TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

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SPECIAL EDUCATION

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AUTHORITY: Implementing Article 14 and authorized by Section 2-3.6 of the School Code [105 ILCS 5/Art.14 and 2-3.6].


NOTE: Capitalization denotes statutory language.

SUBPART A: GENERAL

Section 226.75  Definitions

Assistive Technology Device: Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

Behavioral Intervention: An intervention based on the methods and empirical findings of behavioral science and designed to influence a child’s actions or behaviors positively.

Case Study Evaluation: See “Evaluation”.

Cultural Identification: Identifying the family’s general cultural factors, such as ethnicity and language spoken, which may have an impact on the design of the case study evaluation procedures used.

Date of Referral: The date on which written parental consent to complete an evaluation is obtained or provided.
Day: A calendar day, unless otherwise indicated as “business day” or “school day”.

Business Day: Monday through Friday, except for federal and State holidays (unless holidays are specifically included in the designation of business days, as at 34 CFR 300.403(d)(1)(ii)).

School Day: Any day, including a partial day, during the regular school year that students are in attendance at school for instructional purposes.

Developmental Delay: Delay in physical development, cognitive development, communication development, social or emotional development, or adaptive development (may include children from three through five years of age).

Disability: Any of the following specific conditions.

Autism: A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. (A child who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the other criteria of this Section are satisfied.) Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance.

Deaf-Blindness: Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

Deafness: A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance.
Emotional Disturbance (includes schizophrenia, but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance): A condition exhibiting one or more of the following characteristics over an extended period of time and to a marked degree that adversely affects a child’s educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of anxiety or unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems.

Hearing Impairment: An impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness.

Mental Retardation: Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.

Multiple Disabilities: Concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments (does not include deaf-blindness).

Orthopedic Impairment: A severe orthopedic impairment that adversely affects a child’s educational performance; includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis,
etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

Other Health Impairment: Limited strength, vitality or alertness, including a heightened sensitivity to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and adversely affects a child’s educational performance.

Specific Learning Disability: A DISORDER IN ONE OR MORE OF THE BASIC PSYCHOLOGICAL PROCESSES INVOLVED IN UNDERSTANDING OR IN USING LANGUAGE, SPOKEN OR WRITTEN, THAT MAY MANIFEST ITSELF IN AN IMPERFECT ABILITY TO LISTEN, THINK, SPEAK, READ, WRITE, SPELL, OR DO MATHEMATICAL CALCULATIONS, INCLUDING SUCH CONDITIONS AS PERCEPTUAL DISABILITIES, BRAIN INJURY, MINIMAL BRAIN DYSFUNCTION, DYSEXIA, AND DEVELOPMENTAL APHASIA. (THE TERM DOES NOT INCLUDE LEARNING PROBLEMS THAT ARE PRIMARILY THE RESULT OF VISUAL, HEARING, OR MOTOR DISABILITIES, OF MENTAL RETARDATION, OF EMOTIONAL DISTURBANCE, OR OF ENVIRONMENTAL, CULTURAL, OR ECONOMIC DISADVANTAGE.)  [105 ILCS 5/14-1.03(a)]

Speech or Language Impairment: A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.

Traumatic Brain Injury: An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial
behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.

Visual Impairment: An impairment in vision that, even with correction, adversely affects a child’s educational performance (includes both partial sight and blindness).

Domain: An aspect of a child’s functioning or performance that must be considered in the course of designing an evaluation. The domains are health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities.

Educational Performance: A student’s academic achievement and ability to establish and maintain social relationships and to experience a sound emotional development in the school environment.

Eligible: Identified in accordance with this Part as having any of the disabilities defined in this Section and needing special education and related services.

Equipment (a programmatic definition, not intended to coincide with the definition of “equipment” given in the Program Accounting Manual at 23 Ill. Adm. Code 110.120):

Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

Evaluation: A series of procedures designed to provide information about a child’s suspected disability; the nature and extent of the problems that are or will be adversely affecting his/her educational development; and the type of intervention and assistance needed to alleviate these problems.
Extended School Year Services: Special education and related services that are provided to a child with a disability beyond the normal school year of the public agency in accordance with the child’s IEP and at no cost to the parents of the child and meet the requirements of Section 226.750(c) of this Part.

Functional Behavioral Assessment: An assessment process for gathering information regarding the 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.

General Curriculum: The curriculum adopted and/or used by a local school district or by the schools within a district for nondisabled students; the content of the program, as opposed to the setting in which it is offered.

