



Illinois State Board of Education

April 2015

Memorandum #10-01

Revised - ISBE Guidance Relating to Special Education Cooperative Articles of Agreement

(PA 96-0769)

(PA 96-0783)

Effective Date: August 28, 2009

*This document is intended to provide non-regulatory guidance on the subject matter listed above.
For specific questions, please contact the person(s) identified in the document.*

Dr. Christopher Koch, State Superintendent

MEMORANDUM

TO: Special Education Directors
Other Interested Parties

FROM: David Andel
Division Administrator
Special Education Services

DATE: April 2015

SUBJECT: **Revised** - Special Education Cooperative Articles of Agreement

Enactment of Public Acts [96-0769](#) and [96-0783](#), both effective August 28, 2009, clarifies certain provisions of [Section 10-22.31 of the School Code](#) relating to the structure and authority of special education joint agreements, also commonly referred to as special education cooperatives (“Cooperative(s)”) [[105 ILCS 5/10-22.31](#)]. This **revised** guidance is intended to assist member districts and Cooperatives in determining whether this legislation **and recent clarification regarding use of IDEA Part B Funds** require changes to a Cooperative’s existing articles of agreement.

Consistent with the applicable provisions of the Illinois Statute on Statutes, this guidance attempts to read both Public Acts relating to Cooperatives in such a manner as to give full effect to each Act except in the case of irreconcilable conflict [[5 ILCS 70/6](#)].

The first section of this document identifies issues required to be contained in Articles of Agreement governing Cooperatives formed under [Section 10-22.31](#) of the School Code. This is followed by implementation guidance in the form of a Q&A¹.

Required Components for Cooperative Articles of Agreement:

- Provisions for Administration (including whether the Cooperative will employ a Director of Special Education and specifications for the employment of that Director);
- Staff;
- Programs;
- Financing;
- Housing;
- Transportation;
- An Advisory Body;

¹ *Please note:* This Guidance is intended to respond to various questions that have been received from the field regarding PAs 96-0769 and 96-0783 and is neither intended to be an exhaustive review of changes made nor is it intended to be legal advice.

- Method(s) for disposing of property, including any unspent Federal IDEA Part B Funds generated by students in member districts (i.e., “carryover”), upon withdrawal of a member district or dissolution of the Cooperative. (Recent clarification of Federal reporting requirements requires the return of carryover funds to the member district and prohibits terms which would result in the forfeiture of such funds to the Cooperative.)
- Specific procedures for the withdrawal of member districts from the Cooperative; and
- Provisions specifying that any “full-time professional worker who is employed by a joint agreement program and spends over 50% of his or her time in one school district shall not be required to work a different teaching schedule than the other professional workers in that district.”

As indicated above, this list represents the minimum requirements identified by [Section 10-22.31](#). A Cooperative’s Articles of Agreement may include additional components as agreed upon by member districts.

Frequently Asked Questions:

1. When do the Articles of Agreement need to be amended?

With regards to the amendment of existing Articles of Agreement, [Public Act 96-0783](#) states as follows:

Such agreement may be amended at any time as provided in the joint agreement or, if the joint agreement does not so provide, then such agreement may be amended at any time upon the adoption of concurring resolutions by the school boards of all member districts, provided that no later than 6 months after the effective date of this amendatory Act of the 96th General Assembly, all existing agreements shall be amended to be consistent with this amendatory Act of the 96th General Assembly.

Based on the effective date of August 28, 2009, Articles of Agreement were to be amended by February 28, 2010, and forwarded to ISBE.

2. Do all Cooperatives have to amend their Articles of Agreement?

This legislation and recent clarification require amendment of any Cooperative’s Articles of Agreement that do not currently contain all required components or that contain language requiring a withdrawing member district to forfeit carryover Part B Funds. Articles of Agreement containing all required components need not be amended. However, all Articles of Agreement must contain provisions regarding the disposal of property – including unspent Part B Funds generated by the constituent member district – as a result of a district withdrawal or dissolution of the Cooperative. Such provision may not include a member district’s forfeiture of these funds.

3. What are the consequences if a Cooperative does not amend its Articles of Agreement?

In order to be recognized as compliant with the requirements of [Section 10-22.31](#) of the School Code, the Articles of Agreement of all Cooperatives must comply with the required components. Cooperatives who fail to complete any necessary amendments and/or properly file compliant Articles of Agreement with ISBE will not be eligible to submit [FY16](#) IDEA Part B grant applications on behalf of its member districts unless and until such non-compliance is rectified.

4. How will ISBE monitor whether the Articles of Agreement contain required components?

Pursuant to the language of [Section 10-22.31](#) of the School Code, a fully executed copy of a Cooperative's Articles of Agreement must be filed with ISBE. Cooperatives should forward a copy of the current or amended Articles of Agreement in order to demonstrate compliance with these amendatory Acts. In addition, Cooperatives must provide any available documentation of the required Cooperative Board action that demonstrates adoption of the Articles of Agreement (e.g., Board Meeting Minutes demonstrating adoption of amended Articles of Agreement). In keeping with ISBE's, and many school districts', green initiatives, required documents shall be submitted electronically. Please submit PDF copies via email to Mr. Boyd Ferguson at bfergurs@isbe.net.

5. How is the implementation of the legislation affected by the change from "Professional Worker" to "Qualified Worker" in Section 14-1.10 of the School Code?

Reference to the term "professional workers" is utilized in [Section 10-22.31](#) with a reference to [Section 14-1.10](#) of the School Code [105 ILCS 5/14-1.10]. [Public Act 96-0257](#) included a change from the term "professional workers" to "qualified workers." In keeping with the directive of the Statute on Statutes, cited earlier, to give full effect to both Acts, the term "professional workers" in [Section 10-22.31](#) should be read as "qualified worker," in accordance with [Section 14-1.10](#).

6. Must a cooperative employ a director of special education?

Cooperatives formed under [Section 10-22.31](#) are permitted, but not required, to employ a director of special education. Recent legislation clarifies the parameters for such employment. Directors of special education must be certificated in accordance with the requirements of Part 25 and Part 226 of ISBE's Administrative Rules [[23 Illinois Administrative Code 25](#) and [23 Illinois Administrative Code 226](#)]. Cooperatives have discretion to hire a director pursuant to a one-year or multi-year contract, but no such contract may be entered into for less than a one-year period. Contract extensions are permitted under law for one-year or multi-year periods and such contracts may be discontinued at any time by agreement of the parties. Questions relating to provisions of any existing contract for a director of special education should be directed to the Cooperative or member districts' counsel. However, pursuant to [Section 226.800](#) of ISBE's special education administrative rules, if a cooperative elects not to hire a director, then each of the member school districts must employ a full-time, appropriately certified director of special education [[23 Illinois Administrative Code 226.800](#)].

7. What do the Articles of Agreement need to include regarding the withdrawal of member districts?

The recent Public Acts clarify that petitions for withdrawal from a Cooperative are to be presented to the Regional Board or Boards of Trustees exercising oversight or governance over any member districts. The Acts also require Cooperatives to "specify procedures for the withdrawal of districts from the joint agreement." These procedures should take into account the newly created provisions of subsection (g) permitting withdrawal of a member district without presentation of a petition to the Regional Boards of School Trustees of competent jurisdiction in situations where the withdrawal is agreed

to by all remaining member districts [[105 ILCS 5/10- 22.31\(g\)](#)]. Guidance regarding changes in requisite steps for school districts who are seeking to withdraw from a Cooperative will be separately addressed in a forthcoming update to *ISBE's Procedural Guidance for School Districts Withdrawing From a Special Education Joint Agreement Formed Under 105 ILCS 5/10-22.31*.

8. Can the Articles of Agreement include a procedure for changing the membership of the cooperative without a petition?

Yes. As indicated in the previous response, the newly created subsection (g) sets out procedures for a district to withdraw with the concurrence of all remaining member districts [[105 ILCS 5/10-22.31\(g\)](#)]. In addition, subsection (a) states that an amendment to Articles of Agreement completed in accordance with any relevant requirements may include the addition of a new member district or removal of an existing member district if all member districts adopt concurring resolutions to that effect [[105 ILCS 5/10-22.31\(a\)](#)].

9. What if all member districts cannot agree on the terms to be included in amending our Articles of Agreement?

Disputes among member districts should be resolved in accordance with established procedures for dispute resolution in the cooperative's Articles of Agreement. However, please note, as identified above, that failure to reach resolution on the required components prior to the submission of **FY16** IDEA Part B grant applications will result in a delay in processing of those applications and funds.

For further information, please contact the following staff members at the ISBE Special Education Services Division (217) 782-5589:

- Boyd Ferguson for questions relating to Special Education Cooperatives; and
- Dawn Camacho, Tammy Greco, or Felicia Malloy for questions relating to IDEA Part B grant applications.