of the individualized substance of documents on the Vital IEP Process Documents list. [268]

   a. *Common languages* mean the five most commonly spoken languages other than English that are used in the State of Illinois, based on the most recent Home Language Survey results, and any language that is spoken by more than 20 total families in the District. [269]

   b. *Less common language* means any language that is not considered a common language. [270]

   c. *Preferred language* means a Parent's native language or any other language with which both Parents are fluent and have agreed upon. *Preferred language* does not include artificial or constructed languages, including but not limited to, Klingon, Dothraki, Elvish, or Esperanto. [271]

   d. *Vital IEP Process Documents* includes: [272]

      (1) The IEP;

      (2) Parent/Guardian Notification of Conference (ISBE 34-57D);

      (3) Parent/Guardian Notification of Conference Recommendations (ISBE 34-57E);

      (4) Notice of Procedural Safeguards for Parents/Guardians of Students with Disabilities (ISBE 34-57J);

      (5) Parent/Guardian Consent for Initial Evaluation (ISBE 34-57B);

      (6) Parent/Guardian Consent for Reevaluation (ISBE 34-57C);

      (7) Evaluation reports;

      (8) Eligibility determination;

(9) Manifestation determination review documents;

(10) IEP progress reports; and

(11) Medicaid consent forms.

2. A translated Parent/Guardian Notification of Conference Recommendations form (ISBE 34-57E) in Parent(s)' preferred language or mode of communication shall be provided simultaneously with English IEP documents, and the District shall make all reasonable efforts to provide the translated IEP within seven (7) school days after the IEP, or as soon as possible thereafter.

3. All other Vital IEP Process Documents shall be translated and provided to Parent(s) as soon as practicable but no more than 30 school days after the IEP meeting.

4. Parent(s) may request translation of documents not on the Vital IEP Process Documents list that have a vital relation to the child's educational planning through the same process identified on the Parent/Guardian Notification of Conference form (ISBE 34-57D), and the District shall make reasonable efforts to provide the requested translations in a timely manner. [273]

5. All translations must be performed: [274]

   a. By competent translators who have undergone sufficient professional training regarding special education terminology and processes; or

   b. By outside vendors that are commercially recognized as providing competent translation services; or,

   c. If the District elects to use an automated translation program or application, the results must be reviewed and edited, as needed, by an individual qualified to determine the accuracy of the translation.

6. All translations must be certified to be true and accurate by the translator to the best of the translator's knowledge or ability. [275]

LEGAL REF.: 34 C.F.R. §300.503 (Prior notice by the public agency; content of notice)

23 Ill. Admin. Code §§226.75 (Definitions), 226.500 (Language of Notifications), 226.530 (Parents' Participation), 226.800 (Personnel Required to be Qualified).

273 23 Ill. Admin.Code §226.500(c).

274 23 Ill. Admin.Code §226.500(d).

275 Id.

Section 15. Personnel Development

The District will take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities. [276]

LEGAL REF.: 34 C.F.R. §300.156 (Personnel qualifications).

23 Ill. Admin. Code Part 226, Subpart I (Personnel).

[276] 23 Ill.Admin.Code Part 226, Subpart I; 34 C.F.R. §300.156.