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 Mental Retardation
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226.160 Determination of Eligibility (Repealed)
226.170 Criteria for Determining the Existence of a Specific Learning Disability (Repealed)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226.190 Reevaluation (Repealed)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 PROPOSED 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

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>226.300</td>
<td>Continuum of Placement Options</td>
</tr>
<tr>
<td>226.310</td>
<td>Related Services</td>
</tr>
<tr>
<td>226.320</td>
<td>Service to Students Living in Residential Care Facilities</td>
</tr>
<tr>
<td>226.330</td>
<td>Placement by School District in State-Operated or Nonpublic Special Education Facilities</td>
</tr>
<tr>
<td>226.340</td>
<td>Nonpublic Placements by Parents Where FAPE is at Issue</td>
</tr>
<tr>
<td>226.350</td>
<td>Service to Children in Private Schools</td>
</tr>
</tbody>
</table>

SUBPART E: DISCIPLINE

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>226.400</td>
<td>Disciplinary Actions</td>
</tr>
<tr>
<td>226.410</td>
<td>Manifestation Determination Review (Repealed)</td>
</tr>
<tr>
<td>226.420</td>
<td>Appeals (Repealed)</td>
</tr>
<tr>
<td>226.430</td>
<td>Protection for Children Not Yet Eligible for Special Education (Repealed)</td>
</tr>
<tr>
<td>226.440</td>
<td>Referral to and Action by Law Enforcement and Judicial Authorities (Repealed)</td>
</tr>
</tbody>
</table>

SUBPART F: PROCEDURAL SAFEGUARDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>226.500</td>
<td>Language of Notifications</td>
</tr>
<tr>
<td>226.510</td>
<td>Notification of Parents’ Rights</td>
</tr>
<tr>
<td>226.520</td>
<td>Notification of District’s Proposal</td>
</tr>
<tr>
<td>226.530</td>
<td>Parents’ Participation</td>
</tr>
<tr>
<td>226.540</td>
<td>Consent</td>
</tr>
<tr>
<td>226.550</td>
<td>Surrogate Parents</td>
</tr>
<tr>
<td>226.560</td>
<td>Mediation</td>
</tr>
<tr>
<td>226.570</td>
<td>Complaints</td>
</tr>
</tbody>
</table>

SUBPART G: DUE PROCESS
### NOTICE OF PROPOSED AMENDMENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</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>Description</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</td>
</tr>
<tr>
<td>226.735</td>
<td>Case Loan 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>

### SUBPART I: PERSONNEL

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>226.800</td>
<td>Personnel Required to be Qualified</td>
</tr>
<tr>
<td>226.810</td>
<td>Special Education Teaching Approval</td>
</tr>
<tr>
<td>226.820</td>
<td>Authorization for Assignment</td>
</tr>
</tbody>
</table>
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 as proposed June 21, 2005, on page 35782 of the Federal Register), 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 30 Ill. Reg. _____, effective _____________)

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

“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.

e) 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) 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 a 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 of the former local school district developed for the child. Such adoption does not require without an IEP meeting if:

i) the parents indicate satisfaction with the current IEP; and

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

NOTICE OF PROPOSED AMENDMENTS

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 initiate an IEP meeting within ten days after the date of the child’s enrollment by providing written notice to the parent of the proposed date of the IEP meeting, in conformance with Section 226.520 of this Part. 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 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)  4)  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, both the parent and the student shall receive written notification in conformance with the requirements of 34 CFR 300.503 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 review the recommendation that the student receive a regular diploma for graduation.

4) Students who have participated in a graduation ceremony 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), 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 30 Ill. Reg. _____, effective _____________)

Section 226.60 Charter Schools

For purposes of IDEA 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 30 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 seven five 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 disturbance, hearing impairment, mental retardation, 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;
- 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 5/14-1.03(a)]

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

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

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

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

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

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

Equipment (a programmatic definition, not intended to coincide with the definition of “equipment” given in the Program Accounting Manual at 23 Ill. Adm. Code 110.120): 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/or communication needs of a student as a foundation for learning.

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): The setting that permits a child to be educated with nondisabled children to the maximum extent appropriate. (See Section 226.240I of this Part.)

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 300.38. 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 300.41. 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 300.42. 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 30 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 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) 1437(a)(8) in order to develop a transition plan enabling the public school to implement an IFSP or IEP no later than the third birthday of each eligible child.

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

4) Coordination and consultation with nonpublic schools located within the district that results in child find activities comparable to those affecting students in the public schools. Costs of child find and evaluation activities may not be considered as part of the expenditures used by the district to meet its obligation under 34 CFR 300.453(a).
b) When the responsible school district staff 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 30 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, 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 that 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 educational 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 extent to which 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 days after receiving a request for an evaluation, the district shall determine whether any additional information is needed upon which to base the evaluation 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-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 days following the district’s receipt of written consent from the parent to perform the needed assessments, a meeting as described in 34 CFR 300.306 shall be initiated by the district. 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.

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 professional 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 the 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 30 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.

c) 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 30 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 300.308, 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. 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.

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.
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.

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.

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.

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 the test purports to measure.