IEP Team: The group of individuals enumerated in Section 226.210 of this Part, except that in three instances the team shall be expanded to include any other qualified professionals whose expertise is necessary to administer and interpret evaluation data and make an informed determination as to whether the child needs special education and related services (i.e., when identifying the specific assessments required in order to evaluate a child’s individual needs; when determining whether the child is eligible pursuant to this Part; and when conducting a Manifestation Determination Review).

Independent Educational Evaluation: An evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question. (See Section 226.180 of this Part.)

Individualized Education Program (IEP): A written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with Subpart C of this Part.

Individualized Family Service Plan (IFSP): A written plan for providing the early intervention services to a child eligible under 34 CFR 303 and the child’s family.

Interim Plan: A portion of an IEP that identifies the services that will be provided as a temporary measure, either when the child’s complete IEP cannot be implemented or when the parents and the district have only agreed to a portion of the services that will be needed, and that sets out the specific conditions and timelines to which both the parents and the district have agreed.
Least Restrictive Environment (LRE): The setting that permits a child to be educated with nondisabled children to the maximum extent appropriate. (See Section 226.240(c) of this Part.)

Parent: A natural or adoptive parent of a child; a guardian but not the State if the child is a ward of the State; a person acting in the place of a parent of a child (such as a grandparent or stepparent with whom a child lives); a person who is legally responsible for a child’s welfare, or a surrogate parent who has been appointed in accordance with Section 226.550 of this Part. A foster parent is a “parent” when the natural parent’s authority to make educational decisions on the child’s behalf has been extinguished under State law and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under IDEA, and has no interest that would conflict with the interests of the child.

Participating Agency: A state or local agency, other than the local school district, that is or may be legally responsible for providing or funding services to a student who is eligible under this Part.

Personally Identifiable (with reference to information): Including the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's Social Security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Qualified Personnel: Staff members or other individuals who hold the certificate, license, registration, or credential that is required for the performance of a particular task.

Qualified Bilingual Specialist: An individual who holds the qualifications described in Section 226.800(f) of this Part.

Qualified Specialist: An individual who holds the applicable qualifications described in Subpart I of this Part.

Referral: A formal procedure established by a school district which involves a request for a case study evaluation.

Related Services: Transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit
from special education, including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation (including therapeutic recreation), early identification and assessment of disabilities in children, counseling services (including rehabilitation counseling), orientation and mobility services, and medical services for diagnostic or evaluation purposes; also including school health services, social work services in schools, and parent counseling and training. (See Section 226.310 of this Part.) Related services do not include those performed by licensed physicians or dentists (except for diagnostic or evaluative services or consultation to staff), registered or licensed practical nurses (except when functioning as school nurses), or other medical personnel involved in the provision of ongoing medical care.

Special Education: Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals, in institutions, and in other settings, and including instruction in physical education.

Special School: An educational setting which is established by the local school district exclusively to meet the needs of eligible children.

Student Record: See Section 2 of the Illinois School Student Records Act [105 ILCS 10/2].

Supplementary Aids and Services: Aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

Transition Services: A coordinated set of activities for a student with a disability that:

Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

Is based on the individual student’s needs, taking into account the student’s preferences and interests; and
Includes instruction, related services, community experiences, the
development of employment and other post-school adult living objectives,
and, if appropriate, acquisition of daily living skills and functional
vocational evaluation.

(Source: Amended at 27 Ill. Reg. ____ , effective _____________)

SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

Section 226.100 Child Find Responsibility

a) Each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district, including children not enrolled in the public schools, who may be eligible for special education and related services. Procedures developed to fulfill this responsibility shall include:

1) An annual screening of children under the age of five for the purpose of identifying those who may need early intervention or special education and related services.

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

3) Ongoing coordination with early intervention programs to identify children from birth through two years of age who have or are suspected of having disabilities, in order to ensure provision of services in accordance with applicable timelines.

A) Each local school district shall participate in transition planning conferences arranged by the designated lead agency under 20 USC 1437(a)(8) in order to develop a transition plan enabling the public school to implement an IFSP or IEP no later than the third birthday of each eligible child.

B) A child is considered “referred” to a school district when he or she is identified in writing by staff of an early intervention program.
pursuant to 34 CFR 303. Such a referral is effective no later than 60 school days prior to the child’s third birthday, regardless of the date on which the notification takes place. (See Section 226.260 of this Part.)

4) Coordination and consultation with nonpublic schools located within the district that results in child find activities comparable to those affecting students in the public schools. Costs of child find and evaluation activities may not be considered as part of the expenditures used by the district to meet its obligation under 34 CFR 300.453(a).

b) When the responsible school district staff conclude that an individual evaluation of a particular child is warranted based on factors such as a child’s educational progress, interaction with others, or other functioning in the school environment, the requirements for referral and evaluation set forth in this Subpart B shall apply.

c) Each school district shall be responsible for ensuring that the confidentiality requirements of 34 CFR 300.560-300.577, 105 ILCS 10/4(a), 23 Ill. Adm. Code 375, and Section 226.740 of this Part apply to all data used to meet the Child Find requirement.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Section 226.240 Determination of Placement

a) The placement determination shall be made by the IEP Team.

b) The placement determination shall be consistent with the child’s IEP.

c) The placement determination shall provide the least restrictive environment for the child.

1) To the maximum extent appropriate, each child, including children in public or nonpublic residential facilities, shall be educated with children who are nondisabled.
2) Special education classes, separate schooling, or other removal of children with disabilities from the regular education environment shall occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

3) Each child’s placement shall be as close as possible to his or her home.

4) Unless the IEP requires some other arrangement, a child shall be educated in the school he or she would attend if not disabled.

5) Consideration shall be given to the possible harmful effect of a placement on the child or on the quality of services received.

6) A child shall not be removed from an age-appropriate regular classroom solely because of needed modifications in the general curriculum.

d) The placement decision shall, to the maximum extent appropriate, 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).

e) The placement determination shall be reviewed at least annually or any time the IEP is revised.

(Source: Amended at 27 Ill. Reg. _____, effective ______________)

Section 226.250 Child Aged Three Through Five

In the case of an eligible child three through five years of age, an IFSP that contains the material described in 20 USC 1436 may serve as a child’s IEP if using that plan is agreed to by the local school district and the child's parents. If a district proposes to use an IFSP, the local school district shall:

a) Provide a detailed explanation of the differences between an IFSP and an IEP to the child's parents; and

b) Obtain informed, written consent from the parents for the use of the IFSP; and
c) The IFSP shall be developed in accordance with the IEP requirements found in Sections 226.200 through 226.230 of this Part.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

SUBPART D: PLACEMENT

Section 226.350 Service to Children in Private Schools

a) To the extent consistent with their number and locations in the State, provision must be made by school districts for services to children with disabilities who have been enrolled in private schools by their parents.

1) Each school district shall consult annually with representatives of private schools in light of the funding available for serving their students, the number of such students, their needs, and their respective locations to decide:

   A) Which children will receive services;
   B) What services will be provided;
   C) How the services will be provided; and
   D) How the services provided will be evaluated; and
   E) Where the services will be provided.

2) Each school district shall give representatives of private schools a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements of this subsection (a).

3) The consultation required by this subsection (a) shall occur before the school district makes any decision that affects the opportunities of private school children with disabilities to participate in services.

4) The school district shall make the final decisions with respect to the services to be provided to eligible children who are enrolled in private schools.
The school district shall maintain a written record of actions taken in compliance with the requirements of this subsection (a).

b) The services provided by a school district to children with disabilities enrolled in private schools shall be comparable in quality to the services provided to eligible children enrolled in the district. “Comparable in quality” means provided by similarly qualified personnel.

1) Eligible students in private schools may receive a different amount of services than eligible children in public schools.

2) No individual child must receive a specific service or receive the same amount of service the child would receive in a public school.

3) For any child served pursuant to this Section, the school district shall develop a service plan that identifies the services that the district will provide to the child. The plan shall meet the requirements of Section 226.230 of this Part and shall be developed, reviewed, and revised consistent with Sections 226.200, 226.210, 226.220, and 226.530 of this Part.

c) Services may be provided on site at a child's private school, including a religiously affiliated school, to the extent consistent with the provisions of IDEA (20 USC 1413(d)).

d) Transportation to and from a site other than the private school shall be provided if necessary for a child to benefit from or participate in the services offered by the district at that site. This includes transportation from the service site to the private school or to the child’s home, depending upon the timing of services.

e) When a student receives services from a school district pursuant to this Section, the procedural safeguards described in Subpart F of this Part shall be available only with respect to complaints that the district has failed to fulfill the requirements of this Section. The due process requirements of Subpart G of this Part shall not apply.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)
Section 226.530 Parents’ Participation

a) Nothing in this Part precludes routine communication and consultation from occurring among school employees without parents in attendance, 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.

b) Whenever a meeting is to be held which a parent has a right to attend, the requirements of this subsection (b) shall apply.

1) No later than ten days prior to the proposed date of the meeting, except for a meeting convened pursuant to Section 226.400(g) of this Part, the district shall notify the parent(s) in writing of the purpose of the meeting, the proposed date, time, and place for the meeting, who else will be in attendance, and the parent’s right to invite other individuals with knowledge or special expertise regarding the child. If a parent indicates that the proposed date or time is inconvenient, the district shall make reasonable efforts to accommodate the parent’s schedule.

2) If neither parent can attend, the district shall use other methods to attempt to secure at least one parent’s participation, including rescheduling the meeting, individual or conference telephone calls, or use of such other means of communication as may be available.

3) A meeting may be conducted without a parent in attendance if the district is unable to obtain the parent’s participation. In this case, the district shall maintain a record of its attempts to arrange a mutually agreed on time and place, such as:

A) Detailed records of telephone calls made or attempted and the results of those calls;

B) Copies of correspondence sent to the parents and any responses received; and

C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
4) The district shall take whatever action is necessary to facilitate the parent’s understanding of and participation in the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

5) Any document generated during the meeting, including a copy of the IEP, shall be provided to the parent upon request, unless an applicable federal or State statute or federal regulation requires its automatic provision without a request.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

Section 226.540 Consent

a) A parent shall be considered to have given consent only when:

1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;

2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3) The parent understands that his or her granting of consent is voluntary and may be revoked at any time by means of the due process described in Subpart G of this Part.

b) A school district may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required.

c) Parental consent shall be obtained before conducting an initial evaluation of a child. Consent for initial evaluation shall not be construed as consent for initial placement.

d) Parental consent shall be obtained before conducting any reevaluation of a child. If a parent fails or refuses to provide consent for a required triennial reevaluation
within ten days after the district requests it, the district shall request a due process hearing.

e) Parental consent shall be obtained prior to the initial provision of special education and related services.

f) Parental consent shall be obtained prior to the use of the parent’s private insurance to pay for services required by a child’s IEP.

g) Parental consent shall be obtained for the disclosure of personally identifiable information about a child, consistent with the requirements of the Student Records Act.

h) Parental consent shall be obtained for the use of an IFSP instead of an IEP.

i) A parent may revoke consent for any action by the district or cooperative entity serving his or her child that requires parental consent. If a parent desires to revoke consent, he or she shall request a due process hearing in accordance with Subpart G of this Part. If the revocation of consent is communicated orally, the district or cooperative entity shall commit the parent’s request to writing and provide a copy of this written summary to the parent within five days.

j) Any revocation of consent as a result of a due process hearing is effective immediately, subject to the provisions of subsection (k) of this Section, but is not retroactive, i.e., it does not negate an action that occurred after the consent was given and before it was revoked. For purposes of this subsection (j), a district shall be considered to have given immediate effect to a parent’s revocation of consent when it either discontinues the action that is the subject of the revocation prior to its next scheduled occurrence or provides to the parent a written explanation of the timeline for the district’s action and the reasons for that timeline. The district or cooperative entity shall ensure that each staff member whose activities are affected by the revocation of consent is promptly informed of the revocation.

k) If a district disagrees with a parent’s revocation of consent, the district may request a due process hearing pursuant to Section 226.605 of this Part.
1) If the parent’s revocation of consent pertains to an evaluation or re-evaluation of the student, the district shall not proceed with the evaluation or re-evaluation during the pendency of due process.

2) If the parent’s revocation of consent pertains to a special education placement for the student that is already in effect, the district’s request for a due process hearing shall have the effect of staying that placement, provided that the district submits the request in writing to the State Board of Education in keeping with the provisions of Section 226.615 of this Part and within three business days after the parent’s revocation occurred.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

SUBPART G: DUE PROCESS

Section 226.605 Request for Hearing; Basis

A parent, a school district, or a student may request an impartial due process hearing for any reason connected to the identification, evaluation, or placement of, or the provision of services to, a student who is or may be eligible pursuant to this Part. No other party shall have standing to submit such a request. The school district or public agency must insure that all requests or notices pursuant to due process are maintained in a confidential manner consistent with the Illinois School Student Records Act and the rules of the State Board of Education at 23 Ill. Adm. Code 375.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

Section 226.610 Information to Parents Concerning Right to Hearing

a) Each school district shall inform parents in writing of their right to a hearing and of the procedures for requesting one. The district shall notify the parent of the information the parent must provide when requesting a hearing, in one of the following ways:

1) The district may provide the parent with a model form designed by the State Board of Education in accordance with 34 CFR 300.507(c)(1)(v)(3); or

2) The district may inform the parent that the request for a hearing must include the following information:
A) the name of the child;

B) the address of the child’s residence;

C) the name of the school the child is attending;

D) a description of the nature of the problem relating to the proposed or refused initiation or change, including facts relating to the problem;

E) a proposed resolution of the problem, to the extent known and available to the parents at the time; and

F) if known, whether the parents will be represented by legal counsel.

b) The director of special education shall assist parents in taking whatever action is necessary to use the hearing process.

c) The district shall inform the parents of the availability of mediation and of any free or low-cost legal services and other publicly funded advocacy services available in the area if the parent requests the information, or if the parent or the district initiates a hearing.

d) The local education agency may develop procedures that require the parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center in the State that is funded through a federal grant under IDEA.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

Section 226.625 Rights of the Parties Related to Hearings

a) The parties have the right to be represented at their own expense by counsel, or to be represented and assisted by other persons having special knowledge of this Part.
b) The parents may inspect and review all school records pertaining to their child and, subject to the provisions of 23 Ill. Adm. Code 375.50 (Student Records), may obtain copies of any such records at their own expense.

c) The parents shall have access to the district's list of independent evaluators, and may obtain an independent evaluation of their child at their own expense.

1) If the parents believe that acquisition of a completed independent evaluation will require a delay in convening the hearing, the parents shall request such a delay as provided in Section 226.640(c) of this Part.

2) The parents 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 to inform the hearing officer concerning the services to which the student may be entitled, it shall be so ordered and provided at the school district’s expense. The hearing officer shall delay the hearing as provided for in Section 226.640(c) of this Part.

3) This subsection (c) shall not apply to expedited hearings conducted pursuant to Section 226.655 of this Part.

d) Either party to a hearing, other than an expedited hearing conducted pursuant to Section 226.655 of this Part, has the right to the disclosure, at least five days prior to the hearing, of any evidence to be introduced. At least five days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing. Either party may prohibit the introduction of evidence which was not disclosed to that party at least five days prior to the hearing. The hearing officer may reschedule the hearing to permit full disclosure. Disclosure of evidence with respect to an expedited hearing shall conform to the requirements of Section 14-8.02b of the School Code [105 ILCS 5/14-8.02b].

e) Either party may compel the attendance of any school district employee at the hearing, or any other person who may have information relevant to the needs, the abilities, the proposed program, or the status of the student. At the request of either party, the hearing officer shall authorize the issuance of subpoenas to compel the testimony of witnesses or the production of documents relevant to the case at issue. If any person refuses to comply with a subpoena issued under this
Section, court action may be sought as provided in Section 14-8.02a(g) of the School Code [105 ILCS 5/14-8.02a(g)].

f) Pursuant to 34 CFR 300.509(c)(1)(i), the parent has the right to have the child who is the subject of the hearing present at the hearing.

g) Either party, or any other person participating in the hearing, may request that an interpreter be available during the hearing because one of the participants is hearing impaired and/or uses a primary language other than English. **Such interpreters** shall be provided at the school district’s expense.

h) The student’s educational placement shall not be changed pending completion of the hearing except as provided in Section 14-8.02a(j) of the School Code.

i) The hearing officer shall conduct the hearing in a fair, impartial, and orderly manner. The hearing officer shall afford each party an opportunity to present the evidence, testimony, and arguments each party believes necessary to support and/or clarify the issues in dispute and the relief the party is requesting. The hearing officer shall regulate the course of the hearing and the conduct of the parties and their counsel.

j) The hearing shall be closed to the public unless the parents of the child specifically request that it be open. The hearing officer shall advise the parents of their right to have the hearing open to the public. If the parents make such a request, the hearing shall be open. (References to parents in this subsection (j) apply to the student if Section 226.690 of this Part applies.)

k) The parties shall have the right to confront and cross-examine witnesses.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

Section 226.690 Transfer of Parental Rights

a) When a student with a disability reaches the age of majority (18 years of age; see 755 ILCS 5/11-1) or becomes an emancipated minor pursuant to the Emancipation of Mature Minors Act [750 ILCS 5/Art. 11a] (except for a student with a disability who has been adjudged as a disabled person pursuant to 755 ILCS 5/Art. 11a-1 et seq.):
1) The school district shall provide any notice required by this Part to both the individual and the parents, and all other rights accorded to parents under Part B of the Individuals with Disabilities Education Act, the implementing regulations at 34 CFR 300, and this Part shall transfer to the student; and

2) All rights accorded to parents under Part B of the Individuals with Disabilities Education Act, the implementing regulations at 34 CFR 300, and this Part shall transfer to a child who is incarcerated in an adult or juvenile, State, or local correctional institution.

b) Whenever rights are transferred to a student pursuant to this Section, the district shall notify the student and the parents of the transfer of rights.

c) All notices that are required under this Part and 34 CFR 300 shall be provided to the student and the parent after the student reaches the age of majority.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

**SUBPART H: ADMINISTRATIVE REQUIREMENTS**

Section 226.740 Records; Confidentiality

a) Students’ records shall be maintained in accordance with the School Student Records Act [105 ILCS 10] and the rules of the State Board of Education (23 Ill. Adm. Code 375).

b) Each school district shall protect the confidentiality of personally identifiable information during its collection, storage, disclosure, and destruction.

c) All persons collecting or using personally identifiable information shall receive training or instruction regarding the State's and school district’s policies and procedures and the requirements of this Part for ensuring the confidentiality of any personally identifiable information collected, used or maintained.

d) Each school district shall maintain, for public inspection, a current listing of the names and positions of those employees within the local school district who may have access to personally identifiable information.
Parents shall be afforded the opportunity to inspect, review, and copy all educational records with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. Each school district shall provide parents on request a list of the types and locations of educational records collected, maintained, or used by the agency. If any educational record includes information on more than one child, the parents of any of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

The portion of each district’s policies and procedures that is required pursuant to Section 226.710(b)(3) of this Part shall require that all information maintained concerning a student receiving special education be directly related to the provision of services to that child and shall address:

1) the method by which information concerning a student will be collected;

2) the confidential nature of such information;

3) the use to which such the information will be put;

4) how such the information will be recorded and maintained;

5) the period for which such the information will be maintained;

6) the persons to whom such the information will be available; and

7) under what circumstances such the information will be made available.

The portion of each district’s policies and procedures referred to in subsection (f) of this Section shall be consistent with:

1) The Illinois School Student Records Act;

2) 23 Ill. Adm. Code 375 (Student Records);

3) 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision);

4) The Family Educational Rights and Privacy Act; and

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

Section 226.770 Fiscal Provisions

a) Requirements Related to the Provision of FAPE

1) A school district is responsible for developing students’ IEPs and remains responsible for ensuring that children receive all the services described in their IEPs in a timely fashion, regardless of whether another agency will ultimately pay for the services.

2) A school district may look to non-educational entities such as insurance companies and the Medicaid program to pay for services for which such entities are otherwise responsible. The district must have written consent from parents in order to use their private insurance.

3) Services required by an IEP must be provided at no cost to the child's parents, whether they have public or private insurance. Parents shall be notified that the use of their private insurance proceeds to pay for services is voluntary. In the case of a child who is dually insured (through private insurance and Medicaid), a family shall not be required to draw upon private insurance whose use is a prerequisite to billing Medicaid if that use of insurance will result in financial costs to the family.

4) “Financial costs to the family” include:

   A) Out-of-pocket expenses incurred in filing a claim, such as the payment of a deductible or required co-payment, but not including incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim;

   B) A decrease in available lifetime coverage or any other benefit under an insurance policy;

   C) Payment by the family for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
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D) An increase in premiums or the discontinuation of a policy; and

E) A risk in terms of loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

b) The federal regulations implementing the Individuals with Disabilities Education Act (see 34 CFR 300) establish detailed requirements for the use of federal funds in connection with service to students who are eligible under this Part. School districts and cooperative entities are required to comply with those federal requirements.

c) School districts and cooperative entities shall use federal matching funds received under Medicaid or the KidCare program only to supplement special education programs and services. Each school district or cooperative entity shall submit an annual record of its expenditures of these funds on a form supplied by the State Board of Education.

d) Computation of Reimbursement Under Section 14-7.03 of the School Code

The amount of reimbursement for which a district shall be eligible under Section 14-7.03 of the School Code shall be computed by determining the actual cost of maintaining the program in accordance with the State Board’s rules for Determining Special Education Per Capita Tuition Charge (23 Ill. Adm. Code 130), as further specified in this subsection (d).

1) The district’s cost for administration and supervision shall be computed based on the relationship that the average daily membership of children in special education classes bears to the district’s total average daily membership.

2) The cost of buildings and facilities shall not exceed 10% of the expenditures for classes.

3) All payments authorized by law, including State or federal grants for the education of children, shall be deducted when program reimbursement or per capita tuition is calculated.

4) The total reimbursement for a child who is living in a residential care facility and who has been placed in a nonpublic special education program
by the responsible district shall not exceed the amount authorized under Section 14-7.02 of the School Code.

e) Eligibility of Students for Funding Under Section 14-7.03 of the School Code

1) A student who meets the requirements of Section 14-1.11a(5) of the School Code [105 ILCS 5/14-1.11a(5)] is eligible for reimbursement under Section 14-7.03 of the School Code if he or she:

   A) is a resident of one of the residential care facilities described in Section 226.320 of this Part;

   B) would not be a resident of that school district except by virtue of his or her placement in one of the residential care facilities described in Section 226.320(a) of this Part; and

   C) has been declared eligible for special education and related services pursuant to this Part.

2) A student who has been declared eligible for special education and related services pursuant to this Part and is living in a State residential unit or county-operated detention center is eligible for reimbursement under Section 14-7.03 of the School Code.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)

SUBPART I: PERSONNEL

Section 226.800 Personnel Required to be Qualified

a) General

1) Each school district, or the cooperative entity of which it is a member, shall employ sufficient professional and noncertified personnel to deliver and supervise the full continuum of special education and related services needed by the eligible students who reside in the district. The number and types of personnel employed shall be based on students’ need rather than administrative convenience.
2) Each district or cooperative entity shall periodically submit to the State Board of Education, on forms supplied by the State Board, the roster of the individuals who will be or are providing special education or related services. The State Board may request any additional documentation needed in order to verify that each such individual holds the qualifications that are required for his or her assignment(s).

3) Reimbursement for personnel expenditures shall be made by the State Board only with respect to individuals who are qualified pursuant to this Section or pursuant to Section 226.810 or 226.820 of this Part.

4) Each district or cooperative entity shall develop and implement a comprehensive personnel development program for all personnel involved with the education of children with disabilities.

b) Professional Instructional Personnel

Each individual employed in a professional instructional capacity shall hold either:

1) a valid special certificate and the qualifications required for the teaching area pursuant to 23 Ill. Adm. Code 25.40 and 25.43; or

2) another valid teaching certificate and approval issued by the State Board of Education specific to the area of responsibility (see Section 226.810 of this Part).

c) An individual assigned as a vocational coordinator shall be required to hold approval for this position, which shall be granted provided that the individual submits an application demonstrating that he or she:

1) have has two years’ teaching experience;

2) hold holds either a special preschool-age 21 certificate or a high school certificate; and

3) have has completed at least 16 semester hours of college coursework, which shall at least include each of the areas identified in subsections (c)(3)(A) through (D) and may include one or more of the areas identified in subsections (c)(3)(E) through (I) of this Section:
A) Survey of the exceptional child;
B) Characteristics of the mentally retarded student;
C) Characteristics of the socially and/or emotionally maladjusted student;
D) Vocational programming for students with disabilities;
E) Characteristics of other exceptionalities;
F) Methods course in special education;
G) Guidance and counseling;
H) Educational and psychological diagnosis;
I) Vocational and technical education; and

4) submit evidence of meeting the requirements of this subsection (c) under cover of an application form supplied by the State Board of Education.

d) An individual assigned as a teacher coordinator shall be required to hold approval for this position, which shall be granted provided that the individual submits an application demonstrating that he or she:

1) hold holds either a special preschool – age 21 certificate endorsed for the disability area of assignment or a high school certificate with special education approval in the applicable disability area issued pursuant to Section 226.810 of this Part;

2) have has completed a course in vocational programming for students with disabilities; and

3) have has at least one year’s work experience outside the field of education or have has completed at least one course in either guidance and counseling or vocational and technical education; and
4) submit evidence of meeting the requirements of this subsection (d) under cover of an application form supplied by the State Board of Education.

e) An individual assigned as a business manager’s assistant shall hold an administrative certificate endorsed for chief school business official pursuant to 23 Ill. Adm. Code 25.344.

f) Qualified Bilingual Specialists

Professional staff otherwise qualified pursuant to this Section shall be considered “qualified bilingual specialists” if they meet the applicable requirements set forth in this subsection (f).

1) A holder of a special certificate endorsed in the area of responsibility pursuant to 23 Ill. Adm. Code 25.40 or 25.43 shall successfully complete a language examination in the non-English language of instruction and shall have completed coursework covering:

A) Psychological/educational assessment of students with disabilities who have limited English proficiency;

B) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition; and

C) Methods and materials for teaching students of limited English proficiency or students with disabilities who have limited English proficiency.

2) A holder of an early childhood, elementary, or high school certificate who also holds special education approval in the area of responsibility (see Section 226.810 of this Part) shall successfully complete a language examination in the non-English language of instruction and shall have completed the coursework listed in subsections (f)(1)(A), (B), and (C) of this Section.

3) A holder of an early childhood, elementary, or high school certificate who also holds approval to teach bilingual education or English as a second language shall have completed coursework covering:
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A) Methods for teaching in the special education area of assignment;

B) Psychological/educational assessment of students with disabilities who have limited English proficiency, or psychological diagnosis for children with all types of disabilities; and

C) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.

4) A holder of a transitional bilingual certificate issued pursuant to 23 Ill. Adm. Code 25.90 and endorsed for the language of assignment shall have completed two years of successful teaching experience and have completed coursework covering:

A) Survey of children with all types of disabilities;

B) Assessment of the bilingual student, or psychological/educational assessment of the student with disabilities who has limited English proficiency;

C) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition;

D) Methods for teaching in the special education area of assignment; and

E) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.

