

## Special Education Procedures Assuring the Implementation of Comprehensive Programming for Children with Disabilities REVISED September 2009

**Editor's Note:** The Illinois Council of School Attorneys' Special Education Committee prepared these "Special Education Procedures" to help school districts and special education cooperatives comply with the ISBE's requirements.

The ICSA's "Special Education Procedures" do not contain the required components for procedures on the use of behavioral interventions for children with disabilities – behavioral intervention procedures must be developed locally.

The ICSA's "Special Education Procedures" are designed to provide accurate and authoritative information in regard to the subject matter covered. They are distributed with the understanding that neither the Illinois Council of School Attorneys nor the Illinois Association of School Boards (nor their members, employees, or agents) is engaged in rendering legal or other professional service. If legal advice or other expert assistance is required, the service of a competent professional person should be sought.

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Supplement Special Education Programs and Services (if the School District is Participating in One or More of those Federal Programs)

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**Adopted by the Ford County Special Education Cooperative Executive Committee on 10/19/2009.**

Section 1. **Provision of a Free Appropriate Public Education**

A. Comprehensive Program

The School District provides and maintains appropriate and effective educational programs in order to afford every eligible child with a disability who is between the ages of 3 and 21 (inclusive), is enrolled in the School District, and requires special education and related services to address the adverse effect of the disability on his/her education, a free appropriate public education (FAPE). As part of this effort, the School District shall make available to all eligible children who are residents of the School District a comprehensive program of special education, which includes each of the following:

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 which may include, but is not limited to, any of the following:
  - a. Regular classes;
  - b. Special classes;
  - c. Special schools;
  - d. Home/hospital services; and
  - e. State operated or nonpublic programs.
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.
  9. Continuous planning for program growth and improvement based on internal and external evaluation.

B. Public Awareness

The School District shall create public awareness of special education and related services and advise the public of the rights of children with disabilities pursuant to School District developed procedures. In creating public awareness of special education and related services and advising the public of the rights of children with disabilities, the School District shall comply with the following:

1. Information provided to the public shall be made available in each of the major languages represented in the School District and in the language that will be understandable to Parents regardless of ethnic or cultural background or hearing or visual abilities;
2. Annual notification shall be provided to all Parents in the School District regarding the special education services available in or through the School District and of their right to receive a copy of § 226.50 of ISBE regulations upon request;

3. Annual dissemination of information to the community served by the School District regarding the special education services available in or through the School District and the rights of children with disabilities;
4. Documentation, including examples as appropriate, of the School District's efforts in this regard shall be maintained in the School District's files.

C. Providing Free Appropriate Public Education

Each School District will provide a free appropriate public education (FAPE) to all children with disabilities between the ages of 3 and 21 (inclusive), including children with disabilities who have been suspended or expelled from school for more than 10 consecutive school days during the school year, or who receive a series of removals that constitute a change in placement. In order to meet the requirements of the School District to provide FAPE, the School District shall comply with the following:

1. The School District shall be responsible for actively seeking out and identifying all children from birth through age 21 within the School District (and those parentally-placed private school children for whom the School District is responsible (See Section 9)) who may be eligible for special education and related services.
2. The School District must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.
3. The special education and related services shall be provided according to the child's individualized education program (IEP), which shall be developed in accordance with these procedures, at no cost to the Parent. The IEP shall specify the special education and related services needed in order to ensure that the child receives FAPE, including any extended school year services, if appropriate.

4. FAPE shall be made available to all eligible children with disabilities no later than the child's third birthday.
5. 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 category of disability. These services shall address all of the child's identified needs for special education and related services.
6. The School 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.
7. No delay shall occur 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.
8. No eligible child from 3 through 21 years of age, inclusive, may be permanently excluded from the public schools, either by direct action by the board of education, by indication of the School 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.
9. The School District need not provide a child with services during periods in which the child has been removed from his/her current placement for 10 school days or fewer in a particular school year, if services are not provided to a child without disabilities who has been similarly removed. However, an eligible child who has been suspended or expelled from school for more than 10 school days during a particular school year shall 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.
10. If a child with a disability who is receiving special education from his/her current school district transfers to this School District, this School District shall

ensure that the child receives FAPE. (See Section 3, C for applicable procedures).

11. In providing FAPE to children with disabilities who have been suspended or expelled from school, the School District shall meet the requirements set forth in Subpart E of ISBE regulations.
12. Any child for whom services are sought shall not be denied FAPE regardless of any jurisdictional disputes among Illinois agencies.
13. The School District shall provide an eligible student who requires continued public school educational experience to facilitate his/her integration into society with services through age 21, inclusive (i.e., through the day before the student's 22nd birthday).

D. Exceptions to Providing FAPE

1. The School District is not required to provide FAPE to a student with a disability who has graduated with a regular high school diploma. Students who have participated in a graduation ceremony but have not been awarded a regular high school diploma continue to be eligible to receive FAPE through age 21, inclusive.
2. The School District is required to provide FAPE to a student with a disability who has fulfilled the minimum State graduation requirements set forth in The School Code but whose IEP prescribes special education, transition planning, transition services, or related services beyond that point. In such case, the issuance of the diploma shall be deferred so that the student will continue to be eligible for those services.
3. Any child 18 through 21 years of age who is incarcerated and who is not identified as eligible and did not have an IEP in his/her educational placement immediately prior to incarceration shall not be provided FAPE.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1413 (local educational agency eligibility).

34 C.F.R. §§ 300.101 (free appropriate public education (FAPE)), 300.102 (limitation -- exception to FAPE for certain ages), 300.300 (provision of FAPE), 300.103 (FAPE-methods and payments), 300.106 (extended school year services).

105 ILCS 5/14-1.02 (children with disabilities).

23 Ill. Admin. Code §§ 226.50 (requirements for a FAPE), 226.700 (general).

Section 2. **Child Find**

A. Child Find Responsibility

1. Each School District shall be responsible for actively seeking out and identifying all children from birth through age 21 within the School District (and those parentally-placed private school children for whom the School District is responsible – see Section 9) who may be eligible for special education and related services. This requirement relates to homeless children, children who are wards of the state and highly mobile and migrant children. Procedures developed to fulfill the child find responsibility shall include:
  - a. 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.
  - b. 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.
  - c. 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. Each local School District shall participate in transition planning conferences arranged by the designated lead agency 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.
2. 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 evaluation set forth herein shall apply.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1412(a)(3), 1413 (local educational agency eligibility), 1413(a)(1), 1413(a)(3).

34 C.F.R. §§ 300.111.

23 Ill. Admin. Code § 226.100.

Section 3. **Evaluation and Determination of Eligibility**

A. Evaluation and Determination of Eligibility

1. Evaluation Procedures

a. Definitions

- (1) The “date of referral” shall be the date the School District receives the informed written consent for the evaluation or reevaluation from the Parent(s).
- (2) Screening procedures used by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered an evaluation.
- (3) Domain means an aspect of a child’s functioning or performance that must be considered in the course of designing a case study evaluation. The domains to be considered are health, vision, hearing, social emotional status, functional performance, general intelligence, academic performance, communication status, and motor abilities.

b. 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;
- (2) Designate the persons to whom a request may be made;
- (3) Identify the information that must be provided;
- (4) Provide any assistance that may be necessary to enable persons making requests to meet any related requirements established by the School District; and

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

c. Persons Who Can Make A Request for an Evaluation

A request may be made by a Parent of a child or by an employee of a State educational agency, another State agency, a local educational agency, or a community service agency.

d. School District's Response to Request

(1) The School District shall be responsible for processing the request, deciding what action should be taken, and initiating the necessary procedures.

(2) To determine whether the child requires an evaluation, the School 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, and a conference with the child.

(3) Within 14 school days after receiving a request for an evaluation, the School District shall determine whether an evaluation is warranted.

(4) If the School District determines not to conduct an evaluation, it shall provide written notice to the Parents as required by State and federal law.

(5) If an evaluation is to be conducted:

(a) The School District shall convene a team of individuals (including the Parent(s)) 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 as described below and shall prepare a written notification for the Parent(s) that describes any evaluation procedures to be conducted. For each domain, the notification shall either describe the needed assessments or explain why none are needed. The team may identify the assessments necessary without a meeting.
- (c) The School District shall ensure that the notification of the team's conclusions is transmitted to the Parent(s) within the 14-school-day timeline applicable along with the School District's request for the Parent(s)' informed written consent to conduct the needed assessments.
- (d) Informed written consent for the initial evaluation shall be obtained from the Parent(s) of the child before conducting the evaluation.

e. Identification of Needed Assessments

- (1) An evaluation shall cover all domains, which are relevant to the individual child under consideration.
- (2) The following procedures shall be used for an evaluation:
  - (a) The IEP Team members shall review and evaluate existing information about the child, including the following if available:
    - i. Information from a variety of formal and informal sources, including information provided by the child's Parent(s);
    - ii. Current classroom-based assessments and observations;
    - iii. Observations by teachers and providers of related services;
    - iv. Information, if any, provided by the child; and

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

(b) The team may conduct its review without a meeting.

(3) After review of the information described above, the IEP Team members shall determine whether additional evaluation data is needed in any relevant domain and from what source(s) to determine:

(a) Whether the child has, or continues to have, one or more disabling conditions;

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

(c) Whether the disability is adversely affecting the child's educational performance;

(d) Whether the child needs or continues to need, special education and related services; and

(e) Whether any additions or modifications to the child's special education and related services are needed to enable the child to meet the goals and objectives of his/her IEP and to participate appropriately in the general curriculum.

f. Upon completion of the assessments, but no later than 60 school days following the date of receipt of informed written consent from the Parent(s) to perform the needed assessments (or prior to the first day of the next school year if there are less than 60 school days remaining at the time informed written consent is received), the determination of eligibility shall be made at an IEP meeting.

g. If the School District fails to conduct the evaluation, the Parent(s) of the child may appeal this failure in an impartial due process hearing.

B. Evaluation Requirements

1. In conducting the evaluation, the School District must:
  - a. Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the Parent(s) that may assist in determining:
    - (1) Whether the child is a child with a disability;
    - (2) The content of the child's IEP.
  - b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
  - c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
  - d. Each evaluation shall be conducted so as to ensure that it is nondiscriminatory with respect to language, culture, race, and gender.
    - (1) The languages used to evaluate a child shall be consistent with the child's primary language or other mode of communication. Determination of the child's language use pattern and general cultural identification shall be made by determining the languages spoken in the child's home and the languages used most comfortably and frequently by the child. 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.

- (2) If documented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the School District shall use an individual who possesses the professional credentials required under 23 Ill. Admin. Code § 226.840 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.
- (3) If documented efforts to locate and secure the services of a qualified bilingual specialist or a qualified specialist assisted by another individual are unsuccessful, the School District shall conduct assessment procedures which do not depend upon language. Any special education resulting from such alternative procedures shall be reviewed annually until the student's proficiency is determined no longer to be limited pursuant to 23 Ill. Admin. Code § 228.
- (4) Tests given to a child whose primary language is other than English shall be relevant, to the maximum extent possible, to his/her culture.
- (5) Determination of the child's mode of communication shall be made by assessing the extent to which the child uses verbal expressive language and the use he or she makes of other modes of communication (e.g., gestures, signing, unstructured sounds) as a substitute for verbal expressive language.
- (6) If the child's receptive and/or expressive communication skills are impaired due to hearing and/or language deficits, the School District shall utilize test instruments and procedures that do not stress spoken language and one of the following:
  - (a) Visual communication techniques in addition to auditory techniques.

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

(7) 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.

2. Assessments and their evaluation materials must be:
  - a. Used for the purposes for which the assessments or measures are valid and reliable;
  - b. Administered by trained and knowledgeable personnel; and
  - c. Administered in accordance with any instructions provided by the producer of the assessments.

C. Determination of Eligibility

1. No later than 60 school days following the date of receiving informed written consent to conduct an evaluation (or prior to the first day of the next school year if there are less than 60 school days remaining at the time informed written consent is received), an IEP meeting will be held to consider the results of the evaluation and, if the child is determined to be eligible for special education and related services to develop an IEP.
2. The team shall consist of a group of qualified professionals and the Parent(s).
3. The IEP Team, after considering the evaluation and other information available regarding the child, shall determine whether the child is or continues to be eligible for special education and related services as a child with a disability as defined by federal and state law and the child's educational needs. In making this determination, the IEP Team shall:

- a. 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;
  - b. Ensure that information obtained from all of these sources is documented and considered; and
  - c. Ensure that a psychological evaluation has been conducted and a recommendation for eligibility has been made by a school psychologist for all children determined to have a cognitive disability.
4. A child may not be determined eligible 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 School District's eligibility criteria.
5. At the conclusion of the meeting convened to consider the results of the evaluation, 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 relating to identifying students suspected of or having a specific learning disability, if applicable. The IEP Team's report shall also include:
  - a. The date of the meeting;
  - b. The signatures of the participants, indicating their presence at the meeting; and
  - c. 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.

6. 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.
  7. 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 School District shall note the missing portions in the child's evaluation report and state the reasons why those portions could not be completed.
  8. In the event that the student is determined to be eligible for special education and related services, the IEP meeting shall be conducted within 30 days (and no later than 60 school days from the date the School District receives the informed written consent for the evaluation or reevaluation from the Parent(s)) after the date of that determination.
  9. A copy of the IEP Team's report, together with all documentation upon which it is based will be maintained in the child's temporary education record in accordance with confidentiality requirements.
  10. A copy of the completed document will be provided to the Parent(s). If requested, a copy of any evaluation reports will also be provided.
  11. No later than 10 school days following the IEP meeting, the Parent(s) will be provided a written notice of the determination of the team, in compliance with 23 Ill. Admin. Code § 226.520.
- D. Additional Requirements for Identifying Children with Specific Learning Disabilities
1. The criteria for identifying children with specific learning disabilities

- a. Must permit the use of a process based on the child's response to scientific, research-based intervention and, by 2010-2011 school year, require the use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure;
  - b. May permit the use of other alternative research-based procedures to determine whether a child has a specific learning disability, as defined in federal law; and
  - c. In addition to the process described above, the School District may permit the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability.
2. Additional group members required to determine specific learning disability eligibility

The determination of whether a child suspected of having a specific learning disability is a child with a disability must be made by the child's Parent(s) and a team of qualified professionals, which must include:

- a. The child's regular teacher; or
  - b. If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his/her age; or
  - c. For a child less than school age, an individual qualified by ISBE to teach a child of his/her age; and
  - d. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
3. Determining the existence of a specific learning disability

- a. The group described above may determine that a child has a specific learning disability, if:
  - (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
    - (a) Oral expression.
    - (b) Listening comprehension.
    - (c) Written expression.
    - (d) Basic reading skills.
    - (e) Reading fluency skills.
    - (f) Reading comprehension.
    - (g) Mathematics calculation.
    - (h) Mathematics problem solving.
  - (2) A) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified above when using a process based on the child's response to scientific, researched-based intervention; or  
  
B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments; and

The group determines that its findings above are not primarily the result of:

- (a) A visual, hearing, or motor disability;
  - (b) Cognitive disability;
  - (c) Emotional disability;
  - (d) Cultural factors;
  - (e) Environmental or economic disadvantage; or
  - (f) Limited English proficiency.
- (3) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:
- (a) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - (b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's Parent(s).
- (4) The public agency must promptly request parental informed written consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes, unless extended by mutual written agreement of the child's Parent(s) and a group of qualified professionals:
- (a) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described above; and

(b) Whenever a child is referred for an evaluation.

4. Observation
  - a. The School District must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
  - b. The group meeting to determine whether a child has a specific learning disability, must decide to:
    - (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
    - (2) Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental informed written consent is received.
  - c. In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.
5. Specific documentation for a determination of specific learning disability
  - a. For a child suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:
    - (1) Whether the child has a specific learning disability;
    - (2) The basis for making the determination, including assurance that the determination has been made in accordance with Section 3, C (3) (a & b);

- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally relevant medical findings, if any;
- (5) Whether:
  - (a) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards as provided above; and
  - (b) (A) The child does not make sufficient progress to meet age or State-approved grade-level standards as provided above; or
    - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development as provided above;
- (1) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- (2) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
  - (a) The instructional strategies used and the student-centered data collected; and
  - (b) The documentation that the child's Parent(s) were notified about:
    - i. The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - ii. Strategies for increasing the child's rate of learning; and

iii. The Parent(s)' right to request an evaluation.

- b. Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

E. Reevaluations

- 1. The School District must ensure that a reevaluation of each child with a disability is conducted in accordance with the procedures for an evaluation in accordance with Section 3, A (1) (a), (d), (e), (f) and Section 3, B:
  - a. If the School District determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
  - b. If the child's Parent(s) or teacher requests a reevaluation.
- 2. A reevaluation conducted as described above:
  - a. May occur not more than once a year, unless the Parent(s) and the public agency agree otherwise; and
  - b. Must occur at least once every 3 years, unless the Parent(s) and the School District agree that a reevaluation is unnecessary.

F. Independent Educational Evaluation

- 1. Parents have the right to obtain an independent educational evaluation of their child in accordance with State and federal law. (See Section 10, (N)).
- 2. An "Independent Educational Evaluation" ("IEE") means an evaluation conducted by a qualified examiner who is not employed by the School District.
- 3. The School District shall send the notice convening the IEP Team's meeting within ten days after receiving the report of an evaluation conducted at public

expense. In the case of an evaluation conducted at private expense, the School District shall send the notice within ten days after the Parent requests a meeting to consider the results. (See Section 10, (N)).

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1412(a)(3), 1413 (local educational agency eligibility), 1413(a)(1), 1413(a)(3).

34 C.F.R. §§ 300.122, 300.201, 300.301- 300.311.

23 Ill.Admin.Code §§ 226.110, 226.120, 226.130, 226.135, 226.140, 226.150, 226.180.

## Section 4. **Individualized Education Programs**

### A. Development of IEP

1. An IEP meeting will be conducted within 30 days (and no later than 60 school days from the date the School District receives the informed written consent for the evaluation or reevaluation from the Parent(s)) after a child is determined to be eligible. The child receiving special education and related services must have an IEP developed in compliance with these procedures and in effect at the beginning of each subsequent school year.
2. The specified group of persons responsible for the development of the IEP (IEP Team) includes:
  - a. A representative of the School District (other than the child's teacher) who is qualified to provide or supervise the provision of special education, is knowledgeable about the general curriculum, is knowledgeable about the School District's resources, has the authority to make commitments for the provision of resources set forth in the IEP, and is able to ensure that the services in the IEP will be implemented.
  - b. At least one of the child's special education teachers, or where appropriate, at least one special education provider of the child. If the child is receiving only speech and language services, the speech and language pathologist shall fulfill this role.
  - c. At least one general education teacher of the child (if the child is, or may be, participating in regular education environment) who is, or may be, responsible for implementing a portion of the IEP.
  - d. For a child age three through five who has not yet entered the primary grades, an individual qualified to teach preschool children without disabilities.
  - e. One or both of the child's Parents.

- f. If appropriate, the child may be invited by either the School District or the Parent(s). The School District shall invite the child when the purpose of the IEP meeting is to consider and plan transition services or when the child has reached the age of 18. When the child does not attend the IEP meeting where transition services are discussed, the School District shall take other steps to ensure that the child's preferences and interests are considered.
- g. Other individuals, at the discretion of the Parent(s) or School District, who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
- h. An individual who is qualified to interpret the instructional implications of the evaluation results (who may be one of the individuals listed herein).
- i. A qualified bilingual specialist or bilingual teacher (who may be one of the individuals listed herein), if needed to assist meeting participants in understanding the child's language or cultural factors as related to the child's instructional needs. If documented efforts to locate such a person are unsuccessful, the School District shall meet the requirements for nondiscriminatory evaluations (see Section 3, B 1.(d)).
- j. In those cases where the child's behavior impedes his/her learning or the learning of others, a person knowledgeable about positive behavior strategies.
- k. If transition services will be discussed and with the informed written consent of the Parents (or child who has reached the age of majority), the School District shall invite representative(s) of any participating agencies that are likely to be responsible for providing or paying for transition services.
- l. For a child who was previously served under Part C of the IDEA, upon request of the Parent, the Part C service coordinator or other

representative of the Part C system shall be invited to the initial IEP meeting to assist with the smooth transition of services.

3. IEP Team Attendance

- a. A member of the IEP Team described above is not required to attend an IEP meeting, in whole or in part, if the Parent(s) and the School District agree in writing that the attendance of the Team member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- b. If an IEP meeting involves a modification to or discussion of an IEP Team member's area of the curriculum or related services, that IEP Team member may be excused from attending the meeting, in whole or in part, if (1) the Parent(s) and the School District consent to the excusal in writing and (2) the IEP Team member submits, in writing to the Parent(s) and the IEP Team, input into the development of the IEP prior to the meeting.

4. The School District will take the following steps to encourage parental participation in the IEP process:

- a. The School District will schedule each IEP meeting at a mutually agreed upon time and place, whenever possible;
- b. The School District will notify Parents at least 10 days prior to any IEP meeting of the purpose, time and location of the meeting, the titles of the persons who will be in attendance, and the Parents' right to invite other individuals with knowledge or special expertise regarding the child;
- c. The School District may conduct an IEP meeting without a Parent in attendance if the School District is unable to obtain parental participation;

- d. If neither Parent is present at an IEP meeting, the School District will maintain a record of its attempts to arrange a mutually agreed on time and place;
  - e. The Parent(s) and School District may agree to use alternative means of meeting participation, such as video conferences and conference telephone calls; and
  - f. The School District will take whatever action is necessary and reasonable to facilitate the Parent(s)' understanding of and participation in the IEP meeting, including arranging and paying for the expense of an interpreter for Parent(s) who are deaf or whose native language is other than English.
5. In developing a child's IEP, the IEP Team shall consider the strengths of the child, the concerns of the Parent(s) regarding the child's education, the results of the most recent evaluation, and the academic, developmental, and functional needs of the child. The IEP Team also shall consider the following factors:
- a. Positive behavior strategies, interventions, and supports for children with behavior that impedes their learning or that of others;
  - b. Language needs of children with limited English proficiency as those needs relate to the IEP;
  - c. Instruction in Braille and the use of Braille, unless the IEP Team determines that, after an evaluation of the child's reading and writing skills, needs and appropriate reading and writing media, it is not needed, for children who are blind or visually impaired;
  - d. Communication needs;
  - e. Assistive technology devices and services; and

- f. For a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communication with peers and professionals in the child's language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communication mode.
- g. For students on the autism spectrum (which includes autistic disorder, Asperger's disorder, pervasive developmental disorder not otherwise specified, childhood disintegrative disorder, and Rett Syndrome, as defined in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM IV, 2000)), the IEP team shall also consider all of the following factors:
  - (1) The verbal and nonverbal communication needs of the child.
  - (2) The need to develop social interaction skills and proficiencies.
  - (3) The needs resulting from the child's unusual responses to sensory experiences.
  - (4) The needs resulting from resistance to environmental change or change in daily routines.
  - (5) The needs resulting from engagement in repetitive activities and stereotyped movements.
  - (6) The need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting from autism spectrum disorder.
  - (7) Other needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development.
- h. If the student may be eligible to participate in the Home Based Support Services Program for Mentally Disabled Adults authorized under the

Developmental Disability and Mental Disability Services Act upon becoming an adult, the student's individualized education program shall include plans for:

- (1) Determining the student's eligibility for those home based services,
- (2) Enrolling the student in the program of home based services, and
- (3) Developing a plan for the student's most effective use of the home based services after the student becomes an adult and no longer receives special educational services under this Article. The plans developed under this paragraph shall include specific actions to be taken by specified individuals, agencies, or officials.

6. The IEP shall include the following components:

- a. A statement of the child's present levels of academic achievement and functional performance. This must include: (1) a statement of how the child's disability affects his/her involvement and progress in the general curriculum; or (2) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- b. A statement of measurable annual goals that reflect consideration of the State Goals for Learning and the Illinois Learning Standards, as well as benchmarks or short-term objectives, developed in accordance with the child's present levels of educational performance, designed to:
  - (1) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum, or for preschool children to participate in age appropriate activities; and
  - (2) Meet each of the child's other educational needs that result from the child's disability.

- c. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, and program modifications or supports that will be provided for the child to:
  - (1) Advance appropriately toward attaining the annual goals; and
  - (2) Be involved in and make progress in the general curriculum and participate in extracurricular and other nonacademic activities; and
  - (3) Be educated and participate with other children with and without disabilities.
- d. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments, or a statement of why the child cannot participate in such assessments and why the particular alternate assessment selected is appropriate (see Section 5).
- e. The projected beginning date for the beginning of the services and modifications, and the amount, frequency, and anticipated duration of those services and modifications.
- f. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and nonacademic activities.
- g. A statement as to whether the child requires extended school year services and, if so, a description of those services that includes their amount, frequency, duration, and location.
- h. A description of how the child's progress towards annual goals will be measured, and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or

other periodic reports, concurrent with the issuance of report cards) will be provided.

- i. 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.
  - j. Beginning not later than the first IEP to be in effect when the child turns age 14 1/2, and updated annually thereafter, the IEP shall include (1) appropriate, measurable, postsecondary goals based upon age-appropriate assessments related to employment, education or training, and, as needed, independent living; (2) the transition services that are needed to assist the child in meeting 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 contained in Section 14-8.03 of The School Code [105 ILCS 5/14-8.03].
  - k. Beginning not later than one year before the child reaches the age of 18, the IEP must include a statement that the child has been informed of the rights under IDEA that will transfer to the child when he or she reaches the age of 18.
  - l. The IEP of a student who may, after reaching age 18, become eligible to participate in the home-based support services program for 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 pursuant to the requirements of Section 14-8.02 of The School Code [105 ILCS 5/14-8.02].
7. The IEP of a student who requires a behavioral intervention plan shall:
- a. Summarize the findings of the functional behavioral assessment;
  - b. Summarize prior interventions implemented;

- c. Describe any behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors;
  - d. Identify the measurable behavioral changes expected and methods of evaluation;
  - e. Identify a schedule for a review of the interventions' effectiveness; and
  - f. Identify provisions for communicating with the Parents about their child's behavior and coordinating school-based and home-based interventions.
8. 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, the use of a State-operated program should be given first consideration if appropriate. The determination shall be based on recent diagnostic assessments and other pertinent information and made in light of other factors such as proximity to the child's home. Before the School District places a child or refers a child to such a facility:
- a. The School District will convene an IEP meeting and invite representative(s) of the State-operated or nonpublic school to attend to assist in identifying or verifying the appropriate placement for that child. If one or more needed representatives cannot attend, the School District will use other methods to ensure their participation.
  - b. With respect to the annual review and revision of the IEP of a child with a disability placed or referred to a State-operated or nonpublic school by the School District, the School District may permit the nonpublic school to initiate IEP meetings which will be conducted as described above, provided that the Parent(s) of the child and a representative of the School District are invited to participate in any decision about the child's

IEP and agree to any proposed changes in the IEP. The School District remains responsible for the development and implementation of the child's IEP and for convening any needed IEP meetings, including annual reviews.

9. The IEP shall state the placement the IEP Team has determined to be appropriate for the child. The IEP Team shall take into consideration the student's eligibility for other educational programs and services such as bilingual education, career and technical education, gifted education, and federal Title I programs. The placement determination shall be reviewed at least annually or at any time the IEP is revised.
10. Each initial IEP must be completed by the IEP Team no later than 30 days after the determination of eligibility and in no case later than 60 school days from the date of the School District's receipt of informed written consent from the Parent(s) to perform the needed assessments. When a child is referred for an 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.
11. The School District shall provide special education and related services to eligible children in accordance with their IEPs.
12. The School District shall provide the Parent(s) with a copy of the IEP at the conclusion of the IEP Team meeting at no cost to the Parent(s).

B. Determination of Related Services

1. Participants in IEP Team meetings held to develop, review, or revise the IEP shall determine what related services are necessary to assist a child in benefiting from special education, as defined in 34 C.F.R. 300.34.
2. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance or replacement of that device.

C. Implementation of the IEP

1. Implementation of the IEP shall occur no later than 10 days after the Parent(s) have been provided notice of the placement unless otherwise agreed by the IEP Team.
2. Informed written parental consent is required at least 10 days prior to the initial provision of special education and related services to a child. Parent(s) may waive the 10-calendar-day interval before placement.
3. The IEP must be accessible to all staff members who are responsible for implementing the IEP; each shall be informed of his/her specific responsibilities relating to the IEP and the specific accommodations, modifications and supports to be provided to the child in accordance with the IEP.

D. Review and Revision of the IEP

1. The IEP of each child with a disability currently receiving special education and related services must be reviewed at least annually to determine whether the annual goals are being achieved. The IEP should be revised as appropriate to address any lack of expected progress toward the annual goals; the results of a reevaluation; information about the child provided to, or by, the Parent(s); the child's anticipated needs; or other matters.
2. A child's teacher or Parent(s) may request a review of the child's IEP at any time. Within 10 days after receipt of such request, the School District will either agree and notify the Parent(s) of the meeting, or notify the Parent(s) in writing of its refusal to meet. Notice of a refusal will include an explanation of the reason no meeting is necessary to ensure a FAPE to the child. Parents may revoke their consent for special education services in accordance with their procedural safeguards. (See Section 10, F. 3.)
3. After the annual review IEP Team meeting, the Parent(s) and the School District may agree not to convene an IEP Team meeting for the purpose of

making changes to a child's IEP and instead may develop a written document to amend or modify the current IEP, rather than redrafting the entire IEP. The School District must ensure that the child's IEP Team is informed of those changes. Upon request, a Parent must be provided with a revised copy of the IEP with the amendments incorporated.

4. If a participating agency other than the School District, fails to provide the transition services described in the IEP, the IEP Team must reconvene to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

E. Transfer Children

1. If a child receiving special education transfers into the School District, the School District will ensure FAPE in consultation with the Parent(s) by providing special education and related services in conformity with an IEP.
  - a. For transfers from within Illinois, the School District shall enroll the child and provide FAPE, including education services comparable to those in the IEP from the former School District, until the School District either: (1) adopts the IEP from the former School District, or (2) develops, adopts and implements a new IEP.
  - b. For transfers from another state, the School District shall enroll the child and provide FAPE, including services comparable to those in the IEP from the former School District, until the School District: (1) conducts an evaluation, if determined to be necessary, and (2) develops, adopts and implements a new IEP, if appropriate.
  - c. If the School District does not adopt the former IEP and plans to develop a new one, within 10 days after the date of the child's enrollment the School District must provide written notice to the Parent(s), including the proposed date of the IEP meeting.

2. The School District must take reasonable steps to obtain the child's records, including the IEP, from the former School District. If the School District does not receive a copy of the transfer child's IEP or verbal or written confirmation of requirements of the IEP from the former School District, the child will be enrolled and served in the setting that the School District believes will meet the child's needs until the current IEP is obtained or a new IEP is developed.

F. Children Aged Three Through Five

1. For a child with a disability aged three through five, an Individualized Family Service Plan (IFSP) may serve as the child's IEP if using that plan is agreed to by the School District and the Parent(s). If the School District proposes to use an IFSP, it shall:
  - a. Provide a detailed explanation of the differences between an IFSP and an IEP to the Parents(s);
  - b. Obtain informed, written parental consent for the use of an IFSP; and
  - c. Ensure that the IFSP is developed in accordance with IEP requirements.

LEGAL REF.: 20 U.S.C.§§ 1400(c), 1412(a)(4), 1414(d).

34 C.F.R. §§ 300.34, 300.39, 300.114-117, 300.320-325, 300.328, 300.503.

105 ILCS 5/2-3.64, 5/14-8.02, 8.02(b).

23 Ill. Admin. Code §§ 226.50 (requirements for a FAPE), 226.200 (general requirements), 226.210 (IEP team), 226.220 (development, review and revision of the IEP), 226.230 (content of the IEP), 226.240 (determination of placement), 226.250 (child aged 3 through 5), 226.260 (child reaching age 3), 226.300 (continuum of placement options), 226.310 (related services), 226.330 (placement by school district in state-operated or nonpublic special education facilities), 226.530 (Parents' participation).



Section 6. **Serving Students in the Least Restrictive Environment**

A. Overview of Placement

1. The School District supports the right of children with disabilities to be educated with nondisabled children to the maximum extent appropriate.
2. The child's placement shall be based on the child's IEP and shall be as close as possible to the child's home. Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled. A placement determination based solely upon the category of a child's disability or on the current configuration of the School District's service delivery system is prohibited. In selecting the least restrictive environment (LRE), consideration shall be given to any potential harmful effect on the child or on the quality of services received.
3. Children with disabilities must be allowed to participate to the maximum extent appropriate with nondisabled children in nonacademic and extracurricular activities (including meals, recess periods, athletics, clubs, and recreational activities).
4. Parental participation shall be encouraged. Informed written parental consent is required only before initial special education placement. In cases in which informed written parental consent cannot be obtained, the School District may request a due process hearing to compel services/placement in special education, except in an initial placement of a child in special education.

B. Participation in Regular Education Programs

1. The School District shall take steps to ensure that children with disabilities have equal access to the variety of educational programs and services available to nondisabled children.

2. Steps taken by the School District to ensure the availability of regular educational programs and services to children with disabilities may include, but not be limited to:
  - a. Modification of instructional methodologies, staffing, materials and equipment to permit effective participation as appropriate; and
  - b. Individualization of the instructional program including staffing, curriculum modifications, classroom accommodations, modified grading, assistive technology, and instructional materials to permit the effective participation of children with disabilities.
3. The IEP must include a statement describing how the child's disability adversely affects the child's participation in, and progress toward general education curriculum objectives, including:
  - a. Participation in extracurricular and other nonacademic activities;
  - b. The extent to which the child will be educated and participate with nondisabled children;
  - c. An explanation of the extent, if any, to which the child will not participate with nondisabled children; and
  - d. A statement of any individual modifications in the administration of State or School District-wide assessments necessary in order for the child to participate in the assessments. If the IEP Team determines that the child cannot participate in State or School District-wide assessments, the IEP Team must explain why and describe how the child will be alternately assessed. (See Section 5, Students' Participation in Assessments).

C. State-Operated or Nonpublic Special Education Facility

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, the use of a State-

operated program should be given first consideration if appropriate. The determination shall be based on recent diagnostic assessments and other pertinent information and made in light of other factors such as proximity to the child's home. Before the School District places a child or refers a child to such a facility:

1. The School District will convene an IEP meeting and invite representative(s) of the State-operated or nonpublic school to attend to assist in identifying or verifying the appropriate placement for that child. If one or more needed representatives cannot attend, the School District will use other methods to ensure their participation.
2. With respect to the annual review and revision of the IEP of a child with a disability placed or referred to a State-operated or nonpublic school by the School District, the School District may permit the nonpublic school to initiate IEP meetings which will be conducted as described above, provided that the Parent(s) of the child and a representative of the School District are invited to participate in any decision about the child's IEP and agree to any proposed changes in the IEP. The School District remains responsible for the development and implementation of the child's IEP and for convening any needed IEP meetings, including annual reviews.

D. Continuum of Placement Options

The School District will ensure that a continuum of alternative placement options is available to meet the needs of children with disabilities. This continuum will include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. The continuum will also make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

E. Determining Educational Placement

1. In determining any educational placement of a child, the School District shall ensure that:

- a. The placement decision is made by a group of persons, including the Parent(s), and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and is made in conformity with the least restrictive environment requirements;
  - b. The child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home;
  - c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school he/she would attend if nondisabled;
  - d. In selecting the LRE, consideration is given to any potentially harmful effect on the child or on the quality of services that the child needs; and
  - e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
2. When making a placement determination on behalf of a child with a disability between the ages of 3-5, the School District must provide a free appropriate public education (FAPE) in the least restrictive environment. The least restrictive environment alternatives may include:
    - a. Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);
    - b. Placing children with disabilities in private school programs for nondisabled preschool children or private preschool programs that integrate children with disabilities and nondisabled children; or
    - c. Locating classes for preschool children with disabilities in regular elementary schools.
  3. In the event the School District must remove a special education child from his/her current program because of behavior that causes serious bodily injury

or due to a weapons or drug violation, the IEP Team shall identify an interim alternative educational setting (IAES). This setting will enable the child to continue to progress in the general curriculum and to receive those services and modifications as described in the child's current IEP.

4. Homebound instruction may be recommended by the IEP Team in accordance with subsection C of this Section and the eligibility requirements under 23 Ill. Admin. Code § 226.300.

F. Nonacademic and Extracurricular Services

1. The placement decision shall permit the child to participate, as appropriate, in nonacademic and extracurricular services and activities (e.g., meals, recess, recreational activities, and clubs sponsored by the School District). According to the needs of the child, as articulated in his/her IEP, the School District may provide service(s) to a child in order to allow him/her to access participation in nonacademic or extracurricular activities.
2. A child with a disability may be excluded from participation in nonacademic and extracurricular activities for misconduct provided the exclusion is consistent with the School District's disciplinary code, is applied to children without disabilities and takes into consideration the special needs of the child.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1412 (a)(7), 1413 (local educational agency eligibility).

34 C.F.R. §§ 300.305 (program options), 300.345 (Parent(s) participation), 300.346 (development review and revision of IEP), 300.347 (content of IEP), 300.350 (general LRE requirements), 300.551 (continuum of alternative placements), 300.552 (placements), 300.553 (nonacademic settings).

105 ILCS 5/14-1.02 (children with disabilities), 5/15-8.02 (identification, evaluation and placement of children).

23 Ill. Admin. Code. §§ 226.240 (determination of placement), 226.300 (continuum of placement options), 226.310 (related services), 226.530 (Parent(s)' participation), 226.720 (facilities and classes), 226.220 (development, review and revision of the IEP), 226.230 (content of the IEP).

**Section 7. Provision of Extended School Year Services**

- A. Extended school year services are special education and related services, which are provided by the School District to an IDEA eligible child with a disability beyond the School District's regular school year in accordance with the child's IEP at no cost to the child's Parent(s) and meet the standards of ISBE.
- B. Extended school year services shall be provided to each special education child whose unique needs require special education and related services in excess of the regular school year. Special education children who may require extended school year services are those whose IEPs specify an extended school year program and/or related services as determined by the child's IEP Team in accordance with the IDEA and ISBE standards and regulations. The child's IEP Team shall determine the type, amount, and/or duration of the services necessary as part of the child's extended school year program on an individualized basis.
- C. The School District shall not limit the provision of extended school year services to children with a particular category or categories of disability or unilaterally limit the type, amount, or duration of those services.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1413 (local educational agency eligibility).