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 30 Ill. Reg. _____, effective _____________)

Section 226.135 Additional Procedures for Students Suspected of or Having Mental Retardation

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 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 languages language(s) spoken in the child’s home and the languages 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
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 30 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.

a) The languages 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 child acquires a predominantly English language use pattern.
ILLINOIS REGISTER

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

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 30 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.
e) 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.

d) 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.

e) 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.

f) 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 30 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 30 Ill. Reg. _____, effective _____________)
Section 226.180 Independent Educational Evaluation

Parents have the right to obtain an independent educational evaluation of their child 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) 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 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 30 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.

e) 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 30 Ill. Reg. _____, effective _____________)

SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

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.

e) 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.

f) 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.

g) 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 30 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) 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. The child’s parents shall be members of the IEP Team.

b) For a child of less than school age, the team shall include an individual qualified to teach preschool children without identified disabilities. The IEP Team shall include at least one regular education teacher if the child is participating or may participate in the regular education environment.

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 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 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 and cultural factors as they relate to the child’s instructional needs.

g) 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, 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 30 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 is developed or revised, notice 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. 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 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 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 30 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.

2) 4) A statement regarding of 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) 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 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 training, education, employment, and, where appropriate, independent living skills;

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 (c) 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 30 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).

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

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

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

1) To the maximum extent appropriate, each child, including children in public or nonpublic residential facilities, shall be educated with children who are nondisabled.

2) Special education classes, separate schooling, or other removal of children with disabilities from the regular education environment shall occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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

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

5) Consideration shall be given to the possible harmful effect of a placement on the child or on the quality of services received.
6) A child shall not be removed from an age-appropriate regular classroom solely because of needed modifications in the general curriculum.

d) The placement decision shall, to the maximum extent appropriate, permit the child to participate 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 30 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 30 Ill. Reg. _____, effective _____________)

Section 226.260 Child Reaching Age Three

a) Child with an 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 to be 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 30 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 300.38 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 300.38 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:

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.

e) 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;
2) B) 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) C) the anticipated duration or nature of the child’s absence from school.

c) 2) 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) 3) 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) 4) 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) 5) 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 30 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:

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;

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.

1) 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:

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 30 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 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 30 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.
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 226.110 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 30 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 alternative setting, the district shall convene an IEP meeting as delineated in subsection (c) of this Section.

h) 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.

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

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 30 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.

c) 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 30 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.

c) 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 30 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 30 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 30 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 30 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 Ten days before a school district proposes or refuses 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:

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 30 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 30 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.

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

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

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

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

gh) 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) 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 three business days after the parent’s revocation occurred.

(Source: Amended at 30 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.

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 30 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
IIlinois Register

State Board of Education

Notice of Proposed Amendments

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.

e) 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.

b) 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.

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

Section 226.570 Complaints

This Section sets forth the State Board of Education’s written complaint procedures, as required by 34 CFR 300.151.

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:
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 30 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.

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

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.
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;
   
   D) a description of the nature of the problem relating to the proposed or refused initiation or change, including facts relating to the problem;
   
   E) a proposed resolution of the problem, to the extent known and available to the parents at the time; and
   
   F) if known, whether the parents will be represented by legal counsel.

b) The director of special education shall assist parents in taking whatever action is necessary to use the hearing process.
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 30 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 fulfilling the requirement to “forward a copy of the due process complaint to the SEA” as required by 34 CFR 300.508(a)(2), the party filing a due process complaint must deliver the complaint 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 30 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.
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 as provided for in Section 226.640(b) 226.640(c) of this Part.

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

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

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

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

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

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

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

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

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

(Source: Amended at 30 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 30 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
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 30 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

   3) 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 30 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 30 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) d) 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) e) 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 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 days each.
STATE BOARD OF EDUCATION
NOTICE OF PROPOSED AMENDMENTS

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 30 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) 1) To administer, or to authorize the court reporter to administer, oaths;

b) 2) To examine witnesses;

c) 3) To authorize the issuance of subpoenas;

d) 4) To rule upon the admissibility of evidence;

e) 5) To order independent evaluations;

f) 6) To grant specific extensions of time;

g) 7) 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) 8) 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 30 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 14-8.02a(g) of the School Code [105 ILCS 5/14-8.02a(g)]. 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 30 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 14-8.02a(h) [105 ILCS 5/14-8.02a(h)]. In addition,

a) Within ten days after the conclusion of the hearing (two days for an expedited hearing), the hearing officer shall issue a written decision that sets forth the issues in dispute, findings of fact based upon the evidence and testimony presented, and the hearing officer's conclusions of law and orders. The hearing officer shall order the parties to take all steps necessary to ensure appropriate placement and services for any student found to be eligible for special education services. The hearing officer shall specify the procedures necessary to ensure timely compliance with his or her order, in accordance with Section 14-8.02a(j) of the School Code.

b) 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.
e) 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 (e) of this Section, shall be enforced by the State Board as provided in Section 226.675 of this Part.

(Source: Amended at 30 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 30 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 30 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.
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) 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) 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 30 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
STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

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 30 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.

e) Special education classes and services shall be delivered in age-appropriate settings.

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

Section 226.730 Class Case Load/Class Size

a) When a student’s IEP calls for services in a regular education classroom, the student must be served in a class. A regular education classroom is one 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 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: 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.
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.

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 two 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 five students in attendance during that 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.

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
c) 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.

(Source: Amended at 30 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 30 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.

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;
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) 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) Behavioral Intervention

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) 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.

3) 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.

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
maintained 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 or board(s) 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 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 30 Ill. Reg. _____, effective _____________)
STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS