TO: Illinois State Board of Education

FROM: Christopher A. Koch, Ed.D., State Superintendent of Education (Interim)
Darren Reisberg, General Counsel

Agenda Topic: Action Item: Rules for Adoption - Part 226 (Special Education)

Materials: Recommended Rules

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Purpose of Agenda Item
The purpose of this agenda item is to present the amendments to Part 226 for the Board’s adoption.

Relationship to/Implications for the State Board’s Strategic Plan
Amendments to Part 226 are necessary as a result of Reauthorization of the Individuals with Disabilities Education Improvement Act and are also relevant to Goal 1, Enhancing Literacy.

Expected Outcomes of Agenda Item
The Board will be asked to adopt a revised version of the amendments to Part 226.

Background Information
The State Board of Education is required by the U.S. Department of Education to ensure that relevant regulations are reconciled with the reauthorized Individuals with Disabilities Education Improvement Act (IDEIA) (also referred to as IDEA 2004) and its implementing regulations by no later than June 2006.

Notably, IDEA 2004 requires that each State receiving funds “identify in writing to local educational agencies located in the State and the Secretary [of USDE] any . . . rule, regulation or policy as a State-imposed requirement that is not required by this title and Federal regulations” and “minimize the number of rules, regulations and policies to which the local educational agencies and schools located in the State are subject under this title.” [20 U.S.C. § 1407(a)(1)&(3)]

As a result, a primary strategy in revising Part 226 has been to reference the federal regulations instead of parroting their language and to reserve substantive text in Part 226 for those circumstances where we are making a conscious decision either to provide more detail or to offer more protection to students with disabilities than federal law provides. As has been discussed previously, specific Illinois provisions related to transition plans, short-term measurable objectives in students’ individualized education programs, and case load/class size are examples of these instances.
In conjunction with the withdrawal of the earlier version, these proposed amendments were presented for the Board’s initial review in February of this year. They were subsequently published in the Illinois Register to elicit public comment. A period of 180 days was allotted for the public comment period, during which nine public hearings were held and more than 450 items of correspondence were received. As expected, a small number of issues drew the great bulk of the comments, and many other suggestions and criticisms were received on other individual points. A detailed summary and analysis of these points is attached.

**Analysis and Implications for Policy, Budget, Legislative Action and Communications**

**Policy Implications:** Please see above.

**Legislative Action:** Concurrently with this rulemaking, ISBE has been pursuing legislative action connected to the due process system and several other aspects of special education. SB 2796 has now passed out of both houses of the General Assembly and awaits the Governor’s signature.

**Communication:** Please see “Next Steps” below.

**Superintendent’s Recommendation**

The Superintendent recommends that the State Board of Education adopt the following motion:

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

Special Education (23 Illinois Administrative Code 226).

Further, the Board authorizes the State Superintendent of Education to make such technical or non substantive 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 amendments 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.
Two principal issues were raised in conjunction with the approach ISBE had taken to this rulemaking, and a number of comments were received on both these main points. There were objections to the agency’s having issued proposed amendments prior to the availability of the final federal regulations, and there were objections to the truncated format used that relies mainly on cross-references to the federal regulations. Beyond these, a number of communications simply urged the State Board to stop the process or not to adopt this rulemaking, without giving any specific reason or identifying the issue that had caused the authors to be concerned.

On the first issue, commenters noted that some other states were waiting until the federal regulations were final and indicated that this process would allow stakeholders to ensure that their states’ rules would build on the final specifics. It was some commenters’ opinion that, because the federal rules did not become final until August 14, the nine public hearings the agency held had not provided an ample opportunity to provide meaningful comment, ensure congruence with federal requirements, and suggest appropriate amplification. Some characterized ISBE’s rulemaking as premature or hasty, and others stated that interested parties should not have to juggle rules with virtually no content and the federal regulations.

It was thought to be more efficient to await publication of the final federal regulations, both because issues might arise in that final version that had not been previously apparent and because concerns with the proposed federal regulations might no longer be relevant once the final version was available. Several commenters also objected to the level of input they or the groups they represented had into the formulation of ISBE’s proposed amendments, stating that experienced stakeholder groups should be included as fully informed participants. Some urged ISBE to restart the rulemaking process and hold additional hearings.

Numerous commenters described the streamlined format as incomplete, confusing, annoying, impractical, or inefficient. Concern was expressed for the viability of the rules as a functional tool for users, and numerous requests were included for a return to the prior, narrative approach or for a side-by-side presentation of the relevant federal provisions with the state rules. The complex legalities involved were stated to need “the greatest possible clarification” to promote true understanding and compliance.

Related comments indicated that the amount of paper needed to answer the questions that would arise from the streamlined version would outweigh the savings. The lack of clarity might be found to be depriving students of free and equal access under the Constitution. Other commenters stated that this version of the rules “deleted almost all of the unique Illinois rules developed to meet Illinois problems”. “What if federal rights change?” more than one commenter asked. In addition, it was thought unjust to require access to so many documents because of the cost associated with advocating for students’ and parents’ rights under those circumstances. Some apparently believed redress would only be available at the federal level because of the way the rules were written. It was also pointed out that “lack of trust is at the root of due process”, and the writer’s opinion was that this approach to the rules would make that problem worse and draw ISBE into controversies.
Several respondents believed that the earlier versions of Part 226 contained all federal requirements as well as those arising separately from the state level and therefore afforded the reader complete information, meaning that no other documents would need to be consulted. They therefore considered the more detailed versions to be more parent-friendly and particularly to give parents more useful information on what their rights and the required procedures were. The motivation for causing readers to need multiple reference points was not understood, given that this approach was not required by USDE. It was also stated that use of the new format assumes that the reader has the “luxury of time” to consult the federal regulations. ISBE’s goal should be to ensure ready access for ease of understanding. Section 226.180 (Independent Educational Evaluation) was cited as an example of how much material it might take to glean the same points that one page of rules now provides.

On a related note, it was proposed that a complete list of all federal regulations referred to in Part 226 be added to the beginning of the document. Several suggestions emphasized additional documents that would need to be developed and available, or which ISBE should require districts to disseminate. The Illinois School Student Records Act, the School Code, and the Parents’ Rights Handbook were mentioned as examples. Other commenters understood the desire to minimize the volume of the rules but wanted to ensure that the necessary information would be readily available in some other format. These individuals were concerned that access to the information would be guaranteed so that compliance review would be possible. Along the same lines, it was thought that considerable additional funding should be made available for parent training centers and other training efforts for “many years” so that parents could navigate among the various documents.

Finally, one commenter noted errors in cross-references and expressed surprise that these had not been noticed and corrected.

Analysis

Process

We believe that the relationship of ISBE’s rules to the federal regulations is not well understood in several respects, as evidenced by many of the comments described above. There are several points that should be borne in mind in this connection.

First, there were few significant differences between the proposed and the final federal regulations. Even if there had been numerous substantive changes, however, members of our audiences were mistaken if they expected an opportunity to provide input leading to changes in ISBE’s rules where those reflect the federal regulations. This is because ISBE would be bound by the final version, regardless of any comments we might receive. This also means we are obligated to make a careful comparison to ensure that our rules correctly reference and correspond to the final version of the federal regulations. That comparison would be made whether or not there were any comments about it. We acknowledge that some cross-references need to be corrected now that the final version is available, and those are included in our recommendations presented below.

There also appears to have been unnecessary confusion as to the elimination of federally accorded rights and protections in the streamlined version. It should be clear that these certainly continue to apply, since they are not dependent upon regulation at the state level. Additionally, the great volume of concerns identified through public comment addressed provisions that are unique to Illinois and not dependent upon federal requirements – particularly case load and class size. No one’s feedback on that aspect of the rules was dependent upon
the issuance of the final federal regulations, because that issue is not addressed at the federal level.

We should note that the USDE’s deadline for having our final rules in effect is June of 2007. The current rulemaking process will take until at least late January to complete, and possibly somewhat longer. ISBE will be able to comply with USDE’s deadline on that basis. Had we started a new rulemaking after reviewing the final federal regulations, there would be no difference in the meaning of the vast majority of Part 226, no reason for different comments to be submitted on those portions not related to the federal regulations, and no more than the standard 45-day period available for public comment if the federal deadline were to be met. At the present time, the deadline could not be met with a new rulemaking. For these reasons, we do not agree that there is anything to be gained by starting the rulemaking process over.

Format
Despite many readers’ assumptions that Part 226 provided all information relevant to their questions on special education, this has never actually been the case. It should be understood that numerous determinations and requirements that flow from case law have never been captured in the administrative rules. Thus it is erroneous to assume that Part 226 could serve as a definitive “one-stop shop” where special education is concerned.

The approach that we have taken to the re-drafting of these rules, while not explicitly required as such by USDE, does provide a clear means of complying with the federal directives to “identify in writing to local educational agencies located in the State and the Secretary [of USDE] any . . . rule, regulation or policy as a State-imposed requirement that is not required by this title and Federal regulations” and “minimize the number of rules, regulations and policies to which the local educational agencies and schools located in the State are subject under this title.” We do not believe a return to the previous drafting approach is necessary, in that all rights and protections afforded by federal law and regulations continue in force and those that are provided under ISBE’s authority are expressly stated.

This is not to say we cannot appreciate the need of various audiences for explanatory materials presented in user-friendly formats, and we recognize ISBE’s obligation to ensure the availability of that material. Work has already begun on a document that will present these rules side by side with the federal regulations they reference, and the need for additional materials targeted at specific audiences such as advocates and parents has been duly noted.

Note: The use of strikethrough and underlining in the recommendations that follow displays the suggested changes against the language originally proposed, rather than against the language currently in effect.

COMMENTS ON TERMINOLOGY

Comment
Several terms used in Part 226 were identified as having negative connotations and reflecting insensitivity. These included “mental retardation”; “emotional disturbance”, and “regular education”. It was suggested that these be replaced with “cognitive disability”, “emotional disability”, and “general education”. 

Note: The use of strikethrough and underlining in the recommendations that follow displays the suggested changes against the language originally proposed, rather than against the language currently in effect.
Analysis
Based on the comments received, we agree that “mental retardation” and “emotional disturbance” should be exchanged for expressions with fewer negative connotations. Additionally, we should use “general education” interchangeably with “regular education” and make clear that they both have the same meaning.

Recommendation
The terms “mental retardation” and “emotional disturbance” should be changed as recommended in the title of Section 226.135, in the definition of “disability”, and in Section 226.731(b). Specific instances involving “regular education” will be identified in sequence below.

Comment
One commenter expressed reservations about using the word “agree” in place of “consent”, feeling that parents’ rights are better protected when the latter word is used.

Analysis
We reviewed the entire text of the rules to check the usage of “agree” and found that each instance is appropriate. Nowhere is actual parental consent characterized as “agreement”, and much of the affected text deals with parties agreeing among themselves about a particular action such as delaying a hearing, where “consent” is not involved. Further, many of the instances of “agree” occur in language that is being eliminated.

OTHER GENERAL COMMENTS
A variety of additional comments were submitted that did not relate to any specific portion of the rules:

- ISBE was challenged to devote energy to improvements in services instead of revising things that had not proven to be unsuitable.
- One commenter recommended a general provision requiring that the rules be construed to effectuate the intent of IDEA and ensure FAPE for all students, while another noted a preference for a statewide electronic IEP format.
- It was stated that there need to be consequences for teachers and administrators so they will follow the rules and that they must be held accountable for doing so.
- The importance of interpreters for deaf students was emphasized by a commenter who stated that they should be certified.
- One commenter thanked ISBE for the opportunity to provide input prior to preparation of the proposed rules.

Analysis
Because Part 226 is specifically stated to implement IDEA 2004 and its implementing regulations, there is no need to indicate additionally that it must be construed to effectuate the intent of IDEA. Also, recent rulemaking has put in place requirements for the qualifications of interpreters for deaf students; see 23 Ill. Adm. Code 25.550. These do not represent “certification” per se, but approval specific either to sign language interpreting or to cued speech interpreting will be issued.
TECHNICAL CORRECTIONS NEEDED

The following is a list of the references to the federal regulations that need to be updated now that the final version is available. These are identified according to the order in which they appear in the rules.

- In Section 226.10, “as proposed June 21, 2005, on page 35782 of the Federal Register” should be deleted; the simple reference to 34 CFR 300 is sufficient now that the regulations are final.
- In the definition of “Special Education”, the correct reference is to 34 CFR 300.39.
- In the definition of “Supplementary Aids and Services”, the correct reference is to 34 CFR 300.42.
- In the definition of “Transition Services”, the correct reference is to 34 CFR 300.43.
- In Section 226.130, 34 CFR 300.307 should be listed among the provisions referenced.
- In Section 226.300, the correct references are to 34 CFR 300.39 rather than 300.38.
- In Section 226.350, the correct cross-reference is to Section 226.100 rather than Section 226.110.
- In Section 226.570, the correct reference will include not only 34 CFR 300.151 but also 300.152 and 300.153.
- In Section 226.750, “Extended School Year Services” is the correct identifier for the reference to 34 CFR 300.106.

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COMMENTS ON INDIVIDUAL PROVISIONS

Section 226.10 Purpose

Comment
It was suggested that the phrase “treatment of children” in the first line of this Section be replaced with “identification, evaluation, and placement of children with disabilities”, and that the phrase “to eligible children” be inserted after “and the provision of special education and related services”. It was also noted that the reference to the proposed federal regulations needs to be updated.

Analysis
We can only assume “treatment” was considered by the commenter to convey a medical connotation and therefore thought inappropriate. This is existing language, used in the current version of the rules to capture all the actions that are taken with respect to the students who are the subject of this Part. We do not agree that the phrase “identification, evaluation, and placement” is equally comprehensive, since it does not encompass aspects such as discipline, for example. We also believe it is redundant to refer to “eligible children” since special education may only be provided to children who are eligible. We do not see that useful meaning would be added by this revision. (We do, of course, agree about the need to revise the cross-reference, as noted above.)

Recommendation
No further changes are needed in response to this comment.
Section 226.50  Requirements for a Free Appropriate Public Education (FAPE)

Comment
It was requested that ISBE restore all the deleted language in subsection (a) of this Section. The commenter stated that it was imperative to retain those provisions since schools often fail to take into consideration the needs of families from non-English backgrounds. It was asserted that emphasis on these requirements would “further comply” with Executive Order 13166 and with OCR’s guidance to schools serving national origin minority students.

Analysis
The language being discussed here has stated requirements related to districts’ obligations for creating public awareness of special education and advising the public of the rights of students with disabilities, including making information available annually and in all the major languages represented in the district. Because these detailed requirements are not found in federal law or regulations, we continue to believe they should be eliminated in keeping with our obligation and commitment to minimize the number of rules to which districts are subject.

Recommendation
No change should be made in response to this comment.

Comment
One individual indicated that the concept set forth in Section 226.50(a)(1)(A) was a good one, since a transfer student might very well have a current and appropriate IEP and there would be no need for an IEP meeting.

Analysis/Recommendation
No change is called for by this comment.

Comment
Section 226.50(a)(1)(B) was thought to be too vague as to whether what is required to be accomplished within 10 days is an IEP meeting or provision of notice of the date of the meeting.

Analysis
The language of this rule, both in its existing form and in the proposed revision, refers to “initiating” an IEP meeting. The proposed version goes on to state that the district must do so within 10 days after the child’s enrollment, “by providing written notice to the parent of the proposed date...” We are uncertain how this language could be interpreted to mean that the meeting must be held within the 10-day timeframe. However, perhaps a slightly different organization of the information would make the intended meaning clearer. At the same time, the internal cross-reference needs to be corrected so the intended notice will be cited.

Recommendation
The proposed version of Section 226.50(a)(1)(B) should be revised as shown below.

B) If the district does not adopt the former IEP and seeks to develop a new IEP for the child, it must initiate an IEP meeting within ten days after the date of the child’s enrollment the district must provide by providing written notice to the parent including of the proposed date of the IEP meeting, in conformance with Section 226.530 226.520 of this Part. While.....
Comment  
Several possible edits were identified that would not change or add meaning and were presumably intended just for the sake of clarity. This communication also displayed the complete deletion of subsections (a)(2)(A), (B), and (C) of this rule without providing an explanation for the commenter’s desire to see those provisions eliminated.

Analysis  
The suggested clarifications are generally self-explanatory and, with one exception, should be integrated into the rule (see below). The revision that we do not believe should be accepted would be to expand subsection (a)(2) to state that “the child shall be enrolled, provided special education and related services, and served in the setting that the receiving district believes will meet the child’s needs until a copy of the current IEP is obtained or a new IEP is developed…” This change would alter the meaning of this existing rule by imposing an absolute requirement to provide special education and related services before the receiving district might know what is needed. We believe the flexibility afforded by the current version is necessary so that districts will be able to comply. That is, while the child may not remain “without services”, it is up to the district to determine what services are appropriate while receipt of the IEP is pending.

It may have been the commenter’s point of view that insertion of this language would make subsection (a)(2)(A) redundant so that it should be deleted. (“In no case shall a child be allowed to remain without services during this interim.”) However, we believe that that subsection, as well as subsections (a)(2)(B) and (C), should be retained. The latter two in particular establish time limits within which the receiving district must act to resolve the sending district’s failure to communicate regarding the content of the IEP. These requirements pick up where those established under the Illinois School Student Records Act leave off, ensuring that either records are received or a new IEP is developed timely.

Recommendation  
Several minor revisions should be made to Section 226.50.

- The introductory sentence should be made more complete by referring to, “A “free appropriate public education” (“FAPE” FAPE) as defined……”
- Subsection (a)(1) should be introduced with, “In the case of an eligible a student transferring…”
- Subsection (a)(1)(a)(i) should provide, “the parents indicate, either orally or in writing, satisfaction with the current IEP…”
- Subsection (a)(2) should be revised to provide, “If the new school district does not receive a copy of the child’s current IEP or a verbal or written confirmation of the requirements of that IEP…”

Comments  
Opposition was expressed from representatives of administrators and school districts to the extension of eligibility through age 21, inclusive, in Section 226.30(c)(1). The additional cost was given as the reason for this position; commenters noted that the affected students would preponderantly be those who require more expensive programming. In some cases nearly a full year’s eligibility would be added. These commenters questioned why ISBE would want to extend services beyond the federally required time period and indicated that the current provision permitting students who reach age 21 during a school year to complete the year is sufficient. They stated the belief that this would match the intent of the federal provision, i.e., to ensure that each child would receive an education up to age 21.
Another issue raised by these respondents was the disruptiveness of having students leave school other than at “natural breaks”. This might make the transition more difficult for them, and those affected would be those who most need consistency. Examples were given such as the abrupt termination of services by job coaches. The existing version of the rule was stated to be more educationally sound. The ramifications of this change with regard to collective bargaining agreements were also brought out, since certain individuals’ services might no longer be needed from one day to the next. In terms of equity for students, a parallel was drawn between the current rule and the requirement that students turn five years of age by September 1 in order to be eligible for kindergarten in that school year.

The other side of this issue was emphasized by parents, who indicated that the change would be very helpful to their children because every extra amount of time made a difference. The continuation of services through age 21 was stated to be very necessary, “especially in a state so woefully lacking in support and services for adults”. Another commenter believed that the proposed change would increase equity for all students, illustrating this point with the cases of two students with August 1 and September 1 birthdays. The former would turn 21 outside a school year and receive no further services, while the latter would turn 21 during a school year and receive services throughout that year. In this context, the importance of transition planning was highlighted.

**Analysis**

As Section 226.50(c)(1) notes, 34 CFR 300.101(a) governs the provision of FAPE through age 21 to students who require continued services. That federal regulation provides, “A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 300.530(d).” Thus the proposed Illinois rule accurately conveys the current federal requirement.

**Recommendation**

No change should be made in response to these comments.

**Comment**

Restoration of the phrase “or its equivalent” at the end of subsection (c)(2) was requested on the basis that the proposed deletion would result in continued eligibility for students under age 22 who have earned a GED.

**Analysis**

Subsection (c)(2) as proposed states, “The provision of FAPE is not required with respect to a student with a disability who has graduated with a regular high school diploma or its equivalent.” This change in the existing rule reflects the provisions of 34 CFR 300.102(a)(3)(i) (Limitation – exception to FAPE for certain ages), which excepts “children with disabilities who have graduated from high school with a regular high school diploma” from the district’s obligation to make FAPE available. Further language at 34 CFR 300.102(a)(3)(iv) specifies that the term “regular high school diploma” does not include a GED. Pursuant to that language, the obligation does exist for those through age 21 who have earned a GED, and ISBE would lack the authority to continue making that exception.

**Recommendation**

The requested change should not be made.
Comment
It was requested that the proposed change, “eligible for grant a regular high school diploma” (subsection (c)(3)) be reversed. The commenter stated that “granting” is “philosophically” more appropriate. The commenter went on, “Please clarify what happens for students with severe needs relative to the eligibility for a diploma.”

In a similar vein, another commenter expressed agreement with the “Brittney’s Law” component of Section 226.50(c)(4) distinguishing participation in a graduation ceremony from receipt of a diploma. However, this individual recommended a clearer definition of the students who would have the option to receive regular diplomas, stating that otherwise students with more significant disabilities would still be “fighting” for that.

Analysis
Subsection (c)(3) must be read in conjunction with the points that follow in subsections (c)(3)(A) and (B). The thrust of subsection (c)(3)(A) is to indicate that a regular diploma will not be issued if the student continues to need services. This is arranged so as to preserve the student’s right to those services, which would cease upon the receipt of the regular diploma. It would be contradictory to state in subsection (c)(3) that a diploma shall be granted, because that would eliminate the possibility for the flexibility given in subsection (c)(3)(A). In other words, the point is not to “inflict” a diploma on a student who would be better served by not receiving it. It should not be necessary to add that the student will still “be eligible for” a regular diploma at any subsequent time when the termination of special education and related services is appropriate. Then the diploma can be granted without detriment to the student. On this basis we continue to believe that the word “eligible” is apropos in this rule.

We do not believe a rule can be written that would cover “what happens” regarding receipt of a diploma when a student has severe needs. A regular diploma is issued when a student completes all requirements for graduation and not otherwise. The commenter may have intended to seek insertion of a statement to the effect that all students with disabilities, including those with the most severe disabilities, are eligible to participate in graduation ceremonies when they have completed four years of high school. Because this is explicitly stated in Section 14-16 of the School Code, no further explanation is needed in the rule.

Recommendation
No changes should be made in response to these comments.

Comment
A set of specific suggestions was submitted for provisions to be added to this rule as a new subsection (e) addressing students with disabilities who also have cognitive ability in the gifted range (referred to as “twice exceptional” or “2e” students). These provisions would:
- prohibit discrimination against twice exceptional children in the provision of FAPE;
- require districts to ensure that neither gifted services nor special education services are denied to students who qualify for both;
- require districts to ensure the same level of enrichment or acceleration as is accorded to students of similar cognitive ability who are not disabled;
- provide for special education services off-site at a school for gifted students or other flexible arrangements;
- allow parents to seek reimbursement for private placements when they believe districts have failed to provide FAPE; and
permit part-time home schooling at the parents' request if the school does not provide a “research-based FAPE” for twice-exceptional students.

Related recommendations were made with respect to Sections 226.130, 226.150, 226.170, 226.300, 226.310, 226.350, and 226.430, which will be discussed in sequence below. This commenter stressed that the provision of FAPE to a twice exceptional student rests on access to gifted services, because the child needs help developing his strengths in order to help overcome his disabilities. She explained that, if the giftedness is ignored, other interventions cannot be successful. Substantial concern was expressed for situations in which giftedness is masked by disability and not discovered because of lack of understanding, in particular in light of the loss of the affected students’ potential contributions.

A dozen or more other commenters wrote to express support for the points raised by this first individual.

Analysis
The points discussed above have also been raised with respect to the pending rulemaking for Gifted Education (Part 227) that is being presented for adoption in this Board packet. In an ideal world, following the existing requirements for evaluation of and service to students with disabilities would result in the identification of concomitant giftedness and the provision of programming tailored to address both sets of needs. Discussions and comments have made it very clear, however, that this ideal is not being attained, due at least in part to lack of awareness, collaboration, and training.

The solution to this dilemma is far from clear, given that the right to FAPE already exists for all students who are eligible for special education, including those who are also gifted, and does not need to be created through rulemaking. Similarly, all the existing procedural safeguards apply equally to these students and their parents, so it should not be necessary to create separate means of redress.

We have gathered from the comments that the root of the problem lies more in lack of training and resources than in anyone’s disinclination to provide appropriate services, and we need to avoid writing punitive requirements with which districts cannot comply. Instead, it would seem more productive to focus efforts and resources, where possible, on training and capacity-building.

Recommendation
No changes should be made in the rules in response to these comments.

Comment
The addition of statewide eligibility criteria was recommended for the purpose of establishing consistency and continuity, as opposed to the “varied adaptations of federal definitions” cited by the commenter. This would afford all Illinois students equal opportunity and access to services, as well as continuity when residence changes.

Analysis
This comment is being taken under advisement for possible future rulemaking. (It would not be permissible to introduce new provisions with such substance at this point in this rulemaking.)

Recommendation
No changes should be made at this time.
Section 226.75 Definitions

Comments
Nearly all the reactions to the proposal which would extend the use of “developmental delay” for purposes of eligibility from age 5 through age 7 were supportive of that change but expressed a strong preference for age 9 or at least age 8. Age 9 was identified as the appropriate ending age not only because it would match the federal definition but, more significantly, because it would permit the use of information gathered over a longer period of time in order to make determinations about the presence or absence of a disability. The challenges in fully understanding the learning needs of younger children were cited, as well as a desire to avoid mislabeling and inappropriate services. It was stated that younger students should not have to stop receiving support since they develop at different rates. One commenter pointed out that auditory and visual channels are still developing through age 7 or 8 and also that many children are not ready for reading until later. It would be best practice not to discontinue services by placing children in the general classroom and then waiting for them to fail.

A related comment encouraged ISBE to expand funding for alternative services and placements for children in this age group in order to enhance the learning of at-risk youngsters and expand their opportunities. Developmental delay was stated to be the area of greatest growth in special education due to the difficulty in discriminating among those with disabilities and those simply at risk.

One comment was received advocating a reversal of the proposed change so that developmental delay could only be used for children through age 5, rather than 7. This respondent indicated that the IEP team should identify the disability and the student’s needs more specifically than required under “developmental delay”, so that more appropriate interventions could begin as early as possible.

Analysis
We certainly concur with the last point outlined above, in that everyone shares the goal of ensuring that all students receive the services they need as soon as possible. When IEP teams can identify the presence of a particular disability, it would not be appropriate to serve the student as developmentally delayed instead. On balance, however, it is clear that many professionals feel the extended use of this eligibility mechanism provides a more adequate basis for determining children’s needs and designing services in response to those needs. Mislabling and premature characterization of disability also have their pitfalls, and we believe a compelling case has been made for matching the latitude given to Illinois districts with that afforded by the federal regulations.

Recommendation
The definition of “developmental delay” given in Section 226.75 should be revised to state that it “may include children from three through nine years of age”.

Comment
Insertion of a definition for “academic and functional performance” was recommended by a commenter who stated that social functioning should be included as a domain. Similarly, other commenters requested restoration of the definition of “educational performance”, indicating that students need attention to social and emotional areas and not just academic ones and that elimination of that “standard” could potentially harm children’s chances for success. It was noted that in several respects ISBE had made the conscious decision to offer more protection to students than federal law would require, and preservation of this instance was thought to be...
warranted because students who can maintain social relationships and experience sound emotional development have a greater likelihood of holding a job after graduation. The relevance of the newly adopted standards for social and emotional development was mentioned in this context also.

**Analysis**
The presence of a definition for a term does not, in and of itself, necessarily convey any particular requirement. In this case, the real issue is the deletion from Section 226.230 (Content of the IEP) of the requirement that each IEP include a “statement of the child’s present levels of educational performance”, which was clarified through the definition of “educational performance”, i.e., “A student’s academic achievement and ability to establish and maintain social relationships and to experience a sound emotional development in the school environment.”

However, it should be noted IDEA 2004 requires that a child’s IEP include a statement of the child’s present levels of “academic achievement and functional performance”. Further, the required statement of measurable annual goals is required to encompass both academic and functional goals. Although no definition of “functional goals” is provided in federal law or regulations, the Office of Special Education Programs (OSEP) has indicated that this phrase is “generally used to refer to activities and skills that are not considered academic or related to a child’s academic achievement as measured on Statewide achievement tests.” Thus it can be seen that attention to other areas of functioning has not been lost despite the deletion of existing language on that subject.

**Recommendation**
No change is needed in response to this comment.

**Comment**
Several definitions were stated to be of limited usefulness because the federal provisions referenced simply direct the reader to yet other provisions. “Evaluation”, “IEP Team”, and “IEP” were the examples given.

**Analysis**
The federal regulatory provisions cited do provide a fundamental definition for each term. While there may be additional references to other federal provisions that are necessary for a full understanding of the context, these do not detract from the basic definitions. Therefore, we believe that the cited references to the definitions in the federal regulations are sufficient.

**Recommendation**
No changes should be made in response to these comments.

**Comment**
It was recommended that language be added to the definition of “Evaluation” to indicate that, in the instance of students of non-English background, special attention must be given to the provisions of 34 CFR 300.304(c) (Other Evaluation Procedures).

**Analysis**
The federal provisions cited above require full and comprehensive evaluations using instruments that will measure what they are intended to measure rather than being affected by various impairments or a child’s limited proficiency in English. This is also the location of the federal requirement that evaluations be nondiscriminatory on a racial or cultural basis.
This is the first of quite a number of instances in which commenters wished to have reminders inserted into the rules in places other than where the underlying requirements are already stated. As noted above, a definition generally is used for the purpose of describing what something is, rather than for alerting the reader to all the requirements that apply.

Of course, it is not our intention to deny that 34 CFR 300.304 applies when students of non-English background are being evaluated. It is simply redundant to make that statement in the definition of “evaluation”, and doing so would not make the requirements more applicable. Section 226.140 (Modes of Communication and Cultural Identification) and Section 226.150 (Evaluation to be Nondiscriminatory) establish the requirements for determining cultural identification and mode of communication and then for conducting the evaluation so it is nondiscriminatory. Section 226.150 already reflects the requirements of 34 CFR 300.304(c) and amplifies those with specific statements regarding the use of qualified bilingual specialists when relevant.

**Recommendation**

For the sake of completeness, the introductory statement in Section 226.150 should be expanded with a reference to the federal regulations:

> Each evaluation shall be conducted so as to ensure that it is linguistically, culturally, racially, and sexually nondiscriminatory. *(See also 34 CFR 300.304(c)).*

**Comment**

In the definition of “IEP Team”, an insertion was proposed to state, “In the case of a child of non-English language background, a qualified bilingual specialist shall be a member of the team.” The commenter identified Section 14-8.02 of the School Code as the source of this purported requirement.

**Analysis**

Section 14-8.02 of the School Code requires ISBE to define the term “qualified bilingual specialist” but does not state that one must serve on the IEP team of each student from a non-English background. *(Section 226.800(f), which is not being amended at this time, fulfills this requirement by describing the qualifications needed for each type of educational professional.)* Further, it is Section 226.210 (IEP Team) that governs the team’s composition, rather than the definition in Section 226.75. Existing subsection (f) of Section 226.210 refers to the inclusion of a qualified bilingual specialist but is being struck in these amendments, which may have caused concern on the part of some readers.

It should be noted that not every student of non-English background will, *ipso facto*, need the services of qualified bilingual specialists, since some will be very fluent in English. “Students of non-English background” are “students, whether born in the United States or born elsewhere, whose native language is other than English or students who come from homes where a language other than English is spoken, either by the students themselves or by their parents or legal guardians.” *(23 Ill. Adm. Code 228.10).* We believe it is unnecessary and therefore overly prescriptive to impose that requirement across the board.

However, we do agree that there are instances when it is necessary to include a qualified bilingual specialist on an IEP Team, and we do not believe any underlying federal provision specifically conveys this requirement. Since we know that availability of suitably qualified personnel who also have the necessary fluency in other languages is limited in some districts,
we should include the same alternative option for fulfilling this requirement as is provided in the case of evaluations (i.e., a qualified professional assisted by someone fluent in the relevant language).

**Recommendation**
The language being deleted from Section 226.210(f) should be restored and revised as subsection (e) but made mandatory in the situations it contemplates:

e) The IEP Team **shall** include a qualified bilingual specialist or bilingual teacher, if the presence of such a person is needed to assist the other participants in understanding the child’s language or and cultural factors as they relate to the child’s instructional needs. If documented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the district shall instead meet the requirements set forth in Section 226.150(b) of this Part.

