TO: Illinois State Board of Education
FROM: Robert E. Schiller, Superintendent
Respicio Vazquez, General Counsel
Gail Lieberman, Acting Director

Agenda Topic: Action Item: Rules for Adoption - Part 228 (Transitional Bilingual Education)

Materials: Recommended Amendments

Staff Contact: Boon Lee

Purpose of Agenda Item
To present the proposed amendments for adoption.

Expected Outcome of Agenda Item
The Board's adoption of the proposed amendments to Part 228.

Background Information
The amendments contained in this set of rules are technical revisions needed to implement P.A. 92-604, which took effect in July of 2002 and changed the requirements for the notice districts must provide to parents whose children are enrolled in bilingual education programs. The statute added a great deal of specificity regarding the content and timing of these notices. Section 228.40(a)(1) is being amended to provide a cross-reference to that statutory language.

P.A. 92-604 also strengthened parents' right to have their children removed from bilingual education programs on demand. The revisions to Section 228.40(a)(2) reflect that new statutory provision.

These amendments were presented for the Board’s initial review at the January 2003 meeting and were subsequently published in the Illinois Register to elicit public comment. Three letters and e-mails were received. Please see the Summary and Analysis of Public Comment below for a discussion of the issues raised.
Analysis and Implications for Policy, Budget, Legislative Action, and Communications

Policy Implications: The Illinois legislative changes correspond to changes made at the federal level by the No Child Left Behind Act.

Budget Implications: This rulemaking has no budgetary implications for the agency.

Legislative Action: None needed.

Communications: Please see “Next Steps” below.

Superintendent’s Recommendation

Adopt the following motion:

    The State Board of Education hereby adopts the proposed rulemaking for:

    Transitional Bilingual Education (23 Illinois Administrative Code 228).

    Further, the Board authorizes the State Superintendent of Education to make such technical or nonsubstantive changes as the State Superintendent may deem necessary in response to suggestions or objections of the Joint Committee on Administrative Rules.

Next Steps

Notice of the adopted rules will be submitted to the Joint Committee on Administrative Rules to initiate JCAR’s review. When that process is complete, the adopted rules will be filed with the Secretary of State and disseminated as appropriate.
Summary and Analysis of Public Comment
Transitional Bilingual Education (23 Ill. Adm. Code 228)

Comment
It was stated to be very difficult for districts to provide notices to parents in all the languages that might be spoken (more than 50 in the commenter’s district). Problems with cost and with managing translation services were mentioned. The commenter suggested that the required notice be provided in English and, at the request of parents, in the home language of the student.

Analysis
The pertinent language in Section 228.40(a)(1) is taken directly from the statute, as indicated by its presentation in capital letters, and the same requirement has been in the law for a number of years. The rule must reflect the statutory requirements and therefore cannot be revised as the commenter proposed.

State Board staff members recognize the issues associated with this rule. In particular, it is well understood that it would not make sense for individual districts to pay for translations when this work could be done once in each language for the entire state. In fact, the agency arranged for translation of the previously required notification into 26 languages and made that available to districts. At this time translation work is being done on the new required contents of the notice, and multiple versions will be posted on the agency’s web site as they become available.

Recommendation
No change in the rule would be appropriate in response to this comment.

Comment
It was suggested that subsection (a)(1) continue to state the required contents of the notice rather than referring to the statute.

Analysis
As a matter of rulemaking practice, agencies are encouraged to avoid repeating statutory language in rules unless this is necessary. It should not be necessary to do so in this case, since the State Board has prepared and disseminated a sample notice that districts can use. That sample meets the requirements set forth in Section 14C-4 of the School Code, helping district staff avoid the inconvenience of looking those up.

Recommendation
No change in the rule is needed.

Comment
The right to withdraw a child from a bilingual education program “immediately” was stated not to be in the child’s best interest. Similarly, it was suggested that we restore the (deleted) language requiring a conference with school officials, in order to ensure that parents are adequately informed about the program before they withdraw a child. The commenter believed parents may not get enough information about bilingual
education programs from the communication that is sent home, or that acquaintances may sometimes misinform them.

**Analysis**
Here again, the law has been changed to give parents the right of immediate withdrawal, and the agency’s rule (Section 228.40(a)(2)) must reflect the statutory provision.

**Recommendation**
No change should be made in the proposed rule.

**Comment**
Also with respect to subsection (a)(2), a commenter advocated requiring parents to sign a written document in order to withdraw a child. It was further suggested that the school should maintain the signed document in the student’s “cumulative record”.

**Analysis**
Both the law and subsection (a)(2) of the rule do require a written notice. The striking through of surrounding text may have made this hard to see. Under the rules that implement the Illinois School Student Records Act (Part 375), districts can maintain these notices in students’ temporary student records

**Recommendation**
No change in the rule is needed.

**Comment**
Section 228.40(b)(1) regarding course credit was thought to be misleading in stating, “Courses in ESL shall count toward English requirements for graduation.” The commenter indicated that her district offers “ESL American History”, which counts for history. She suggested revising the rule to provide that courses would count for credit in the appropriate departments.

**Analysis**
Section 228.10 of the rules defines “English as a Second Language (ESL)” as “specialized instruction designed to assist students whose home language is other than English in attaining English language proficiency”. By definition, then, an ESL course is an English course. The description “ESL History” may be a given district’s local shorthand for a course in history that is structured for students with limited English proficiency, but under the rule it is not actually considered an ESL course. Therefore the district can and should award credit in the history department for completion of such a course. This would not conflict with either Section 228.10 or Section 228.40(b)(1).

**Recommendation**
No change in the rule should be made.

**Comment**
It was stated that districts often overlook the requirement for integration of students with limited English proficiency into classes with English-speaking students in curricular areas where language is not essential to an understanding of the subject matter.
(Section 228.40(b)(3)). The respondent proposed adding to the annual application for funding a section in which each district would describe its plans connected to meeting this requirement. Alternatively, it was suggested that a “provision for accountability” be added to the rule.

**Analysis**
Accountability for meeting any requirement stated in a rule is implicit. The issue raised here is more a matter of monitoring than one that needs to be amplified in the rule.

**Recommendation**
No change is needed in this portion of the rule.

**Comment**
One commenter indicated the need for a more specific definition of “average student-teacher ratio” as used in Section 228.40(b)(4). She noted several possible interpretations of the current language of that rule.

**Analysis**
Agency staff acknowledge that the current rule (which refers to the “average student-teacher ratio in regular classes in that attendance center”) is more useful in elementary school settings than it is in secondary schools. They believe some further specificity should be added to address the variety of situations that can exist in departmentalized settings. However, a change of this kind cannot be made at this stage in the rulemaking process, because substantive language addressing a new issue will need to be published for public comment.

**Recommendation**
The rules should not be revised at this time. Staff should develop a proposal and bring it to the Board for consideration as a new rulemaking, including any other revisions that may appear warranted.

**Comment**
Section 228.40(e) was stated to have two possible meanings and clarification was requested.

**Analysis**
We believe the statutory language quoted in this rule is clear. (“Summer school programs shall not replace programs required during the regular school year.”) The language has been in the rule for more than ten years and has not generated other misunderstandings. Program staff have provided the needed clarification to the respondent.