5) A holder of a school service personnel certificate endorsed for guidance, school social work, or school psychology shall successfully complete an examination in the non-English language and shall have completed coursework in assessment of the bilingual student or psychological/educational assessment of the student with disabilities who has limited English proficiency.
g) Directors and Assistant Directors of Special Education

Each school district, or the cooperative entity of which it is a member, shall employ a full-time director of special education, who shall be the chief administrative officer of the special education programs and services of the district or cooperative entity. The provisions of subsections (g)(1) and (2) of this Section shall apply through June 30, 2005. Beginning July 1, 2005, directors and assistant directors of special education shall be subject to the requirements of 23 Ill. Adm. Code 29.140 and 29.150.

1) Each director or assistant director of special education shall hold a valid administrative certificate issued pursuant to 23 Ill. Adm. Code 25.315 and a master’s degree, including 30 semester hours of coursework distributed among all the following areas:

A) Survey of exceptional children;

B) Special methods courses (3 areas of exceptionality);

C) Educational and psychological diagnosis and remedial techniques;

D) Guidance and counseling; and

E) Supervision of programs for exceptional children.

2) Each individual who will function as a director or assistant director of special education shall submit an application for special education administrative approval on a form supplied by the State Board of Education.

3) Each school district, or the cooperative entity of which it is a member, shall employ a full-time director of special education and shall submit to the State Board of Education a letter identifying the individual employed as the director of special education, along with the minutes of the board(s) of education approving the individual’s employment in that capacity. If the individual is qualified as required, the State Board shall confirm that the individual is the State-approved director of special education for the district or cooperative entity.
The individual employed pursuant to subsection (g)(3) of this Section shall be the chief administrative officer of the special education programs and services of the district or cooperative entity.

h) Supervisors

1) Each district or cooperative entity shall employ sufficient supervisory personnel to provide consultation to and coordination of special education services.

2) Each individual performing a supervisory function shall hold a master’s degree, including at least 15 semester hours of coursework distributed among all the following areas:

A) Survey of exceptional children;

B) Characteristics course(s) courses in the area(s) areas to be supervised;

C) Methods course(s) courses in the area(s) areas to be supervised;

D) Educational and psychological diagnosis and remedial techniques; and

E) Supervision of programs for exceptional children.

3) Each individual performing a supervisory function shall also hold either:

A) a valid special certificate in the area to be supervised, endorsed for supervision pursuant to 23 Ill. Adm. Code 25.322, with two years’ teaching experience in that area; or

B) a valid school service personnel certificate, endorsed for supervision and two years’ experience in the area to be supervised, and a valid administrative certificate; or

C) a valid administrative certificate and either a valid special certificate endorsed for the area to be supervised or special education approval in that area.
i) Chief Administrator of Special School

The chief administrator of a special school shall hold an administrative certificate with a general administrative endorsement issued pursuant to 23 Ill. Adm. Code 25.344 and either:

1) the qualifications required under 23 Ill. Adm. Code 25.43 in at least one disability area served by the school; or

2) approval issued by the State Board of Education pursuant to Section 226.810 of this Part for at least one disability area served by the school.

j) Other Professional Personnel

Each individual employed in a professional capacity not specified in subsections (a) through (i) of this Section shall, as appropriate to his or her assignment, hold:

1) the school service personnel certificate endorsed as appropriate to the area of responsibility (see 23 Ill. Adm. Code 25, Subpart D); or

2) a valid license or permission to practice, if the individual’s profession is governed by such a requirement and either no educational credential in the same or a related field is issued by the State Board of Education (e.g., for a physical therapist) or the School Code permits the individual to perform the function(s) assigned; or

3) a credential, regardless of title, issued by a professional association or organization in the relevant field, when no educational credential in the same or a related field is issued by the State Board of Education and no license or permission to practice is required by the State (e.g., for a music therapist or a daily living skills specialist).

k) Noncertified Personnel

1) Each noncertified professional individual employed in a special education class, program, or service, and each individual providing assistance at a work site, shall function under the general direction of a professional staff member.
2) Each program assistant/aide, as well as each nonemployee providing any service in the context of special education, shall function under the direct supervision of a professional staff member.

3) Each district shall provide training experiences appropriate to the nature of their responsibilities to the individuals discussed in subsections (k)(1) and (2) of this Section. Such training shall be in lieu of the requirements for noncertified personnel set forth in 23 Ill. Adm. Code 1, Subpart G.

(Source: Amended at 27 Ill. Reg. _____, effective _____________)