**Comment**
In the definition of “Individualized Education Program (IEP)”, it was recommended that the reference to “the language and/or communication needs” be changed to “the language, communication, and/or cultural needs” of a student. The commenter based this suggestion on the fact that language and communication by themselves do not address cultural needs. According to another commenter, this definition should reference the need for cultural appropriateness and provide a definition, because the cultural aspect is just as important as language. Similarly, another respondent suggested restoring the definition of “Cultural Identification” because identifying a family’s general cultural factors would affect the design of the evaluation procedures used.

**Analysis**
While we understand the commenters’ desire to have the culturally related aspects of students’ needs addressed, we believe that the phrase “cultural needs” presents a semantic problem (because students do not have needs for culture in the same way as they have needs for the use of language they can understand). We believe somewhat different wording can solve this problem without a need for a separate definition of “cultural identification”.

**Recommendation**
The statement in question should be revised as shown below.

An IEP shall be considered “linguistically and culturally appropriate” if it addresses the language and communication needs of a student as a foundation for learning, as well as any cultural factors that may affect the student’s education.

**Comment**
Restoration of the definition of “Least Restrictive Environment” was suggested by a commenter who indicated that basic understanding of this concept is needed so it should be included at the beginning of the rules. Another commenter stated that the definition should not be eliminated because resolution of the *Corey H.* litigation is still pending.

**Analysis**
Very few references to the least restrictive environment remain in the body of Part 226. Since the requirements that are captured by this concept are stated explicitly at 34 CFR 300.114, no meaning would be added by retention of this definition. However, it is probably wisest to include
in these rules the terms that are most salient to an understanding of special education requirements, simply for the sake of completeness.

**Recommendation**
The following definition should be inserted:

*Least Restrictive Environment (LRE):* See 34 CFR 300.114.

**Comment**
Several additional definitions were identified as necessary but missing from the rules. It was stated that a common understanding of these terms is needed. The locations of some of these definitions were provided (“Limited English Proficient” at 34 CFR 300.27; “Native Language” at CFR 300.29; and “Child of Non-English Background” in Part 228). “Qualified Bilingual Professional” and “Culture” were also suggested.

**Analysis**
As noted above, Section 226.800(f) describes who may be considered a “qualified bilingual specialist” and covers all the relevant professions regulated by ISBE. It would be an unnecessary duplication to include this considerable quantity of text as a definition also. For “students of non-English background”, a reference is already provided to Section 228.15 of the rules for bilingual education (see Section 226.140). As the commenter noted, the federal regulations provide definitions for “Limited English Proficient” and “Native Language”, and it may be worthwhile to provide those cross-references, again in the interest of completeness. No specific definition of “culture” was proposed, and we believe it is appropriate to rely upon the dictionary for this meaning (“The totality of socially transmitted behavior patterns, arts, beliefs, institutions, and all other products of human work and thought; …products considered as the expression of a particular period, class, community, or population.”)

**Recommendations**
Two further definitions should be added to Section 226.75:

*Limited English Proficient:* See 34 CFR 300.27.

*Native Language:* See 34 CFR 300.29.

**Section 226.100 Child Find Responsibility**

With respect to subsection (a) of this Section, it was recommended that clarification be added as to which children are the subject of this responsibility. It was suggested that the word “residing” be added to make clear that the district’s obligation pertains primarily to residents. In addition, it was noted that a district is no longer required to conduct child find for residents who have been placed by their parents in private schools located outside the district’s boundaries. Another revision was suggested to state this exception, so that the affected portion of subsection (a) would state: “all children from birth through age 21 residing within the district except residents who are parentally-placed private school children for whom another school district is responsible under 34 CFR 300.131, and for those parentally-placed private school children for whom the district is responsible under 34 CFR 300.101, who may be eligible…”

**Analysis**
While we agree with the delineation of responsibilities outlined by this commenter, the subsection in question clearly references the applicable requirements at 34 CFR 300.131 in
order to make these distinctions. We do not agree that a detailed and complicated additional discussion is needed.

**Recommendation**
No change should be made in response to this comment.

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## Section 226.110 Evaluation Procedures

**Comment**
It was recommended that the word “assistance” in Section 226.110(a)(4) be changed to “information”. No background information was provided for this suggestion.

**Analysis**
The rule in question currently requires districts to provide “any assistance that may be necessary to enable persons making requests (for evaluations) to meet any related requirements established by the district”. Thus in some cases there will be a significant difference in meaning if the district is only required to “inform” parents and other parties making referrals, rather than providing whatever assistance is necessary to enable them to complete their requests. This depends upon the complexity of the procedures established by the district, and the absence of assistance may represent a significant impediment in some cases.

**Recommendation**
This suggested change should not be made.

**Comment**
Several commenters interpreted Section 226.110(b) as limiting the individuals who can refer a child they suspect of having a disability to the local educational agency for an evaluation.

**Analysis**
The indication in subsection (b) of this Section as to who may request an evaluation is derived directly from 34 CFR 300.301(b), which does identify a finite set of persons who may do so. As such, the rule is correct as drafted.

**Recommendation**
No change is needed in light of these comments.

**Comment**
Revisions to subsection (c)(2) of this Section were displayed as recommendations without further comment:

2) To determine the extent to which the child requires an evaluation, consistent with 34 CFR 300.309(b), the district must may utilize screening data and conduct preliminary procedures such as observation of the child, assessment for instructional purposes, data-based documentation of assessments of achievement, consultation with the teacher or other individual making the request, and a conference with the child.

**Analysis**
The subject of the federal regulation at 34 CFR 309 is determining the existence of a specific learning disability, and this matter is addressed in Section 226.130 of these proposed rules. Section 226.110 and its subsections address generally applicable evaluation procedures.
Because additional requirements to determine the existence of a specific learning disability are delineated in Section 226.130 and reference is made to 34 CFR 300.309 in that Section, it is not necessary or appropriate to include a reference to 300.309(b) in 226.110(c)(2).

**Recommendation**
This provision should not be revised as shown above.

**Comment**
With regard to subsection (c)(3), a variety of comments also discussed the insufficiency of 14 days from the receipt of a request until the determination of whether additional information is needed upon which to base an evaluation. The time needed for data-gathering and contacts among staff members was stressed. The requirement for 10 days’ notice to the parents was noted, meaning that Day 10 of notice is (at best) Day 14 of the time available. It was suggested that a 14-day deadline would be more suitable for having the meeting scheduled instead of held and the determination made. The commenter provided a list of factors that can impede timeliness and the district’s ability to schedule this work.

Recommendations related to this timeline included 14 school days to account for holidays and weekends, recognize the variations in school calendars, and provide parents with an adequate opportunity to participate, as well as 30 school days to avoid the need for additional staff at prohibitive cost. The latter commenter stated that, if 14 days is maintained, it must be stated as school days. It was also noted that the federal regulations do not specify a timeframe from referral to consent for evaluation, so ISBE’s imposition of a timeline exceeds the federal requirements.

Several other commenters proposed changing subsection (c)(3) so that the 14-day timeline for determining whether any additional information is needed would run from completion of the activities required under subsection (c)(2) rather than from the receipt of a request for an evaluation. One stated that this would not further delay the evaluation, if one was determined to be needed, but would allow the district initial flexibility to meet the requirements of the federal regulations and subsection (c)(2). Particularly in light of the data-gathering involved in the use of the “Response to Intervention” (RtI) approach, it was considered advantageous to have this flexibility rather than rushing to a premature conclusion. The same was stated also to be helpful in dealing with requests for evaluations that are received the day before a break in the school calendar or the summer recess.

A related suggestion was that the rule should impose the timeline only when the request for an evaluation has been submitted in writing and is a clear request for an evaluation that would precede an eligibility determination.

Another commenter, however, disagreed with some of these points and noted that reviewing grades and observing the child could be accomplished quickly. This individual asserted that RtI, if implemented properly, can also yield timely results. Another respondent commended ISBE for maintaining the time allowed for the “domain meeting” at 14 days from the date of referral, stating that delays had been a problem in CPS.

**Analysis**
There is no underlying federal requirement for this specific timeline from the request for an evaluation to the receipt of parental consent. However, we believe the district should obtain parental consent within a reasonable time after the parent makes a request for an evaluation. Therefore, we are defining “reasonable” as within 14 school days after receiving a request for an
evaluation. For the purposes of this Section, receipt of parental consent (or “date of referral”) is the date on which the parent signs the written consent to evaluate.

(For the sake of accuracy, it should be pointed out that subsection (c)(3) does not address the time from referral to consent, as the one commenter appeared to understand.)

**Note:** The comments submitted on the timeframe proposed in subsection (d) of this Section (for the time after the district’s receipt of consent to the IEP meeting) are relevant in this connection also. Those are presented below, because a comprehensive approach to this sequence of events is needed.

**Comment**

Further comments related to timelines addressed the change from 60 school days to 60 days in subsection (d) of this Section. It was pointed out that the federal regulation at 34 CFR 300.301(c) permits states to maintain longer timeframes if they already have those in place, and ISBE was requested to maintain 60 school days, as stated in current Section 226.110(d)(1), because of instances where breaks in the school calendar make shorter timelines impossible to meet. It was stated that otherwise, if RtI is to be conducted as part of the evaluation after consent is signed, the deadline might come too quickly. This timeline was identified as a matter of frequent concern for districts and special education directors. Especially when a student has moved into a district during the summer without an existing IEP, it was thought unfair to the student and the district to require completion of all needed assessments within 60 days. It was characterized as questionable whether a meaningful evaluation can be conducted.

The forecast was expressed that a significant number of additional personnel would be needed due to the one-third reduction in time available and the increasing prevalence of more direct interventions on the part of instructional and related services personnel. Other commenters advocated restoration of the word “school”, asserting that this would not be a substantial change in terms of elapsed time but would help districts with flexibility in the utilization of staff. One commenter indicated that the proposed language was likely to result in two meetings instead of one.

Related concerns were expressed with regard to allowing 30 days for the development of the IEP after a student is found eligible. This commenter recommended a change in subsection (j) to require holding the IEP meeting within the same 60 school days to be allowed by subsection (d). Another individual recommended that the rule clarify that the “outer limit for conducting an IEP” is 74 days (14 to obtain parental consent after a request for an evaluation plus 60 days to determine the student’s eligibility, conduct the evaluation, and prepare the IEP). If subsection (j) were understood as providing an additional 30-day period in which to develop the IEP, some might understand a total timeframe of 104 days, “which is too great a delay”.

A comparison was provided between the timeline now in effect and that stated in the proposed rule, noting that the proposed rearrangement still comes out to a total of about 12 weeks. For this reason, this individual disagreed that the new timeline would cause hardships for districts and pointed out that a student can miss receiving appropriate educational services for one if not two 9- or 10-week grading periods. This was thought very generous to districts but potentially harmful to children.
Analysis
These comments have caused us to review once again the relationship between the timeline expressed in the federal regulations and that required under Illinois statute (Section 14-8.02 of the School Code), as well as to compare the respective portions of the referral/evaluation/eligibility/IEP procedure that are captured by these provisions. It needs to be made clear, on the one hand, that Section 14-8.02 of the School Code allows 60 school days within which to complete the set of steps that precede development of the IEP. (“The determination of eligibility shall be made within 60 school days from the date of referral by school authorities for evaluation by the district or date of application for admittance by the parent or guardian of the child.”) (Emphasis added.) Existing Section 226.110(d), however, has interpreted this provision as requiring development of the IEP within that same time period.

Under existing subsection (d)(2), it has also been the case that only 30 days were allowed to elapse between the eligibility determination and completion of the IEP. Therefore, an earlier deadline for the IEP would apply when the eligibility determination was made quickly, but the 60-school-day deadline continued to apply if the eligibility determination did not occur so promptly. Proposed subsections (d) and (j) together were intended to carry those requirements forward, but this apparently was not understood by at least some readers, probably due to the omission of a statement that the overall limit would continue to apply.

As some of the comments pointed out, the federal regulation at 34 CFR 300.301(c) discusses the time permitted from receipt of parental consent for the initial evaluation to completion of the evaluation. This provision allows 60 days or, “If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe”. As noted above, however, the timeframe established in Illinois law applies to a different subset of the steps in the process: 60 school days are allowed from referral to eligibility determination. As long as that timeline is observed for the steps it covers, the only other time requirement that Illinois must observe is the 30-day limit between reaching the eligibility determination and conducting the IEP meeting (established at CFR 300.323(c)(1)).

Legislation supported by ISBE that has made its way through the Illinois General Assembly and is now awaiting signature by the Governor will amend Section 14-8.02 of the School Code with regard to these timelines, further complicating our analysis of the best approach to take at this time. We will need to plan for another set of amendments to implement these statutory changes. Our goal would be for this rulemaking and the subsequent one to impose as few different changes on school districts as possible. With that goal in mind, it might be most advisable in this interim to reinstate the existing practice of defining “date of referral” as “the date of written parental consent to complete an evaluation”.

This would have the advantage of leaving the same 60 school days available as previously for the same set of actions that have previously been required to be accomplished within them. We would then need a provision addressing timelines only for the “preliminary” steps between the request for an evaluation and the district’s request for consent. On that basis, the time limits could be left in place even assuming SB 2796 is signed into law as we expect, since the bill provides, “The determination of eligibility shall be made and the IEP meeting shall be completed within 60 school days from the date of written parental consent referral by school authorities for evaluation or date of application for admittance by the parent or guardian of the child.” In other words, the new language of the law will match what our practice has been.
Recommendation
The introductory paragraph to Section 226.110 should be revised as shown below:

Procedures for requesting and conducting initial evaluations of children who are suspected of requiring special education and related services shall conform to the requirements of 34 CFR 300.301, 300.304, 300.305, and 300.306. For purposes of this Section, the “date of referral” discussed in Section 14-8.02 of the School Code shall be understood to be the date of written parental consent for an evaluation, and screening procedures done in accordance with 34 CFR 300.302 shall not be considered an evaluation. Consent for the initial evaluation shall be obtained in conformance with the requirements of 34 CFR 300.300. In addition, the following requirements shall apply.

Subsection (c)(3) of this Section should be revised to begin:

3) Within 14 school days after receiving a request…..

Subsection (c)(3)(C) should also be edited to refer to “the 14-school-day timeline applicable under this subsection (c)(3)”.

Finally, subsection (d) of this Section should be revised as shown below:

d) Upon completion of the assessments identified pursuant to subsection (c)(3) of this Section, but no later than 60 school days following the date district’s receipt of written consent from the parent to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed a meeting as described in 34 CFR 300.306 shall be initiated by the district.

Comment
Several respondents indicated that Section 226.110 does not make it clear that, although parents may request an evaluation, a district has the “final say” and can decline to conduct an evaluation if the child is not suspected of having a disability. It was felt that the majority of the Section reads as if the evaluation will be completed and that it should be made clearer that there is a difference between a district’s failure to perform one and a district’s refusal to perform one. One commenter stated that teachers should be involved in making the decision as to whether an evaluation is warranted, since they are the ones who see the children’s performance.

It was noted that, for some parents, “average” is not good enough, in the sense that parents might seek services for students without disabilities out of a belief that they could be helped to do better. Information was provided to the effect that IDEA “was not designed to maximize a child’s success” and that this point has clearly been determined through federal case law. The commenter attached the opinion of U.S. Supreme Court in Board of Education v. Rowley and urged its review, stating that it would be wrong to eliminate districts’ right to enforce federal law.

Analysis
This rule is not meant to imply that an evaluation is required in all instances, and we agree with the commenters that this impression may be created by the proposed language. This can be rectified fairly simply through changes in subsections (c)(2) and (3).
Recommendation
Section 226.110(c)(2) should be reworded to begin:

2) To determine whether the extent to which the child requires an evaluation…

Section 226.110(c)(3) should be amplified as shown below:

3) Within 14 school days after receiving a request for an evaluation, the district shall determine whether an evaluation is warranted any additional information is needed upon which to base the evaluation. If the district determines not to conduct an evaluation, it shall provide written notice to the parents in accordance with 34 CFR 300.503(b). If an evaluation is to be conducted:

Comment
It was requested that Section 226.110(d) be amplified to emphasize the provisions under the “special rule for eligibility” (34 CFR 300.306(b)) to the effect that limited English proficiency or lack of appropriate instruction in reading or math is not to be the determining factor in an eligibility decision.

Analysis
Our response to this comment is as stated above; this insertion would be redundant and would not add any substantive protection for students.

Recommendation
No change is needed.

Comment
It was recommended that language be inserted into subsection (c)(3)(A) to require the team to include a qualified bilingual specialist, in order to ensure greater accuracy in the identification of students as eligible and avoid overrepresentation of students with limited English proficiency. Similarly, it was suggested that subsection (c)(3)(C) should include a reference to 34 CFR 300.304(c) (Other Evaluation Procedures), because that provision specifies that assessments must take into account the language and culture of the child.

Analysis
As noted previously, we understand commenters’ desire to ensure the linguistic and cultural appropriateness of evaluations. Because these requirements are established elsewhere, they do not need to be reiterated here.

Recommendation
No changes are needed in response to these comments.

Comment
A new subsection (c)(3)(D) was suggested, to state that the group can conduct the review without a meeting. One commenter proposed that appropriate individuals could speak with one another and with the parents to determine whether additional assessments were required, without the need for formally convening an IEP meeting, while another pointed out that 34 CFR 300.305(b) expressly permits this decision to be made without a meeting. Another commenter, on the other hand, expressed concern with “excusing IEP team members” given the need for full communication about children’s educational needs.
Analysis
It is correct that the federal regulations permit the decision discussed in subsection (c)(3) to be made without a meeting. We believe the reference to 34 CFR 300.305 that is provided in the introductory portion of Section 226.110 sufficiently addresses this matter.

Recommendation
No change is needed in response to this comment.

Comment
It was asserted that subsection (f) is inconsistent with 34 CFR 300.613, which gives parents a right to access evaluation reports “before any meeting regarding an IEP”. The commenter indicated that parents are meant to have enough time to review records, ask questions, and get responses before the IEP meeting is convened. It was stated that the rule’s wording is misleading and seems to promote the current “unauthorized” practice of some school districts of preventing parents from reviewing the results of tests and evaluations before the meeting.

Analysis
Section 226.110(f) refers to information that is provided to parents upon conclusion of the meeting at which eligibility is determined. We do not agree that 34 CFR 300.613 is applicable in this instance and do not believe the rule needs to be changed as suggested.

Recommendation
No change is needed in response to this comment.

Comment
The use of the word “professional” in Section 226.110(h) was identified as inconsistent with the use of “qualified bilingual specialist” elsewhere in the document, and the commenter requested clarification if it refers to someone else. In addition, a further definition of “nonstandard” conditions was requested in this rule to help avoid unreliable assessment results.

Analysis
There is no distinction intended by the use of “professional”, so it will be preferable to use “specialist” instead to avoid confusion. We do not believe it is necessary to define “nonstandard conditions” beyond the example given in the rule, because the authors of various types of evaluations will provide guidance to the qualified professionals who administer them. Situations that will affect validity will vary from instrument to instrument, making it impossible to cover all the ramifications in a rule.

Recommendation
The last sentence of Section 226.110(h) should be reworded to state, “For example, the use of a translator when a qualified bilingual specialist is not available may create nonstandard conditions.”

Comment
One commenter recommended that ISBE provide updated guidance on “screening” in case the previously issued memoranda do not remain accurate in light of 34 CFR 300.302.

Analysis
We will review the communications that have been issued on this subject and ensure that any necessary updates are disseminated.
Recommendation
No change is needed in the rules in response to this comment.

Section 226.130 Additional Procedures for Students Suspected of or Having a Specific Learning Disability

Comments
Widely varying opinions were expressed with respect to the requirement that the presence of a specific learning disability may only be identified when a process is used to determine whether the child responds to a “scientific, research-based intervention” (often referred to as “RtI”) as part of the evaluation. It was noted that the final regulations implementing IDEA 2004 prohibit states from requiring the use of a “discrepancy-based” system but do not require that local agencies use RtI. The most serious concern voiced related to the potential delay in identifying students as eligible for special education and the attendant delay in their receipt of services. It was feared that valuable time would be wasted because instruction would not be effective in the meantime. Mention was made of the “Flex Delivery System” that purportedly failed many students by “trapping” them in the process for several years before a decision was made to provide an evaluation. It was also stated that no data are available regarding the optimal length of an intervention. Further, there was concern that districts, without a definitive standard for “scientific, research-based”, could claim any method they wished as scientific.

Use of RtI was said only to identify students as “eligible for special education” rather than identifying a specific learning disability. This, again, would delay their receipt of specially tailored instruction targeted at their learning challenges. Other methods were asserted to be more appropriate for demonstrating the existence of cognitive disabilities, and it was stated that there is no substitute for comprehensive psychological and educational testing. (“The proposed change would be disastrous.”) From another viewpoint, the use of RTI would require general education teachers to “add programs” to their existing workload, and then students would not be considered for many months unless their needs were severe. This commenter considered requiring RTI as “criminal and unthinkable”.

Finally, “massive” amounts of money would be required to train general education teachers in the use of RtI, and its three-tiered process “can become a nightmare in schools”. These commenters all believed districts should be permitted to continue identifying the existence of a learning disability based upon a severe discrepancy between intellectual ability and achievement, without a requirement for developing other evidence through RtI or a comparable process.

Other respondents, on the other hand, complimented ISBE for being proactive in establishing this requirement, stating that the process serves children well and is supported by research. Advocates of the RtI model strongly endorsed it because they believed:

- students at risk are quickly identified and provided with interventions based on the evidence, before their challenges become even more significant;
- assessment and instruction are closely tailored to the individual’s learning problems and progress;
- greater emphasis is placed on collaboration among general and special education staff;
- decisions are based on data that have been expertly gathered and analyzed;
- parents are more involved and receive more meaningful information; and
- there is continuous monitoring of progress and adjustment of instruction.
Further, it was stated that many models had shown various components of RtI to be effective and that "impressive" increases in students' performance could be attributed to its use, both at the elementary level and at the secondary level. One commenter discussed specific experience in establishing the use of "Problem Solving/RtI", based on the use of data that "actually told us something about the areas of struggle for students". Other individuals felt "we have been using discrepancy far too long", noting that research indicates it does not distinguish those students in need of intervention. In one case the complete elimination of the "discrepancy model" was advocated.

On the other hand, it was noted that the final federal regulations recognize that a district may not always have information about whether a child has responded to a scientific, research-based intervention. Home-schooled and other private-school students were cited as examples, as well as transfers from other districts or states. This correspondent proposed inserting "to the extent that such data is available" to account for these situations, stating that this approach would require the use of data where available but absolve districts from a requirement they cannot meet when no data are available.

It was recommended that, in the case of students suspected of being twice-exceptional, a requirement be added for at least one evaluative procedure that is discrepancy-based, in order to identify hidden disabilities masked by giftedness or vice versa.

Several cautionary notes were sounded, even by those strongly favoring RtI. Such models were stated to be challenging to implement, particularly because circumstances in controlled studies may not always be closely similar to those in actual school settings. The need for feasibility was acknowledged in terms of time, money, and staffing; attitudes and acceptance; and "social validity", integrity, and sustainability. Vision, courage, tenacity, and an intensified approach were identified as necessary, "but the outcomes for students are reason enough to forge ahead". Sufficient training and support were also stated to be crucial, but the benefits for student outcomes and parental involvement would warrant these investments. One commenter thought it unfortunate that RtI is discussed only in the context of identifying learning disabilities, since "it is more useful if used more comprehensively".

It was recommended that more structure and guidance be provided so that schools would not be "doing their own version or interpretation". Lack of consistency among districts was a cause for concern in light of students' mobility, especially in metropolitan areas. In addition, lead-in time for training was recommended before the use of RtI becomes mandatory. For example, it was suggested that the requirement be instituted beginning with the 2008-09 school year instead of immediately upon the effectiveness of the rules. One commenter questioned what would happen if districts were precluded from their current practices but were not ready to implement a new approach?

An additional suggestion was to reverse the sequence of ideas in the following sentence in Section 226.130:

"The district may use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, provided that the district also uses a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in 34 CFR 300.304."

The basis for this recommendation was to reflect the order in which the actions occur. The commenters proposed instead:
“The district shall use a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in 34 CFR 300.304. The scientific, research-based interventions may be used to determine if a student has a specific learning disability. In addition, the district may use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability.”

These individuals believed the final sentence on this subject (“The district may also use other alternative research-based procedures for determining whether a child has a specific learning disability.”) to be redundant and recommended its deletion.

**Analysis**

We believe that there are significant advantages to a requirement for structured consideration of evidence related to a child’s specific learning difficulties and the child’s response to interventions matched specifically to those difficulties, in that this process should result in a student’s receipt of assistance early, when learning problems are relatively small and interventions are most effective, and frequent collection of student performance data over time. In fact, since data on student performance levels and rate of learning will have already been collected within general education, the evaluation can proceed much more quickly than has been the case in the historical system.

RtI involves the practice of providing high-quality instruction and interventions matched to students’ needs, monitoring progress frequently, and using learning rate over time and level of performance to make important educational decisions about instruction or goals (Batsche, G., et al., Response to Intervention Policy Considerations and Implementation, 2006). Inherent in this process are the design and provision of early intervening services, as well as the assessment of a student’s response to interventions by collecting progress monitoring data through frequent standardized assessments (e.g., Curriculum-Based Measurement, Curriculum-Based Evaluation, DIBELS (Dynamic Indicators of Basic Early Literacy Skills)).

The use of a model relying solely on a significant discrepancy between a student’s intellectual ability and his or her performance, on the other hand, essentially involves waiting for the student to fail before questioning whether a disability may be involved. This fact is demonstrated by Illinois’ December 1, 2005, report to the U.S. Department of Education on the number of students, by age, identified as having a specific learning disability (SLD). At age six, 2,423 had been identified; by age nine, 9,885 had been identified; by age 11, the number had grown to 13,252; and by age 15, it had reached 15,197. In addition, the National Institute for Child Health and Development’s research studies (Bradley, Danielson & Hallahan, 2002) concluded that the practice of using IQ/achievement discrepancies to identify specific learning disabilities delays treatment to students beyond the time when interventions are most effective.

It is also important to note that federal regulation 934 CFR 300.309(b)) requires that, in order to ensure that a child’s underachievement is not due to lack of appropriate instruction in reading or math, the group making the specific learning disability eligibility determination must consider “(1) Data that demonstrates…the child was provided appropriate instruction in general education settings by qualified personnel; and (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction…. ” Given the frequent, curriculum-based assessment practices inherent in the RtI process, an RtI-based system provides a viable and valid means to fulfill these federal requirements. Further, most of the assessment procedures used in an RtI-based system are standardized and very specific in their assessment targets. Conversely, results from nationally-
normed, standardized tests of general skills or abilities are less related to effective interventions than the former measures (Batsche, et al., 2006).

In regard to the assertion that the use of RtI practices would delay evaluation to determine eligibility, it should be understood that federal regulation (34 CFR 300.309(c)) prohibits the use of RtI procedures as a means of delaying an evaluation to determine the existence of SLD. Even when this model is in use, anyone who is eligible to request an evaluation in accordance with Section 226.110(b) of these rules may do so at any time and the request must be dealt with as provided in that Section. Further, RtI procedures would be an integral part of the evaluation process and data collected would become part of the evaluation results.

In terms of the general education teacher’s role, it is appropriate that the first line of inquiry regarding the source of a student’s learning difficulties rests with the general education teacher. This expectation is clearly expressed in several places within the Illinois Professional Teaching Standards; see especially 23 Ill. Adm. Code 24.100(b), (c), (d), and (h), which address human development and learning, diversity, planning for instruction, and assessment, respectively. Responsibility does not fall solely on the general education teacher, though. RtI practice typically involves a problem solving/data-based decision-making process (problem definition, problem analysis, plan development/implementation, and plan evaluation) that is used to design instructional strategies and provide for frequent monitoring of instructional effectiveness. The problem solving process is implemented by a school-based team, which may include building administrators, teachers (general and special education), related service providers, reading specialists, etc. Therefore, defining and analyzing student learning needs, identifying and implementing interventions, and evaluating the interventions’ integrity and effectiveness are a team process.

We agree that professional development is critical to the successful implementation of an RtI model, and ISBE has a vested interest in providing educators and parents with the necessary training and technical assistance. To that end, in February of this year, ISBE launched Illinois ASPIRE (Alliance for School-based Problem-solving and Intervention Resources in Education), a five-year training and technical assistance initiative. Illinois ASPIRE consists of four regional centers—one in the City of Chicago and one each in the northern, central, and southern parts of the state.

All regional Illinois ASPIRE Centers provide standardized professional development and technical assistance to educators and parents in their regions. The professional development and technical assistance are focused on designing and providing early intervening services, with an emphasis on reading instruction that is scientifically research-based; progress monitoring; response to intervention; and standards-aligned instruction and assessment. Existing ISBE initiatives provide the foundation for the content of the training and technical assistance delivered by each Illinois ASPIRE Center. These initiatives include the Flexible Service Delivery Project, the Standards-Aligned Classroom Initiative, and Illinois Reading First.

By using a standardized curriculum and a common professional development and technical assistance structure, the consistency of training will be improved, as will the systemic implementation of the knowledge and skills gained by the participants. To enhance project replicability and to ensure that evaluation can be conducted at the school and student levels, school demonstration and data collection sites have been identified within selected school districts located in the geographic area served by each Illinois ASPIRE Center.
In addition to the resources available through Illinois ASPIRE, federal regulation (34 CFR 300.224) allows local education agencies to use up to 15% of their IDEA Part B flow-through funds to develop and implement early intervening services for K-12 students not identified as needing special education or related services but who need additional academic and behavioral support to succeed in the general education environment. One allowable use of these funds is professional development. Therefore, school districts will have the option of securing other professional development opportunities for their staff beyond those provided by Illinois ASPIRE.

Finally, the Flexible Service Delivery (FLEX) Initiative has been implemented in Illinois since 1995, with formalized support from ISBE beginning in 1998. FLEX is founded on a problem-solving model and incorporates RtI practices, and Illinois ASPIRE is a statewide expansion of this successful initiative. Since the formalization of the FLEX initiative, school districts throughout Illinois have worked collaboratively through the FLEX Consortium. Consortium members meet on a regular basis to share effective ways to implement the problem-solving model and RtI, act as a network and outreach for others interested in implementing the model, and plan trainings and conferences, etc. The consortium is still in operation, and membership is open to all interested school personnel.

Given the resources available in the state, we do not agree that there is a need to delay the effective date of the provisions in Section 226.130. We do agree, though, that the suggested change in the language better reflects the order in which the evaluation procedures will occur when both procedures of eligibility consideration are in use.

**Recommendation**
The proposed version of Section 226.130 should be revised as follows:

In addition to the requirements set forth in Sections 226.110 and 226.120 of this Part, the district shall adhere to the procedures set forth at 34 CFR 300.307, 300.308, 300.309, 300.310, and 300.311 when evaluating a student who is suspected of, or who has previously been identified as having, a specific learning disability as described in 34 CFR 300.8. Each district shall use a process that determines whether the child responds to scientific, research-based intervention as part of the evaluation procedures described in 34 CFR 300.304. The scientific, research-based interventions may be used to determine whether a student has a specific learning disability. In addition, a The district may use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, provided that the district also uses a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in 34 CFR 300.304. The district may also use other alternative research-based procedures for determining whether a child has a specific learning disability.

The effective date of the Section should remain the same.
Section 226.150 Evaluation to be Nondiscriminatory

Comment
Rewording and an addition to the introductory provision of this Section were recommended, as shown below:

Each evaluation shall be conducted so as to ensure that it is linguistically, culturally, racially, and sexually nondiscriminatory with respect to language, culture, race, and gender. In addition, each evaluation shall be conducted so as to screen for dual-exceptionality and so as to consider level of cognitive functioning in interpreting scores that may exceed arbitrary cut-off levels. Where dual-exceptionality is suspected, districts may not deny special education services based solely on failure to score below the arbitrary cut-off.

Analysis
We do not agree that it would be appropriate to require every evaluation to include specific attention to the possibility that a student is also gifted. The requirement is already in place for teams to consider each domain, including academic performance and general intelligence, in determining where additional assessments are needed and where they are not. It is correct to rely on the professional judgment of the individuals participating on the team for this decision. See Section 226.110(c) and 34 CFR 300.304(c)(4). The suggested semantic change does improve the language of the rule and should be incorporated.

Recommendation
The introductory sentence in Section 226.150 should be reworded as discussed above.

Comment
For the sake of consistency with 34 CFR 300.304(c)(ii), one commenter suggested adding to the end of the first sentence of (a) the following language: “and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally”.

Analysis
The commenter is correct that the quoted language is used in the federal regulation cited. However, the rest of the sentence structure is different, in that the federal language refers to “assessments and other evaluation materials” being “provided and administered … in the form most likely….”, whereas this sentence in the rules has “languages” as its subject. The suggested insertion would be semantically incorrect in this case.

Recommendation
This proposed change should not be made.

Comment
A respondent provided background information on the emergence of requirements for evaluation of children from non-English backgrounds and pointed to the overrepresentation of Latino children considered to have cognitive delays because of the lack of qualified bilingual specialists. This individual stated that eliminating those regulations would be irresponsible and “a return to the abuses of 30 years ago.”
Analysis
The commenter did not state which portion of the amendments was eliminating the desirable protections. We note that no substantive change is being made in Section 226.150 and can only reiterate that redundancy in some other portion of the rules would not increase students’ rights or protections.

Recommendation
No change is appropriate in response to this comment.

Comment
Two parents urged that all professionals working with Latino students with disabilities be qualified bilingual professionals and named speech/language pathologists, psychologists, counselors, social workers, and teachers. This requirement was intended to include the entire age span from early childhood through age 21. Other commenters reiterated these points and discussed the need for English language learners to be evaluated by bilingual specialists.

Similar comments advocated repeated mention of qualified bilingual specialists throughout the rules. The goal of these commenters was to ensure that families of students with limited English proficiency would receive information in the language they know best. They stated that their concerns were based on the continuing lack of access they face as a result of a “frequent disregard” on the part of some schools. They contended that the purported disregard arises in part from administrators’ tendency to rely on Part 226 exclusively and not to consult federal law and regulations. From their point of view, the rules should reflect the “absolute requirement” that qualified bilingual specialists be involved in every aspect of the process used to identify appropriate services, and they identified numerous locations in the rules where such requirements should be reiterated.

Analysis
We completely understand these commenters’ focus on accurate evaluation and appropriate services for students from language minority backgrounds. The requirements they wished to see imposed would be reasonable and acceptable if the supply of education professionals with fluency in languages other than English were more nearly adequate. Unfortunately this is not the case, and the shortage of professionals who have both credentials in specialty areas such as school psychology and fluency in other languages makes the establishment of absolute requirements very problematic.

One goal we must bear in mind in all rulemaking is to avoid making requirements that cannot be met. We therefore are obligated to find alternative ways of complying with federal requirements when necessary. This is the reason behind the descending order of priority set up in Section 226.150 regarding the qualifications to be required of professionals who are evaluating students with native languages other than English.

It should be evident that, when a particular type of professional skill is required in order to administer or interpret a component of an evaluation, the combination of that skill and language competency is ideal and to be sought first. However, when that combination is not available, the professional qualifications must take precedence, supplemented by assistance from someone who knows the relevant language and culture. It would be irresponsible on our part to ignore the unfortunate shortage of professionals with the needed language skills and require across the board that only such individuals could serve students with disabilities. No greater protection for students and families would result from such a rule, despite everyone’s wishes to the contrary.
Recommendation
No change should be made in Section 226.150 in response to these comments.

Comment
Several comments indicated that portions of this Section were not stated clearly or objectively enough. The meaning of the phrase “demonstrated competencies in the language of the child” was questioned as used in subsection (b) by a commenter who recommended that the rules stipulate what training must be provided to these individuals when they are to assist a qualified specialist due to the lack of a qualified bilingual specialist. It was stated that provisions are needed to ensure linguistic competency, knowledge of appropriate interpreting procedures, and adherence to requirements for confidentiality.

It was also suggested that “a predominantly English language use pattern” be defined because the current language involves subjective judgments. It was stated to be neither advisable nor desirable for students who still have limited proficiency in English to be assessed using tools that rely on English competency.

Analysis
The second of these problems lends itself more readily to a solution than does the first. The rule calls for an annual review of the appropriateness of services provided to a child who was evaluated using procedures that did not rely on language. In most cases such a student will be receiving bilingual education services over time so that his or her proficiency in English should be expected to increase and then other evaluation procedures can be used if still needed. Rather than discuss this progression in terms of “language use pattern”, it will be more concrete to refer to limited English proficiency since that is defined and measured under the relevant rules. When the child’s English proficiency is no longer limited, the presumption of a need for interpreting should also no longer be present.

The issue of assistance from individuals with “demonstrated competencies in the language of the child”, on the other hand, is more troublesome to resolve by rule. The commenter proposed requirements for training for the individuals in question. However, the time constraints associated with evaluations would generally preclude districts from complying with requirements for training, since they would not always be aware of the individuals who could provide language-related assistance until a child from a particular language background needed that support.

It is clear from the long-standing problems in this area that the availability of individuals fluent in various languages who can fulfill the tasks discussed in this Section is uneven around the state. This fact makes us reluctant to try to impose a standard of proficiency or preparation for fear of leaving districts and families with absolutely no one available who would be permitted to assist. On balance, we believe it is preferable not to go further in this rule. While not ideal by any means, available procedural safeguards should be used when families believe districts are not using the best available language support for their children.

Recommendation
Subsection (c) of Section 226.150 should be revised to eliminate subjectivity to the greatest possible extent:

c) If documented efforts to locate and secure the services of a qualified bilingual specialist or a qualified specialist assisted by another individual as provided in subsection (b) of
this Section are unsuccessful, the district shall conduct assessment procedures that do not rely on 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. Adm. Code 228 (Transitional Bilingual Education; see Section 228.15) the child acquires a predominantly English language use pattern.

Comment
Translation of IDEA into the languages used by parents was identified as necessary, as was translation of Part 226 as soon as the rules are issued. It was stated further that, in light of the long-standing unavailability of bilingual special education professionals, the State must aggressively develop and plan incentives for increasing their numbers at all levels of the process.

Analysis
ISBE has made its parents’ guide available in Spanish and has translated the IEP form and the Notice and Consent forms into 10 languages. We believe these materials are more useful than the more formal documents in question and have not so far translated the rules into languages other than English. We note that USDE has indicated that there are no plans to translate IDEA 2004 or the federal regulations into other languages.

Recommendation
No change in the rules is called for by these comments.

Section 226.160 Determination of Eligibility

Comment
It was recommended by several commenters that the requirement for a bilingual school psychologist to identify the presence of mental impairment should not be deleted or that a provision be added to require a recommendation by a qualified bilingual psychologist in the case of a student of non-English background.

Analysis
These suggestions relate to the deletion of subsection (a)(3), which is being repealed along with the entire surrounding Section. All the requirements currently stated in Section 226.160 are redundant because they are covered at 34 CFR 300.306 or in Section 14-8.02 of the School Code.

Recommendation
No change should be made in light of these comments.

Comment
One commenter recommended, instead of repealing this Section, retaining it with a title such as “Co-existence of Intellectual Giftedness with Learning Disabilities”. Proposed text was provided to require that districts develop written eligibility criteria that consider the needs of twice-exceptional children, with specific requirements including:

- a search for excess in cognitive ability rather than a deficit in learning;
- prohibition against eliminating a child from eligibility for special education due to a cognitive level in excess of two standard deviations above the mean on a standardized ability test; and
• recognition that a learning disability may still exist even if a student is performing somewhat above grade level (when the level of ability would indicate that the student should be achieving significantly beyond the existing grade level).

A similar comment was submitted regarding the repeal of Section 226.170, and the commenter provided specific text for a rule to be titled “Special Criteria for Twice-Exceptional Children”. Districts would be required to develop research-based guidelines for determining the eligibility of twice-exceptional children and to provide the same range of services for disabled gifted children as for disabled children who are not gifted, or gifted children who are not disabled. Specific mention was made of self-contained and pull-out programs for students who, because of their disabilities, cannot function effectively in the gifted programming regularly provided by the district but would otherwise qualify for such a curriculum.

Analysis
We recognize that the points contained in both these suggestions reflect best practices in the field of gifted education, and we agree that guidance should be provided to school districts on these matters. However, as stated above, we continue to believe it appropriate to rely upon the judgment of the IEP team in determining what evaluations will be needed to determine whether a child has a disability rather than dictating a portion of those from the state level. Similarly, requirements for appropriate services already exist, so that writing requirements for their provision to these children specifically would be redundant without adding any new protection.

Recommendation
Sections 226.160 and 226.170 should be repealed, as originally proposed.

Section 226.180 Independent Educational Evaluation

Comment
It was suggested that the phrase “at public expense” should be inserted in the first sentence of the introduction to this sentence.

Analysis
Although Section 226.180 cross-references 34 CFR 300.502 and Section 14-8.02(b) of the School Code, both of which discuss independent educational evaluations both at public expense and at private expense, it is true that the focus of this rule is on the requirements for obtaining such an evaluation at public expense. It would be useful to make that clear in the introductory sentence in line with this comment.

Recommendation
The introductory provision of Section 226.180 should be amplified to state:

“Parents have the right to obtain an independent education evaluation of their child at public expense in accordance with 34 CFR 300.502 and Section 14-8.02(b) of the School. The following rights and requirements shall also apply.”

Comment
Retention of the rule preventing districts from delaying the procurement of an independent educational evaluation (existing subsection (d), which is being deleted) was recommended by a commenter who believed, however, that the 30-day time limit should be applicable only to the district and not to the parent.
Analysis
Section 14-8.02 of the School Code establishes the 30-day requirement and discusses situations in which that time limit may be extended. Since the introductory provision of Section 226.180 already references Section 14-8.02, there is no need for the rule to repeat this information.

Recommendation
No change is needed in response to this comment.

Comment
Deletion of the phrase “and the specific evaluations to be completed” from proposed subsection (c) was displayed by one commenter, without an explanation for this suggested change.

Analysis
This is an existing rule receiving a new label due to other deletions. It provides in certain situations that, “the parent and the school district shall agree on the qualifications of the examiner and the specific evaluations to be completed prior to the initiation of an independent educational evaluation at public expense”. We believe this provision guards against misunderstandings on the part of parents regarding the extent to which public funds will be used in response to their concerns, and as such it should be retained.

Recommendation
The phrase in question should not be deleted.

Comment
Two different comments were submitted with the goal of giving the district time to review the report of an independent evaluation that was obtained at the parent’s expense prior to a meeting requested by the parent to discuss that report.

Analysis
When a parent obtains an evaluation at private expense, the district will not have a report of that evaluation until the parent furnishes it, unlike situations in which the evaluation has been obtained at public expense. We agree that the proposed language of new subsection (d) does not distinguish carefully enough among these differing circumstances, and it would be a good idea to build in a provision that does so. When a parent requests a meeting to consider results of an evaluation done at private expense, the parent is under no obligation to provide a report in advance and the district will not know whether the parent will do so. Since there is a 10-day timeline for convening an IEP meeting requested by a parent, it is not permissible for the district to wait for receipt of a report. The only workable timeline begins with the parent’s request.

Recommendation
The language of the provision that will become subsection (d) should be expanded as shown below.

d) The district shall send the notice convening the IEP Team’s meeting within ten days after receiving the evaluation report of an evaluation conducted at public expense. In the case of an evaluation conducted at private expense, the district shall send the notice within ten days or after the parent requests a meeting to consider the results of an independent evaluation.
Section 226.200  General Requirements

Comment
Clarification was requested for the deletion of subsection (d) requiring annual IEP reviews. The commenter noted that this requirement is present in the federal regulations but felt it needed to be included in Part 226 to ensure compliance.

Analysis
The annual review is now encompassed within Section 226.220 of the rules, where the relevant federal regulations are referenced.

Recommendation
No change is needed in Section 226.200 in response to this comment.

Comment
Insertion of a reference to certain provisions within 34 CFR 300 was requested as being helpful and consistent with the approach being taken in the rest of the rules.

Analysis
The commenter was advocating a cross-reference to the requirements for the IEP, which are not the subject of this Section but are addressed in detail in Section 226.230.

Recommendation
The suggested addition should not be made.

Section 226.210  IEP Team

Comment
Various points were made with regard to the composition of the IEP Team, some of which have been touched on in earlier portions of this summary.

It was recommended that a qualified bilingual specialist (in this case, a teacher) be a required member of the team for a child of limited English proficiency or be a permitted member “if the presence of such a person is needed to assist the other participants in understanding the child’s language and cultural factors as they relate to the child’s instructional needs.” It was pointed out that the federal regulation only requires the team to take special factors into consideration, including limited English proficiency. Given Illinois’ diverse population and the importance of addressing bicultural factors in assessing educational needs, the commenter believed the previous, more specific language to be more appropriate.

Analysis and Recommendation
In our analysis of similar comments made with respect to Section 226.75, we agreed that there are instances when it is necessary to include a qualified bilingual specialist on an IEP Team and recommended that the language being deleted from subsection (f) of this Section should be restored and revised as subsection (e):

\[ \text{e)} \quad \text{The IEP Team shall may include a qualified bilingual specialist or bilingual teacher, if the presence of such a person is needed to assist the other participants in understanding the child’s language or and cultural factors as they relate to the child’s instructional needs. If documented efforts to locate and secure the services of a qualified bilingual} \]

Plenary Packet - Page 79 --36
specialist are unsuccessful, the district shall instead meet the requirements set forth in Section 226.150(b) of this Part.

Comment
It was recommended that the substance of existing subsection (g) be restored: “In the case of a child whose behavior impedes his or her learning or the learning of others, the team may include a person knowledgeable about positive behavior strategies.” The commenter believed the IEP Team should include an individual with expertise in the development of appropriate behavior interventions and strategies. Along the same lines, it was stated that positive behavioral intervention plans are essential to creating an environment conducive to learning and preventing abuse.

Analysis
This is another instance in which the federal requirement is only that special factors be considered but we agree that there are instances when it is necessary to include a particular type of specialist on an IEP Team. Therefore the use of “may” will not be appropriate.

Recommendation
A new subsection (f) should be included, providing as follows:

f) In the case of a child whose behavior impedes his or her learning or the learning of others, the team shall include a person knowledgeable about positive behavior strategies.

Comment
Recommendations were received for deleting the phrase “qualified to teach children of that age” from subsection (a) and also entirely deleting subsection (b), which requires inclusion of “an individual qualified to teach preschool children without identified disabilities,” on the basis that these provisions afford privileges not required under IDEA 2004. It was stated that, for the many school districts that do not operate general education preschool programs, it would be costly to supply the services of that type of teacher. The rule was also noted to treat younger children differently than those of school age.

The relationship of subsection (b) to the requirement for a general education teacher in subsection (a) was not clear to one commenter, and the phrase “less than school age” was also asserted to have several possible interpretations in light of the compulsory attendance age of 7. Another commenter, on the other hand, appreciated subsection (a), stating it is important to have the general education teacher present to facilitate better understanding and communication. This commenter also expressed support for subsection (c), which permits a speech/language pathologist to fulfill the role of the required teacher if only speech/language services are being provided, because this flexibility decreases unnecessary teacher participation.

Analysis
Since the underlying federal requirement at 34 CFR 300.321 is for a general education teacher “of the child”, nothing will be lost by deleting the phrase “qualified to teach children of that age”. As noted earlier, we do need to revise subsection (a) to use “general” in preference to “regular”, and we can take this opportunity to reorganize this provision in line with the comments also.

As to subsection (b), we agree that “of less than school age” should be made more specific in order to eliminate the potential for confusion. There has been no compelling evidence
presented that this (existing) requirement for an early childhood general education teacher has been problematic for school districts. We believe this requirement should be maintained.

**Recommendation**

Subsection (a) of Section 226.210 should be restated as shown below:

a) The general education teacher who serves as a member of a child’s IEP Team shall be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to instruct the child. If the child does not have a regular education teacher but is anticipated to receive at least some instruction in the regular education setting, the team shall include a general education classroom teacher qualified to teach children of that age.

In addition, subsection (b) should be revised to state:

b) For a child aged three through five years who has not yet entered the primary grades of less than school age, the team shall include an individual qualified to teach preschool children without identified disabilities.

**Comment**

It was stated that the state’s rules need to emphasize that the parents must be IEP Team members, and a commenter recommended including a reference to 34 CFR 300.501 so as to “ensure” the parent’s participation in all meetings.

**Analysis**

The underlying federal requirements are adequately referenced in the introduction to this Section, and unfortunately there is no rule language that can “ensure” that parents participate.

**Recommendation**

No change is needed in response to these comments.

**Section 226.220 Development, Review, and Revision of the IEP**

**Comment**

Several respondents understood that the wording of subsection (a) of this Section would permit revision of an IEP without parental input. On a related note, it was stated that the IEP is a legal document and that its development is not to be taken lightly so it should be worked on face to face. Finally, ISBE was requested to require districts to provide copies of revised IEPs so this would not be optional.

**Analysis**

The discussion of notice to parents in subsection (a) does not mean that the IEP can be revised and then the parents must be notified to that effect. As the introduction to the rule makes clear, revision of the IEP is required to occur in accordance with federal regulations, and these specify that revisions are made by the IEP Team, which always includes the parents. The notice to parents that is referred to is the required notice of the district’s proposal to change or not to change aspects of the child’s services. It follows after the decision-making which includes the parent.
Also under the applicable federal regulations, it is permissible for parents to agree to means of revising an IEP that do not involve face-to-face meetings. It is important for parents to have these varied means of participation available, and thus it would be inappropriate to revise the rule to curtail their availability.

Finally, we do not agree that a rule is necessary to compel the provision of copies of IEPs, based on Illinois districts' demonstrated willingness to supply these voluntarily.

**Recommendation**
No changes are needed with respect to these comments.

**Comment**
A different problem was identified in connection with the proposed amendment to subsection (a), in that the language would mean the district must implement an IEP before the parent’s notice period expires. As such, the rule would be inconsistent with Section 226.520, and the commenter suggested language to repair the problem.

**Analysis**
The wording of this rule is designed to cover two possibilities that exist after notice is provided to the parents. Either the ten-day period will elapse and then the district will implement the IEP, or the parent will waive some portion of the notice period and the district can implement the IEP before the notice period elapses.

**Recommendation**
Section 226.220(a) should be revised as shown below to improve its clarity:

a) When an IEP has been developed or revised, a notice in accordance with 34 CFR 300.503(b) and (c) shall be provided immediately to the parents, shall be provided immediately in accordance with 34 CFR 300.503(b) and (c) and implementation of the IEP shall occur no later than ten days after the provision of this notice.

**Comment**
Subsection (a)’s requirement for “immediate” notice to the parents after development or revision of an IEP was stated to exceed the requirements of federal law and to be subject to misinterpretation. The commenter recommended substitution of the phrase “within a reasonable time” as being consistent with federal guidelines. This correspondent also proposed adding “unless otherwise indicated in the IEP” after the provision for the IEP to be implemented no later than 10 days after the provision of the notice, stating that this language would account for agreements that certain services should start at a different point, e.g., at the start of the next quarter or semester. The commenter provided a concrete example involving the delayed transfer of a student from out of state.

**Analysis**
When an IEP is written, the Team indicates the date or dates on which specified services are to begin. Compliance with those dates means that the IEP is being implemented, so it would be circular to include the phrase “unless otherwise indicate in the IEP”.

We are not able to concur with the suggestion to state that any action must be accomplished “within a reasonable time”, because such a statement would provide no basis for gauging compliance. (It should be understood that the Illinois Administrative Procedure Act (see 5 ILCS 100/5-20) requires agencies to state the standards by which it implements its discretionary
powers. ISBE staff would have no basis for determining whether any amount of time taken by a district were “reasonable” or not and would therefore have no standard upon which to identify noncompliance with this rule.)

**Recommendation**
No change is needed in response to these suggestions.

**Comment**
It was advocated that, for the sake of clarity, subsection (b) should be changed to refer to requesting “an IEP meeting” at any time instead of to requesting “the review of the child’s IEP”. The commenter believed that the proposed language could be interpreted to mean that simply viewing the child’s temporary record would result in initiating the IEP process.

Another commenter requested that, here again, the phrase “within a reasonable time” be used in place of the ten-day time limit given.

**Analysis**
We agree that the proposed language is subject to misinterpretation and that the suggested reference to an IEP meeting would improve the rule.

**Recommendation**
The first sentence of Section 226.220(b) should be revised to state:

b) Either a child’s educational provider or a child’s parent may request an IEP meeting the review of the child’s IEP at any time.

**Section 226.230 Content of the IEP**

**Comment**
A number of commenters applauded the decision to retain the requirement for short-term objectives in subsection (a)(1) of this Section. One indicated that these objectives allow for more effective communication regarding students’ progress, while another felt that removing this requirement would only increase inconsistency and widen the existing gap between students with and without IEPs.

Another commenter stated the opposite point of view, believing short-term objectives are an unnecessary requirement because, when goals are linked to the Illinois Learning Standards (ILS), benchmarks or objectives are implied and do not need to be stated in the IEP. It was considered appropriate, however, to include objectives for students with the most severe cognitive disabilities (who will take the Illinois Alternate Assessment), because their goals may need to be broken down into smaller increments and functional goals are not implicit in the ILS. Along similar lines, revision of the rule was recommended to refer to “measurable annual goals developed in accordance with the child’s present levels of educational performance” and to eliminate the requirements for short-term objectives as well as for consideration of the State Goals for Learning and the Illinois Learning Standards. This commenter noted that these requirements exceed those expressed in federal law.

**Analysis**
In the development of these rules, a conscious decision was made to retain the existing requirement for short-term objectives because of the benefits we believe these bring to
children’s education. These benefits were emphasized by various commenters, and we continue to believe they outweigh the administrative inconvenience involved in including them.

**Recommendation**
No changes should be made in light of these comments.

**Comment**
The proposed rule was thought by one commenter not to be specific enough regarding the fact that the IEP must address both the child’s language needs and his or her disability. The addition of language was advocated to specify that the IEP must address the child’s language needs, including the development of English language proficiency to meet the English language proficiency standards.

The commenter also noted that Section 14-8.02(b) of the School Code requires ISBE to “develop standards for the development of appropriate bilingual special individualized programs”.

**Analysis**
We believe that the definition of IEP and subsection (a)(3) of this Section provide as much language-related specificity as can correctly be included. One related factor is parents' unilateral authority to determine at any time whether their children will or will not participate in bilingual education programs. We would also like to note a recent revision to the rules for Transitional Bilingual Education that states, “Each district shall ensure that any accommodations called for in the Individualized Education Programs of students with disabilities are afforded to those students in the administration of the screening instrument discussed in this Section and the language proficiency assessment prescribed under Section 228.25(c) of this Part.” (See Section 228.15(f).) In addition, there are students whose mode of communication is nonverbal or American Sign Language, for example, who will not be seeking to attain the English language proficiency standards.

The issue with developing appropriate bilingual special individualized programs is not directly related to these rules.

**Recommendation**
No changes should be made in response to these comments.

**Comment**
It was suggested that the requirement for the IEP to include a description of any needed “extended school year services” be deleted by a commenter who stated that it is unnecessary and eliminates team decision-making related to individual circumstances. Another individual pointed out that this provision exceeds federal requirements but indicated that it nevertheless did not appear to be problematic.

**Analysis**
We do not understand the concern for the elimination of the IEP Team’s decision-making ability in this connection. Services to be provided are required to be stated within each child’s IEP, so there is no scope for making ad hoc decisions about them during an extended school year any more than at other times.

**Recommendation**
Subsection (a)(4) should not be changed in response to these comments.
Comment
With regard to subsection (b) of this Section, it was noted that behavior goals can include “on-task” behaviors that do not necessitate a behavioral intervention plan. It was also stated to be confusing that a child with such a plan might not have a goal related to behavior. Other commenters stated that developing these plans is very time-consuming and that the existing rules correctly spell out when they are actually needed. In these individuals’ view, developing a plan for every student with any behavioral goal would result in less intervention by school professionals rather than more, in complete opposition to best practice. If these plans are to mandated, then the State should also mandate at least one school psychologist and school social worker in every school and provide the funding for these positions.

Similar comments pointed out that it is not necessary to require a behavior plan for every child, since all goals are essentially behavioral in nature. It was recommended that the need for such a plan be left to the discretion of the IEP Team, when behavior is disruptive to the learning environment. One commenter also proposed deleting the list of the plan’s required contents on the basis that this exceeds federal law.

Analysis
We believe that these responses have provided convincing evidence that this rule as proposed is excessive. Accordingly, we agree that it would be more appropriate to retain the existing version of these requirements.

Recommendation
The proposed version of Section 226.230(b) should be eliminated in favor of the existing language, as shown below:

b) An IEP that contains one or more goals addressing the child’s behavior shall also include a behavioral intervention plan as described in this subsection (b). A behavioral intervention plan may, however, also be included in an IEP that does not contain a goal addressing the child’s behavior, if deemed appropriate by the IEP Team. Each The IEP of a student who requires a behavioral intervention plan shall:

Comment
Although planning for transition beginning at age 14½ is no longer a federal requirement, most commenters who addressed this topic supported or applauded the retention of that requirement in Section 226.230(c). They stated “the more planning, the better; the earlier, the better”, feeling that students would be better prepared, more knowledgeable and confident, and therefore more likely to succeed in their transition to the adult world. That transition was described as confusing and stressful, particularly because students become responsible for advocating for themselves and are not used to that role. Early planning, identification of options, and coordination of needed services would avoid missing vocational opportunities and instead allow students to capitalize on their skills.

Several commenters noted that 15 is the age at which the most students drop out, so that waiting until age 16 to begin the planning process would clearly cut short opportunities for many. Another point in favor of planning in the 8th grade was that it permits productive choices to be made among the options available when the student reaches high school. It was noted that a number of other states were also planning to go beyond the federal requirements in this aspect of their rules.
One commenter suggested adding a “statewide framework for transition” as guidance to educators on ways that families, advocates, and programs can work together. This would have several objectives:

- establishing a comprehensive statewide plan;
- aligning various resources and increasing interagency collaboration;
- increasing capacity to improve outcomes across the domains (employment, postsecondary education, community and independent living, recreation and leisure);
- stating measurable transition goals based on transition assessments;
- creating active strategic partnerships to facilitate seamless transitions between school and adult settings, as well as programs and options appealing to young adults.

On the other hand, one organizational representative disagreed, indicating that these services should not be written into students’ IEPs until they are 16 or at the sophomore level. This respondent’s point of view was that collaboration between elementary and high schools is frequently not possible, resulting in plans that are not “teathered (sic) in reality”.

**Analysis**

It is gratifying that many stakeholders with differing roles in the provision of special education concurred with this proposal to retain a good practice even when it would not be required by federal regulation. The research does support the efficacy of this approach, and we continue to believe that beginning transition planning at age 14½ represents an important protection for students with disabilities in Illinois and a rational investment in their future independence.

**Recommendation**

No changes are needed in response to these comments.

**Comment**

One commenter made the point that not every student would have a goal in each of the areas listed in Section 226.230(c)(1), i.e., “training, education, employment, and, where appropriate, independent living skills”. For example, if a student had a specific employment goal or a job waiting upon graduation, he or she might very well not have an interest in postsecondary education. A training goal might be very appropriate, but requiring that this student have both a training goal and an education goal would be unreasonable. It was pointed out that the checklist generated by the U.S. Department of Education’s Office of Special Education Programs (OSEP) for compliance with transition planning requirements had been revised to reflect this understanding in response to comments to this effect. It was hoped that ISBE would similarly revise the proposed rule to permit more student-focused planning for transition.

**Analysis**

We agree that the change in the federal interpretation of these requirements enables us to make this rule more flexible and that avoiding artificial goal statements is appropriate.

**Recommendation**

Section 226.230(c)(1) should be revised to mirror the recent statement of the federal interpretation:

1) appropriate, measurable, postsecondary goals based upon age-appropriate assessments related to employment, education or training, and, where appropriate, independent living skills;
Comment
One commenter asserted that addendums could be made to IEPs without calling the entire team together for a meeting but that it was unclear what could be changed without the input of the entire team. ISBE was requested to clarify this point if the federal regulations do not do so. Also, the commenter was concerned that nothing in the rules would require notification to parents of changes made by this method. This individual emphasized the importance of keeping parents aware of any changes and pointed out that parents cannot request a copy of a revised IEP if they do not know changes have occurred.

Analysis
We do not know the origin of the commenter's belief that the parents are not required to be involved when an IEP is revised, because this is not the case. It is true that, under 34 CFR 300.324(a)(4)(i), an agreement can be reached to make changes without convening a meeting per se, but the parent must be a part of this decision-making process and must be involved in all revisions.

Recommendation
No change is needed.

Section 226.240  Determination of Placement

Comment
One individual asserted the existence of a gap in the rules with respect to the least restrictive requirement and advocated inclusion of a reference to the need for placement of students with disabilities who have limited English proficiency in bilingual education programs with their non-disabled peers. The commenter stated that these students should have access to the same instructional programs as all other students who benefit from bilingual instruction, and that to deny them the opportunity to participate in bilingual classrooms only because they are receiving special education could be considered a violation of their civil rights.

Analysis
It is axiomatic that students with disabilities may not be excluded on that basis from programs and services for which they are otherwise eligible. Nothing in Part 226 will make this fundamental requirement more applicable. However, since there appears to be a lack of clarity about these relationships, we agree that this Section can make reference to the possibility of participation in other programs.

Recommendation
Section 226.240 should be amplified to acknowledge this concept, as shown below:

The determination of placement shall conform to the requirements of 34 CFR 300.114 through 300.116, 300.327, and 300.501(c), and 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 any time the IEP is revised.
Section 226.250 Child Aged Three Through Five

Comment
One correspondent advocated extending the availability of early intervention services until a student enters kindergarten if the child would be eligible for preschool services under Section 619 of the Act and previously received early intervention services. This was stated to be permitted by Section 635(c) of IDEA. The commenter noted that children typically move to pre-kindergarten at the beginning of the next school year after turning 3, resulting in interruption in services over the summer if the children do not have disabilities, or do have disabilities but do not require “extended school year” services. However, the family could have been receiving family-focused services to facilitate the transition into school. This would be a better alternative than asking districts to extend special education services downward in the age range and bear the personnel burden, always assuming qualified staff could be found. A related recommendation pertained to Section 226.750.

Another individual advocated the deletion of subsection (c) on the basis that it exceeds federal requirements.

Analysis
It is correct that IDEA gives states the flexibility to provide early intervention services to children from three years of age until entry into elementary school. At this time, the Department of Human Services, the lead agency for early intervention in Illinois, has determined that implementing the “birth-to-six” option is not feasible.

Recommendation
No changes should be made in this Section, other than to amplify the title given to subsection (a) to include “Individualized Family Service Plan” before the first use of the abbreviation “IFSP”.

Section 226.260 Child Reaching Age Three

Comment
It was suggested by several commenters that the reference to 60 days in subsection (b) should be changed to 60 school days. With regard to subsection (c), one commenter stated appreciation for the clear authorization for the IEP Team to determine for children with summer birthdays whether services should begin during the summer or at the start of a new school year. The same flexibility was requested with respect to children whose birthdays fall during breaks in the school year. Finally, it was recommended that a qualified bilingual specialist be required to participate on the early intervention team whenever a child is of limited English proficiency or comes from a non-English speaking home.

Analysis
Subsection (b) discusses the requirements for a child who is referred at least 60 days prior to his or her 3rd birthday and determined eligible. Subsection (b)(1) uses “school days”, while subsection (b)(2) displays “school” as deleted. We agree that 60 school days is a more appropriate timeframe in these provisions and that the two should match. For reasons already stated elsewhere, we do not concur with the need for the other changes suggested in this Section.
Recommendation
In Section 226.260(b)(2), the word “school” should be restored.

Section 226.300 Continuum of Placement Options

Comment
One communication displayed insertion of the phrase “totaling more than 10 school days” after “ongoing intermittent absences” in subsection (b), in the context of the team’s consideration of the need for home or hospital services.

Analysis
This is a long-standing provision that has not caused any noteworthy problems in its interpretation. Because of the presence of the word “ongoing”, we do not agree that a threshold of ten days needs to be established in this rule. “Ongoing” clearly implies that the student’s intermittent absences are not predicted to end.

Recommendation
The suggested change in subsection (b) should not be made.

Comment
The addition of a new subsection was advocated, to state:

h) Where a parent of a twice-exceptional student elects to home-school the student and FAPE is at issue, school districts shall not preclude the student from a part-time home-schooling option, in which the child retains his social connection with the school and access to special education services and other school-related activities. It is recognized that for many 2e students, this is their only option to meet all their needs.

Analysis
Because Section 14-6.01 of the School Code already allows dual enrollment for students with disabilities as this commenter wishes, the suggested rule is not needed.

Recommendation
No change in this rule is needed.

Section 226.310 Related Services

Comment
One correspondent requested the restoration of subsection (e), which discusses parent counseling and training, stating that there are few counseling and training opportunities available to immigrant parents and those of limited English proficiency. The commenter indicated an urgent need to emphasize that parents of limited English proficiency must be offered training and counseling services in a manner that takes their culture and language into consideration.

Addition of a subsection (n) was also proposed, to discuss “Gifted services for twice exceptional” and to require either a specific program or a designated gifted education expert to work with special education personnel. Specific, more detailed requirements for the roles of these professionals were recommended.
Analysis
We need to clarify that the only purpose of all the language previously found in this Section was to describe the various related services, rather than to require their provision. As such, their deletion does not result in the loss of any substantive meaning. “Parent counseling and training” is defined at 34 CFR 300.34(c)(8), and retaining subsection (e) of this Section would do nothing to ensure that parents receive needed training.

The new subsection (n) should not be added, because gifted education is not considered a “related service” under the federal regulations.

Recommendation
No change should be made in response to these comments.

Section 226.330 Placement by School District in State-Operated or Nonpublic Special Education Facilities

Comment
A question was raised about a facility’s responsibility for securing services for the students placed there. In other words, the commenter inquired whether the responsibility rests with the district of residence to secure related services when the facility does not have the appropriate providers.

Analysis
The district is also required under 34 CFR 300.2(c)(1) to ensure the provision of FAPE. This requirement is reflected in subsection (b) of this rule, which states, “The local school district is responsible for ensuring implementation of the child’s IEP….” Further, “No school district shall place any child….unless…all educational programming and related services specified on the child’s IEP will be provided to the student.”

Recommendation
No change is needed in this rule.

Comment
One communication displayed a change in subsection (c)(4) that would make the reference to primary disability categories singular.

Analysis
We would have no justification for decreasing this requirement for responsiveness to students’ needs.

Recommendation
This suggested change should not be made.

Section 226.350 Service to Parentally-Placed Private School Students

Comment
One communication displayed the deletion of everything in the new portion of this rule beginning with “In fulfilling”, while another individual recommended insertion of a requirement for priority to be given to providing special education to gifted students who are placed by their parents in
schools that do not provide special education when there is no school within a reasonable distance that does so.

**Analysis**
The new language of this Section provides necessary explanation for the workings of the underlying federal requirements, and ISBE has no regulatory means of “giving priority” to certain classes of students as suggested here.

**Recommendation**
No changes are needed in response to these comments.

**Section 226.400 Disciplinary Actions**

**Comment**
Deletion of the second sentence of the introductory paragraph was recommended. This sentence requires the district to convene a meeting of the IEP Team to review or develop a behavioral intervention plan under certain circumstances. This requirement was identified as exceeding IDEA, which only requires a plan when appropriate because the conduct was a manifestation of the student's disability.

**Analysis**
There may be instances of behavior that triggers expulsion or lengthy suspension in which a behavioral intervention plan is not truly warranted. However, in the great majority of cases we believe the attention of the IEP Team needs to be directed toward identifying causes of these occurrences and changes that can be made to prevent their recurrence. Therefore, in the interest of ensuring that students’ needs will be met, we continue to believe that inclusion of this requirement is appropriate.

**Recommendation**
The provision in question should not be deleted.

**Comment**
Retention of two portions of this Section was advocated. These were the language in subsection (a) that permits certain removals “as long as such repeated removals do not constitute a pattern…” and subsection (h), requiring the IEP Team to make all disciplinary determinations. The commenter stated that these requirements would be easier to comply with than the federal regulation at 300.530(d) (which permits some decisions to be made by school personnel without the involvement of the entire IEP Team), because the approach would be consistent throughout and because it would be better for the student because the team knows him or her.

**Analysis**
In both these cases, the U.S. Department of Education has indicated (in the comments that accompany the federal regulations) that the intent is to give school personnel greater latitude for disciplinary removals of children with disabilities. Therefore, retention of these two provisions in Section 226.400 would be contrary to federal intent.

**Recommendation**
These suggested changes should not be made.
Comment
It was also proposed that the language of subsection (j) be retained, discussing the specific steps to take prior to any expulsion. The correspondent stated that schools should be required to exhaust all possible remedies to the problematic behavior prior to expelling a student.

Analysis
Expulsion is not dealt with separately from removal in the current federal regulations, so there is no need to have separate provisions in our rules either. The portion of Section 226.400 that will remain will apply in these cases as well as to all other removals.

Recommendation
Subsection (j) should be deleted as originally intended.

Section 226.410 Manifestation Determination Review

Comment
The retention of several portions of Section 226.410 was requested.
- With regard to subsection (d)(2), referring to “observations of the child” instead of the federal phrase “any teacher observations”, the former was preferred because it could include parents and other school personnel who would have invaluable input.
- Subsections (e) (1)-(3) on how behavior can be ruled not to be a manifestation of the disability were stated to provide specific guidance on the factors to be considered. The commenter urged that this determination must be made in a fair and competent manner because of the consequences.
- Subsection (f), specifying that deficiencies in the IEP must be addressed immediately if behavior is a manifestation of the disability, was contrasted to the federal regulations that would require only that the behavioral intervention plan be modified. It was noted that this plan might not be the source of the problem.
- Various family members of students with autism asserted that, “Our children should not be disciplined the same as their neurotypical counterparts” and stressed the need for manifestation hearings.

Analysis
Each of these issues is addressed specifically in the comments accompanying the federal regulations, so the intent of the underlying provisions is known. We have reviewed this material and are confident that repeal of these statements reflects the federal interpretation in each case.

Recommendation
Section 226.410 should not be changed in response to these suggestions.

Section 226.430 Protection for Children Not Yet Eligible for Special Education

Comment
One commenter requested the preservation of this Section instead of its repeal, stating that it provides important protection for disabled children not yet formally identified, especially twice-exceptional children, whose disabilities are so often masked.
Analysis
The federal regulation at 34 CFR 300.534 sets out detailed specifications on the subjects that have been covered by this Section. Restating these requirements in Part 226 is redundant and does not provide any additional protection, contrary to this assertion.

Recommendation
This Section 226.430 should be repealed as originally proposed.

Subpart F Generally (Sections 226.500-226.570)

Comment
It was asserted that these rules are supposed to address clearly the items required by the federal regulations but that they fail to do so. Various components of the procedural safeguards required by federal regulations were stated to be missing from the rules, and their inclusion in the Parents’ Rights manual was also advocated. It was suggested that, if all the items required by federal law and regulations were not to be included in the rule, the rule should be replaced with a cross-reference to those federal provisions.

Analysis
We disagree with this comment and believe the provisions in Subpart F correctly reflect the underlying federal requirements.

Section 226.510 Notification of Parents’ Rights

Comment
It was suggested that posting parents’ rights on the district’s web site should be sufficient to meet the requirement for annual notification.

Analysis
The federal requirement is for notice to be “given” to parents. Further, districts’ web sites are not accessible to all parents.

Recommendation
Section 226.510 should not be changed in response to this comment.

Section 226.520 Notification of District’s Proposal

Comment
It was requested that the text of subsection (c) be restored to permit a parent to waive the ten-day notice period before placement so services can begin as quickly as possible.

Analysis
We agree that this should be permitted, as discussed in connection with an earlier Section.

Recommendation
The sentence that has appeared as subsection (c) should be added to the end of the text that remains in Section 226.520: “A parent may waive the ten-day notice period before placement, allowing the district to place the child in the recommended program as soon as practicable.”
Comment
One correspondent requested addition of a requirement for districts to “make every effort” to ensure that parents who are contacted by districts have received the information and that it has been provided in a language they understand. The commenter stated that reliance on the mail is not sufficient, since many immigrant families live with relatives and mail may be misdirected.

Analysis
We believe the existing language of this Section should stand as proposed. There is no finite standard expressed in a requirement for “making every effort”, and that phrase would be inadequate as a rule.

Recommendation
No change should be made in response to this comment.

Section 226.530 Parents’ Participation

Comment
The deletion of the new phrase “and covering the expense of” (an interpreter) was sought on the basis that this requirement exceeds 34 CFR 300.322(e). Another commenter requested the insertion of new sentence before “In addition”, to state, “For purposes of 34 CFR 300.501(b)(4), “attempt” is replaced with “attempts”. This was recommended for consistency with another provision at 34 CFR 300.322(d), which uses the plural in discussing the district’s efforts to arrange mutually convenient times and locations for meetings. Finally, a new provision was suggested to state that notice shall be in the child’s parents’ primary language. The commenter indicated that this would conform to 34 CFR 300.503(c) by ensuring that the notification allows parents access to the information.

Analysis
In the first of these instances, we believe the requirement must be maintained based on the obligation to provide FAPE. In the second instance, we do not believe differing federal provisions can be made the same by this means. In the third instance, the issue in question is covered in Section 226.520, by virtue of that Section’s reference to 34 CFR 300.503.

Recommendation
No changes are needed in this Section of the rules.

Section 226.540 Consent

Comment
With regard to subsection (b) of this Section, it was suggested that “upon receipt of a written revocation or upon the district’s committing an oral revocation to writing” be added after “immediately”. It was stated that oral revocations can be ambiguous, and when a district commits a revocation to writing, the parents can clarify or perhaps reconsider it, which may avoid due process.

Analysis
We do not believe this addition is needed, because language in subsection (a) already clarifies the district’s responsibilities with regard to oral and written revocations.
Recommendation
No change is needed in response to this comment.

Comment
A change to five business days instead of three was recommended in subsection (c)(2) for the sake of consistency “throughout this subpart”. It was also noted that the initiation of due process is discretionary on the part of the district in this context. This change would simply provide additional time for considering whether it is appropriate while also exploring mutually agreeable means of resolving any pending issues that may have led to the parents’ revocation of consent.

Analysis
This change appears reasonable in terms of consistency and also in light of the opportunity to consider means of resolving the issues. We agree that this revision is advisable.

Recommendation
Subsection (c)(2) should be changed to indicate that the district’s request for due process will have the effect of staying the student’s 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 five business days after the parent’s revocation occurred.”

Comment
Insertion of a new subsection (d) was requested to provide that, “Each time”, for purposes of 34 CFR 300.154(e)(ii), is defined as “each fiscal year”. The commenter indicated that language on this subject that was added to the federal regulation after the public comment period is unclear and burdensome for school districts.

Analysis
We do not believe the relevant federal provision yields the interpretation advocated by this commenter.

Recommendation
This suggested change should not be made.

Section 226.550 Surrogate Parents

Comment
It was stated that subsection (b)(1) is an excellent provision but should be revised to refer to reasonable efforts made to secure a surrogate parent whose “racial, linguistic, and cultural background is similar to and/or consistent with the child’s.”

Analysis
We cannot see that any meaning is added by this new phrase, in that “similar” and “consistent” do not convey different concepts in the context of a child’s background.

Recommendation
This suggested addition is not needed.
Section 226.560 Mediation

Comment
The need for a large number of qualified “due process hearing officers” who are bilingual and available to the population with limited proficiency in English was emphasized. Increased orientation and education were recommended for parents, as well as increased training of bilingual personnel to qualify them as mediators.

Analysis
The reference to “hearing officers” is misplaced in the context of mediation, but we do acknowledge the stated need. ISBE has placed advertisements intended for a wide range of audiences in order to solicit a diverse pool of hearing officers. The number of applicants has been low, and we are reviewing additional means for attaining this objective. This is not a matter that can be addressed through rulemaking.

Comment
An entirely new Section was proposed to establish the procedures for mediation. The commenter stated that the federal regulations require ISBE to establish these (see 34 CFR 300.506(a)).

Analysis
This new material is not needed as part of the rules because mediation is optional.

Recommendation
No change is needed in response to this comment.

Section 226.570 Complaints

Comment
Changing the title of this Section to “State Complaint Procedures” was recommended, in order to distinguish its subject from a “due process hearing complaint”. It was stated that the reader should be told at the beginning of the rule that it pertains to general complaints against a school district and not to complaints related to due process.

Analysis
Although the introductory sentence explains the relevance of this Section, we agree that the change in the Section title would aid in distinguishing it even further.

Recommendation
The title of Section 226.570 should be changed to “State Complaint Procedures Complaints”.

Comment
It was stated to be unclear whether ISBE or any other entity maintains a list of advocacy organizations whose personnel would be able to communicate with parents of particular linguistic backgrounds. Further, no means was identified by which immigrant or refugee parents, if not literate, would be able to file a complaint with the state agency. Finally, the necessity was highlighted for written decisions to be made available in the parents’ primary language.
Analysis
It is our opinion that written complaints should continue to be required (as referenced in 34 CFR 300.153), and that the process should be conducted in English. Complaint procedures have not specifically addressed issues of language. Some complaints have been written in Spanish, but the responses have been provided in English, although Spanish-speaking ISBE staff members have been engaged in communication with those who speak only Spanish. ISBE will make reasonable efforts on a case-by-case basis to ensure communication with parents in their “primary language”, as in the past.

Recommendation
No change should be made.

Comment
Edits to subsections (c)(4) and (c)(5)(C) were recommended to clarify that corrective action will be ordered when appropriate and must be responsive to the issues raised in the complaint.

Analysis
We believe the meaning desired by the commenter is already present in the text of these rules, which refer to “whether the public entity is violating a requirement…” and actions that are “necessary to bring the public entity into compliance with applicable requirements”.

Recommendation
No change should be made in response to this comment.

Section 226.600 Calculation of Timelines

Comment
The elimination of references to the School Code and federal regulations was requested by a commenter who indicated that referencing two different conflicting sources promotes confusion.

Analysis
Section 226.600 only includes a reference to the Statute on Statutes, so it is not clear what is actually meant by this comment. However, it should be pointed out that each state is permitted to depart from the basic requirements of IDEA 2004 insofar as such departures represent enhancements to the rights of students with disabilities to receive a free appropriate public education. In Illinois, several of the departures from IDEA 2004 are embodied in provisions of Article 14 of the School Code. Thus it is necessary to refer to both state and federal sources in order to ensure that the reader understands the authority for each particular rule.

Recommendation
No change is required in response to this comment.

Section 226.610 Information to Parents Concerning Right to Hearing

Comment
It was stated that much confusion exists among parents, districts, advocates, and hearing officers regarding “resolution meetings” and whether all issues are resolved. The commenter suggested inclusion of a rule that would be similar to guidance on due process that was issued in July 2005, clarifying that a resolution meeting may resolve all or some of the issues and the
others, if any, are not waived unless agreed upon and can be presented in a due process claim or hearing. Another individual indicated that this Section provides sufficient notice (meaning dissemination of the ISBE Explanation of Procedural Safeguards).

Analysis
This Section concerns the responsibility of districts to disseminate written information to parents about their rights while a request for a due process hearing remains pending. It does not refer to procedures related to resolution sessions. ISBE believes that the requirements for resolutions as described in IDEA 2004 and its implementing regulations (see 20 USC Sec. 1415(f)(1)(B) and 34 CFR 300.510) provide ample guidance for the conduct of resolution sessions.

Recommendation
No further clarification on resolution sessions is needed in these rules.

Section 226.615 Procedure for Request

Comment
It was recommended that the introductory paragraph to this Section be rewritten to require a parent’s request to be submitted in writing to the district superintendent and requiring the superintendent to forward it to ISBE within 5 school days after receipt. According to the commenter, “Retaining district responsibility for this administrative action is likely to contribute to more reliable and efficient implementation of the hearing process.” On a related note, another commenter also indicated that unrepresented parents might find this requirement burdensome. Finally, one correspondent commended ISBE for aligning its requirements with the federal ones and working with stakeholders to revise Illinois state law also.

Analysis
As noted previously, while this rulemaking has been in progress, Senate Bill 2796 has passed out of both houses of the Illinois General Assembly and is now awaiting the Governor’s signature. That bill maintains the current procedure under which a parent is to file a hearing request with the district only, after which the district is to forward the request to ISBE within five days. (This contrasts with the proposed language of Section 226.615, which contemplates that the party filing the request must also forward a copy to ISBE.) In view of the likelihood of enactment of the pending legislation, and because the proposed version of the rule may needlessly burden parents, we believe the rule should be edited for consistency with SB 2796 as that affects Section 14-8.02a(f) of the School Code.

Recommendation
The pertinent portion of Section 226.615 should be revised to state:

In addition, in order to fulfill fulfilling the requirement to “forward a copy of the due process complaint to the SEA”, as specified in required by 34 CFR 300.508(a)(2), the school district superintendent shall, within five days after receipt of the request, forward the request party filing a due process complaint must deliver the compliant to the State Board of Education in Springfield by certified mail or another means that provides written evidence of the delivery.
Section 226.620 Denial of Hearing Request

Comment
It was stated that repealing this Section (as proposed) strengthens the expectation for a hearing officer to exercise his/her authority to dismiss a hearing when appropriate.

Analysis
We agree with this view and think it appropriate that authority for denying hearing requests should rest with the hearing officer at all times.

Recommendation
No change is called for by this comment.

Section 226.625 Rights of the Parties Related to Hearings

Comment
Objections were expressed to subsection (b) of this Section on the grounds that no federal law or other obligation calls for the district to bear the expense of an interpreter. The commenter opined that, since ISBE is responsible for the due process hearing, ISBE should also be responsible for the cost of any interpreter needed to enable a party’s participation. The commenter therefore recommended replacing “school district’s” with “Illinois State Board of Education’s” before “expense” in subsection (b).

Analysis
Although this comment is technically correct in that IDEA 2004 does not place this obligation on school districts, the district does unequivocally bear such a burden in other, similar contexts such as IEP conferences, procedural safeguards, etc. As a matter of policy, ISBE believes that the provision of an interpreter at a due process hearing is part of a district’s ongoing responsibility to ensure that parents and students have full and meaningful access to the process of ascertaining and providing a FAPE to students with disabilities.

Recommendation
No change should be made in response to this comment.

Section 226.630 Qualifications, Training, and Service of Impartial Due Process Hearing Officers

Comment
Appreciation was expressed for the degree to which this Section and Section 226.635 mirror federal provisions. The commenter also requested that ISBE study the cost and other factors associated with professionalizing the role of the hearing officers in several specific respects.

Analysis
ISBE agrees that ongoing analysis of the due process hearing system is needed to ascertain whether further improvement can be made in the future. To that end, ISBE is compiling data on a range of aspects of the system.

Recommendation
No change in the rules is called for by this comment.
Section 226.635 Appointment, Recusal, and Substitution of Impartial Due Process Hearing Officers

Comment
One commenter requested insertion of a provision that hearing officers recuse themselves if they are residents of the districts involved, except in Chicago. It was noted that such a provision would allow officers in Chicago to hear cases in unfamiliar schools and would therefore be practical.

Analysis
This comment recommends a change that corresponds to a legislative change being made via SB 2796. Section 226.635 states that, “The appointment, recusal, and substitution of due process hearing officers shall conform with the requirements of Section 14-8.02(f) of the School Code [105 ILCS 14-8.02(f)].” Since the law will be explicit, it will not be necessary to state the points requested by the commenter in so many words in the rule.

A technical problem is created by the fact that the pending bill creates a new subsection label (f-5) within which this subject will be addressed. Because that subsection has not yet been enacted into law, it cannot be referenced in the rule yet. When the law changes, the rule will need to be amended to correct this reference. (If the Governor signs the bill before the Joint Committee on Administrative Rules completes its review of Part 226, however, we may, by agreement with JCAR, be able to accomplish the change without a new rulemaking.)

Recommendation
No change should be made at this time.

Section 226.640 Scheduling the Hearing and Pre-Hearing Conference

Comment
One correspondent applauded the decision to retain the time period parents have in order to prepare for due process. Another requested a limit on the number of days a hearing can last, so as to produce an expeditious ruling addressing the actual matter of contention.

Analysis
We assume the first comment relates to subsection (b) of this Section, which permits either party to request a delay in the hearing or the pre-hearing conference. There is a provision in Senate Bill 2796 that we believe will be established as Section 14-8.02(g-55) of the School Code and that expresses the expectation for parties to use “all reasonable efforts” complete a hearing within seven days in the aggregate. The language of the bill also goes on to direct hearing officers to schedule the last days of hearings promptly as another expressions of this concept. In light of these reflections of legislative intent, we do not believe that ISBE will have authority to use rulemaking to limit the length of these hearings.

Recommendation
No change should be made in response to these comments.
Section 226.655 Expedited Due Process Hearing

Comment
It was recommended that the time limit on placement in an interim alternative educational setting discussed in subsection (c) be changed from 45 days to 45 school days for the sake of consistency with IDEA 2004 and the relevant federal regulation.

Analysis
Since June 2005, ISBE has taken the position that school districts should be permitted up to 45 school days to remove a student for disciplinary reasons, in line with the procedures described in IDEA 2004. We agree that this change in the rule is warranted.

Recommendation
Section 226.655(c) should be revised in two places to refer to “45 school days”.

Section 226.670 Decision of Hearing Officer; Clarification

Comment
Support was expressed for a revision to Section 14-8.02a of the School Code to shorten from 120 to 90 days the period within which a party aggrieved by a hearing officer’s decision could bring action challenging it.

Analysis
This proposed amendments to this Section of the rules include deleting the specific statement of this timeframe. Therefore the rules will reflect any revisions to the underlying state law that may occur. However, the legislation currently pending maintains the 120-day window of opportunity for filing a complaint in state or federal court following the issuance of the hearing officer’s decision.

Recommendation
No further change should be made.

Section 226.690 Transfer of Parental Rights

Comment
Several commenters addressed the need for states to have procedures for appointing a parent or another individual to represent a child throughout the period of eligibility, pursuant to 34 CFR 300.520(b). It was noted that even a student who has reached the age of majority and has not been determined incompetent may not have the ability to provide informed consent. One commenter stated, “As Illinois has a Probate Act with explicit guardianship procedures, Illinois will need to amend the school code and establish procedures to be in compliance with IDEA.” Another noted that school districts have sometimes refused to recognize a power of attorney when lawyers or advocates attempt to use one to deal with this situation. It was stated that Congress apparently intended two things: (a) states would establish standards for determining whether a student has the ability to provide informed consent when no judicial determination of incompetency has occurred; and (b) states would adopt procedures for appointing the parent or another appropriate individual, such as a surrogate parent, when these circumstances exist. It was thought that doing so in this rulemaking would be appropriate.
Analysis
ISBE does not believe that the Illinois Probate Act is controlling on the issue of the age of majority or affects Part 226, except insofar as a guardianship order may affect the decision-making at an IEP meeting. Though ISBE has considered whether other mechanisms such as powers of attorney can be used, we have not yet reached a conclusion that such instruments must be uniformly recognized in the context of an IEP meeting. By the same token, ISBE believes that students who have reached the age of majority should be allowed the opportunity to bring persons (including attorneys) to IEP meetings to lend assistance to the student during the decision-making process that flows from various special education procedures. We do not believe that such a policy requires a revision to the current rule.

Recommendation
No change should be made in response to this comment.

Section 226.720 Facilities and Classes

Comment
With regard to subsection (b) of this Section, opposition was voiced to the wide permissible range of grades to be served in the same class. The commenter indicated that students in grades from 1st through 8th could all be together under this rule.

Analysis
Subsection (b) states that, “The age range of students within a special education grouping shall not exceed four years at the elementary level and six years at the secondary level.” We do not see how this language can be interpreted as permitting students from eight grades to be served together.

Recommendation
No change is needed in response to this comment.

Comment
Also in connection with subsection (b), language was requested to indicate that students who reach the age of 6 during the school year shall be allowed to remain in the early childhood program through the end of that school year. The individual submitting this comment noted the rule’s statement that “only” children aged 3-5 are allowed to be in those classes.

Analysis
We consider it best practice to allow a student to remain in an early childhood classroom until the end of the year if he or she has turned 6 during that year. We therefore understand it to be a reasonable implementation of subsection (b) for each child served to be no older than 5 at the beginning of the year. There is no reason this cannot be clarified.

Recommendation
The relevant sentence in Section 226.720(b) should be amplified to state:

Early childhood classes and services shall serve only children from three through five years of age, except that a district shall not be prohibited from permitting a child who reaches his or her sixth birthday during a year to complete that year.
Comment
One commenter objected to the deletion of subsection (c) and disagreed that it was redundant with subsection (a). It was feared that sole reliance on subsection (a) and its requirement for “comparable" facilities could result in the impression that the same kind of facilities would be required but not that they must be appropriate to the age of the students served.

Analysis
We agree that subsection (c) was originally drafted to convey a requirement not specifically expressed in subsection (a) and that it should be restored.

Recommendation
The proposed deletion of Section 226.720(c) should be reversed.

Section 226.730 (Class Size for 2008-09 and Beyond) and Section 226.731 (Class Size Provisions for 2007-08)

By far the largest and most emphatic portion of the public comments received on this rulemaking responded to the provisions of these two Sections. Many commenters addressed the proposed increase in the percentage of students with IEPs who may be served in a “general education classroom” under Section 226.730(a), while others focused either on the individual class size limits given in subsection (b) of that Section or on the elimination of the connotation that any particular class size is equivalent to the respective teacher’s case load. Each of these aspects will be discussed separately below.

Comments - Definition of “General Education Classroom”
Many parents and teachers who commented on this provision expressed concern for the teacher’s ability to meet the needs of all students in the classroom if the percentage of students with IEPs were to increase to 40. They pointed out that students with IEPs are by no means the only ones with special needs, in that English language learners as well as students in difficult family situations also present challenges. Some stated that the 30 percent level is already inappropriate, because students have needs far beyond what the general and special education teachers can meet. Statements such as, “Teachers can’t do the impossible," and, "It’s not always possible to do more with less,” illustrate these concerns. Numerous commenters characterized themselves or their colleagues as “stretched thin”. ISBE was invited to “talk to teachers about the changing face of the classroom”, and it was stated to be a struggle to help all children succeed, an untenable situation that must improve instead of getting worse.

It was felt that, with the proposed increase, as many as 55-60 percent of all the students in a general education classroom would have “high needs" and then none of their needs would be met. This would be a disservice to teachers and to all students, and the “daunting task” inherent in addressing the needs of the currently permitted 30 percent was emphasized. One commenter advocated standing up for the average student’s chance to learn by not overburdening the general education teacher with more tasks but no additional time in which to accomplish them. It was also mentioned by several commenters that districts currently ignore the 30 percent limit and that some general education classes have had a representation of students with disabilities in excess of 50 percent. Concern was expressed over even greater possible concentrations if the limit is raised and then similarly disregarded.

“I can’t believe one would even contemplate it,” and “It’s wrong and a violation of the right to FAPE” summarize the feelings of several commenters. Similarly, “If the necessary help isn’t
given now, we as a nation will pay;” “Reducing services speaks of a lesser America than what these children and their families are promised”; and “Taking away services is counterproductive; if students are not well prepared when they leave high school, they will show up on the welfare rolls”.

Along the same lines, various respondents were “astounded”, “shocked”, and “stunned” at this proposal. One was “unnerved by the rush to insert special education students into general education”, and several concluded that cost savings were the goal. The change was described as “horrific”, “irresponsible”, “devilish”, “unconscionable”, “ridiculous”, “immoral”, and “a recipe for disaster”. The assumption was frequently expressed that there would be a reduction in the specialized services provided, and numerous commenters characterized this proposal as “forcing” special education students into general classrooms without the necessary support services. It was noted that the 40 percent limit might paradoxically permit more students with IEPs in a general education classroom than in a special education setting, creating incentives to place students with IEPs in general education settings without the support they need. As one commenter put it, “It becomes a special education class with a general education teacher.”

The question was posed, “When will our nation put emphasis on what each child needs instead of reducing costs?” Some believed special education teachers would lose their jobs because the rules would make it easier for districts not to hire them. It was pointed out that individualized supports are critical to students’ success and have become even more important in light of all the pressures flowing from NCLB. Raising the maximum to 40 percent would mean less time for working on the goals in each student’s IEP.

“Special education is supposed to be special” captures the feeling of those who expressed concern for the potential loss of individualized attention. Research was stated to suggest that all students would be more successful when separated for certain situations. “If this were right, it would have worked well in the days before special education,” in the words of one correspondent. Another stated, “If anyone can come and teach the 30 percent without any assistance or support, I will support this outlandish proposal. Shame on you for even attempting to have our students be poorly served in such a treacherous manner.”

A frequently noted fear was that the needs of the other students in general education classrooms would be completely overshadowed by those of the students with disabilities. It was asserted that the average learner is “on the brink” as far as educational discrimination is concerned and that such discrimination already exists for gifted students. One concrete problem that was identified was the need for substitute teachers when regular teachers have to attend meetings related to their special education students; the commenter felt this would have adverse consequences for the others in the class. The proposal was also said to shortchange the education of students who do not have learning problems and who have the ability to “comply with the tasks at hand”. One respondent indicated this approach would not be educationally sound because it no longer weighs category of disability and severity of need. As such it would deny the other students in the classroom the best efforts and full learning opportunities they deserve, leading to a “lose-lose situation”. The pace of instruction would suffer and the students with IEPs might experience problems with distractions. This commenter believed none of the students would be well served despite everyone’s desire to help them develop their maximum potential. Instead, “they will be victimized by rules allowing for assignment by economic priority”. Reasonable and appropriate inclusion with the proper support was advocated.
Despite acknowledging the benefits of “blending”, some commenters stated that those benefits would be greatly reduced in classes where 40 percent of the students had IEPs. Others indicated that “overloading” a classroom with special education students is harmful to all involved, stating that team teaching can be very successful if the numbers are appropriate but that it is difficult for the special education student to get needed attention, even in a well-managed team setting. A related concern was that the safety of students and teachers might be compromised if students are placed with teachers who lack the specialized training to respond to their individual needs.

Several parents of students with disabilities described their children’s experiences and noted difficulties they had experienced in the general education setting that were mitigated by the special education services they had received. One son “survived his school years with his sanity intact” due to the benefits of a separate class. Another was the only child with a disability in his general education class, and his parent wrote that the teacher could not have handled another child with special needs in addition to the nearly 30 others in the class. She stated that a 40 percent limit would be “absurd”. It was feared by another commenter that children would experience setbacks in the general classroom and that teachers would have less time for the other students as well. It was described as “a shame” to take away small group learning atmospheres for those who need them.

One individual felt that the “requirement of a 10 percent increase” ignores the many general education teachers who are not “highly qualified” and noted that there was no mention of co-teaching or any other support. Another stated that “50 percent” would have a significant impact at the middle and high school levels, and a third recommended opposing “a bill that would include all special education students in regular education settings”.

Not everyone shared the assumption that a higher level of mainstreaming would have the effects described above. It was pointed out that there is no necessary connection between a student’s placement in a general education classroom and a reduction in services to that student. Rather, what matters is an understanding of, and attention to, best practices in an inclusive situation. Another individual noted that it is imperative to furnish the needed support in the general education setting but also to provide an ample range of other educational settings for those who need them. “Inclusion must be done with children’s well-being in mind and not cost savings.”

From an administrative point of view, a 30 percent limit was stated not to be reasonable, because it would be too expensive to have two teachers in the same classroom for just a small number of students. In a high school class of 25-30 where 10 or 12 students have IEPs, parents have been told the district will not be able to place all of them in co-taught classes next year even though most are in those settings now. The district believes this benefits those students, but the “new percentages” will not permit that arrangement due to the overall numbers. In a similar vein, it was thought that a 30 percent maximum would lead to under-identification of students eligible for special education due to the need to keep the number down. Having a special education teacher working with the general education teacher was thought to be too expensive, as well as impractical in light of the many other responsibilities of the special educator. Other district-based commenters indicated that the changes would make it impossible to predict the number of staff needed, because a schedule change for one student could change required staffing levels “in a number of directions”.

A straightforward limit stated as a percentage of the class’s make-up was noted not to take into account the range of the students’ disabilities. For example, a student with a math-related
learning disability should not affect the calculation in a reading class. Several commenters requested that any limit established discount those students who receive speech services only, since they do not receive any services while they are in the general education classroom and should therefore be treated the same as their non-disabled peers. Similarly, it was proposed that any maximum exclude those needing no more than 60 minutes of special education services per week, or four percent of instructional time.

It was acknowledged that the proposed change from 30 to 40 percent would make the rule that applies to most of the state match the provisions that have been in place for the Chicago Public Schools for several years under the Corey H. matter. However, it was suggested that ISBE should be questioning smaller districts as to the appropriateness of clustering large numbers of their disabled students in the same buildings rather than increasing the limit to 40 percent. The possibility of an appeal was raised in conjunction with leaving the maximum at 30 percent. Other strategies might be for ISBE to place a cap on the number of IEP meetings any teacher would be required to attend, in that co-teaching several periods per day could yield a case load of 50-70 students with all the attendant services and responsibilities.

Analysis
We should note first of all that nothing in the proposed rules was intended to, or would have the effect of, “forcing” students with IEPs into general education classrooms. Nor was there any goal to have class sizes of 40, as some apparently assumed. The reason for including in the rules a definition for “general education classroom” is the need to determine whether IEPs that call for students’ placement in such a setting are being correctly implemented. This is particularly crucial because of the requirement in federal law that the general education classroom, with whatever modifications and supports are necessary, be the first placement option considered for every student with a disability. One generally would not expect a prevalence of individuals with disabilities higher than 30 percent of the population, so it should be obvious that a classroom in which 60 or 70 percent of the students have IEPs should not be classified as a general education setting. However, in small schools there are often few sections of particular classes, especially in the upper grades, so a rigid limit of 30 percent may be a disservice to students with disabilities when there are no more places available in general classrooms.

A definition of “regular education classroom” was put in place in August of 2000 at the urging of the Court-appointed Monitor in the Corey H. litigation. Some commenters were clearly overlooking the fact that the 30 percent limitation stated in that definition is not new. However, an exception was soon granted for the Chicago Public Schools, and it was simply our intention to make this rule somewhat more flexible for the rest of the districts in the state, with the stipulations set out in Section 226.730(a)(1)-(3).

As can be seen, the provisions of that rule do not state or imply that needed supports will be absent, and there are other portions of the rules that would maintain those protections. However, we cannot disregard the level of consternation and anxiety expressed during the public comment period, from which it is very clear that educators’ and parents’ experience is significantly different from ISBE’s intentions in many cases.

We believe there has been a very persuasive body of comments indicating that resources, time, and support for serving students in the general education environment are often inadequate as things stand now. Many individuals and organizations are convinced that increasing the maximum percentage to 40 would surely exacerbate those problems, and there is no ironclad way to guard against abuses of a higher overall limit or unintended curtailment of services.
needed by students, both with IEPs and without. Although the 40 percent limit and the associated stipulations will remain in force for the Chicago Public Schools regardless of this rulemaking, we have concluded that this change in the rules should be reversed. Since no more practical solution has been identified that would afford flexibility to the other districts around the state, we should simply delete the new portions of Section 226.730(a) so that the 30 percent maximum remains in place. When districts believe a higher percentage is warranted and defensible in specific situations, they can make use of the mechanism set forth in current Section 226.700(f) and being retained as subsection (c) to gain approval on a case-by-case basis. We should also edit the rule so it will refer to “general education” instead of “regular education”, based on related comments discussed elsewhere.

Recommendation
Both Section 226.730(a) and Section 226.731(a) should be revised as displayed below.

a) When a student’s IEP calls for services in a general regular education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs, that utilizes the general curriculum, that is taught by an instructor certified for regular (general) education, and that is not designated as a general remedial classroom. However, a class in which up to 40 percent of students have identified disabilities shall also be considered a regular education class for purposes of meeting this requirement, provided that:

1) The class is smaller than the average class size in the State of Illinois, as identified on the Illinois School Report Card; or

2) A special education teacher is present whenever more than 30 percent of the students have IEPs, and this teacher assists the regular education teacher in the delivery of instruction as necessary to meet the needs of the students with IEPs; or

3) The total number of students in the relevant age range who are served at that location precludes forming more than one class per grade level or more than one section of a class.

Comments – Class Size
A number of comments addressed the change in numbers that would be permitted within individual classes, while another quantity of responses had to do with eliminating the notion of a limit on individual teachers’ case loads.

Most of those who commented on the topic of class size clearly assumed that larger classes would result from the proposed new language of Section 226.730. On that basis, numerous statements were made to the effect that larger class sizes would prevent special education teachers from providing the individualized instruction and other services that students need, such as emotional support to students with emotional/behavioral disorders. It was pointed out that much time is needed in order to allow for individualized attention, and concern was expressed that training and support should be provided for teachers rather than driving them out of the field with large class sizes and poor working conditions. Small class sizes were advocated in order to avoid overwhelming young and inexperienced teachers. They were also stated to be critical to meeting the requirements of NCLB.
One commenter stated there is no evidence to indicate that the current rule is ineffective and believed it to be appropriate because it is linked to both a specific disability and level of need. This correspondent recommended that ISBE refrain from revising existing criteria except when they are proven unsuitable, expressing opposition to any increase in class size for fear that the availability of one-on-one instruction would decrease.

Related comments indicated that there would be drastic negative consequences connected with basing class size on the percentage of time for which students are removed from the general education classroom rather than on the type or intensity of their disabilities. It was stated that this proposal would be setting public education up for failure because students need more service, not less. “There is no one-size-fits-all,” was a point made about the percentage of time removed as a basis for class size, and another respondent stated that percentage of time removed is not an indicator of need. Another commenter echoed the sentiment that this change in the rules would have a significant impact at the middle and high school levels especially, fearing that instructional groupings constructed on this basis would ignore common educational need. The example was given of students with similar reading difficulties, who should be grouped on that basis but might not be because it would involve mixing various percentages of time removed (presumably resulting in a lower class size and greater expense). It was proposed that the changes be studied with real-life examples to determine their implications.

On a similar note, it was stated that case load and class size should be re-evaluated because students are more impaired now than in the past. “We want to teach but need hope that we can make a difference,” one teacher stated. A resource teacher described the time and tasks involved in providing direct and indirect services as “difficult enough with 17 students” when all the modifications, accommodations, and meetings are taken into account. A class size of 15 was stated by another commenter to be too large; in this person’s opinion, class size should be dependent upon the needs of specific groups of students. It was also noted that older students need exposure to different settings to prepare them for success after graduation and their teachers need the time and freedom to work with them in those settings. A parent wrote that “lower ratios can’t wait”.

An opposing point of view was expressed by a special education director who stated that the proposed class sizes are too low. This individual stated that a high school self-contained class for students with behavior disorders would not be feasible to run and questioned the effectiveness of a history discussion, for example, in a class of five. It was her opinion that the number of full-time equivalent staff needed under the proposed rules would “break the bank”.

Other commenters, however, were cautiously supportive of the class size changes. In their case the move away from classrooms based on categories of disability was welcomed, and it was noted that there has been a tendency not to focus on individual needs when all the students have the same disability. Similarly, they praised the focus on students’ intensity of instructional need rather than their specific disability label. It was acknowledged that it would require a “major shift in thinking” to contemplate these changes but in their opinion the changes were “compatible” with the current class size numbers. These individuals saw the proposed rule as an improvement. Regret was expressed at the tone of the discussion that had occurred on this subject and the distress that had been caused to parents who had been led to fear class sizes as high as 90.

**Comments – Case Load**
The presumed increases in class sizes were especially troubling to some commenters in light of the possible interaction between those numbers and the removal from the rules of the
connotation that one class size is also that teacher’s overall case load. Various commenters calculated possible maximums of 90 or 100 students per day, assuming a teacher were serving only students removed from the general education classroom for less than 20 percent of the school day. A case load of 50 or 60 students was stated to be too high for special educators due to the extra paperwork requirements that apply to them. Some comments about tremendous case loads came from Chicago teachers and were apparently linked to cuts in staffing that had actually occurred, rather than to the presumed effects of these changes.

Many respondents made very similar points on the subject of case load. They stated, for example, that it would be unfair to have no limit, because of the need to juggle too many assignments and too many students across too many grade levels. “Dramatic increases” were feared. General education teachers were stated to need more support and training, but special educators would have less time to provide that.

It was suggested that, whatever is changed or retained, ISBE should define case load and class size so it will be clear whether these two are the same thing or different.

One commenter requested that the rules be specific about the age range a resource teacher can be required to cover and whether the stated requirement limits the age range over all or just class period by class period. Another stated it was not clear “what will happen” to resource classes.

Similarly, ISBE was requested to make available information about “case manager loads” so that comments could be given on that proposal. One educator described being the case manager “for every child I see” and explained the time needed for meetings, paperwork, assessments, and other services. That individual’s case load is now limited to 20 students, and “more would be impossible”. Students were stated to deserve the individualized education that is promised to them, “not some cookie-cutter education because there is no time to do anything else”.

Finally, Sections 226.730 and 226.731 were identified as not supporting the placement of students in the least restrictive environment because of their discussion of special education “classes” and omission of many other time-consuming activities such as consultation with general education teachers; adaptation of curriculum for use in the regular classroom; planning and implementation of strategies to foster greater participation in the regular classroom; periodic observation; and direct assistance in the classroom. It was noted that Section 226.730 currently requires one a teacher for every 20 special education students and encompasses all the services they provide, such as those listed above. “By contrast, the proposed version disregards services and sends a message to districts that they need not be considered in determining how many teachers to hire.”

Analysis
The first point that should be made regarding the provisions addressing class size is that they were drafted for the limited purpose of dealing with that subject only. As such, they are not intended to devalue or disregard other services, but only to deal with the number of students who can be served in self-contained special education classes when those exist.

We would be the first to acknowledge, and value, the broad range of additional services and activities performed by special education teachers. In fact, that range is so broad, and the variety among Illinois school districts and cooperatives is so great, as to make a serviceable statewide definition of “case load” extremely elusive. Our experience with the current scenario,
in which “class size” is sometimes assumed to be synonymous with “case load”, leads us to conclude that no concrete definition has been conveyed or understood, making monitoring and enforcement of appropriate staffing configurations impossible.

In our view, there are simply too many variables among local situations to permit case load to be defined or restricted at the state level. Not least of these is the obvious variability in the amount of travel time involved when professionals serve students in multiple buildings. It would be impossible to predict, let alone quantify, all the other factors that do and should affect how many students an individual can serve and at what level of intensity. Similarly, assignment of the various functions entailed in case management may be consolidated or spread among various individuals, and it would not be feasible for ISBE to impose one rigid model on all the public entities that provide special education.

Another important point to consider in this context is the relationship of state regulation to local control and collectively bargained arrangements. Virtually any configuration ISBE could develop would run counter to some contractual provisions that were agreed upon by educators somewhere in the state. Therefore, we have concluded that defining case load and attempting to regulate it would be counterproductive. However, there is an alternative approach by which we may avoid these pitfalls while still establishing a more solid platform for ensuring that students receive the services to which they are entitled. It will be useful for all concerned to have information readily available as to how each district or cooperative makes staffing decisions, and each entity should have a policy stating how decisions will be made to ensure that all required services can be provided by each affected professional. (Please see “Recommendation” below for more details.)

As to the effect of the proposed changes in terms of class size, we note that none of the commenters linked their assumptions of higher class sizes to specific provisions of the rules. This has made it very difficult to know what comparisons readers were drawing and how they thought students with given disabilities would be affected. To illustrate the changes, let us review the situation of students with autism in an “instructional” class as that is now characterized, i.e., students removed from the general education classroom for at least 50 percent of the school day. Under the current rule, the maximum class size is eight students, with the possibility of ten in response to unique circumstances or 13 with an aide. Under the proposed rule, the maximum will be 10 unless any of the students is removed for more than 60 percent of the day, in which case it will be eight. The respective totals, increased as permitted with the services of a paraprofessional, are 15 and 13, as compared to the total of 13 permitted under the current rule.

Another example that will be helpful to consider involves students with learning disabilities, since they make up approximately half of Illinois students with IEPs. Under the current rule, the maximum class size is 10 students, with the possibility of 12 in unique circumstances or 15 with an aide. Under the proposed rule, the maximum will be 10 unless any of the students is removed for more than 60 percent of the day, in which case it will be eight. The respective totals, increased as permitted with the services of a paraprofessional, are 15 and 13, as compared to the total of 15 permitted under the current rule.

For high school students with mild or moderate mental impairment who are served in “instructional” classes, the current class size is 15 (17 in unique circumstances, 20 with an aide). Under the proposed rule, the maximum will be 10 unless any of the students is removed for more than 60 percent of the day, in which case it will be eight. The respective totals,
increased as permitted with the services of a paraprofessional, are 15 and 13, as compared to
the total of 20 permitted under the current rule.

Thus it can be seen that some of these students would probably experience an increase in class
size under some circumstances, while others would not.

We also do not believe that the percentage of time for which a student is removed from the
general education classroom is any less precise a barometer of educational need than the
currently used statements based on disability and severity. Indeed, the current rule already
relies partially on time removed, as the definitions of “resource” services and “instructional”
services are based on that analysis. Based on all these factors, we continue to believe the
class size parameters stated in the proposed rule are appropriate, and they will lend themselves
much more readily to monitoring for compliance than the much more numerous configurations in
the current rule.

**Recommendation**
The proposed class size specifications set forth in Section 226.730(b) should not be changed.
A new subsection (c) should be added to that Section in order to give voice to the expectation
that educators’ work loads will be reasonable in light of the specific demands placed upon them, as follows:

c) **The maximum class sizes set forth in subsection (b) of this Section shall, if necessary,**
be further restricted at the local level to account for the activities and services in which
the affected educators participate in order to provide students with IEPs the free,
appropriate public education in the least restrictive environment to which they are
entitled. Each entity subject to this Part shall adopt and place into effect, no later than
the beginning of the 2008-09 school year, a policy stating how staffing decisions will be
made so that all services required under students’ IEPs, as well as all needed ancillary
and support services, can be provided at the requisite level of intensity. Each policy
shall encompass, but need not be limited to:

1) individualized instruction;
2) consultative services and other collaboration among staff members;
3) attendance at IEP meetings and other staff conferences; and
4) paperwork and reporting.

**Miscellaneous Additional Points on Sections 226.730 and 226.731**

**Comment**
One commenter indicated that Section 226.731(b)(4)(A) should be deleted because it is unclear
and open to multiple interpretations. Another stated there would be no need for Section
226.731 at all, in that a one-year transition period “may be confusing and irrelevant, especially
when this may be implemented given the timing of the rules’ adoption”.

**Analysis**
We are unclear as to the reason for the recommendation to delete Section 226.731(b)(4)(A),
since it simply transfers current language to another location. All of Section 226.731 is existing
language that is being carried over for one more year but is being placed after the Section intended for the longer term. We disagree that the one-year transitional period is not needed, since the revised rules will not go into effect until the spring of 2007. This timetable would leave no room for districts and cooperatives to rethink their staffing configurations and assumptions and ensure that the required levels of staffing can be achieved. We also disagree that carrying over current provisions has the potential to be confusing; we believe an abrupt change would be a good deal more so.

**Recommendation**
No change is needed in response to these comments.

**Comment**
A question was raised as to why “private placements” are not bound by the same class size limits as the public schools and cooperatives. Another correspondent, apparently assuming the opposite, noted that space may not be available for “more classes”, resulting in higher rates for students placed pursuant to Part 401 of ISBE’s rules (Special Education Facilities Under Section 14-7.02 of the School Code).

**Analysis**
Section 401.140 of the rules in question (Provision of Instructional Program) does, in fact, convey the same limits on class size as stated in Part 226. Section 401.140, by cross-referencing Section 226.730, has imposed the same requirements on the nonpublic and other facilities operated under Part 401 as are applicable in school districts and special education cooperatives for classes consisting of students with severe/profound or multiple disabilities. The maximum class size has been five students (seven in unique circumstances, 10 with an aide). The new rule will stipulate a maximum of 8 and 13 with an aide, so it is not clear how “more classes” will be required or greater cost will result. A mechanism for receiving approval of deviations is and has been present. (Note: The cross-reference in Section 401.140 will need to be updated to reflect the final version of Part 226.)

**Recommendation**
Section 226.731 should be retained as proposed except for the deletions from subsection (a) outlined above.

**Section 226.750 Additional Services**

**Comment**
It was noted that the federal regulations permit states to use “regression and recoupment” as the sole criterion in determining whether to provide “extended school year services” (formerly subsection (c)) and advocated that ISBE do so, stating that these are the standards that lend themselves most readily to objective data and are most validated at this time. The commenter indicated that other factors could be used if districts wish to provide summer school outside of IDEA’s requirements.

**Analysis**
It is accurate that the comments accompanying the federal regulations indicate that “regression and recoupment” may be used as the sole criterion in this context but that states are not required to do so. Further, a different guidance document reflecting a circuit court case indicates that “one measure can not be the sole means to determine ESY eligibility”. We have posted this guidance on ISBE’s web page and believe it should be observed.
**Recommendation**
No change should be made in response to this comment.

**Subpart I  Personnel Required to be Qualified**

**Comment**
Although the rules in this portion of Part 226 are not being amended, one correspondent expressed appreciation for ISBE’s work with all the affected parties in developing the criteria for considering teachers “highly qualified”, stating that these strengthened educational services for all learners with disabilities. It was noted that development of a multiple-subject “HOUSSE” (High Objective Uniform State Standard of Evaluation) for special educators should remain a priority. The commenter also supported having the same requirements for all special education teachers, regardless of setting, based on the fact that public money follows students into nonpublic settings. However, in this individual’s opinion, jeopardizing the approval status of a nonpublic facility if staff are not “highly qualified” would reduce access to an important part of the continuum of placements for students with disabilities.

**Analysis**
These comments, while appreciated, do not have a direct bearing on Part 226.
TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 226
SPECIAL EDUCATION

SUBPART A: GENERAL

Section
226.10 Purpose
226.50 Requirements for a Free Appropriate Public Education (FAPE)
226.60 Charter Schools
226.75 Definitions

SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

Section
226.100 Child Find Responsibility
226.110 Evaluation Procedures Referral
226.120 Reevaluation Identification of Needed Assessments
226.130 Additional Procedures for Students Suspected of or Having a Specific Learning Disability Evaluation Requirements
226.135 Additional Procedures for Students Suspected of or Having a Cognitive Disability
226.140 Modes Mode(s) of Communication and Cultural Identification
226.150 Evaluation Case Study to be Nondiscriminatory
226.160 Determination of Eligibility (Repealed)
226.170 Criteria for Determining the Existence of a Specific Learning Disability (Repealed)
226.180 Independent Educational Evaluation
226.190 Reevaluation (Repealed)

SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Section
226.200 General Requirements
226.210 IEP Team
226.220 Factors in Development, Review, and Revision of the IEP
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

226.230 Content of the IEP
226.240 Determination of Placement
226.250 Child Aged Three Through Five
226.260 Child Reaching Age Three

SUBPART D: PLACEMENT

Section
226.300 Continuum of 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 Children in Private Schools

SUBPART E: DISCIPLINE

Section
226.400 Disciplinary Actions
226.410 Manifestation Determination Review (Repealed)
226.420 Appeals (Repealed)
226.430 Protection for Children Not Yet Eligible for Special Education (Repealed)
226.440 Referral to and Action by Law Enforcement and Judicial Authorities (Repealed)

SUBPART F: PROCEDURAL SAFEGUARDS

Section
226.500 Language of Notifications
226.510 Notification of Parents’ Rights
226.520 Notification of District’s Proposal
226.530 Parents’ Participation
226.540 Consent
226.550 Surrogate Parents
226.560 Mediation
226.570 State Complaint Procedures (Repealed)
ILLINOIS REGISTER

STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>226.600</td>
<td>Calculation of Timelines</td>
</tr>
<tr>
<td>226.605</td>
<td>Request for Hearing; Basis <em>(Repealed)</em></td>
</tr>
<tr>
<td>226.610</td>
<td>Information to Parents Concerning Right to Hearing</td>
</tr>
<tr>
<td>226.615</td>
<td>Procedure for Request</td>
</tr>
<tr>
<td>226.620</td>
<td>Denial of Hearing Request <em>(Repealed)</em></td>
</tr>
<tr>
<td>226.625</td>
<td>Rights of the Parties Related to Hearings</td>
</tr>
<tr>
<td>226.630</td>
<td>Qualifications, Training, and Service of Impartial Due Process Hearing Officers</td>
</tr>
<tr>
<td>226.635</td>
<td>Appointment, Recusal, and Substitution of Impartial Due Process Hearing Officers</td>
</tr>
<tr>
<td>226.640</td>
<td>Scheduling the Hearing and Pre-Hearing Conference</td>
</tr>
<tr>
<td>226.645</td>
<td>Conducting the Pre-Hearing Conference</td>
</tr>
<tr>
<td>226.650</td>
<td>Child’s Status During Due Process Hearing <em>(Repealed)</em></td>
</tr>
<tr>
<td>226.655</td>
<td>Expedited Due Process Hearing</td>
</tr>
<tr>
<td>226.660</td>
<td>Powers and Duties of Hearing Officer</td>
</tr>
<tr>
<td>226.665</td>
<td>Record of Proceedings</td>
</tr>
<tr>
<td>226.670</td>
<td>Decision of Hearing Officer; Clarification</td>
</tr>
<tr>
<td>226.675</td>
<td>Monitoring and Enforcement of Decisions; Notice of Ineligibility for Funding</td>
</tr>
<tr>
<td>226.680</td>
<td>Reporting of Decisions <em>(Repealed)</em></td>
</tr>
<tr>
<td>226.690</td>
<td>Transfer of Parental Rights</td>
</tr>
</tbody>
</table>

**SUBPART H: ADMINISTRATIVE REQUIREMENTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>226.700</td>
<td>General</td>
</tr>
<tr>
<td>226.710</td>
<td>Policies and Procedures</td>
</tr>
<tr>
<td>226.720</td>
<td>Facilities and Classes</td>
</tr>
<tr>
<td>226.730</td>
<td>Class Case Load/Class Size for 2008-09 and Beyond</td>
</tr>
<tr>
<td>226.731</td>
<td>Class Size Provisions for 2007-08</td>
</tr>
<tr>
<td>226.735</td>
<td>Case Load for Speech-Language Pathologists</td>
</tr>
<tr>
<td>226.740</td>
<td>Records; Confidentiality</td>
</tr>
<tr>
<td>226.750</td>
<td>Additional Services</td>
</tr>
<tr>
<td>226.760</td>
<td>Evaluation of Special Education</td>
</tr>
<tr>
<td>226.770</td>
<td>Fiscal Provisions</td>
</tr>
</tbody>
</table>
STATE BOARD OF EDUCATION
NOTICE OF ADOPTED AMENDMENTS

SUBPART I: PERSONNEL

226.800 Personnel Required to be Qualified
226.810 Special Education Teaching Approval
226.820 Authorization for Assignment
226.830 List of Independent Evaluators
226.840 Qualifications of Evaluators

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

SUBPART A: GENERAL

Section 226.10 Purpose

This Part establishes the requirements for the treatment of children and the provision of special education and related services pursuant to the Individuals with Disabilities Education Improvement Act (also referred to as “IDEA”) [20 USC 1400 et seq.], its implementing regulations (see 34 CFR 300), and Article 14 of the School Code [105 ILCS 5/Art.14]. This Part also distinguishes between requirements derived from federal authority and those imposed additionally pursuant to Article 14 of the School Code or the authority of the State Board of Education. The requirements of IDEA, its implementing regulations, and this Part shall apply in every instance when a child is or may be eligible for special education and related services.

(Source: Amended at 31 Ill. Reg. _____, effective ______________)

Section 226.50 Requirements for a Free Appropriate Public Education (FAPE)

“A free appropriate public education” (“FAPE”) as defined at 34 CFR 300.17 must be made available by school districts to children with disabilities in accordance with 34 CFR 300.101 - 300.103, unless otherwise specified in this Section. Each local school district shall ensure that a free appropriate public education (FAPE) is available to each child with a disability who is between the ages of 3 and 21, resides in the State and is enrolled in the district, and requires special education and related services to address the adverse effect of the disability on his or her education. The special education and related services must be provided according to the child’s individualized education program (IEP) at no cost to the parent and in accordance with this Part. As public schools, charter schools are also bound by these requirements, and children with disabilities who attend public charter schools and their parents retain all rights under this Part.

a) As part of this obligation, each local district shall develop and implement procedures for creating public awareness of special education and related services and for advising the public of the rights of children with disabilities.

1) All such procedures shall ensure that information is made available in each of the major languages represented in the local school district and in language that will be understandable to parents, regardless of ethnic or cultural background or hearing or visual abilities.
2) Procedures developed by a district pursuant to this Section shall include, but need not be limited to:

A) Annual notification to all parents in the district regarding the special education services available in or through that district and of their right to receive a copy of this Part upon request; and

B) An annual dissemination of information to the community served by the school district regarding the special education services available in or through the district and the rights of children with disabilities.

3) Documentation, including examples as appropriate, of the school district’s efforts pursuant to this Section shall be maintained in the district’s files.

b) As part of this obligation, each local school district shall comply with the requirements for identifying, locating, and evaluating all children with disabilities set forth in Section 226.100 of this Part.

c) A local school district is obligated to make FAPE available to each eligible child no later than the child’s third birthday. (See Sections 226.110(d) and 226.260 of this Part.)

d) The special education services and placement that constitute FAPE for a particular child shall be identified based on the child’s unique needs and not on the child’s disability. These services shall address all of the child’s identified needs for special education and related services.

e) The district shall 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.

f) The local school district shall ensure that no delay occurs in implementing a child’s IEP, including any case in which the source of payment or provision of services to the child is being determined.

g) No eligible child from three through 21 years of age may be permanently excluded 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 school district to allow the child to remain without an educational program.

1) A public agency need not provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or fewer in that school year, if services are not provided to a child without disabilities who has been similarly removed. An eligible child who has been suspended or expelled from school for more than ten school days during the school year must 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.

2) In providing FAPE to children with disabilities who have been suspended or expelled from school, a school district shall meet the requirements set forth in Subpart E of this Part.

a) h) Transfer Students

Provision of FAPE to students who transfer into a local school district shall be made in accordance with the requirements of 20 USC 1414(d)(2)(C). The additional requirements of this subsection (a) shall also apply.

1) If a child who is receiving special education from a local school district transfers to another district, the new district is responsible for ensuring FAPE by providing special education and related services in conformity with an IEP. When a transfer student is presented for enrollment, the district shall enroll and initiate educational services to the student immediately. The new school district shall ensure that the child has an IEP in effect.

A) In the case of an eligible student transferring into a district from another district within Illinois, where the new district obtains a copy of the student’s IEP before or at the time the child is presented for enrollment: The
A) The district may adopt the IEP that the former local school district developed for the child. Such adoption does not require without an IEP meeting if:

i) the parents indicate, either orally or in writing, satisfaction with the current IEP; and

ii) the new district determines that the current IEP is appropriate and can be implemented as written.

B) A district that cannot fully implement an IEP from a student’s former district shall note in the IEP the services to be provided and shall explain what is being done to secure the remaining services, resources, or other unfulfilled portions of the IEP and how long those actions are expected to take.

C) If the district does not adopt the former IEP and seeks to develop a new IEP for the child if the school district or the parents do not believe the current IEP is appropriate. In such a case, the district shall, within ten days after the date of the child’s enrollment the district must provide written notice to the parent including the proposed date of the IEP meeting, in conformance with Section 226.530 of this Part initiate an IEP meeting for the purpose of developing the new IEP. While the new IEP is under development, the district shall implement services comparable to those described in the IEP from the former district.

2) If the new school district does not receive a copy of the child’s current IEP or a verbal or written confirmation of the requirements of that IEP from the previous school district when the child is presented for enrollment, the child shall be enrolled and served in the setting that the receiving district believes will meet the child’s needs until a copy of the current IEP is obtained or a new IEP is developed by the school district.

A) In no case shall a child be allowed to remain without services during this interim.
B) The new district shall request the student’s records from the sending district or school by the end of the next business day after the date of enrollment.

C) No later than ten days after expiration of the time allotted under Section 2-3.13a of the School Code [105 ILCS 5/2-3.13a] for the sending district or school to forward the child’s records, the new district shall initiate an IEP meeting for the purpose of developing a new IEP, unless the sending district’s or school’s IEP arrives before this time elapses, the student has transferred from a district within Illinois, and the new district adopts the previously held IEP and the conditions set forth in subsection (h)(1)(A) of this Section apply.

b) i) Jurisdictional Disputes

Each school district is responsible for ensuring that no eligible child for whom services are sought is denied FAPE due to jurisdictional disputes among Illinois agencies. Provision of FAPE to such a student shall not preclude a district from seeking repayment for costs incurred from any other school district or entity that is determined responsible for such costs.

j) Nothing in this Part relieves any participating agency of the responsibility for providing or paying for any services the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

c) k) Eligibility; Graduation or Completion of Program

1) An eligible student who requires continued public school educational experience to facilitate his or her integration into society shall be eligible for such services through age 21, inclusive (i.e., through the day before the student’s 22nd birthday) (34 CFR 300.101(a)).

2) Students who reach age 21 during a school year shall be allowed to complete that year.

3) The provision of FAPE is not required with respect to a student with a
disability who has graduated with a regular high school diploma or its equivalent.

3) A student with a disability who has fulfilled the minimum state graduation requirements set forth in Section 27-22 of the School Code [105 ILCS 5/27-22] satisfactorily completed a secondary program shall be eligible for granted a regular high school diploma.

   A) If the student’s individualized education program prescribes special education, transition planning, transition services, or related services beyond that point, issuance of that diploma shall be deferred so that the student will continue to be eligible for those services.

   B) If the student is to receive a regular high school diploma, at least one year prior to the student’s anticipated date of its issuance graduation, both the parent and the student shall receive written notification in conformance with the requirements of 34 CFR 300.503 Section 226.520(b) of this Part that eligibility for public school special education services ends following the granting of a diploma and that the parent (or the student, if Section 226.690 of this Part applies) may request an IEP meeting to a review of the recommendation that the student receive a regular diploma for graduation.

4) Students who have participated in a graduation ceremony graduated but have not been awarded regular high school diplomas continue to be eligible to receive FAPE through age 21, inclusive.

d) Exception for Certain Students Incarcerated as Adults

   Pursuant to 34 CFR 300.102(a)(2) 300.311, the right to receive FAPE does not extend to students from 18 through 21 years of age who are incarcerated and who were not identified as eligible and did not have IEPs in their educational placements immediately prior to incarceration.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)
Section 226.60  Charter Schools

For purposes of IDEA the Individuals with Disabilities Education Act and this Part, charter schools established pursuant to Article 27A of the School Code [105 ILCS 5/Art.27A] shall be treated either as schools within school districts or as local educational agencies in their own right.

a) When a school’s charter is issued by a local board of education pursuant to Section 27A-8 of the School Code [105 ILCS 5/27A-8], that charter school shall be considered as a school within the district over which that board of education exercises jurisdiction.

b) When a school’s charter is issued by the State Board of Education pursuant to Section 27A-9(f) of the School Code [105 ILCS 5/27A-9(f)], that charter school shall be considered as a local educational agency.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.75  Definitions

Assistive Technology Device: See 34 CFR 300.5. 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, that 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; Business Day; School Day: See 34 CFR 300.11. 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: See 34 CFR 300.8 and 300.111(b). Delay in physical development, cognitive development, communication development, social or emotional development, or adaptive development (may include children from three through nine years of age).

Disability: IDEA identifies 13 disabilities as the basis for students’ eligibility for special education and related services. These disabilities (autism, deaf-blindness, deafness, emotional disability, hearing impairment, cognitive disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment) shall be defined as set forth in 34 CFR 300.8(c). In addition, for purposes of this Part, “autism” shall include, but not be limited to, any Autism Spectrum Disorder that adversely affects a child’s educational performance. 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, DYSLEXIA, 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 5/14.03(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): See 34 CFR 300.14.
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: See 34 CFR 300.15. 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: See 34 CFR 300.106(b). 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: See 34 CFR 300.23. 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: See 34 CFR 300.502(a)(3)(i). 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): See 34 CFR 300.22. 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. An IEP shall be considered “linguistically and culturally appropriate” if it addresses the language and communication needs of a student as a foundation for learning, as well as any cultural factors that may affect the student’s education.

Individualized Family Service Plan (IFSP): See 34 CFR 300.24. 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): See 34 CFR 300.114. The setting that permits a child to be educated with nondisabled children to the maximum extent appropriate. (See Section 226.2401 of this Part.)

Limited English Proficient: See 34 CFR 300.27.

Native Language: See 34 CFR 300.29.

Parent: See 34 CFR 300.30. 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): See 34 CFR 300.32. 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 Bilingual Specialist: An individual who holds the qualifications described in Section 226.800(f) of this Part.

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: See 34 CFR 300.34. 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: See 34 CFR 300.39. 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: See 34 CFR 300.42. 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: See 34 CFR 300.43. 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 31 Ill. Reg. _____, effective _____________)

SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

Section 226.100 Child Find Responsibility

This Section implements the requirements of 34 CFR 300.111.

a) Each school district shall be 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 under 34 CFR 300.131), including children not enrolled in the public schools, who may be eligible for special education and related services. Procedures developed to fulfill the child find 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)(9) 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 members 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 31 Ill. Reg. _____, effective ____________)

Section 226.110 Evaluation Procedures Referral

Procedures for requesting and conducting initial evaluations of children who are suspected of requiring special education and related services shall conform to the requirements of 34 CFR 300.301, 300.304, 300.305, and 300.306. For purposes of this Section, the “date of referral” discussed in Section 14-8.02 of the School Code shall be understood to be the date of written parental consent for an evaluation, and screening procedures done in accordance with 34 CFR 300.302 shall not be considered an evaluation. Consent for the initial evaluation shall be obtained in conformance with the requirements of 34 CFR 300.300. In addition, the following requirements shall apply.
When there is reason to believe that a child may have a disability requiring special education and related services, the child shall be referred for a special education evaluation.

a) Referral Procedures for Requesting an Initial Evaluation

Each school district shall develop and make known to all concerned persons procedures by which an evaluation may be requested. These procedures shall:

1) Designate the steps to be taken in making a request for an evaluation referral;

2) Designate the persons to whom a request referral may be made;

3) Identify the information which must be provided;

4) Provide any assistance that may be necessary to enable persons making requests referrals to meet any related requirements established by the district; and

5) Identify the process for providing the parents with notice of their rights with respect to procedural safeguards.

b) A request referral may be made by a parent of a child or by an employee of a State educational agency, another State agency, a local education educational agency, or any concerned person, including but not limited to school district personnel, the parent(s) of a child, an employee of a community service agency, another professional having knowledge of a child’s problems, a child, or an employee of the State Board of Education.

c) District’s Response to Request Referral

1) The school district shall be responsible for processing the request referral, deciding what action should be taken, and initiating the necessary procedures.

2) To determine whether the referred 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 referring agent, and a conference with the child.

3) Within 14 school days after receiving a request for an evaluation, the district shall determine whether an evaluation is warranted. If the district determines not to conduct an evaluation, it shall provide written notice to the parents in accordance with 34 CFR 300.503(b). If an evaluation is to be conducted: or not to conduct an evaluation and notify the referring party and the parent of the decision and the basis on which it was reached.

A) The district shall convene a team of individuals (including the parent) 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.

B) The team shall identify the assessments necessary to complete the evaluation in accordance with 34 CFR 300.305 and shall prepare a written notification for the parents as required under 34 CFR 300.304(a). For each domain, the notification shall either describe the needed assessments or explain why none are needed.

C) The district shall ensure that the notification of the team’s conclusions is transmitted to the parents within the 14-school-day timeline applicable under this subsection (c)(3) along with the district’s request for the parents’ consent to conduct the needed assessments.

d) If the district decides to conduct an evaluation, parental consent must be obtained.

1) Pursuant to Section 14-8.02 of the School Code [105 ILCS 5/14-8.02], the evaluation and IEP meeting shall be completed within 60 school days after the date of referral or the date of the parent’s application for admittance of the child to the public school.

2) The IEP meeting shall be conducted within 30 days after the child is determined eligible. The overall limit specified in subsection (d)(1) of this Section still applies.
3) When a child is referred for 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 the next school year.

e) Upon completion of the assessments identified pursuant to subsection (c)(3) of this Section, but no later than 60 school days following the date of written consent from the parent to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed. If the parent refuses consent for initial evaluation, the district may continue to pursue the evaluation by using the mediation or due process procedures described in Section 226.560 and Subpart G of this Part.

e) f) At the conclusion of the meeting convened pursuant to subsection (d) of this Section, 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 of Section 226.130 of this Part if applicable. The IEP Team’s report shall also include If the district decides not to conduct an evaluation:

1) the date of the meeting; The referring party shall be provided written notice of the district’s decision not to conduct an evaluation and, subject to the requirements of the Illinois School Student Records Act [105 ILCS 10] and 23 Ill. Adm. Code 375 (Student Records), the reasons for that decision; and

2) the signatures of the participants, indicating their presence at the meeting; and The parent shall be provided written notice of:

A) The date of the referral and the reasons for which the evaluation was requested; and

B) The reasons for which the district decided not to conduct a case study evaluation.
3) 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.

f) The school district shall provide a copy of the IEP Team’s report to the parent at the conclusion of the team’s meeting. In addition, the district shall provide to the parent, within ten school days after the meeting, written notice conforming to the requirements of Section 226.520 of this Part as to the eligibility determination reached with respect to the child. The parent shall also be entitled to receive copies of any evaluation reports upon request.

g) A copy of the IEP Team’s report, together with all documentation upon which it is based, shall become a part of the child’s temporary student record.

h) 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. For example, the use of a translator when a qualified bilingual specialist is not available may create nonstandard conditions.

i) 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.

j) In the event that the student is determined to be eligible for special education and related services pursuant to the procedures described in subsections (d) and (e) of this Section, the IEP meeting shall be conducted within 30 days after the date of that determination.

k) If a district refuses or fails to conduct an evaluation, the parent of the child in question (or the student, if Section 226.690 of this Part applies) may appeal such refusal or this failure in an impartial due process hearing.

(Source: Amended at 31 Ill. Reg. _____, effective _______________)
Section 226.120 Reevaluations Identification of Needed Assessments

Procedures for the completion of reevaluations of children for whom special education and related services are currently being provided shall conform to the requirements of 34 CFR 300.303, 300.304, 300.305 and 300.306, as well as the relevant provisions of Section 226.110 of this Part.

Each school district shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services. An evaluation shall cover all domains (see Section 226.75 of this Part) that are relevant to the individual child under consideration. The IEP Team shall determine the specific assessments needed to evaluate the individual needs of the child.

a) The IEP Team that identifies the assessments and procedures needed must have the knowledge and skills necessary to administer and interpret the resulting evaluation data and make an informed determination as to whether the child needs special education and related services. The composition of the team will vary depending upon the nature of the child’s presenting symptoms and other relevant factors.

b) The IEP Team shall review and evaluate existing information about the child, including:

1) Information from a variety of formal and informal sources, including information provided by the child’s parents;

2) Current classroom-based assessments and observations;

3) Observations by teachers and providers of related services;

4) Information provided by the child; and

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

e) The team may conduct its review without a meeting.
d) The team shall determine what additional evaluation data are needed in each of the relevant domains, and from what sources that information should be obtained, in order for the team to determine:

1) Whether the child has, or continues to have, one or more of the disabilities defined in Section 226.75 of this Part;

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

3) Whether the disability is adversely affecting the child’s education;

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 set out in his or her IEP and to participate appropriately in the general curriculum.

e) If the IEP Team identifies the need for additional evaluations, the school district shall administer or arrange for such tests and other evaluation procedures as may be needed to produce the needed information.

f) If the IEP Team determines that no additional information is needed, the district shall provide written notice to the child’s parents of:

1) the determination and the reasons for it; and

2) the parents’ right to request an assessment to determine whether the child is or continues to be eligible for special education and related services.

g) Within ten school days after a parent requests an assessment pursuant to subsection (f)(2) of this Section, the district shall either:

1) Notify the parent that it will conduct the assessment and make the necessary arrangements, or
2) If the district does not wish to conduct the assessment, request a due process hearing or notify the parent (in keeping with the requirements of Section 226.520 of this Part) of his or her right to request a due process hearing.

h) The IEP Team shall document its evaluation decisions, the basis for the determination made in each domain, and its decisions under subsections (d) and (f) of this Section. This information shall be provided to the parents in the form of a written notice in accordance with Section 226.520 of this Part.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.130 Additional Procedures for Students Suspected of or Having a Specific Learning Disability Evaluation Requirements

In addition to the requirements set forth in Sections 226.110 and 226.120 of this Part, the district shall adhere to the procedures set forth at 34 CFR 300.307, 300.308, 300.309, 300.310, and 300.311 when evaluating a student who is suspected of, or who has previously been identified as having, a specific learning disability as described in 34 CFR 300.8. Each district shall use a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in 34 CFR 300.304. The scientific, research-based interventions may be used to determine whether a student has a specific learning disability. In addition, a district may use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability.

Each local school district shall establish written procedures to ensure that the following requirements are met:

a) Tests and other materials used to evaluate a child:
   1) Shall be selected and administered so as not to be discriminatory on a racial or cultural basis;
   2) Shall be provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;
   3) Shall be technically sound and designed to assess the relative
contributions of cognitive, behavioral, physical, and developmental factors; and

4) Shall be used in a manner consistent with the instructions provided by their publishers.

b) A variety of assessment tools and strategies shall be used by qualified specialists who are trained and knowledgeable and shall be used to gather relevant functional and developmental information about the child. The assessment shall include information provided by the parent that may assist in determining:

1) Whether the child is eligible for special education and related services; and, if so,

2) The content of the child's IEP or IFSP, including information related to enabling the child to be involved in and progress in the general curriculum or, if in preschool, to participate in appropriate activities.

c) When a student is suspected of having a specific learning disability, an observation shall be conducted in accordance with Section 226.170 of this Part.

d) Any standardized test that is administered shall:

1) Have been validated for the specific purpose for which it is used; and

2) Be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the test.

e) Tests and other evaluation materials shall be tailored to assess specific areas of educational need and may not be merely those that are designed to provide a single general intelligence quotient.

f) Tests shall be selected and administered so as to ensure that, if they are administered to a child with impaired sensory, motor or communication skills, the results of each test accurately reflect the factors that test purports to measure.

g) No single procedure and no single individual shall be used as the sole criterion or
evaluator for determining whether a child is eligible pursuant to this Part or for identifying an appropriate educational program for a child.

h) The school district shall use assessment tools and strategies that provide relevant information and are sufficiently comprehensive to assist in identifying all of the child’s needs for special education and related services, whether or not commonly linked to the disability according to which the child has been classified.

i) 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. For example, the use of a translator when a qualified bilingual professional is not available may create nonstandard conditions.

j) If any needed portion of a case study 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 portion(s) in the child's evaluation report and state the reason(s) why such portion(s) could not be completed.

k) Each individual conducting a portion of a child’s evaluation shall be qualified in accordance with Section 226.840 of this Part.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.135 Additional Procedures for Students Suspected of or Having a Cognitive Disability

In addition to the requirements set forth in Sections 226.110 and 226.120 of this Part, the district shall ensure that a psychological evaluation has been conducted and a recommendation for eligibility made by a school psychologist for any child who is suspected of or determined to have mental retardation.

(Source: Added at 30 Ill. Reg. _____, effective _____________)

Section 226.140 Modes Mode(s) of Communication and Cultural Identification
Before a child is given an a case study evaluation, the local school district shall ensure compliance with the requirements of Section 14-8.02 of the School Code by determining the primary language of the child’s home, general cultural identification, and mode of communication.

a) Determination of the child’s language use pattern and general cultural identification shall be made by determining the language(s) spoken in the child’s home and the language(s) used most comfortably and frequently by the child.

b) 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. Adm. Code 228 (Bilingual Education), which specifies the assessment procedures and eligibility criteria for bilingual education programs (see 23 Ill. Adm. Code 228.15).

c) 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.

d) 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.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.150 Evaluation Case Study to be Nondiscriminatory

Each evaluation shall be conducted so as to ensure that it is linguistically, culturally, racially, and sexually nondiscriminatory with respect to language, culture, race, and gender. (See also 34 CFR 300.304(c).)

a) The language(s) used to evaluate a child shall be consistent with the child's primary language of the home or other mode of communication. (See Section 226.140 of this Part.) 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. The provisions of subsections (b) and (c) of this Section shall apply when a qualified bilingual specialist is needed but unavailable.

b) 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 Section 226.840 of this Part to complete the specific components of the evaluation. This qualified specialist shall be assisted by a certificated school district employee or other individual who has demonstrated competencies in the language of the child.

c) If documented efforts to locate and secure the services of a qualified bilingual specialist or a qualified specialist assisted by another individual as provided in subsection (b) of this Section 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. Adm. Code 228 (Transitional Bilingual Education; see Section 228.15) child acquires a predominantly English language use pattern.

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

e) 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:

1) Visual communication techniques in addition to auditory techniques.

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

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.160 Determination of Eligibility (Repealed)
Each school district shall develop written eligibility criteria that comply with the definitions of the disability categories identified in Section 226.75 of this Part.

a) Upon completing the administration of tests and any other evaluation procedures, the IEP Team shall meet to interpret the evaluation data. This shall be done for the purpose of determining whether the child is eligible for special education and related services. In making this determination, the IEP Team shall:

1) 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;

2) Ensure that information obtained from all of these sources is documented and considered; and

3) Ensure that a psychological evaluation has been conducted and a recommendation for eligibility has been made by a school psychologist for all children determined mentally impaired.

b) A child may not be determined eligible under this Part 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 district’s eligibility criteria.

c) At the conclusion of the IEP Team’s meeting, 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 of Section 226.170(d) of this Part if applicable. The team’s report shall also include:

1) the date of the meeting;

2) the signatures of the participants, indicating their presence at the meeting; and

3) 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.
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NOTICE OF ADOPTED AMENDMENTS

The school district shall provide a copy of the IEP Team’s report to the parent at the conclusion of the team’s meeting. In addition, the district shall provide to the parent, within ten school days after the meeting, written notice conforming to the requirements of Section 226.520 of this Part as to the eligibility determination reached with respect to the child. The parent shall also be entitled to receive copies of any evaluation reports upon request.

A copy of the IEP Team’s report, together with all documentation upon which it is based, shall become a part of the child’s temporary student record.

If a child is determined eligible for special education and related services, an IEP shall be developed in accordance with Subpart C of this Part.

(Source: Repealed at 31 Ill. Reg. _____, effective ______________)
Section 226.170 Criteria for Determining the Existence of a Specific Learning Disability (Repealed)

The determination of the existence of a specific learning disability shall be conducted in accordance with the requirements set forth in the federal regulations at 34 CFR 300.541-543.

(Source: Repealed at 31 Ill. Reg. _____, effective _____________)

Section 226.180 Independent Educational Evaluation

Parents have the right to obtain an independent educational evaluation of their child at public expense in accordance with 34 CFR 300.502 and Section 14-8.02(b) of the School Code, subject to the provisions of this Section. The following rights and requirements shall also apply.

a) The district shall provide to the parents, upon their request, the list of independent educational evaluators developed by the State Board of Education pursuant to Section 226.830 of this Part.

b) If the parents disagree with the district’s evaluation and wish to obtain an independent educational evaluation at public expense, their request to that effect shall be submitted in writing to the local school district superintendent they shall submit to the local school district superintendent a written request to that effect.

c) If the district disagrees with the need for an independent educational evaluation, it shall initiate a due process hearing to demonstrate that its evaluation is appropriate. Such a hearing must be initiated by the local school district within five days following receipt of a written parental request for an independent educational evaluation.

d) An independent educational evaluation at public expense must be completed within 30 days after receipt of a parent's written request, unless the school district initiates a due process hearing or the parties agree that the 30-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 within ten school days after the date on which the extension was proposed.

e) If the final decision of the hearing and review process is that the school district's
evaluation is appropriate, the parents shall have the right to an independent educational evaluation, but not at public expense.

f) If the school district's evaluation is shown to be inappropriate, the district shall pay for the independent educational evaluation or reimburse the parents for the cost of the evaluation.

g) If the parent is entitled to an independent educational evaluation at public expense, it shall be completed within 30 days after the decision is rendered, unless the parties agree that the 30-day period should be extended. If either party wishes such an extension and is unable to obtain the other party's agreement, the school district shall initiate a due process hearing within ten school days after the date on which the extension was proposed.

b) When an independent evaluation is obtained at public expense, the party chosen to perform the evaluation shall be either:

1) an individual whose name is included on the list of independent educational evaluators developed by the State Board of Education pursuant to Section 226.830 of this Part provided by the State Board of Education with regard to the relevant types of evaluation; or

2) another individual possessing the credentials required by Section 226.840 of this Part.

c) If the parent wishes an evaluator to have specific credentials in addition to those required by Section 226.840 of this Part, the parent(s) and the school district shall agree on the qualifications of the examiner and the specific evaluations to be completed prior to the initiation of an independent educational evaluation at public expense. If agreement cannot be reached, the school district shall initiate a due process hearing subject to the time constraints set forth in this Section, as applicable.

j) The conditions under which an independent evaluation is obtained at public expense, including the location of the evaluation and the qualifications of the examiner, shall meet the criteria that the public agency uses when it initiates an evaluation, to the extent that those criteria are consistent with the parent's
right to an independent evaluation. Although the district may ask the parent to specify the areas of disagreement with the local school district’s evaluation, the district may not impose any additional conditions or timelines related to obtaining an independent educational evaluation at public expense (such as requiring the parent to specify the areas of disagreement).

d) k) If the parent obtains an independent educational evaluation, the written result of that evaluation shall be considered by the IEP Team. The district shall send the notice convening the IEP Team’s meeting within ten days after receiving the evaluation report of an evaluation conducted at public expense. In the case of an evaluation conducted at private expense, the district shall send the notice within ten days or after the parent requests a meeting to consider the results of an independent evaluation.

1) The district shall consider the results in any decision made with respect to the provision of a free appropriate public education to the child.

2) The independent evaluation results may be presented as evidence at a hearing or review regarding the child pursuant to this Part.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.190 Reevaluation (Repealed)

a) A local school district shall reevaluate an eligible child whenever conditions warrant a reevaluation or the child’s parent or teacher requests a reevaluation, but at least once every three years. Reevaluations are subject to the applicable requirements of Sections 226.110 through 226.180 of this Part.

b) A district shall reevaluate an eligible child before determining that the child is no longer eligible pursuant to this Part.

c) A reevaluation is not required for a student who graduates from high school with a regular high school diploma or its equivalent or attains the age of 21. (See Section 226.50(k)(4) of this Part.)

(Source: Repealed at 31 Ill. Reg. _____, effective _____________)
Section 226.200 General Requirements

Each school district shall provide special education and related services to eligible children in accordance with their IEPs.

a) An IEP shall be in effect before special education and related services are provided to an eligible child.

b) Any activity undertaken with respect to a child’s IEP (such as developing or revising the goals, benchmarks, short term objectives, services, or placement) shall be conducted by an IEP Team that conforms to the requirements of Section 226.210 of this Part.

c) Each school district shall have an IEP in effect for each eligible child within its jurisdiction at the beginning of each school year.

1) When an IEP is developed or revised, notice to the parents shall be provided immediately in accordance with Section 226.520 of this Part, and implementation of the IEP shall occur no later than ten days after the provision of such notice.

2) A school district shall provide special education and related services to eligible children in accordance with their IEPs. The district and teachers shall make efforts in good faith to assist children in achieving the goals and objectives or benchmarks listed in their IEPs. However, an IEP does not constitute a guarantee by a school district or teachers that a child will progress at a specified rate.

3) If a participating agency other than the local school district fails to provide transition services required by an IEP, the school district shall convene an IEP meeting to identify alternative strategies for meeting the applicable transition objectives established in the child’s IEP.

d) A child’s IEP shall be reviewed at least annually to determine whether the goals for the child are being achieved.
Either a child's teacher or a child's parent may request the review of the child's IEP at any time. Within ten days after receipt of such a request, the district shall either agree and notify the parent in accordance with Section 226.530(b) of this Part or notify the parents in writing of its refusal, including an explanation of the reason no meeting is necessary to ensure the provision of FAPE for the child.

A child’s IEP shall be revised if necessary to address:

1) any lack of expected progress related to the annual goals or the general curriculum, if appropriate;
2) the child's anticipated needs;
3) information about the child provided to or by the parent(s); or
4) any other relevant matters.

Each district shall have procedures in place for providing to involved staff members the information they need about the results of a child’s IEP meeting, including any responsibilities they will have for implementation of the IEP.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.210  IEP Team

The composition of the IEP Team for a particular child, and the participation, attendance, and excusal of the team members and other individuals in the IEP meeting, shall conform to the requirements of 34 CFR 300.321, 300.322, 300.324, and 300.325 this Section. The additional requirements of this Section shall also apply.

a) The general education teacher who serves as a member of a child’s IEP Team shall be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to instruct the child. The child’s parents shall be members of the IEP Team.

b) For a child aged three through five years who has not yet entered the primary grades, the team shall include an individual qualified to teach preschool children without identified disabilities. The IEP Team shall include at least one
1) This should be the teacher who is or may be responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to teach the child. The responsibilities of this teacher shall include assisting in:

   A) the determination of appropriate positive behavioral interventions and strategies for the child; and

   B) the identification of supplementary aids and services, program modifications, and supports for school personnel, consistent with 34 CFR 300.347(a)(3).

2) If the child does not have a regular teacher but is anticipated to receive at least some instruction in the regular education setting, the team shall include a regular classroom teacher qualified to teach children of that age.

3) For a child of less than school age, the team shall include an individual qualified to teach preschool children.

c) The team shall include at least one special education teacher. If known, this shall be the person who is or will be responsible for implementing a portion of the child’s IEP. If the child is receiving only speech and language services, the speech and language pathologist shall fulfill the role of the special education teacher set forth at 34 CFR 300.321(a)(3).

d) The representative of the public agency required by 34 CFR 300.321(a)(4) must, in addition to the requirements set forth in that portion of the federal regulations, have If the child has more than one regular or special education teacher, the local school district may designate which teacher(s) will participate.

e) The IEP Team shall include a representative of the local school district who:

   1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
2) Is knowledgeable about the general curriculum;

3) Is knowledgeable about the district’s resources; and

4) Has the authority to make commitments for the provision of resources and be able to ensure that the services set out in the IEP will be implemented.

f) The IEP Team shall may include a qualified bilingual specialist or bilingual teacher, if the presence of such a person is needed to assist the other participants in understanding the child’s language or and cultural factors as they relate to the child’s instructional needs. If undocumented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the district shall instead meet the requirements et forth in Section 226.150(b) of this Part.

g) In the case of a child whose behavior impedes his or her learning or the learning of others, the team shall may include a person knowledgeable about positive behavior strategies, who may be one of the individuals enumerated in subsections (b) through (f) and (h) of this Section.

h) The IEP Team shall include an individual who is qualified to interpret the instructional implications of the evaluation results, who may be one of the individuals enumerated in subsections (b) through (g) of this Section.

i) In the case of a student for whom transition services must be planned, the district shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If a public agency invited to send a representative to a meeting does not do so, the district shall document other steps taken to obtain participation of that agency in the planning of any transition services.

j) Participation of Student

1) Either the district or the parent may invite the student who is the subject of the IEP meeting to attend.

2) The district shall invite the student when a purpose of the meeting is to plan for transition services needed by the student. The notice to
the student shall conform to the requirements of Section 226.520(b)(8) of this Part. If the student does not attend, the district shall take other steps to ensure that the student’s preferences and interests are considered.

3) The district shall invite the student and the parent when Section 226.690 of this Part applies. The student’s absence from the IEP meeting shall be subject to the provisions for parental participation set forth in Section 226.530 of this Part.

k) At the discretion of the parent (or the student, if applicable) or the district, the IEP Team shall include other individuals with knowledge or special expertise regarding the child, including providers of related services.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.220 Factors in Development, Review, and Revision of the IEP

The development, review, and revision of each child’s IEP shall conform to the requirements of 34 CFR 300.324 and 300.328. The additional requirements of this Section shall also apply. In developing a child’s IEP, the IEP Team shall consider the strengths of the child and the concerns of the parents for enhancing the child’s education, as well as the results of the most recent valid evaluation and any available assessment information that may be useful. If the IEP Team determines that one or more of the factors described in this Section could impede learning or that the child needs a particular device or service (including an intervention, accommodation, behavioral intervention or strategy, or other program modification or support for school personnel) in order for the child to receive FAPE, these needs shall be documented in the IEP.

a) When an IEP has been developed or revised, a notice in accordance with 34 CFR 300.503(b) and (c) shall be provided immediately to the parents, and implementation of the IEP shall occur no later than ten days after the provision of this notice. The team shall consider whether the child requires assistive technology devices and services.

b) Either a child’s educational provider or a child’s parent may request an IEP meeting at any time. Within ten days after receipt of such a request, the district shall either agree and notify the parent in accordance with 34 CFR 300.503 or notify the parents in writing of its refusal, including an explanation of the reason no meeting is necessary to ensure the provision of FAPE for the child.
The team shall consider whether the child has any special needs related to communication:

c) In the case of a child of limited English proficiency, the team shall consider the language-related needs of the child.

d) In the case of a child who is deaf or hard of hearing, the team shall consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and mode of communication, academic level, and full range of needs, including opportunities for direct instruction in the child's language and mode of communication:

e) In the case of a child whose behavior impedes his or her learning or the learning of others, the team shall consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

f) In the case of a child who is visually impaired, the team shall consider whether instruction in Braille and/or the use of Braille will be necessary. To omit or discontinue Braille instruction or use requires an evaluation of the child's reading and writing skills and needs and a determination by the IEP Team that Braille is not appropriate.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.230 Content of the IEP

The content of each child's IEP shall conform to the requirements of 34 CFR 300.320. The additional requirements of this Section shall also apply. Nothing in this Section shall be construed to require the inclusion of information in one section of a child's IEP that is already contained in another section.

a) Each IEP shall include: all the components enumerated in this subsection (a).

1) A statement of the child's present levels of educational performance, including:
A) How the child's disability affects the child's involvement and progress in the general curriculum; or

B) For a preschool child, how the disability affects the child's participation in appropriate activities.

2) A statement of measurable annual goals that reflect consideration of the State Goals for Learning and the Illinois Learning Standards (see 23 Ill. Adm. Code 1), as well as benchmarks or short-term objectives developed in accordance with the child’s present levels of educational performance, related to:

A) Meeting the child's needs that result from the child's disability, to enable the child to be involved in and progress in the general curriculum or, for preschool children, to participate in activities appropriate to the child’s age; and

B) Meeting each of the child's other educational needs that result from the child's disability.

3) A description of how the child's progress toward his or her annual goals will be measured and of how the parent(s) will be informed of the child’s progress. This description shall include a statement of the child’s ability to participate in classroom-based assessments and what accommodations are necessary, if any. If the child is unable to participate even with accommodations, a description of the alternative assessment(s) and/or method(s) to be used shall also be provided.

A) Parents of children with disabilities shall be informed of their children’s progress at least as often as parents of children without disabilities are informed of their children’s progress.

B) The information provided to the parents of a child served pursuant to this Part shall include a description of the child’s progress toward his or her annual goals and an indication of the extent to which that progress is sufficient to enable the child to achieve those goals by the time the current IEP will require annual review.
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

2)  A statement regarding the child’s ability to participate in State and district-wide assessments.

   A) This statement must describe any individual accommodations that are needed in order for the child to participate in a given assessment.

   B) If the IEP Team determines that the child will not participate in a particular assessment of student achievement (or part of an assessment), a statement as to:

      i) Why that assessment is not appropriate for the child; and

      ii) How the child’s performance will be assessed, including a description of the alternate assessments to be used.

3)  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.

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

7)  A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided in order for the child:

   A) To advance appropriately toward attaining the annual goals;

   B) To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities.

8)  The projected beginning date for the services and modifications described in subsection (a)(7) of this Section; the amount, frequency, location, and duration of each of the services and modifications.
4) A statement as to whether the child requires the provision of services beyond the district’s normal school year in order to receive FAPE (“extended school year services”) and, if so, a description of those services that includes their amount, frequency, duration, and location.

10) The placement that the team has determined to be appropriate for the child.

b) The IEP of a student who requires a behavioral intervention plan shall:

1) Summarize the findings of the functional behavioral assessment;

2) Summarize prior interventions implemented;

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

4) Identify the measurable behavioral changes expected and methods of evaluation;

5) Identify a schedule for a review of the intervention’s effectiveness; and

6) Identify provisions for communicating with the parents about their child’s behavior and coordinating school-based and home-based interventions.

c) Beginning not later than the first IEP to be in effect when the child turns 14 1/2, and updated annually thereafter, the IEP shall include: The IEP for a student who has reached the age of 14 shall also include a description of the student’s transition service needs under the applicable components of the IEP, with specific reference to the student’s courses of study.

1) appropriate, measurable, postsecondary goals based upon age-appropriate assessments related to employment, education or training, and, as needed, independent living;
2) the transition services that are needed to assist the child in reaching those goals, including courses of study and any other needed services to be provided by entities other than the school district; and

3) any additional requirements set forth in Section 14-8.03 of the School Code [105 ILCS 5/14-8.03].

d) For purposes of 34 CFR 300.320(c), the age of majority under Illinois law is 18. The IEP for a student who has reached the age of 14½ shall include goals for employment, postsecondary education, or community living alternatives and a description of transition supports or services, based on the student’s needs, including identification of the agency responsible for delivering any needed support or service and, as applicable, any interagency responsibilities or needed linkages.

e) The IEP for a student who has reached the age of 17 shall include documentation indicating that the student has been informed of the rights under the Individuals with Disabilities Education Act that will transfer to the student when he or she reaches the age of 18.

f) The IEP of a student who may, after reaching age 18, become eligible to participate in the home-based support services program for mentally disabled adults with cognitive 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 that conform to the requirements of Section 14-8.02 of the School Code.

g) Students Incarcerated as Adults

1) The IEP of a student incarcerated as an adult is not required to comply with:

   A) The requirements of subsection (a)(4) of this Section regarding assessment; and

   B) The requirements of subsections (e) and (d) of this Section regarding planning for the transition to adult life and services to assist with that transition, if the student’s eligibility for
special education will end before he or she will be eligible to be released from prison.

2) The IEP Team may modify a student’s IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of Section 226.240(c) of this Part regarding placement in the least restrictive environment shall not apply in these circumstances.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.240 Determination of Placement

The determination of placement shall conform to the requirements of 34 CFR 300.114 - 300.116, 300.327, and 300.501(c), and 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.

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

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

e) 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.
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

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 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 31 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 34 CFR 300.323(b) 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;

b) Obtain informed, written consent from the parents for the use of the IFSP; and

c) Ensure that the IFSP is developed in accordance with the IEP requirements found in Subpart C Sections 226.200 through 226.230 of this Part.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.260 Child Reaching Age Three

a) Child with an Individualized Family Service Plan (IFSP) IFSP
For each child who will be making the transition from an early intervention program into the special education program of a school district at age three, the district shall ensure that either an IEP or the child’s IFSP is in effect on his or her third birthday. A representative of the school district shall participate in the transition meeting scheduled by the early intervention team.

b) Child Without an IFSP

1) For each child who is referred to a school district at least 60 school days prior to his or her third birthday and determined eligible, the district shall ensure that either an IEP or an IFSP is in effect on his or her third birthday.

2) For each child who is referred with fewer than 60 school days remaining before his or her third birthday, or after that date, and determined eligible, the district shall comply with the requirements of Section 226.110(c)-(j) of this Part.

c) If a child’s third birthday occurs during the summer, the IEP Team for that child shall determine when the district’s services to the child will begin.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

SUBPART D: PLACEMENT

Section 226.300 Continuum of Placement Options

Each local school district shall, in conformance with the requirements of 34 CFR 300.39 and 300.115, ensure that a continuum of placements is available to meet the needs of children with disabilities for special education and related services. With respect to the home instruction and instruction in hospitals and institutions referenced in 34 CFR 300.39 and 300.115: The continuum shall include at least the following.

a) Regular Classes

The child receives his or her basic educational experience through instruction in regular classes. However, these experiences are supplemented through:
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

1) Additional or specialized instruction from the teacher;

2) Consultation to and with the teacher by providers of special education and related services;

3) Provision of special equipment, materials, and accommodations;

4) Modification in the instructional services (e.g., multi-age placement, expectations, grading, etc.);

5) Modification of curricular content or educational methodology; or

6) Other supplementary services, such as itinerant or resource services, in conjunction with the regular class placement.

b) Special Classes
   The child receives specially designed instruction through a special education class. The child is included in those parts of regular classes which are appropriate.

c) Special Schools
   The child receives specially designed instruction in a special school. The child is included in those parts of regular classes which are appropriate.

d) Home/Hospital Services
   The child receives services at home or in a hospital or other setting because he or she is unable to attend school elsewhere due to a medical condition.

b) 1) When an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school or ongoing intermittent absences, the IEP Team for that child shall consider the need for home or hospital services. Such consideration shall be based upon a written statement from a physician licensed to practice medicine in all its branches which specifies:

1) A) the child’s condition;
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

2) the impact on the child’s ability to participate in education (the child’s physical and mental health level of tolerance for receiving educational services); and

3) the anticipated duration or nature of the child’s absence from school.

c) If an IEP Team determines that home or hospital services are medically necessary, the team shall develop or revise the child’s IEP accordingly.

d) The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to the child's educational needs and physical and mental health needs. The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week.

e) A child whose home or hospital instruction is being provided via telephone or other technological device shall receive not less than two hours per week of direct instructional services.

f) Instructional time shall be scheduled only on days when school is regularly in session, unless otherwise agreed to by all parties.

g) Services required by the IEP shall be implemented as soon as possible after the district receives the physician’s statement.

e) State Operated or Nonpublic Programs

The child is served in a State-operated or nonpublic facility because his or her disabilities are so profound or complex that no services offered by the public schools can meet his or her needs.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.310 Related Services
Each school district shall ensure that related services (defined at 34 CFR 300.34) are provided if necessary to assist an eligible child in benefiting from his or her special education. The related services that will be provided to a particular child shall be described in the IEP in conformance with the requirements of Section 226.230(a)(7) and (8) of this Part. The most commonly provided related services include assistive technology; audiology; counseling services; early identification and assessment of disabilities; diagnostic medical services; occupational therapy; orientation and mobility services; parent counseling and training; physical therapy; recreation; rehabilitation counseling; school health services; school psychological services; school social work services; special readers, braillists, typists, and interpreters; speech-language pathology services; transition services; transportation; and vocational education.

a) Assistive Technology: Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device as defined in Section 226.75 of this Part. Examples include:

1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for children with disabilities;

3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

6) Training or technical assistance for individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a student with a disability.

b) Audiology includes such services as:
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

1) Identification of children with hearing loss;

2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

3) Provision of habilitative activities such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

4) Creation and administration of programs for the prevention of hearing loss;

5) Counseling and guidance for pupils, parents, and teachers regarding hearing loss; and

6) Determination of a child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

c) Occupational Therapy:

1) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

2) Improving ability to perform tasks for independent functioning;

3) Preventing, through early intervention, initial or further impairment or loss of function.

d) Orientation and Mobility Services: Services provided to a blind or visually impaired child to enable the child to attain systematic orientation to and safe movement within the environments in school, home, and community. Includes teaching a child:

1) Spatial and environmental concepts and the use of information received by the senses (such as sound, temperature and vibrations) to establish,
maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street);

2) The use of the long cane to supplement visual travel skills or as a tool for safely negotiating the environment;

3) The use of remaining vision and low vision aids; and

4) Other concepts, techniques, and tools deemed appropriate for the child.

e) Parent Counseling and Training: Services to assist parents in understanding the special needs of their child, provide parents with information about child development, and help parents to acquire the skills that will allow them to support the implementation of their child’s IEP or IFSP.

f) Recreation: Services such as:

1) Assessment of leisure function;

2) Therapeutic recreation services;

3) Recreation programs in schools and community agencies; and

4) Leisure education.

g) Rehabilitation Counseling: Services provided in individual or group sessions that focus on career development, preparation for employment, achieving independence, and integration in the workplace and community of a student with a disability.

h) School Health Services include such activities as:

1) Preparing a health assessment by conducting interviews with a child’s parents and teachers, reviewing the Certificate of Child Health Examination, reviewing the vision and hearing screening results and other pertinent health information, and recommending additional medical evaluations as indicated;
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

2) Interpreting health assessment results;

3) Obtaining, integrating, and interpreting pertinent health information about a child as it applies to learning;

4) Consulting with other staff members in planning school programs to meet the needs of children who require the provision of special health services at school;

5) Planning and managing a program of school health services to meet the specific needs of all children;

6) Identifying and mobilizing community health resources to enable children to learn as effectively as possible in the educational program; and

7) Administering medication.

i) School Psychological Services may include such activities as:

1) Administering psychological and educational tests and other assessment procedures;

2) Interpreting assessment results;

3) Obtaining, integrating, and interpreting information about children’s behavior and conditions relating to learning;

4) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;

5) Planning, managing, and providing a program of psychological services, including psychological counseling for children and parents; and

6) Assisting in completing a functional behavioral assessment, as well as assisting in the development of positive behavioral intervention strategies.

j) School Social Work Services may include activities such as:
1) Preparing a social developmental study on a child with a disability;

2) Group and individual counseling with a child and his or her family;

3) Working with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

4) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

5) Assisting in completing a functional behavioral assessment, as well as assisting in the development of positive behavioral intervention strategies.

k) Speech-Language Pathology Services encompass such activities as:

1) Screening, diagnosis and appraisal of specific speech and language impairments;

2) Identification of children with speech and/or language impairments;

3) Referral and follow-up for medical or other professional attention necessary for the habilitation of speech and language impairments;

4) Planning and developing interventions and programs for children or youth with speech and language impairments;

5) Provision of services for the habilitation and prevention of speech and language impairments; and

6) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

l) Transportation: Special transportation services required because of the child's disability or the location of the special education program or related services, and which are in addition to the regular transportation services provided by the local school district.
ILLINOIS REGISTER

STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

1) Travel to and from school and between schools;

2) Travel in and around school buildings;

3) Specialized vehicles, specialized equipment (such as lifts and ramps, whether provided on regular, adapted, or special buses), and personnel who provide assistance to students in the course of transportation.

m) Travel training: Providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

1) Develop an awareness of the environment in which they live; and

2) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.330 Placement by School District in State-Operated or Nonpublic Special Education Facilities

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, use of a State-operated program should be given first consideration. However, the district shall refer the child to the agency or facility which is most appropriate to the individual situation. This determination shall be based upon recent diagnostic assessments and other pertinent evidence and made in light of such other factors as proximity to the child's home. Evidence of a condition that presents a danger to the physical well-being of the student or to other students may be taken into consideration in identifying the appropriate placement for a particular child.

a) When it appears that a child will require a placement pursuant to this Section, the IEP Team shall invite representatives of potential service providers to assist in identifying or verifying the appropriate placement for that child. If one or more
needed representatives cannot attend, the district shall use other methods to ensure their participation.

b) The local school district is responsible for ensuring implementation of the child’s IEP and convening any needed IEP meetings, including the annual review. If the district allows a State-operated or nonpublic school to initiate and conduct the IEP meeting, the district must ensure that the parent 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 program before the changes are implemented. The district remains responsible for the development and implementation of the child’s IEP and for compliance with the requirements of this Part.

c) No school district shall place any child in a nonpublic special education program, nor shall any such program accept placement of any child with a disability under Section 14-7.02 of the School Code [105 ILCS 5/14-7.02], unless all the following conditions have been met.

1) The program has been approved by the State Board of Education pursuant to the criteria set forth in 23 Ill. Adm. Code 401 (Special Education Facilities Under Section 14-7.02 of the School Code) for the school year for which placement is sought.

2) The allowable costs for the program have been established pursuant to Section 14-7.02 of the School Code.

3) The district has made the certification of inability to meet the student’s needs to the State Superintendent of Education if required pursuant to Section 14-7.02 of the School Code and the State Superintendent has found the district in substantial compliance with Section 14-4.01 of the School Code [105 ILCS 5/14-4.01].

4) The program has been approved by the State Board of Education for all of the disability categories applicable to the student and requiring services pursuant to the IEP.

5) The program has been approved by the State Board of Education for the age range that includes the age of the student.
6) The district has determined that all educational programming and related services specified on the child’s IEP will be provided to the student by the facility. The use of a nonpublic facility or program pursuant to 23 Ill. Adm. Code 401 does not relieve the local school district of the responsibility for ensuring that the student will receive the provision of all programming and related services required by the IEP, whether from one source or from multiple sources.

7) The school district and the facility have entered into the contractual agreement required by subsection (d) of this Section.

8) The child will receive an education that meets the standards applicable to education provided by the school district.

d) If a nonpublic school placement is chosen, the district and the facility shall enter into an agreement utilizing a format provided by the State Board of Education. The agreement shall provide for, but need not be limited to:

1) The child's IEP, as developed by the local school district;

2) The amount of tuition that will be charged;

3) Assurance that the special education staff of the placing school district may inspect the private facility and confer with the staff at reasonable times; and

4) Assurances that the placement will result in no cost to parents.

e) When a nonpublic facility is used, the school district shall be responsible for the payment of tuition and the provision of transportation as provided by Section 14-7.02 of the School Code. (See also Section 226.750(b) 226.750(e) of this Part.)

f) Each local school district shall be responsible for monitoring the performance of each State-operated or nonpublic facility where it has placed one or more eligible students, to ensure that the implementation of each IEP conforms to the applicable requirements of this Part.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)
Section 226.340  Nonpublic Placements by Parents Where FAPE is at Issue

This Section shall apply to students with disabilities who have been, or are to be, placed in a non-public facility by their parents following the parents’ refusal to accept an offer of FAPE by a school district. For such students, the reimbursement obligations and other requirements set forth at 34 CFR 300.148 shall be applicable. If a determination is made by a hearing officer or court of law that the school district is not obligated to provide special education or reimbursement to such a student, the school district shall treat the student as a student defined by Section 226.350 of this Part.

Except as provided in 34 CFR 300.403, a parent who elects to place a child in a nonpublic school or facility without the consent or referral of the local school district is not entitled to have the district pay for that placement if the district made or attempted to make FAPE available to the child:

a) Disagreements between a parent and a school district regarding the district’s provision of an appropriate program for a particular child shall be resolved by means of the due process afforded pursuant to Subpart G of this Part.

b) No child who is placed into a nonpublic facility by his or her parent(s) without the consent or referral of the local school district has an individual right to receive the special education and related services that the child would receive if enrolled in the district. Instead, a district’s services to such children are subject to the provisions of Section 226.350 of this Part.

(Source: Amended at 31 Ill. Reg. _____, effective ____________)

Section 226.350  Service to Children in Parentally-Placed Private School Students

“Parentally-Placed Private School Students” shall be defined as set forth in 34 CFR 300.130. As noted in Section 226.100 of this Part, school districts shall conduct child find for parentally-placed private school students in conformance with the requirements of 34 CFR 300.131. Each school district shall also conform to the requirements of 34 CFR 300.132 - 300.144. In fulfilling the requirements of 34 CFR 300.134 (Consultation) and 300.135 (Affirmation), school districts that are members of the same special education joint agreement are permitted to conduct jointly their consultation with private school and parent representatives. However, even when multiple districts’ funds are pooled by a joint agreement, the amounts that are required to be used...
for services to parentally-placed private school students must be spent in accordance with each member district’s “proportionate share” obligation. School districts that are members of the same special education joint agreement shall be prohibited from aggregating proportionate share funds when determining services for parentally-placed private school students.

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;

   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.

5) 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 31 Ill. Reg. _____, effective _______________)

SUBPART E: DISCIPLINE
Section 226.400 Disciplinary Actions

With respect to disciplinary action concerning children with disabilities, school districts shall conform to the requirements of 34 CFR 300.530 - 300.536, as well as Section 10-22.6 of the School Code [105 ILCS 5/10-22.6]. In addition, upon the occurrence of any act that may subject the student either to expulsion from school or suspension resulting in more than ten cumulative days of suspension during any one school year, the district shall be required to 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.

a) School personnel may order the removal of an eligible child from his or her current placement for periods of no more than ten consecutive school days each in response to separate incidents of misconduct, as long as such repeated removals do not constitute a pattern based on consideration of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. In such a case, these removals shall not be considered to constitute a change in placement.

1) After an eligible child has been removed from his or her placement for ten school days in the same school year, the district shall provide services to the child on any subsequent day(s) of removal.

2) School personnel, in consultation with the child’s special education teacher, shall determine the extent of the services to be provided, which shall be adequate to enable the child to progress appropriately in the general curriculum and advance toward achieving the goals set forth in his or her IEP.

b) Any removal of a student (i.e., any “suspension”) shall be reported immediately to the student’s parents, along with a full statement of the reasons for the suspension, a copy of which shall also be given to the school board. The district shall provide the parents notice of their right to request that the district review the suspension decision, as required by Section 10-22.6 of the School Code [105 ILCS 5/10-22.6].

e) When a district first removes a child for more than ten school days in a school year or initiates a removal that will constitute a change in placement, the district
shall, no later than ten business days after the date of such removal, either:

1) convene an IEP meeting to review and, if necessary, revise the child’s existing behavioral intervention plan as appropriate to address the child’s behavior; or

2) convene an IEP meeting to develop a plan for a functional behavioral assessment for the child and, as soon as possible thereafter, develop a behavioral intervention plan for the child in light of that assessment.

d) Upon any subsequent removal of a child that does not constitute a change in placement, the members of the IEP Team shall review the child’s behavioral intervention plan and its implementation. If any one member of the team believes that the plan needs to be modified, the district shall convene an IEP meeting to review the plan and revise it as the team deems appropriate.

e) A student may be suspended from using the transportation provided by the school district if his or her behavior warrants such a measure. When suspending transportation privileges results in the student’s absence from school on a given day, that day shall be considered a day of suspension or removal, and the requirements of Section 10-22.6 of the School Code shall apply.

f) School personnel may order a change in placement for an eligible child to an interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, up to a maximum of 45 days, if:

1) the child carries a weapon, as defined at 34 CFR 300.520, to school or to a school function under the jurisdiction of a state or a local school district; or

2) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, both as defined at 34 CFR 300.520, while at school or a school function under the jurisdiction of a state or a local school district.

g) No later than ten business days after making the decision to place the child in an
The interim alternative educational setting in which a child is placed pursuant to subsection (f) of this Section shall be identified by the child’s IEP Team.

1) The setting shall be selected so as to enable the child to continue to progress in the general curriculum.

2) While the child is served in the interim alternative educational setting, he or she shall continue to receive the services and modifications set forth in the IEP.

3) The placement shall include services and modifications designed to address the behavior that resulted in the child’s being removed from his or her current educational placement, and to prevent that behavior from recurring.

i) Interim alternative educational settings for students who exhibit behavior that is likely to result in injury to themselves or others are subject to the provisions of Section 226.655 of this Part.

j) No eligible child shall be expelled for behavior or a condition which is, or results from, the child’s disability. If a district is considering expelling an eligible student, the district shall:

1) Conduct a manifestation determination review as described in Section 226.410 of this Part;

2) Adhere to the requirement of Section 10-22.6(a) of the School Code regarding meeting with the parent(s); and

3) Maintain the child in an appropriate placement.

k) An expulsion constitutes a change in placement and requires revision of the child’s IEP in a manner that conforms to the applicable requirements of Subpart C of this Part. Cessation of services to an eligible child is prohibited during a period of expulsion.
Section 226.410 Manifestation Determination Review (Repealed)

The requirements of this Section shall apply whenever a disciplinary action is contemplated with respect to an eligible child that will constitute a change in placement and that action is being considered because of behavior that violates any rule or code of conduct of the school district that applies to all students.

a) On the date when the district determines that disciplinary action will be taken, the district shall notify the parents in writing to that effect and shall notify them of the procedural safeguards that apply.

b) As soon as possible, but in no event more than ten school days after the date on which the district determines that disciplinary action will be taken, the district shall conduct a review of the relationship between the child’s disability and the behavior that is subject to the disciplinary action (a “manifestation determination review”).

c) The manifestation-determination review shall be conducted by the IEP Team.

d) The IEP Team shall determine whether the child’s behavior was a manifestation of his or her disability. In making its determination, the IEP Team shall consider all available relevant information, including:

1) evaluation and diagnostic results, including information supplied by the child’s parent(s);

2) observations of the child; and

3) the child’s current IEP and placement.

e) The team may determine that the subject behavior was not a manifestation of the child’s disability only if it is determined that:

1) The child’s IEP and placement were appropriate, and special education services, supplementary aids and services, and behavioral
intervention strategies were provided consistent with that IEP and that placement.

2) The child’s disability did not impair his or her ability to understand the impact and consequences of the behavior.

3) The child’s disability did not impair his or her ability to control the behavior.

f) If the child’s behavior is determined to have been a manifestation of his or her disability, the district shall immediately initiate steps to remedy any deficiencies identified in the IEP or its implementation so that such deficiencies may be removed as soon as possible.

g) If the child’s behavior is determined not to have been a manifestation of the disability, the district may apply relevant disciplinary procedures in the same manner as it would with respect to children without disabilities. In such a case, the district shall ensure that the student’s special education and disciplinary records are provided for consideration by the person(s) making the final determination regarding the disciplinary action to be taken.

h) When the application of a disciplinary measure results in a change in placement, services shall be provided to the extent determined necessary by the IEP Team to enable the student to progress in the general curriculum and advance appropriately toward achieving the goals set forth in his or her IEP.

(Source: Repealed at 31 Ill. Reg. _____, effective _____________)

Section 226.420 Appeals (Repealed)

a) If the child’s parent disagrees with a determination that the child’s behavior was not a manifestation of the disability or with any disciplinary decision regarding placement, the parent may request an expedited due process hearing in accordance with Subpart G of this Part.

b) The local school district, upon receiving the parent’s request for a due process hearing, shall immediately initiate the procedure set forth in Section 226.615 of this Part to request an expedited due process hearing.
e) If a parent requests a due process hearing to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45-day period, whichever occurs first, unless the parent and the district agree otherwise. The same shall apply if a parent appeals the decision of a hearing officer in this regard.

d) If a child’s IEP Team proposes a new placement to take effect upon the expiration of an interim placement, and if the child’s parent wishes to challenge that new placement, the child shall return to the placement previously set forth in his or her IEP (i.e., prior to placement in the interim alternative educational setting) during the pendency of any due process hearing, except as provided in subsection (e) of this Section. (For purposes of this subsection (d), “new placement” may mean placement in the same alternative educational setting that was used as an interim alternative.)

e) If school personnel consider that it is too dangerous for the child to be returned to the current placement, the district may request an expedited due process hearing to extend the length of time the student may remain in the interim alternative educational setting. (See Section 226.655 of this Part.)

(Source: Repealed at 31 Ill. Reg. _____, effective _____________)

Section 226.430 Protection for Children Not Yet Eligible for Special Education (Repealed)

a) A child who has not been determined eligible under this Part and who has engaged in behavior that violated any rule or code of conduct of the local school district may assert any of the protections provided for in this Part if the school district had knowledge that the child might be an eligible child before the occurrence of the behavior that precipitated disciplinary action.

b) A district shall be deemed to have knowledge that a child may be an eligible child if, prior to the incident:

1) The parent of the child has expressed concern in writing (or orally, if the parent is illiterate in English or has a disability that prevents a written statement) to personnel of the school district that the child is in need of special education and related services;
2) The behavior or performance of the child demonstrates the need, or a potential need, for such services;

3) The parent of the child has requested an evaluation of the child; or

4) The child’s teacher or another school employee has expressed concern in writing about the behavior or performance of the child to the director of special education or to other district personnel, in accordance with the district’s child find or referral procedures.

e) A district shall not be deemed to have knowledge that a child may be an eligible child if:

1) the district determined that no evaluation was necessary or conducted an evaluation and determined that the child was not eligible; and

2) provided written notice to the child’s parents of its determination.

d) If a district does not have knowledge that a child is or may be an eligible child prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as those applied to children without disabilities engaging in comparable behavior.

1) When a request is made for an evaluation of a child during the time period when the child is subjected to disciplinary measures, the district shall conduct an evaluation in an expedited manner.

2) The child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services, until the evaluation is completed.

3) The district shall provide special education and related services after developing an IEP if the child is determined to be eligible for special education and related services.

(Source: Repealed at 31 Ill. Reg. _____, effective _____________)
Section 226.440  Referral to and Action by Law Enforcement and Judicial Authorities (Repealed)

a) Nothing in this Part prohibits a local school district from reporting a crime committed by a child with a disability to appropriate authorities; or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

b) A local school district reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the authorities to whom it reports the crime, to the extent permitted by the Illinois School Student Records Act [105 ILCS 10], the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110], and the Family Educational Rights and Privacy Act (20 USC 1232(g)).

(Source: Repealed at 31 Ill. Reg. _____, effective _____________)

SUBPART F: PROCEDURAL SAFEGUARDS

Section 226.500  Language of Notifications

a) The notices to individual parents required in this Subpart F shall conform to the requirements of 34 CFR 300.503(c), be:

1) Written in language understandable to the general public; and

2) Provided in such a way as to accommodate the primary language or other mode of communication of the respective parent, unless it is clearly not feasible to do so.

b) If the primary language or other mode of communication of the parent is not a written language, the local school district shall ensure that:

1) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
2) The parent understands the content of the notice; and

3) There is written evidence in the child’s record that the requirements of this subsection (b) have been met.

(Source: Amended at 31 Ill. Reg. _____, effective ______________)

Section 226.510 Notification of Parents’ Rights

A copy of the notice of procedural safeguards available to the parents of a child with a disability shall be given to the parents in accordance with, and shall conform to the requirements of, 34 CFR 300.504.

a) A written notification conforming to the requirements of subsection (b) of this Section shall be given to parents on at least the following occasions:

1) Upon a child’s initial referral for evaluation;

2) Along with each notification of an IEP meeting;

3) Along with each request for consent for the reevaluation of a child; and

4) Upon receipt of a request for due process pursuant to this Part.

b) The notification required by this Section shall include a full explanation of all of the rights available to parents concerning:

1) Independent educational evaluation;

2) Prior written notice;

3) Parental consent;

4) Inspection and review of all educational records having to do with:

A) The identification, evaluation, and educational placement of the child; and
B) The provision of FAPE to the child;

5) The opportunity to file a written complaint with the Illinois State Board of Education as described in Section 226.570 of this Part;

6) Procedures for students who are subject to placement in an interim alternative educational setting;

7) Requirements for parents’ unilateral placement of children in private schools at public expense;

8) Mediation services;

9) Due process hearings, including requirements for disclosure of evaluation results and recommendations;

10) A child's placement during the pendency of due process proceedings;

11) Civil actions; and

12) Attorneys' fees.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.520 Notification of District’s Proposal

The written notice a school district is required to provide to a parent prior to a proposal or refusal to initiate or change the identification, evaluation, or educational placement of, or the provision of FAPE to, a child shall conform to the requirements of 34 CFR 300.503. “Reasonable time”, for purposes of 34 CFR 300.503(a), is defined as ten days. The district shall provide written notice to the parent to that effect.

a) If the notice relates to an action proposed by the school district that also requires parental consent, the district may give notice at the same time as it requests consent.

b) The notice required by this Section shall include:
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

1) A description of the action proposed or refused by the district;

2) An explanation of why the district proposes or refuses to take the action;

3) A description of any other options that the district considered and the reasons why those options were rejected;

4) A description of each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action;

5) A description of any other factors that are relevant to the district's proposal or refusal;

6) A statement that the parents of an eligible child are protected by the procedural safeguards of this Part, and an indication of the means by which a description of those procedural safeguards may be obtained;

7) Sources for parents to contact to obtain assistance in understanding the provisions of this Part; and

8) If a meeting will be held, the information required by Section 226.530(b)(1) of this Part.

e) A parent may waive the ten-day notice period before placement, allowing the district to place the child in the recommended program as soon as practicable.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.530 Parents’ Participation

With respect to parents’ participation in meetings, school districts shall conform to the requirements of 34 CFR 300.322 and 300.501. For purposes of 34 CFR 300.322(a)(1), “[n]otifying parents of the meeting early enough to ensure that they will have an opportunity to attend” shall mean notification no later than ten days prior to the proposed date of the meeting. In addition, the

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 parents 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 and covering the expense of 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 31 Ill. Reg. _____, effective _____________)

Section 226.540 Consent

Consent, as defined in 34 CFR 300.9, shall be obtained and may be revoked in accordance with the requirements of 34 CFR 300.154(e), 300.300, 300.323, and 300.622. In addition, the following requirements shall apply:

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.

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.

e) 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.
NOTICE OF ADOPTED AMENDMENTS

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.

a) 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 may do so either in writing or orally. 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.

b) j) Any revocation of consent is effective immediately, subject to the provisions of subsection (c)(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 (b)(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.

c) k) If a district disagrees with a parent’s revocation of consent, the district may request a due process hearing pursuant to Subpart G 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 five business days after the parent’s revocation occurred.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.550 Surrogate Parents

The qualifications, responsibilities, and appointment procedures for surrogate parents shall conform to the requirements of 34 CFR 300.519 and Section 14-8.02a of the School Code [105 ILCS 5/14-8.02a]. In addition, the following requirements shall apply:

a) Whenever the parent or guardian of a child who is or may be eligible for services pursuant to this Part is not known or unavailable, or when the child is a ward of the State living in a residential facility, a person shall be assigned to act as a surrogate parent for the child in matters relating to the identification, evaluation, and educational placement of the child and the provision of a free, appropriate public education to the child.

1) A foster parent is considered a parent for the purposes of this Section, so a child residing with a foster parent does not require a surrogate parent to represent him or her in educational matters.

2) When a child who is a ward of the State is placed in a residential facility, a representative of that facility shall submit to the State Board of Education a request for the appointment of a surrogate parent if the district has not already done so.

b) The State Board of Education shall appoint a surrogate parent for each child who requires one, in keeping with the criteria set forth in 34 CFR 300.519(d) and the following requirements.
1) All reasonable efforts shall be made to secure a surrogate parent whose racial, linguistic, and cultural background is similar to the child’s.

2) The surrogate parent shall have been trained by the State Board.

3) The surrogate parent shall have no interest that conflicts with the interests of the child he or she will represent.

4) The surrogate parent shall have the knowledge and skills needed to ensure adequate representation of the child.

5) An individual may not be appointed as a surrogate parent for a child if he or she is:

   A) employed by the State Board of Education;

   B) employed by the school district in which the child is enrolled; or

   C) employed by any other agency involved in the child’s education.

c) When a surrogate parent is appointed, the State Board of Education shall provide written notification to the local school district, the individual appointed, and, if applicable, the residential facility of the name and address of the surrogate parent, the specific responsibilities to be fulfilled, and the length of time for which the appointment is valid.

d) Any person participating in good faith as a surrogate parent on behalf of a child before school officials or a hearing officer shall have immunity from civil or criminal liability that otherwise might result by reason of such participation, except in cases of willful and wanton misconduct.

e) The services of any person assigned as a surrogate parent shall be terminated if the child’s parent or guardian becomes available.

f) When a child living in a residential facility no longer requires a surrogate parent, a representative of the facility shall notify the State Board of Education in writing.
to that effect. This notification shall include the reason for withdrawal of the request.

e) g) When a surrogate parent’s appointment is terminated, the State Board of Education shall so notify the surrogate parent, the local school district, and, if applicable, the residential facility.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.560 Mediation

The procedures for mediation shall conform to the requirements of 34 CFR 300.506. Each school district shall inform parents that the State Board of Education offers a process of mediation that can be used when there are disputes regarding the identification, evaluation, or placement of, or the provision of FAPE to, a child. This notification shall be provided at least whenever a due process hearing is requested.

a) Each district shall ensure that, when used, the mediation process:

1) Is voluntarily entered into by all parties; and

2) Is not used to deny or delay a parent’s right to a due process hearing, or to deny any other rights afforded under this Part.

b) If either party is interested in participating in mediation, that party shall contact the State Board of Education.

c) Each session in the mediation process shall be scheduled in a timely manner and held in a location that is convenient to the parties involved in the dispute.

d) Discussions that occur during mediation shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to mediation may be required to sign a confidentiality pledge prior to the commencement of the process.

e) Any agreement reached in the course of mediation shall be set forth in writing and shall be consistent with applicable federal and State laws and regulations.

f) The State Board of Education shall maintain a list of individuals who are qualified mediators and knowledgeable about the laws and regulations relating to the provision of special education and related services.

g) Mediators shall be selected by the State Board from its list by rotation.

h) The State Board of Education shall bear the cost of sending a mediator to sessions held pursuant to this Section and other, incidental costs.
Section 226.570 State Complaint Procedures Complaints

This Section sets forth the State Board of Education’s written complaint procedures, as required by 34 CFR 300.151, 300.152, and 300.153.

a) A parent, individual, organization, or advocate may file a signed, written complaint with the State Board of Education alleging that a local school district, cooperative service unit or the State has violated the rights of one or more children with disabilities. Such a complaint shall include:

1) A statement that a responsible public entity has violated a requirement of Part B of the IDEA, Part 34 of the Code of Federal Regulations, Article 14 of the School Code, or this Part;

2) The facts on which the statement is based; and

3) The signature and contact information for the complainant;

4) The names and addresses of the students involved (and the names of the schools of attendance), if known;

5) A description of the nature of the problem of the child, including the facts relating to the problem; and

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

b) A complaint shall only be considered if it alleges that the violation occurred not more than one year prior to the date on which the complaint is received, unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date on which the complaint is received.

c) Within 60 days after a valid complaint is filed, the State Board of Education shall:
1) Carry out an independent on-site investigation, if deemed necessary by the State Board of Education.

2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

3) Provide the public entity with the opportunity to:
   A) offer a proposal to resolve the complaint; and
   B) offer to engage the parent in mediation or alternative means of dispute resolution.

4) Review all relevant information and make an independent determination as to whether the public entity is violating a requirement of Part B of the IDEA, Part 34 of the Code of Federal Regulations, Article 14 of the School Code, or this Part.

5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
   A) findings of fact and conclusions;
   B) the reasons for the State Board of Education’s final decision;
   C) orders for any actions, including without limitation technical assistance activities and negotiation, that are necessary to bring the public entity into compliance with applicable requirements.

Each complaint that complies with the requirements of subsections (a) and (b) of this Section shall be investigated within 60 days after its receipt by the State Board of Education. An extension of that time limit is allowed if exceptional circumstances exist with respect to a particular complaint.

d) An extension of the time limit set forth in subsection (c) of this Section shall be allowed if exceptional circumstances exist with respect to a particular complaint or if the parent and the public entity agree to extend the time to conduct the activities pursuant to subsection (c)(3)(B) of this Section. Upon
completion of the State Board’s investigation, the agency shall issue a letter of findings that sets forth:

1) the allegations of the complaint;

2) findings of fact and conclusions;

3) the reasons for the decision; and

4) orders for any actions that are necessary to bring a school district into compliance with applicable requirements.

e) If a written complaint is received by the State Board of Education involving one or more issues that are also the subject of a due process hearing, the State Board shall hold those portions of the complaint in abeyance pending the completion of the hearing. However, any issues that are not the subject of the hearing shall be resolved as provided in this Section.

f) If a complaint is filed about an issue that has previously been decided in a due process hearing involving the same parties, the decision arising from that hearing shall be considered binding, and the State Board shall inform the complainant to that effect. A complaint alleging a public entity’s local school district’s failure to implement a decision arising from due process, however, shall be resolved by the State Board pursuant to Section 226.675 of this Part.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

SUBPART G: DUE PROCESS

Section 226.600 Calculation of Timelines

In calculating the timelines specified in this Subpart G, Section 1.11 of the Statute on Statutes [5 ILCS 70/1.11] shall apply. The first day shall be excluded and the last day shall be included, unless the last day is Saturday, Sunday, or a holiday as defined or fixed in any statute now or hereafter in force in this State, in which case it shall be excluded. If the day succeeding such Saturday, Sunday, or holiday is also a holiday or Saturday or Sunday, then such succeeding day shall also be excluded.
Section 226.605 Request for Hearing; Basis (Repealed)

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: Repealed at 31 Ill. Reg. ____ , effective _____________)

Section 226.610 Information to Parents Concerning Right to Hearing

a) Each school district shall notify parents in writing of the procedures for requesting a due process hearing in accordance with 34 CFR 300.507 and 300.508. This written notice shall be provided to the parent by the district upon receipt of a request for a due process hearing. Written notice provided to parents as required under Section 226.510 of this Part shall be deemed sufficient notice for purposes of this Section, 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;
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.

e) 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 31 Ill. Reg. _____, effective _____________)

Section 226.615 Procedure for Request

The filing, basis for, and content of due process requests, whether by a parent, a student, or a local school district, shall conform to the requirements of 34 CFR 300.507 and 300.508. Pursuant to Section 226.605 of this Part, the local school district, the parent of any student resident within the district, or the student may request an impartial due process hearing. A parent’s or student’s request for a hearing shall be made in writing to the superintendent of the school district in which the student is a resident. The district shall provide any assistance that may be necessary to enable a person requesting a due process hearing to meet any related requirements. (See Section 226.655 of this Part for requirements pertaining to expedited due process hearings.) In addition, in order to fulfill the requirement to “forward a copy of the due process complaint to the SEA” as specified in 34 CFR 300.508(a)(2), the school district
superintendent shall, within five days after receipt of the request, forward the request to the State Board of Education in Springfield by certified mail or another means that provides written evidence of the delivery.

a) If the district makes the request, it shall be sent in writing to the State Board of Education in Springfield, and at the same time a copy shall be sent to the other party. This letter shall include the information set forth in subsections (b)(1)(A), (C) and (D) of this Section.

b) When a district receives a request for a hearing from a parent or from a student, then within five days after its receipt of the request the district shall:

1) Send a letter to the State Board of Education in Springfield requesting the appointment of an impartial due process hearing officer. This letter shall be delivered by certified mail or another means that provides written evidence of the delivery and shall include:

   A) the name, address, and telephone number of the student and the parent, and of the person making the request for the hearing if other than the student or the parent;

   B) the date on which the request for the hearing was received by the local school district;

   C) the nature of the controversy to be resolved;

   D) the remedy being sought;

   E) the primary language spoken by the parents and student; and

   F) a copy of the request.

2) Send to the person requesting the hearing, by certified mail or another means providing written evidence of delivery, a copy of the letter sent to the State Superintendent.

   A) If the hearing has been requested by the district or the student, the
district shall inform the parents by certified mail of the request and invite them to participate in the proceedings.

B) All references to parents made in the remainder of this Subpart G shall be understood to include both the parents and the person requesting the hearing.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.620 Denial of Hearing Request (Repealed)

A request for an impartial due process hearing that conforms with Section 226.605 of this Part may not be denied for any reason.

(Source: Repealed at 31 Ill. Reg. _____, effective _____________)

Section 226.625 Rights of the Parties Related to Hearings

The hearing rights of parties shall conform to the requirements of 34 CFR 300.512 and Section 14-8.02a of the School Code [105 ILCS 5/14-8.02a]. In addition, the following requirements shall apply.

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(b) of this Part.

3) This subsection (a) 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.

b) 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. 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. (Referencees 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 31 Ill. Reg. _____, effective _____________)

Section 226.630 Qualifications, Training, and Service of Impartial Due Process Hearing Officers

a) Impartial due process hearing officers must possess qualifications in conformance with the requirements of 34 CFR 300.511 and Section 14-8.02a(c) of the School Code [105 ILCS 5/14-8.02a(c)]. In order to be considered for training as an impartial due process hearing officer, an individual either must hold a master’s degree or a juris doctor degree or must hold a bachelor’s degree in combination with relevant experience.

1) For purposes of this Subpart G, “Relevant relevant experience,” as used in Section 14-8.02a(c) of the School Code, means at least three years’ experience, whether paid or voluntary, in special education, disability-related issues, or advocacy.

2) EMPLOYEES OF THE STATE BOARD OF EDUCATION, SCHOOL DISTRICTS, SPECIAL EDUCATION COOPERATIVES,
REGIONAL SERVICE AREAS OR CENTERS, REGIONAL EDUCATIONAL COOPERATIVES, STATE OPERATED ELEMENTARY AND SECONDARY SCHOOLS, OR PRIVATE PROVIDERS OF SPECIAL EDUCATION FACILITIES OR PROGRAMS MAY NOT SERVE AS IMPARTIAL DUE PROCESS HEARING OFFICERS. [105 ILCS 5/14-8.02a(c)]

3) Except as provided in Section 14-8.02a(f) of the School Code, former employees of, and current or former contractors to, the State Board of Education, school districts, special education cooperatives, regional service areas or centers, regional educational cooperatives, state operated elementary and secondary schools, or private providers of special education facilities or programs shall not be disqualified as potential hearing officers by virtue of such employment or service.

b) An individual wishing to be considered as an impartial due process hearing officer shall submit an application to the State Board. In completing the application form, which shall be provided by the State Board, the individual shall disclose at least the following information:

1) name and address;

2) degrees held;

3) current employment status, including if applicable the employer's name and the title of the employee's position;

4) school district of residence; and

5) professional background and relevant experience.

c) Persons who have complied with the requirements of subsections (a) and (b) of this Section shall, if recommended by the Screening Committee pursuant to Section 14-8.02a(b) of the School Code, then be invited to complete a training course conducted as provided in Section 14-8.02a(d) of the School Code. Failure to complete this training course successfully shall result in ineligibility to serve as a hearing officer.
d) Based on the recommendations of the training entity, interviews, and supporting information, the due process screening committee, applying the objective criteria developed by the Advisory Council on Education of Children with Disabilities, shall recommend to the Advisory Council those candidates to be appointed as impartial due process hearing officers. The number of candidates recommended shall equal 150% of the number deemed necessary by the State Board of Education.

e) Each hearing officer shall at least annually attend a review session and/or training course pursuant to Section 14-8.02a(d) of the School Code. Failure to attend a required review session or training course shall result in the hearing officer's termination.

f) Conditions of Service

Hearing officers’ terms of service and subsequent reappointment shall be as provided in Section 14-8.02a(d) and (e) of the School Code.

1) A hearing officer shall accept each case to which he or she is assigned, unless:

A) the hearing officer is ill;

B) the hearing officer has a personal, professional, or financial interest which would conflict with his or her objectivity with respect to a particular case; or

C) the hearing officer is ineligible to accept a particular case pursuant to Section 226.635(a) of this Part.

2) A hearing officer whose other commitments will interfere with his or her ability to accept cases for more than 15 days shall so notify the State Board of Education in writing.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.635 Appointment, Recusal, and Substitution of Impartial Due Process Hearing Officers
The appointment, recusal, and substitution of due process hearing officers shall conform with the requirements of Section 14-8.02a(f) of the School Code [105 ILCS 5/14-8.02a(f)].

a) Upon receipt of a request for a hearing the State Board shall, within five days (one day for an expedited hearing) and using the rotation system called for in Section 14-8.02a(f) of the School Code, appoint an impartial due process hearing officer and notify that individual and the parties of his or her appointment. Prior to making any appointment, the State Board shall review the background of the prospective appointee in order to establish that:

1) the individual has never been employed by or administratively connected with the school district or special education cooperative involved in the case;

2) the individual is not a resident of the district involved; and

3) the prospective appointee has no apparent personal, professional, or financial interest that would interfere with his or her objectivity regarding the matter at issue.

b) An appointee who does not meet the requirements set forth in subsection (a) of this Section shall recuse himself or herself within five days after receiving notification of the appointment, except that an appointee in an expedited hearing shall recuse himself or herself immediately if recusal is necessary. Notification to the State Board of such recusal may occur by telephone, provided that a written statement is also supplied.

e) A PARTY TO A DUE PROCESS HEARING conducted under Section 14-8.02a of the School Code SHALL BE PERMITTED ONE SUBSTITUTION OF A HEARING OFFICER AS A MATTER OF RIGHT [105 ILCS 5/14-8.02a(f)]. A request for a substitute hearing officer shall be made in writing to the State Board of Education within five days after the verified date of delivery of the notification at the last known address. In the event that both parties submit written requests on the same day and both should be received simultaneously, the State Board of Education shall deem the substitution to have been at the request of the party initially requesting the hearing. The right of the other party to a substitution will thereby be absolutely protected.
d) Section 14-8.02a(f) of the School Code contemplates two situations requiring the appointment of a hearing officer other than the individual who originally receives the case under the rotation system and specifies different methods of selecting a replacement.

1. When the appointed hearing officer is unavailable or recuses himself or herself before the parties are notified of his or her appointment, the State Board shall appoint the next scheduled hearing officer under the rotation system.

2. When a hearing officer recuses himself or herself after learning the circumstances of a case, or when a party to the hearing submits a proper request for substitution, the State Board shall select and appoint another hearing officer at random.

(Source: Amended at 31 Ill. Reg. _____, effective ____________)

Section 226.640 Scheduling the Hearing and Pre-Hearing Conference

The provisions of this Section shall not apply to expedited hearings conducted pursuant to Section 226.655 of this Part.

a) The hearing officer shall schedule a pre-hearing conference in accordance with the requirements of Section 14-8.02a(g) of the School Code. Within five days after receiving written notification by the State Board, the appointed hearing officer shall contact the parties to determine a time and place reasonably convenient to the parties and otherwise in accordance with Section 14-8.02a(g) of the School Code for convening the hearing and pre-hearing conference.

b) The hearing officer shall provide the parties at least ten days' written notice of the dates, times, and locations of the pre-hearing conference and the hearing.

c) Either party may request a delay in convening the hearing and/or the pre-hearing conference. The party requesting a delay shall do so in writing to the hearing officer, with a copy sent at the same time to the other party. The requesting party shall set forth the reasons for the request. The hearing officer shall either grant or deny the request and shall so inform the parties and the State Board of
Education in writing. The hearing officer shall determine a new time and date for convening the hearing and/or pre-hearing conference.

1) If the parties jointly propose a delay in convening the hearing or pre-hearing conference, it shall be delayed as agreed. The hearing officer, being advised of such agreement, shall confirm the delay in writing to the parties and the State Board of Education. Such notice shall become part of the administrative record.

2) If the parties cannot agree to a mutually convenient time and place for convening the hearing and/or pre-hearing conference, the hearing officer shall fix such time and place, notify the parties in writing, and proceed to convene and conduct the pre-hearing conference and hearing, provided that the delay shall not continue for a period longer than necessitated by the circumstances that precipitated the delay.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.645 Conducting the Pre-Hearing Conference

a) The hearing officer shall convene the pre-hearing conference in accordance with Section 14-8.02a(g) of the School Code.

b) Any party to the pre-hearing conference shall be permitted to participate by teleconference (Section 14-8.02a(g) of the School Code). It shall be the responsibility of the parties to ensure that any information required at the pre-hearing conference is received by the hearing officer and the other party at or prior to the conference.

c) At the conclusion of the pre-hearing conference, the hearing officer shall prepare a report of the conference that shall be entered into the hearing record. The report shall include, but need not be limited to:

1) the issues, the order of presentation, and any scheduling accommodations that have been made for the parties or witnesses;

2) a determination of the relevance and materiality of documents or witnesses, if raised by a party or the hearing officer; and
such stipulations of fact as have been agreed to during the pre-hearing conference.

d) The provisions of this Section shall not apply to expedited hearings conducted pursuant to Section 226.655 of this Part.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.650 Child’s Status During Due Process Hearing (Repealed)

a) Except as provided in Section 226.655 of this Part, during the pendency of any administrative or judicial proceeding regarding a due process hearing decision, the child shall remain in his or her current educational placement unless the State or local agency and the parents of the child agree otherwise.

b) If the due process hearing involves an application for initial admission to the public school, the child, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings.

c) If the decision of a hearing officer agrees with the child’s parents that a change of placement is appropriate, that placement shall be treated as an agreement between the State or local agency and the parents for purposes of subsection (a) of this Section.

(Source: Repealed at 31 Ill. Reg. _____, effective _____________)

Section 226.655 Expedited Due Process Hearing

Requests for expedited due process hearings shall be made in accordance with 34 CFR 300.532 and 300.533 and Section 14-8.02b of the School Code [105 ILCS 5/14-8.02b].

a) The State Board of Education shall arrange for an expedited hearing when:

1) The local school district requests such a hearing because school personnel maintain that it is dangerous for the child to be in the current placement.
2) The parent requests such a hearing because the parent disagrees with the district’s placement decision when a child is moved to an interim alternative educational setting for a weapon or drug violation.

3) The parent requests such a hearing because the parent disagrees with the district’s determination that a child’s behavior was not a manifestation of the child’s disability.

b) During the pendency of an expedited hearing, the child’s placement shall be the interim alternative educational setting that was determined appropriate by the IEP Team.

e) The hearing officer shall determine:

1) whether the child shall be placed in the proposed alternative educational setting; or

2) whether the local school district has demonstrated that the child’s behavior was not a manifestation of the child’s disability (see Section 226.410 of this Part).

b) The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:

1) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

2) Whether the child's current placement is appropriate;

3) Whether the district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

4) Whether the interim alternative educational setting will permit full implementation of the student’s IEP and includes services and
modifications designed to prevent the undesired behavior from recurring.

c) If all the conditions set forth in subsection (b) (d) of this Section are met, the hearing officer shall order a change in the child’s placement to an appropriate interim alternative educational setting for not more than 45 school days.

1) This new alternative educational setting shall be identified by the IEP Team as provided in Section 226.400(h) of this Part.

2) If the district demonstrates that the student is substantially likely to injure himself or herself or others if returned to the placement that was used prior to the student’s removal, the hearing officer may order that the student remain in the interim setting for subsequent periods of up to 45 school days each.

f) An expedited hearing shall result in a decision within ten school days after the request for the hearing, unless the parents and the local school district agree otherwise.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.660 Powers and Duties of Hearing Officer

a) Once appointed, the impartial due process hearing officer shall not communicate with the State Board of Education or its employees concerning the hearing [105 ILCS 5/14-8.02a(g)] and shall not initiate or participate in any ex parte communications with the parties, except as provided in Section 14-8.02a(g) or 14-8.02b of the School Code, as applicable.

b) The hearing officer shall disclose any actual or potential conflict of interest to the parties upon learning of such a conflict.

c) The hearing officer shall conduct the hearing and, with respect to the hearing, shall have, but is not limited to, the following powers:

a) To administer, or to authorize the court reporter to administer, oaths;
b)  To examine witnesses;

c)  To authorize the issuance of subpoenas;

d)  To rule upon the admissibility of evidence;

e)  To order independent evaluations;

f)  To grant specific extensions of time;

g)  To read into the hearing record any stipulations of fact and other matters agreed upon at the pre-hearing conference and to enter into the record any pre-hearing orders;

h)  To render decisions and issue orders and clarifications.

d)  The hearing officer shall comply with timelines established in Section 14-8.02a or Section 14-8.02b of the School Code, as applicable.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.665  Record of Proceedings

A record of the hearing shall be made and the cost of such record borne in accordance with 34 CFR 300.512(a)(4) and Section 14-8.02(a) of the School Code [105 ILCS 5/14-8.02(a)]. The hearing officer shall ensure that an electronic verbatim record of the hearing is made in the format of the parent’s choice (such as by tape recording or by a court reporter). The hearing officer shall also ensure that all written evidence presented at the hearing is marked to indicate the party offering the evidence and is made part of the administrative record. The parents or the district may obtain a copy of the verbatim record of the hearing. The State Board and the district shall share equally the cost of providing these copies.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.670  Decision of Hearing Officer; Clarification

The bases and timelines for decisions of hearing officers shall conform to the requirements of 34 CFR 300.513 and Section 14-8.02(a) [105 ILCS 5/14-8.02(a)]. In addition,
the hearing officer's decision shall be sent by certified mail to the parties enumerated in Section 14-8.02a(h) of the School Code. The decision shall be translated into the native language of the parents if their primary language is other than English.

c) The written decision shall be binding upon the parties unless a party aggrieved by the decision commences a civil action as provided in Section 14-8.02a(i) of the School Code.

d) As provided in Section 14-8.02a(h) of the School Code, the hearing officer shall retain jurisdiction after issuance of his or her decision for the sole purpose of considering a request for clarification. A request for clarification shall be submitted and acted upon as provided in Section 14-8.02a(h) of the School Code. In the case of an expedited hearing, the hearing officer shall retain jurisdiction either until the 45th day after the initial removal of the student or until 45 days after that hearing officer's latest decision in the case.

e) The hearing decision, if not appealed pursuant to subsection (c) of this Section, shall be enforced by the State Board as provided in Section 226.675 of this Part.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.680 Reporting of Decisions (Repealed)

The State Board of Education shall, after deleting all personally identifiable information and indexing by subject matter, make the decisions of impartial due process hearing officers available to the Illinois State Advisory Council on Education of Children with
Disabilities, to impartial due process hearing officers, and to the Screening Committee established pursuant to Section 14-8.02a(b) of the School Code. This information shall also be available to other interested parties upon request.

(Source: Repealed at 31 Ill. Reg. _____, effective ______________)

Section 226.690 Transfer of Parental Rights

This Section implements 34 CFR 300.520.

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):

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 31 Ill. Reg. _____, effective ______________)

SUBPART H: ADMINISTRATIVE REQUIREMENTS

Section 226.700 General
a) Each school district shall provide and maintain appropriate and effective educational programs, at no cost to the parents, for all eligible children who are residents of the district.

b) Each school district shall establish and implement a goal of ensuring full educational opportunity for all children with disabilities in its service area. Each district shall make available to children with disabilities the variety of educational programs and services available to nondisabled children in the area served by the district, including art, music, industrial arts, consumer and homemaking education, and vocational education.

e) Special education and related services shall be established and conducted as an integral part of the district’s educational effort.

d) Each school district, independently or in cooperation with other districts, shall provide a comprehensive program of special education for children with disabilities who are from three through 21 years of age and who are resident in the district. A “comprehensive program” is one that includes:

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 (see Section 226.300 of this Part);

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
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; and

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

b) e) The school district is the primary agent for the delivery of special education services. Districts may carry out their obligations with regard to special education by forming cooperatives or joint agreements. These entities are:

1) Authorized by State law to develop, manage, and provide services or programs on behalf of school districts;

2) Recognized as agencies for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;

3) Considered as service agents of the participating districts; and

4) Directed by, and responsible to, all the participating local districts.

c) f) Special education and related services which would not comply with specific requirements of this Part shall require written approval from the State Board of Education prior to their implementation. A district’s request for approval shall be submitted in writing to the State Board and shall include a description of the district’s proposal. In determining whether to approve such a request, the
State Board’s staff shall consider whether the proposed program or service will compromise students’ educational opportunity or prevent the full implementation of any student’s IEP, in light of such factors as the students’ disabilities and the proposed class size, staff qualifications, physical plant and evaluation plan. Denial of such a request may be appealed to the State Superintendent of Education.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.710 Policies and Procedures

a) Each local school district, or the cooperative entity of which it is a member, shall develop written policies and procedures conforming to the requirements of subsection (b) of this Section and shall submit these to the State Board of Education for approval, using a format supplied by the State Board. The State Board shall approve those which conform to the requirements of this Section and are consistent with applicable federal and State statutes and regulations. The State Board shall notify districts of any deficiencies that must be remedied before approval will be granted.

b) Each set of policies and procedures shall address the district’s compliance with at least the requirements for:

1) the provision of a free appropriate public education;
2) child find;
3) evaluation and determination of eligibility;
4) Individualized Education Programs;
5) students’ participation in assessments;
6) serving students in the least restrictive environment;
7) the provision of extended school year services;
8) transition of children served under Part C of the Individuals with Disabilities Education Act into preschool programs;

9) serving students who attend nonpublic schools;

10) procedural safeguards;

11) establishing the goal of full educational opportunity;

12) confidentiality of personally identifiable information; and

13) the use of federal matching funds under the Medicaid (Title XIX) or Children’s Health Insurance (KidCare; Title XXI) program to supplement special education programs and services (if the district is participating in one or more of those federal programs).

c) Any revision of a set of policies and procedures shall be submitted to the State Board for approval prior to its implementation.

d) Each set of policies and procedures shall constitute a public document.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.720 Facilities and Classes

a) Facilities used for special education services shall be appropriate to, and adequate for, the specific programs or services for which they are used and, pursuant to Section 14-8.01 of the School Code, shall be subject to the applicable provisions of 23 Ill. Adm. Code 180 (Health/Life Safety Code for Public Schools). Such facilities shall be comparable to those provided to the students in the general education environment.

b) The age range of students within a special education grouping shall not exceed four years at the elementary level and six years at the secondary level. Early childhood classes and services shall serve only children from three through five years of age, except that a district shall not be prohibited from permitting a child who reaches his or her sixth birthday during a year to complete that year.
c) Special education classes and services shall be delivered in age-appropriate settings.

(Source: Amended at 31 Ill. Reg. _____, effective _____________)

Section 226.730 Class Case Load/Class Size for 2008-09 and Beyond

a) When a student’s IEP calls for services in a general education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs identified special education eligibility, that utilizes the general curriculum, that is taught by an instructor certified for general regular education, and that is not designated as a general remedial classroom. In the formation of special education classes, consideration shall be given to the age of the students, the nature and severity of their disability, and the degree of intervention necessary.

b) Class size means the total number of students an educator serves during any class period. As used in this subsection (b), “class” means any circumstance where at least one special education teacher is assigned and provides instruction and/or therapy exclusively to students with IEPs. In the formation of special education classes, consideration shall be given to the age of the students, the nature and severity of their disabilities, the educational needs of the students, and the degree of intervention necessary. A student shall be considered to require “instructional services” when he or she receives special education instruction for 50 percent of the school day or more. Classes and services for such students shall be subject to the limitations of this subsection (b)(a).

1) Classes in which all the students are removed from the regular education classroom for less than 20 percent of the school day shall have at least one qualified teacher for each 15 students in attendance during any given class period. However, the district may increase the class size by a maximum of two students when a paraprofessional is provided for the entire class period.

2) Each class in which any student is removed from the regular education classroom for 20-60 percent of the school day shall have at least one qualified teacher for each ten students in attendance during that class period. However, the district may increase the class size by a
maximum of five students when a paraprofessional is provided for the entire class period.

3) Each class in which any student is removed from the regular education classroom for more than 60 percent of the school day shall have at least one qualified teacher for each eight students in attendance during that class period. However, the district may increase the class size by a maximum of five students when a paraprofessional is provided for the entire class period.

4) Each class for children ages three through five shall have at least one qualified teacher for each five students in attendance during that class period. However, the district may increase the class size by a maximum of five students when a paraprofessional is provided for the entire class period.

5) The provisions of subsections (b)(1)-(4) of this Section notwithstanding, class size shall be limited according to the needs of the students for individualized instruction and services.

1) Early childhood instructional classes or services shall have a maximum ratio of one qualified teacher to five students in attendance at any given time; total enrollment shall be limited according to the needs of the students for individualized programming.

2) Instructional classes or services for students who have either a severe/profound disability or multiple disabilities as defined in Section 226.75 of this Part shall have a maximum enrollment of five students.

3) Instructional classes or services for children whose primary disability is a severe visual, auditory, physical, speech or language impairment, autism, traumatic brain injury, or an emotional disturbance or behavioral disorder shall have a maximum enrollment of eight students.

4) Instructional classes or services for children whose primary disability is a specific learning disability or that serve children who have different disabilities shall have a maximum enrollment of ten students. Instructional programs that group students who have different
disabilities shall be formulated only under the following circumstances:

A) The students are grouped in relation to a common educational need; or

B) The program can be completely individualized and the teacher is qualified to plan and provide an appropriate educational program for each student in the group.

5) Instructional classes or services designed for children whose primary disability is moderate visual or auditory impairment shall have a maximum enrollment of twelve students.

6) Instructional classes or services for children whose primary disability is mild/moderate mental impairment shall have a maximum enrollment of 12 students at the primary level and 15 students at the intermediate, middle, junior high, and secondary levels.

7) A school district may increase the enrollment in an instructional class or service by a maximum of two students in response to unique circumstances which occur during the school year. Such additions may be made only when the educational needs of all students who would be enrolled in the expanded program can be adequately and appropriately met. Alternatively, the district may increase the enrollment in an instructional class or service by a maximum of five students when a full-time, noncertified assistant is provided.

b) A student shall be considered to require “resource services” when he or she receives special education instruction for less than 50 percent of the school day. Classes and services for such students shall be subject to the limitations of this subsection (b).

1) Enrollment shall be limited to the number of students who can effectively and appropriately receive assistance, up to a maximum of 20 students.

2) The teacher or service provider shall participate in determining the appropriate enrollment.
3) The number of children served by a speech-language pathologist shall be based on the speech-language needs of each child. At no time shall the caseload exceed 80 students and, beginning September 1, 2003, the caseload of a speech-language pathologist shall not exceed 60 students.

4) A school district may not increase the enrollment subsection in a resource class or service when a noncertified assistant is provided.

c) The maximum class sizes set forth in subsection (b) of this Section shall, if necessary, be further restricted at the local level to account for the activities and services in which the affected educators participate in order to provide students with IEPs the free, appropriate public education to which they are entitled. Each entity subject to this Part shall adopt and place into effect, no later than the beginning of the 2008-09 school year, a policy stating how staffing decisions will be made so that all services required under students’ IEPs, as well as all needed ancillary and support services, can be provided at the requisite level of intensity. Each policy shall encompass, but need not be limited to: The caseload/class size for any service provider includes each student who receives direct or indirect service, such as consultation services, as delineated in an IEP.

1) individualized instruction;

2) consultative services and other collaboration among staff members;

3) attendance at IEP meetings and other staff conferences; and

4) paperwork and reporting.

(Source: Amended at 31 Ill. Reg. ____ , effective ____________)

Section 226.731 Class Size Provisions for 2007-08

a) When a student’s IEP calls for services in a general education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs, that utilizes the general curriculum, that is taught by an instructor certified for general education, and that is not designated as a general remedial classroom.
b) A student shall be considered to require “instructional” classes when he or she receives special education instruction for 50 percent of the school day or more. Classes for such students shall be subject to the limitations of this subsection (b).

1) Early childhood instructional classes shall have a maximum ratio of one qualified teacher to five students in attendance at any given time; total enrollment shall be limited according to the needs of the students for individualized programming.

2) Instructional classes for students who have either a severe/profound disability or multiple disabilities shall have a maximum enrollment of five students.

3) Instructional classes for children whose primary disability is a severe visual, auditory, physical, speech or language impairment, autism, traumatic brain injury, or an emotional disability or behavioral disorder shall have a maximum enrollment of eight students.

4) Instructional classes for children whose primary disability is a specific learning disability or that serve children who have different disabilities shall have a maximum enrollment of ten students. Instructional programs that group students who have different disabilities shall be formulated only under the following circumstances:

   A) The students are grouped in relation to a common educational need; or

   B) The program can be completely individualized and the teacher is qualified to plan and provide an appropriate educational program for each student in the group.

5) Instructional classes designed for children whose primary disability is moderate visual or auditory impairment shall have a maximum enrollment of twelve students.

6) Instructional classes for children whose primary disability is mild/moderate cognitive disability shall have a maximum enrollment of 12
students at the primary level and 15 students at the intermediate, middle, junior high, and secondary levels.

7) A school district may increase the enrollment in an instructional class by a maximum of two students in response to unique circumstances which occur during the school year. Such additions may be made only when the educational needs of all students who would be enrolled in the expanded program can be adequately and appropriately met. Alternatively, the district may increase the enrollment in an instructional class by a maximum of five students when a full-time, noncertified assistant is provided.

c) A student shall be considered to require “resource” classes when he or she receives special education instruction for less than 50 percent of the school day. Classes for such students shall be subject to the limitations of this subsection (c).

1) Enrollment shall be limited to the number of students who can effectively and appropriately receive assistance, up to a maximum of 20 students.

2) The teacher shall participate in determining the appropriate enrollment.

(Source: Added at 31 Ill. Reg. _____, effective _____________)

Section 226.735 Case Load for Speech-Language Pathologists

The number of children served by a speech-language pathologist shall be based on the speech-language needs of each child. At no time shall the caseload of a speech-language pathologist exceed 60 students.

(Source: Added at 31 Ill. Reg. _____, effective _____________)

Section 226.740 Records; Confidentiality

a) Students’ records shall be maintained in accordance with 34 CFR 300.610 - 300.627, the School Student Records Act [105 ILCS 10] and the rules of the State Board of Education (23 Ill. Adm. Code 375). In addition, the following requirements shall apply:
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.

e) 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.

a) f) 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 the information;

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

4) how the information will be recorded and maintained;

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

6) the persons to whom the information will be available; and
7) under what circumstances the information will be made available.

b) The portion of each district’s policies and procedures referred to in subsection (a)(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 31 Ill. Reg. _____, effective _____________)

Section 226.750 Additional Services

Additional services and activities shall be provided to students whose IEPs require them in accordance with 34 CFR 300.105 (Assistive Technology), 300.106 (Extended School Year Services) and 300.108 (Physical Education). In addition, the following shall apply: The additional services and activities referred to in this Section shall be provided to students whose IEPs require them. In each such case, the relevant requirements of this Section shall apply.

a) Assistive Technology

1) The responsible school district shall furnish such assistive technology devices as a child’s IEP may prescribe, including providing these in the child’s home if required in order for the child to receive FAPE.

2) Each school district shall ensure that hearing aids and assistive technology or adaptive devices are functioning properly.

a) b) Behavioral Intervention
STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

1) School districts shall establish local policies and procedures on the use of positive behavioral interventions to manage, intervene in, or change the behavior of students with disabilities.

2) Each district’s policies and procedures shall require that IEP teams consider strategies including positive behavioral interventions and supports to address behavior(s) which impede a child’s functioning or that of other children in the academic setting or in noninstructional contexts such as regular transportation and extracurricular activities. The district’s policies and procedures shall include criteria for determining when a particular student’s possible need for a behavioral intervention plan should be reviewed.

3) Behavioral interventions shall be used in consideration of the child’s physical freedom, social interaction, and right to placement in the least restrictive environment and shall be administered in a manner that respects human dignity and personal privacy.

e) Extended School Year

A school district shall not limit its provision of services during an extended school year to particular categories of disability, nor shall a district unilaterally limit the type, amount, or duration of such services.

d) Physical Education

Physical education services, specially designed if necessary, shall be made available to every child receiving FAPE.

1) Each child with a disability shall participate in a regular physical education program available to nondisabled children unless the child is receiving services full time in a separate facility or needs specially designed physical education, as prescribed in the child’s IEP.

2) If a child is receiving services full time in a separate facility, the school district shall ensure that he or she receives physical education services appropriate to his or her needs.
b) e) Transportation

Each child who is eligible for special education and related services pursuant to this Part shall be eligible for special transportation. Such transportation shall be provided as the child's disability or the program location may require.

1) Arrival and departure times shall ensure a full instructional day which is comparable to that of the regular education students. Any deviation from this standard must be based upon the individual needs of the child and reflected in the child’s IEP.

2) Every effort should be made to limit the child’s total travel time to not more than one hour each way to and from the special education facility.

3) The special transportation shall be scheduled in such a way that the child’s health and ability to relate to the educational experience are not adversely affected.

4) Vehicles utilized for special transportation shall be adapted to the specific needs of the children receiving this service.

5) Personnel responsible for special transportation shall be given training experiences which will enable them to understand and appropriately relate to children with disabilities.

6) When a district has placed students in a State-operated or nonpublic day program, the district shall provide transportation for the children in that program.

7) When a child is placed in a residential facility, the school district shall provide transportation services for the child’s initial trip to the facility and return home at the close of the school term. The district shall likewise provide transportation for the child at the beginning and end of each school term thereafter.

A) If the district assumes responsibility for transportation arrangements, it shall provide reasonable notice to parents of departure dates and times. It shall in all instances notify
the parents within 48 hours after completing those arrangements.

B) The mode(s) of travel and degree of support and supervision to be provided shall be included in the student’s IEP.

C) The district shall provide transportation services for one round trip home, at a midterm break or at another time as mutually agreed by the district and the parents, and at any additional time when the facility is to be temporarily closed.

D) The school district shall provide round-trip transportation at any time the district seeks additional diagnostic assessments of the student or if the parent wishes the child to be present during a due process hearing.

E) The school district shall provide round-trip transportation in emergencies such as serious illness of the child or death or imminent death of an individual in the child’s immediate family. “Immediate family” includes a parent, a grandparent, a sibling, or any person who resides in the child’s immediate household. If the district questions the severity of an illness of the child or an immediate family member, it may require the opinion of a licensed physician to corroborate the severity of the illness.

F) The school district may also provide transportation services to encourage family contacts and/or to reintegrate the child into the home and community. The district shall have the authority to determine, upon consultation with the parents, when transportation is appropriate for this purpose and shall incorporate this decision, with the specific reasons for it, into the student’s IEP.

c) Vocational Education

Students eligible pursuant to this Part shall receive vocational education in accordance with their individual IEPs.

1) Community work experiences that are part of a student's IEP shall occur
during the school day, unless this is precluded by the nature of the experiences.

2) Participation in community work experiences shall be in accordance with the student’s IEP and applicable child labor laws.

2) All community work experiences which are provided by the school as part of the IEP and for which the student receives educational credit shall be supervised by school personnel.

(Source: Amended at 31 Ill. Reg. _____, effective ___________

Section 226.760 Evaluation of Special Education

a) The extent to which a school district is fulfilling its responsibilities to children with disabilities shall be determined by the State Board of Education. Official representatives of the State Board shall be authorized to examine all documentation, including student records, which would facilitate such determination.

b) Evaluation by the State Board of Education shall focus on the district's provision of special education services, on each special education cooperative organization of which it is a participant, and on community resources utilized by the district.

c) Evaluation of special education services shall be based on all of the following elements.

1) Comprehensive Plan
The performance of the program, as evidenced by data that state education agencies must collect, including without limitation the information collected pursuant to 34 CFR 300.170, 300.600, 300.601, 300.602, and 300.646; Each district or cooperative entity shall have in place a comprehensive plan conforming to the requirements of 34 CFR 300.137 that describes the district’s provision of special education services, its plan for program improvement, and those factors unique to the individual district or cooperative which must be considered in the evaluation. This plan shall be reviewed at least triennially and revised as needed to reflect the district’s current circumstances. The resulting revisions shall
be filed with the State Board of Education. Alternatively, a district may submit a statement indicating that its triennial review did not reveal a need for any changes. The plan shall be a public document.

2) **Policies and Procedures**
   The State Board shall consider the adequacy of the policies and procedures developed pursuant to Section 226.710 of this Part.

3) **Continuous Internal Evaluation**
   Each district or cooperative entity shall develop and implement procedures to assess the extent to which children with disabilities are being adequately served and the effectiveness of each special education service; and:

4) **Records**
   Each district or cooperative entity shall maintain records to demonstrate compliance with the assurances furnished in its applications for State and federal funds.

   d) The State Board of Education shall provide written reports of its evaluations and any subsequent recommendations or actions to the appropriate boards of education.

   e) Compliance with the requirements of this Part shall be a factor in determining a district’s recognition status pursuant to 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision).

   f) A district whose status is changed to “nonrecognized” due to an unfavorable evaluation of its compliance with the requirements of this Part shall have the opportunity to request a hearing pursuant to the Illinois Administrative Procedure Act [5 ILCS 100] and the State Board’s rules for Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475).

(Source: Amended at 31 Ill. Reg. _____, effective _____________)