34 C.F.R. § 300.106

23 Ill. Admin. Code § 226.75 (definitions).

**Section 8. Transition of Children Served Under Part C of IDEA into Preschool Programs**

**A. Children Reaching Age Three**

1. For a child with an IFSP who will be making the transition from an early intervention program into the special education program of the School District at age three, the School District shall ensure that either an IEP or the child's IFSP is in effect on his/her third birthday. A representative of the School District shall participate in the transition meeting.
2. For a child without an IFSP:
  - a. If the child is referred at least 60 school days prior to his/her third birthday, and determined eligible, the School District shall ensure that either an IEP or an IFSP is in effect on his/her third birthday.
  - b. If the child is referred with fewer than 60 school days remaining before his/her third birthday, or after that date, the School District shall follow the procedures herein to determine whether or not an evaluation is warranted, and if so, to conduct an evaluation.
3. If a child's third birthday occurs during the summer, the IEP Team shall determine when the School District's services to the child will begin.

**B. Children Reaching Age Six**

The School District may permit an eligible child in an Early Childhood class who reaches his/her sixth birthday during the school year to complete that school year in the Early Childhood class.

LEGAL REF.: 20 U.S.C. § 1412(a)(9).

34 C.F.R. § 300.124.

23 Ill. Admin. Code § 226.260, Subpart C.

Section 9. **Serving Students Who Attend Nonpublic Schools**

- A. Placements by the School District in Nonpublic Special Education Programs/Facilities
  - 1. The IEP Team shall conduct a meeting(s) and complete an IEP before placing a child in a nonpublic special education program or facility.
    - a. The School District is responsible for arranging participation of a representative of the private school/facility in the IEP meeting.
    - b. The School District remains responsible for the development and implementation of the child's IEP.
  - 2. The School District will determine, for those children placed in a nonpublic special education program or facility, that the conditions contained in 23 Ill. Admin. Code § 226.330(c) are satisfied.
- B. Children With Disabilities Enrolled by Their Parents In Private Schools Where FAPE Is At Issue
  - 1. The School District is not responsible for educational costs, including special education and related services, of children placed in nonpublic special education programs or facilities by their Parents if the School District made FAPE available to the child and the Parent(s) elected to place the child in a nonpublic special education program or facility.
  - 2. If the Parents of a child with a disability, who previously received special education and related services from or through the School District, enroll the child in a private school without the consent of or referral by the School District, a court or hearing officer may require the School District to reimburse the Parents for the cost of the private school if there are findings that (a) the School District did not make a FAPE available to the child in a timely manner prior to the private school enrollment, and (b) the private placement is appropriate.

3. The School District will notify the Parent(s) of the conditions under which reimbursement for the cost of a unilateral placement in a nonpublic special education program or facility may be reduced or denied. Those conditions include:
  - a. Failure of the Parent(s) to inform the IEP Team at the most recent IEP meeting prior to the removal of the child from the public school of the Parents' rejection of the placement proposed by the School District and a statement of their concerns and their intent to enroll their child in a nonpublic special education program or facility at public expense at least 10 business days prior to the removal of the child from the public school; or
  - b. At least 10 business days before the removal of the child from the public school, the Parents did not give written notice to the School District of the information described in subparagraph a above; or
  - c. If, prior to the Parent(s)' removal of the child from the public school, the School District informed the Parent(s), through the notice requirements, of its intent to evaluate the child, but the Parent(s) did not make the child available for the evaluation; or
  - d. Any judicial finding of unreasonableness with respect to the actions taken by the Parent(s).

C. Children With Disabilities Enrolled By Their Parents In Private Schools Where FAPE Is Not An Issue

1. The School District shall develop and implement a system to locate, identify and evaluate children with disabilities who attend private schools (including religiously affiliated schools and home-schools) located within the School District. The School District will conduct child find activities for private school children with disabilities that are similar to those for children with disabilities in public schools.

2. Upon evaluation or reevaluation and determination that a private school child is eligible or still eligible for special education and related services, the School District will develop a services plan for the child if he/she is designated by the School District to receive special education and related services.
3. The School District is not obligated to provide the special education and related services the child would receive if enrolled in a public school.
4. The School District shall consult annually with private school representatives and representatives of Parents of private school children regarding the following:
  - a. The child find process, including how parentally placed private school children can participate equitably and how Parents, teachers, and private school officials will be informed of the process;
  - b. The determination of proportionate share of funds available to serve parentally-placed private school children with disabilities;
  - c. The consultation process;
  - d. The provision of special education and related services; and
  - e. A written explanation by the School District regarding services.
5. The School District shall make final decisions with respect to the services to be provided to eligible children who are enrolled in private schools. The services to be provided to such children are those services that the School District has determined, through the consultation process, it will make available.
6. The School District shall assure that the providers of services to private school children with disabilities meet the same standards as personnel providing services in the public schools, except that private elementary and secondary school teachers who provide equitable services to parentally-placed private school children with disabilities do not have to meet the “highly qualified” requirements of law.

7. The School District shall be responsible for providing Parents with all notifications required to be provided to Parents of students with disabilities who attend the public schools.
8. By December 1 of each year, the School District will conduct a census of the number of nonpublic school children eligible under IDEA, who may or may not be receiving special education and related services.

LEGAL REF.: 20 U.S.C. §§ 1412(a)(10) (State eligibility), 1413(a)(1) (local educational agency eligibility).

34 C.F.R. §§ 300.115 (continuum of alternative placements), 300.325(private school placement), 300.130-300.144 (children with disabilities enrolled by their Parents in private schools), 300.145-300.147 (children with disabilities in private schools placed or referred by public agencies), 300.148 (children with disabilities enrolled by their Parents in private schools when FAPE is at issue).

105 ILCS 5/29-4, 5/14-6.01, 5/14-7.01, 5/14-7.02.

23 Ill. Admin. Code §§ 226.300 (continuum of placement options), 226.310 (related services), 226.320 (service to students living in residential care facilities), 226.330 (placement by school district in state-operated or nonpublic special education facilities), 226.340 (nonpublic placements by Parents where FAPE is at issue), 226.350 (service to parentally-placed private school students).

Section 10. **Procedural Safeguards**

A. Procedural Safeguards Notice

1. Written notification of the procedural safeguards available to the Parent(s) of a child with a disability shall be given to the Parent(s) one time per school year, and:
  - a. Upon referral for an initial evaluation or reevaluation or Parent request for evaluation or reevaluation;
  - b. In accordance with certain disciplinary removals (see Section 10.5);
  - c. Upon request by a Parent; and
  - d. Upon receipt of the first State complaint and upon first request for a due process hearing in a school year.
2. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards relating to:
  - a. Independent education evaluation;
  - b. Prior written notice to Parents as required by State and federal law;
  - c. Parental consent;
  - d. Access to educational records;
  - e. Opportunity to present and resolve complaints through the due process and State complaint procedures;
  - f. The availability of mediation;
  - g. The child's placement during the pendency of any due process complaint;
  - h. Procedures for children who are subject to placement in an interim alternative educational setting;

- i. Requirements for unilateral placement by Parents of children in private schools at public expense;
- j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- k. Civil actions; and
- l. Attorneys' fees.

B. Prior Notice by School District

1. The School District shall provide 10 days written notice to the Parent(s) as required by State and federal law before proposing or refusing to initiate or change the identification, evaluation, or educational placement of, or the provision of free, appropriate public education to, a child. If the notice is related to an action proposed by the School District that also requires informed written parental consent, the School District may give notice at the same time as it requests informed written consent.
2. The notice required by this Section shall include:
  - a. A description of the action proposed or refused by the School District;
  - b. An explanation of why the School District proposes or refuses to take the action;
  - c. A description of any other options that the IEP Team considered and the reason why those options were rejected;
  - d. A description of each evaluation procedure, assessment, record, or report the School District used as a basis for the proposed or refused action;
  - e. A description of any other factors that are relevant to the School District's proposal or refusal;

- f. A statement that the Parent(s) of a child with a disability have protection under the procedural safeguards of the Individuals With Disabilities Education Act, Article 14 of The School Code of Illinois and their respective implementing regulations, and an indication of the means by which a description of those procedural safeguards may be obtained; and
- g. Sources for Parents to contact to obtain assistance and understanding of the provisions of the IDEA, Article 14, and their respective implementing regulations.

C. Notice of Issuance of Diploma

If a student is to receive a regular high school diploma, at least one year prior to the anticipated date of its issuance, both the Parents(s) and the student shall receive written notification that eligibility for public school special education services ends following the granting of a diploma and that the Parent (or student if he or she is 18 or over) may request an IEP meeting to review the recommendation that the student receive a regular diploma.

D. Language of Notifications

- 1. The notices required under the “Procedural Safeguards Notice” and “Notice by School District” Sections above shall be written in language understandable to the general public and provided in the native language of the Parent(s) or other mode of communication used by the Parent(s), unless it is clearly not feasible to do so.
- 2. If the native language or other mode of communication of the Parent(s) is not a written language, the School District shall take steps to insure and document that the notice is translated orally or by other means to the Parent(s) in his/her native language or other mode of communication and that the Parent(s) understands the content of the notice.

E. Opportunity to Examine Records; Parent(s) Participation in Meetings

1. The Parent(s) of a child with a disability shall be afforded an opportunity to inspect and review all education records with respect to their child. The School District shall insure that Parents of children with disabilities have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of, and the provision of free, appropriate public education to, the child. A meeting does not include informal or unscheduled conversations involving School District employees or officials or other routine communications or consultation between School District employees or officials, 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.
2. Whenever a meeting is to be held which a Parent has a right to attend, the following requirements shall apply:
  - a. The School District shall notify in writing the Parent(s) at least ten days prior to the proposed date of the meeting of the purpose of the meeting, the proposed date, time, and place for the meeting, who will be in attendance; and the Parent(s)' right to invite other individuals whom the Parent(s) believe have knowledge or special expertise regarding the child; for the initial IEP meeting of a child who was previously served under Part C of the IDEA, upon request of the Parent, the Part C service coordinator or other representative of the Part C system; and, beginning not later than the first IEP to be in effect when the child turns 14½, or younger if deemed appropriate by the IEP Team, that post-secondary goals and services will be considered, that the student will be invited, and the identity of any other agency that will be invited to send a representative;
  - b. If the Parent(s) indicates that the proposed date or time is inconvenient, the School District shall make reasonable efforts to accommodate the Parent(s)' schedule;

- c. If neither Parent can attend, the School District shall use other methods to ensure at least one Parent's participation;
- d. A meeting may be conducted without a Parent in attendance if the School District is unable to obtain the Parent(s)' participation. In this case, the School District shall maintain a record of its attempt to arrange a mutually agreed-upon time and place;
- e. The School District shall take whatever action is necessary and reasonable to facilitate the Parent(s)' understanding of and participation in the meeting including arranging for and covering the expense of an interpreter for Parents who are deaf or whose native language is other than English; and
- f. Any document generated during the meeting shall be provided to the Parent(s) upon request, unless applicable federal or State statute or federal regulation requires its automatic provision without a request.

F. Consent

- 1. The School District shall document that informed written parental consent is obtained prior to:
  - a. Conducting any initial evaluation;
  - b. The initial provision of special education and related services to a child;
  - c. Conducting any reevaluation;
  - d. Using the Parent(s)' private insurance or Medicaid or other public benefits or insurance programs to pay for services required by the child's IEP;
  - e. Using an IFSP instead of an IEP;
  - f. Disclosing personally identifiable information about a child, consistent with the requirements of federal and State law;

- g. Disclosing information to officials of participating transition agencies; and
    - h. Disclosing information to officials of a private school or a private school student's district of residence.
  - 2. Consent for a proposed action is written agreement provided by a Parent(s) who has been fully informed of all information relevant to the activity for which consent is sought in his/her native language or mode of communication; who understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes the activity and lists the records (if any) that will be released and to whom; and that the agreement is voluntary and may be revoked at any time.
  - 3. Parental informed written consent is not required before reviewing existing data as part of an evaluation or a reevaluation or administering a test or evaluation that is administered to all children unless parental informed written consent is required of all children taking the test.

G. Revocation of Consent for Evaluations and Reevaluations

- 1. Revocation of informed written consent for evaluations or reevaluations may be communicated orally or in writing. If communicated orally, the School District will commit it to writing and provide the Parent(s) with a copy within five days. Any revocation of informed written consent for evaluations or reevaluations is effective immediately, but is not retroactive. The School District will promptly inform all staff members whose activities are affected by the revocation. If the School District disagrees with a Parent's revocation of informed written consent, the School District may request a due process hearing.

H. Revocation of Consent for Special Education and Related Services

- 1. A Parent may revoke consent for special education and related services.

2. Revocation of consent for special education and related services may be communicated by a Parent in writing or orally. The District will memorialize the Parent's oral revocation of consent in writing and provide a copy to the Parent within five days.
3. Within 10 calendar days after the School District's receipt of written revocation of consent, the School District will provide the Parent with prior written notice at which time all IEP services shall cease.
4. When a Parent revokes consent for special education and related services:
  - a. The School District may not utilize mediation or the due process procedures to obtain agreement or a ruling that the services may be provided to the child.
  - b. The School District is not required to convene an IEP meeting or develop an IEP for the child for further provision of special education and related services.
  - c. The School District will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services.
  - d. The School District is not required to amend the child's education records to remove any reference to the child's receipt of special education and related services because of the revocation of consent.

I. Filing a Due Process Complaint

1. The Parent(s) or the School District may file a due process complaint regarding: the School District's proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or the School District's refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The due process complaint must allege a violation that occurred not

more than two years before the date the Parent(s) or School District knew or should have known about the alleged action that forms the basis of the due process complaint. This two-year limitations period does not apply to a Parent(s) if the Parent(s) was prevented from filing a due process complaint due to a specific misrepresentation by the School District that it had resolved the problem forming the basis of the due process complaint or due to the School District's withholding of information from the Parent(s) that was required to have been provided.

2. Notification to Parent(s)

The School District shall notify Parent(s) in writing of the procedures for requesting a due process hearing which includes a requirement that the due process complaint contain the following information:

- a. The name and address of the residence of the child or in the case of a homeless child or youth (within the meaning of the McKinney-Vento Homeless Assistance Act), available contact information for the child;
- b. The name of the school that the child attends;
- c. A description of the nature of the problem of the child relating to the proposed or refused initiation or change of the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, including facts relating to such problem; and
- d. A proposed resolution of the problem to the extent known and available to the party filing the due process complaint at the time.
- e. This written notice must be provided to the Parent by the School District upon the School District's receipt of a due process complaint.

3. Content of the Due Process Complaint

The filing, basis for, and content of the due process complaint, whether by a Parent, a student, or the School District, must contain items specified in

Section 10, G (2) (a-d) and a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets these requirements. If a party believes that the due process complaint does not meet these requirements, a party can challenge the sufficiency of the due process by notifying the hearing officer and the other party in writing within 15 days of receipt of the due process complaint. The due process complaint must be deemed sufficient unless such a challenge is made. The hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements within 5 days of receipt of the challenge and must immediately notify the parties in writing of that determination.

4. Notification of Free or Low Cost Legal Services or Other Related Services in the Area

The School District shall inform the Parent(s) in writing of any free or low-cost legal services and other publicly-funded services available in the area if the Parent(s) requests the information or the Parent(s) or the School District files a due process complaint.

5. Forwarding of Parent Due Process Complaint to ISBE

The School District's Superintendent shall, within 5 days after its receipt of the due process complaint, forward the complaint by certified mail or another means that provides written evidence of delivery to the Illinois State Board of Education in Springfield.

6. School District Response to Due Process Complaint

If the School District has not sent a "prior written notice" under IDEA's implementing regulations at 34 C.F.R. § 300.503 to the Parent(s) regarding the subject matter contained in the Parent(s)' due process complaint, the School District must, within 10 days of receiving the due process complaint, send to the Parent a response that includes:

- a. An explanation of why the School District proposed or refused to take the action raised in the due process complaint;
  - b. A description of other options that the IEP Team considered and the reasons why those options were rejected;
  - c. A description of each evaluation procedure, assessment, record, or report the School District used as the basis for the proposed or refused action;  
and
  - d. A description of the other factors that are relevant to the School District's proposed or refused action.
  - e. The School District's submission of a response to the Parent's due process complaint does not preclude the School District from challenging the sufficiency of such complaint, where appropriate.
7. Other Party Response to Due Process Complaint

The party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

8. Resolution Meeting

Within 15 days of receiving notice of the Parent(s)' due process complaint, and prior to the initiation of a due process hearing, the School District must convene a meeting with the Parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint. This meeting must include a representative of the School District who has decision-making authority on its behalf and cannot include the School District's attorney unless the Parent(s) is accompanied by an attorney. The purpose of this meeting is for the Parent(s) of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the School District has an opportunity to resolve the dispute

that is the basis of the complaint. The Resolution Meeting need not be held if the Parent(s) and the School District agree in writing to waive the meeting or to use the mediation process. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the Parent(s) filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. If the School District is unable to obtain the participation of the Parent(s) in the Resolution Meeting after reasonable efforts have been made, the School District may, at the conclusion of the 30-day period, request that a hearing officer dismiss the Parent's due process complaint. If the School District fails to hold the Resolution Meeting within 15 days of receiving notice of a Parent(s)' due process complaint or fails to participate in the Resolution Meeting, the Parent may seek the intervention of the hearing officer to begin the due process hearing timeline. If a resolution to the dispute is reached at the Resolution Meeting, the parties must execute a legally binding agreement that is signed by both the Parent(s) and a representative of the School District who has the authority to bind the School District. The Resolution Agreement shall be enforceable in a State court of competent jurisdiction or a Federal district court. A party may void the Resolution Agreement within 3 days of its execution.

9. Amendment of the Due Process Complaint

A party may amend its due process complaint only if: the other party consents in writing to the amendment and is given an opportunity to resolve the due process complaint through a resolution meeting; or, the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

10. Rights of the Parties Related to the Impartial Due Process Hearing

Any party to a due process hearing has the following rights:

- a. To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- b. To present evidence and confront, cross-examine, and compel the attendance of witnesses;
- c. To prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- d. To obtain a written, or, at the option of the Parent(s), electronic, verbatim record of the hearing;
- e. To obtain written, or, at the option of the Parent(s), electronic findings of fact and decisions; and
- f. To receive disclosure of all evaluations completed by five business days prior to the hearing and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

11. Parental Rights Related to the Due Process Hearing

Parent(s) involved in hearings must be given the right:

- a. To have the child who is the subject of the hearing present;
- b. To open the hearing to the public;
- c. To have the record of the hearing and the findings of fact and decisions provided at no cost to the Parent; and
- d. To have access to the School District's list of independent evaluators and may obtain an independent evaluation of their child at their own expense. The Parent(s) 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, the hearing shall be delayed.

12. Participant's Right to Interpreter

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 expense of the School District.

13. Stay-Put

During the pendency of any administrative or judicial proceeding initiated pursuant to this Section, except as provided below, unless the School District and the Parent(s) of the child agree otherwise, the child shall remain in his/her current educational placement. If the hearing involves the initial admission of the child to the public school, the child must be placed in the public school, with the Parent's informed written consent, until the completion of all the proceedings. If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from Part C of IDEA and is no longer eligible for Part C services, the School District is not required to provide Part C services that the child has been receiving. If the child is found eligible for special education and related services under Part B and the informed Parent consents in writing to the initial provision of special education and related services, then the School District must provide those special education and related services that are not in dispute between the Parent and the School District. If the decision of the hearing officer agrees with the Parent(s) that a change of placement is appropriate, that placement shall be treated as agreement between the State or School District and the Parent(s) for purposes of this Section.

14. School District Authority to Change a Student's Placement

School personnel have the authority to change the current educational placement of a child with a disability:

- a. For not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement as defined in the IDEA and related federal and State regulations); and
- b. To an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days, if:
  - (1) The child carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function; or
  - (2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or
  - (3) The child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function; or
  - (4) Ordered by a hearing officer in accordance with the expedited hearing procedures set forth below.

15. Hearing Timelines

The School District will fully cooperate with the timelines set forth by the hearing officer to ensure that the hearing process is completed within 45 days from: the expiration of the 30-day resolution period; or, the date both parties agree in writing to waive the Resolution Meeting; or, after either the Mediation or Resolution Meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.

16. Right to Appeal Hearing Decision

The Parent(s) or the School District may appeal the due process hearing findings and decision, within 120 days from the date the decision was mailed

to the parties, by commencing a civil action in any court of competent jurisdiction.

J. Expedited Due Process Hearings

1. The School District may request an expedited due process hearing if school personnel believe that maintaining the current placement of the child is substantially likely to result in injury to the child or others.
2. The Parent(s) or child (if he or she is at least 18 years of age or emancipated) may request an expedited due process hearing if there is disagreement with regard to:
  - a. The School District's determination that a child's behavior was not a manifestation of his/her disability;
  - b. The decision of the School District to move the child to an interim alternative educational setting; or
  - c. The interim alternative educational setting selected.
3. When requesting an expedited hearing the requesting party must provide the following:
  - a. Name of legal counsel if the party is represented by counsel or intends to retain counsel;
  - b. Matters in dispute and specific relief sought;
  - c. Names of all witnesses to be called to testify at the hearing; and
  - d. Relevant documents.
4. No later than two days prior to the hearing, both parties involved in the expedited hearing must disclose to the hearing officer and to each other any evidence, which is intended to be submitted into the hearing record.

5. Unless the Parents and the School District agree in writing to waive a Resolution Meeting, a Resolution Meeting must occur within seven days of receiving notice of the due process complaint and the due process may proceed unless the matter has been resolved to the satisfaction of both parties.

K. Mediation

1. The purpose of mediation is to attempt to informally resolve disputes regarding the identification, evaluation, or placement of, or the provision of free, appropriate public education to, a child. The School District shall inform Parent(s), at least whenever a due process hearing is requested, that ISBE offers a process of mediation that may be used to resolve such disputes.
2. ISBE's Special Education Unit shall appoint a trained impartial mediator upon the request of the Parent(s) or the School District. Mediation sessions shall be scheduled in a timely manner and held in a location that is convenient to the parties.
3. Mediation is entirely voluntary. In no way shall mediation be used as a means to deny or delay a Parent's right to a hearing or any other rights afforded under IDEA, Article 14 of The School Code, or their implementing regulations.
4. Any resolution reached as part of the mediation process must be set forth in writing, is legally binding, and is enforceable by a court of competent jurisdiction.
5. Discussions that occur during mediation shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

L. Complaints

1. A Parent, individual, organization, or advocate may file a signed, written complaint with ISBE alleging that the School District has violated the rights of one or more children with disabilities. Such a complaint must include:

- a. A statement that the School District has violated a requirement of the IDEA, Article 14, or their implementing regulations;
  - b. The facts on which the statement is based;
  - c. The signature and contact information for the complainant;
  - d. The names, addresses, and schools of attendance of the students involved, if known;
  - e. A description of the nature of the problem of the child, including facts relating to the problem; and
  - f. A proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.
2. A complaint to ISBE must allege only violations that occurred not more than one year prior to the date on which ISBE receives the complaint.

M. Surrogate Parents

1. The School District shall ensure that the rights of a child with a disability are protected through the appointment of a qualified surrogate Parent(s) when:
  - a. The Parent(s) cannot be identified or located; or
  - b. The child is a ward of the State; or
  - c. The child is an unaccompanied youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act.
2. The School District shall undertake reasonable efforts to identify and discover the whereabouts of the Parent(s) of the child with a known or suspected disability. Such reasonable efforts may include documented phone calls, letters, certified letters with return receipts, visits to the home, and interviews with relatives and other individuals who may have knowledge of the whereabouts of the child's Parent(s).

3. If, after reasonable efforts have been made, the Parent(s) cannot be located, the School District shall take similar steps to establish contact with a relative, or an individual with whom the child resides and/or the individual or agency which is legally responsible for the child's care and education.
4. If, after reasonable efforts have also been made to identify a guardian of the child or a person acting as the Parent(s) of the child, no such person has been either identified or located, the School District shall make a written request to ISBE to appoint a surrogate Parent(s) for the child in matters relating to the identification, evaluation, and educational placement of, and provision of free, appropriate public education to, him or her.
5. The written request to ISBE shall include information on the racial, linguistic or cultural background of the child.

N. Independent Educational Evaluations

1. Parent(s) have the right to obtain an independent educational evaluation of their child, subject to the provisions of federal and State law.
2. The School District shall provide to the Parent(s), upon their request, the list of independent educational evaluators developed by ISBE.
3. If the Parent(s) disagree with the School District's evaluation and wish to obtain an independent educational evaluation at public expense, they shall submit to the superintendent a written request to that effect.
4. If the School 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 shall be initiated by the School District within five days following receipt of a written parental request.
5. An independent educational evaluation at public expense shall 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 School District shall initiate a due process hearing.

6. If the final decision of the hearing and review process is that the School District's evaluation is appropriate, the Parent(s) shall have the right to an independent educational evaluation, but not at public expense.
7. If the School District's evaluation is shown to be inappropriate, the School District shall pay for the independent educational evaluation or reimburse the Parent(s) for the cost of said evaluation.
8. If the Parent(s) are 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.
9. When an independent evaluation is obtained at public expense, the party chosen to perform the evaluation shall be either:
  - a. An individual whose name is included on the list provided by ISBE with regard to the relevant type(s) of evaluation; or
  - b. Another individual possessing the credentials required by 23 Ill. Admin. Code § 226.840.
10. If the Parent(s) wishes an evaluator to have specific credentials in addition to those required by 23 Ill. Admin. Code § 226.840, the Parent(s) and the School District shall agree on the qualifications of the examiner and the specific evaluation(s) 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.

11. 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 School District uses when it initiates an evaluation, to the extent that those criteria are consistent with the Parent's right to an independent evaluation.
12. If the Parent(s) obtains an independent educational evaluation, the written results of that evaluation shall be considered by the IEP Team and may be presented as evidence at a due process hearing as provided by law. The School District shall send the notice convening the IEP Team's meeting within ten days after receiving the evaluation report or after the Parent(s) requests a meeting to consider the results of an independent evaluation.

O. Transfer of Parental Rights

1. All rights accorded to Parent(s) under the IDEA, Article 14 of The School Code, and their implementing regulations transfer to the child when he or she reaches 18 years of age or becomes an emancipated minor, unless a legal guardian has been appointed for the child or the child delegates his/her rights to the Parents or another adult after the child turns 18 years of age. The School District shall notify the child and the Parent(s) of such transfer of rights and the process for delegating such rights, and shall provide the student with a Delegation of Rights form, at least one year prior to the date that the child reaches the age of majority.
2. The School District shall provide any notice required by the IDEA, Article 14 of The School Code, and their implementing regulations to the child and the Parent(s).

LEGAL REF.: 20 U.S.C. §§ 1412(a)(6) (State eligibility), 1412(a)(7), 1413(a)(1) (local educational agency eligibility), 1415 (procedural safeguards).

34 C.F.R. §§300.500-300.520 (procedural safeguards and due process), 300.610-300.627 (confidentiality of information), 300.322 (Parent participation), 300.154(d) (methods of ensuring services), 300.320(c) (notification of transfer of rights).

105 ILCS 5/ 8.02, 5/14-8.02a, 5/14-8.02b, 5/14-6.10.

23 Ill. Admin. Code §§ 226.500-226.690 (procedural safeguards, State complaints, and due process), 226.180 (independent educational evaluations), 226.230(d) (age of majority for transfer of rights).

## **Section 10.5 Behavioral Intervention and Discipline**

### **A. Behavioral Interventions**

1. Behavioral interventions shall be used with children with disabilities to promote and strengthen desirable behaviors and reduce identified inappropriate behaviors.
2. A committee shall be established to develop and monitor procedures on the use of behavioral interventions for children with disabilities in accordance with the requirements of Section 5/14-8.05 of The School Code. The committee shall review the State Board of Education's guidelines on the use of behavioral interventions and use them as a non-binding reference. The behavioral intervention procedures shall be furnished to the Parents of all children with individual education plans within 15 days after their adoption or amendment by, or presentation to, the Board or at the time an individual education plan is first implemented for a student; all children shall be informed annually of the existence of the procedures. At the annual individualized education plan review, a copy of the School District's behavioral intervention policy and procedures shall be given and explained to Parents. A copy of the procedures shall be available at any time and provided upon request of the Parents.
3. A behavioral intervention plan shall be based on a functional behavior assessment and shall include positive behavioral intervention strategies, and supports to address the inappropriate behavior. A functional behavioral assessment shall be completed, if appropriate, in relationship to the development or modification of a student's behavioral intervention plan. A functional behavioral assessment is an assessment process for gathering information regarding a student's 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. The conduct of the functional behavioral assessment

does not require parental informed written consent unless the IEP Team decides to conduct individualized assessments that go beyond the review of existing data and the administration of tests or other evaluations that are administered to all children.

B. Discipline of Children with Disabilities

1. The School District shall comply with the provisions of the Individuals With Disabilities Education Improvement Act of 2004 (IDEA) when disciplining students. No special education student will be expelled if the student's particular act of gross disobedience or misconduct is a manifestation of his/her disability. Any special education student whose gross disobedience or misconduct is not a manifestation of his/her disability may be expelled pursuant to the expulsion procedures, except that such child shall continue to receive educational services as provided in IDEA during the period of expulsion.
2. A special education student may be suspended for periods of no more than 10 consecutive school days each in response to separate incidents of gross disobedience or misconduct, regardless of whether the student's gross disobedience or misconduct is a manifestation of his/her disability, as long as the repeated removals do not constitute a pattern that amounts to a change in placement (considering 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) and provided that such child receives educational services to the extent required by IDEA during such removals.
3. Any special education student may be temporarily excluded from school by court order or by order of a duly appointed State of Illinois impartial due process hearing officer changing the student's placement to an appropriate interim alternative educational setting for up to 45 school days, if the School District demonstrates that maintaining the child in his/her current placement is substantially likely to result in injury to the child or others.

4. A special education student who has carried a weapon to school or to a school function or who knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substance while at school or a school function or who has inflicted serious bodily injury upon another person while at school or at a school related activity may be removed from his/her current placement. All such children shall be placed in an appropriate interim alternative educational setting for no more than 45 school days in accordance with IDEA. The length of time a child with a disability is placed in an alternative educational setting must be the same amount of time that a child without a disability would be subject to discipline.
5. 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 School District shall 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.

C. Special Education Suspension Procedures

1. All suspension notices and suspension review procedures established by The School Code shall be followed when suspending a special education student. In addition, a special education student who is suspended from school for more than 10 cumulative school days in a school year shall receive educational services in accordance with IDEA.
2. The first time a child is removed for more than 10 cumulative days during the school year, the School District shall, no later than 10 business days after the decision to suspend a child is made, convene an IEP meeting to review and, if appropriate, modify the student's behavioral intervention plan, as necessary, to address the student's behavior. If no behavioral intervention plan is in

place, the IEP Team shall develop a plan for a functional behavioral assessment that must be used to develop a behavioral intervention plan.

3. For all subsequent removals of the child that do not constitute a change in placement, the IEP Team members must review the behavioral intervention plan and its implementation. If any team member indicates that the plan may need to be modified, the IEP Team must be convened to review the plan and revise it, if appropriate.
4. For all removals that exceed 10 cumulative days during one school year, the School District must provide services to the student. School personnel, in consultation with at least one of the child's teachers, shall determine the services to be provided. Such services must be designed to enable the child to progress in the general curriculum and advance toward his/her IEP goals.

D. Special Educational Procedures for Expulsion or Disciplinary Change in Placement

1. For purposes of this subsection, a disciplinary removal constitutes a "change of placement" if:
  - a. A student is removed from the his/her current educational placement for more than 10 consecutive school days; or
  - b. The student has been subjected to a series of removals that constitute a pattern:
    - (1) Because the series of removals total more than 10 school days in a school year;
    - (2) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;

- (3) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
2. The School District shall promptly notify the student's Parent(s) of the gross disobedience or misconduct and whether the child shall be recommended for expulsion. All procedural protections pertaining to notice provided under the School District's discipline policy shall apply to a notice of recommended expulsion in the case of a special education student. The Parent(s) shall also receive a copy of the procedural safeguard and written notification that a manifestation determination review must be made to determine whether the student's act of gross disobedience or misconduct is a manifestation of his/her disability. The manifestation determination review shall take place as soon as possible, but no later than 10 school days after the decision related to the discipline of the child is made.
3. The manifestation determination review must be completed by the Parent(s) and relevant members of the child's IEP Team (as determined by the Parent(s) and the School District).
4. In carrying out the manifestation determination review, the team shall consider, in terms of the behavior subject to the disciplinary action, all relevant information in the student's file, including:
  - a. The child's IEP;
  - b. Any teacher observations of the student; and
  - c. Any relevant information provided by the Parent(s).
5. The conduct must be determined to be a manifestation of the student's disability if it is determined that:

- a. The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - b. The conduct in question was the direct result of the School District's failure to implement the student's IEP.
6. If, at the manifestation determination review conference, it is determined that the behavior of the child was a manifestation of his/her disability, the authorized administrator shall not continue with his/her recommendation for expulsion. The authorized administrator may request a review of the appropriateness of the educational placement of the child in accordance with the federal and State law. During the period necessary to propose a new placement, the child will remain in his/her then-current placement unless:
  - a. The child has not served a full 10 school day suspension imposed for the gross disobedience or misconduct, in which case the child may be required to serve the remaining days of his/her suspension; or
  - b. The Parent(s) and the School District agree on an interim placement; or
  - c. The School District obtains an order from a court of competent jurisdiction or a State of Illinois impartial due process hearing officer decision changing the then-current placement or providing for other appropriate relief.
7. If, at the manifestation determination review conference, it is determined that the behavior of the child was not a manifestation of his/her disability, the authorized administrator may continue with his/her recommendation that the child be considered for expulsion by the School Board. In addition to issues regularly determined at an expulsion hearing, the authorized administrator must present evidence that the manifestation determination review team met and concluded that the student's misconduct was not a manifestation of his/her disability, which shall be duly noted by the Board. The administration

shall ensure that relevant special education and disciplinary records of the child are transmitted for consideration by the Board.

8. If a special education student is expelled from school in accordance with the procedures set forth above, the School District shall convene an IEP meeting to develop an educational program to deliver educational services to the child during such period of expulsion.

E. Misconduct Involving Weapons, Drugs, or Infliction of Serious Bodily Injury.

1. In accordance with the above procedures, the School District may take one or more of the following steps when a child with a disability carries a weapon to school or to a school function, or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school-related function, or has inflicted serious bodily injury upon another person while at school or a school-related function:

- a. Suspend the child from school for 10 school days or less.
- b. Convene an IEP conference to: (a) determine placement in an interim alternative educational setting for up to 45 school days, (b) review and, if appropriate, modify the student's behavior intervention plan, as necessary, to address the student's behavior (if no behavior intervention plan is in place, the IEP Team shall develop a plan for a functional behavioral assessment that must be used to develop a behavior intervention plan), and (c) conduct a manifestation determination review.

(1) The child may be placed in an interim alternative educational setting even if the behavior is a manifestation of the student's disability.

(2) The interim alternative educational setting must:

- (a) Enable the child to continue to progress in the general curriculum;

- (b) Enable the child to receive the services and modifications set forth in his/her IEP; and
    - (c) Include services and modifications designed to address the misconduct to prevent it from recurring.
  - 2. If the Parent(s) disagree with the interim alternative educational placement or with the School District-proposed placement and initiate a due process hearing, the child must remain in the interim alternative educational setting during the authorized review proceedings, unless the Parent(s) and the School District agree on another placement.
- F. Change of Placement if Maintenance of Current Placement Is Likely to Result in Injury
  - 1. In the event that maintenance of a student's current placement is substantially likely to result in injury to the child or to others, the School District may seek an order from a court of competent jurisdiction or a State of Illinois impartial due process hearing officer to change the student's placement to an appropriate interim alternative educational setting for one or more 45 school day periods after convening an IEP meeting to:
    - a. Conduct a manifestation determination review following procedures described under sub-heading "Special Education Expulsion Procedures," above, and
    - b. Determine a proposed interim alternative educational setting that meets the requirements under sub-heading "Misconduct Involving Weapons, Drugs, or Infliction of Serious Bodily Injury," above.
  - 2. The length of time a child with a disability is placed in an alternative educational setting must be the same amount of time that a child without a disability would be subject to discipline.
- G. Protections for Children Not Yet Eligible Under IDEA

1. Any child who has not been determined to be eligible for special education and related services and who engages in behavior that violates the School District's code of conduct shall be disciplined in accordance with the School District's discipline policy for nondisabled students, unless the School District had knowledge that the child was a child with a disability.
2. The School District will be deemed as having knowledge that a child may be eligible for special education and related services prior to the disciplinary incident, if any one of the following conditions exists:
  - a. The Parent(s) of the child expressed concern in writing (or orally if the Parent(s) does not know how to write or has a disability that prevents a written statement) to supervisory or administrative School District personnel that the child is in need of special education and related services;
  - b. The Parent(s) of the child has requested an evaluation of the child; or
  - c. The child's teacher or other School District personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the School District's Director of Special Education or to other School District supervisory personnel.
3. The School District will not be deemed to have knowledge if:
  - a. The Parent(s) of the child has not allowed their child to be evaluated after he/she was referred for such evaluation by the School District;
  - b. The Parent(s) has refused special education services; or
  - c. Documentation maintained in the school student records affirm that an evaluation to determine the presence of a disability was either conducted and the child was found not eligible for special educational and related services or the Parent(s) was provided with written notice that the School

District had considered the need to conduct an evaluation and had determined that an evaluation was not warranted.

4. If, following the School District's decision to discipline a child who has not been determined to be eligible for special education and related services, the child's Parent(s) request a full and individual evaluation, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by the School District, which may include suspension or expulsion without educational services.

H. Referral to and Action by Law Enforcement and Judicial Authorities

The School District is not prohibited from reporting a crime committed by a child with a disability to appropriate authorities. The School District shall ensure that copies of special education and disciplinary records are also transmitted to the authorities in such instances, subject to the requirements of federal and State law.

- LEGAL REF.: 20 U.S.C. §§ 1412, 1413, 1415 (Individuals with Disabilities Education Act).
- 34 C.F.R. §§ 300.101, 300.530-300.535.
- 105 ILCS 5/10-22.6, 5/14-8.05.
- 23 Ill. Admin. Code §§ 226.50 (requirements for FAPE), 226.75 (definitions), 226.220 (factors in development of the IEP), 226.400 (disciplinary actions), 226.655 (expedited due process hearing).

**Section 11. Establishing the Goal of Full Educational Opportunity**

A. Establishment of the Goal

The School District has established a goal of providing full educational opportunity to children with disabilities ages birth through 21. Attainment of the full educational opportunity goal for children, ages birth through 2, will be accomplished through full participation in, and full implementation of the “Infants and Toddlers with Disabilities Act.”

B. Annual Data Collection Requirements

1. The School District shall annually collect the following information regarding children with disabilities residing within the jurisdiction of the School District:
  - a. The number of children with disabilities, by race, ethnicity, and disability category, who are receiving a free appropriate public education;
  - b. The number of children with disabilities, by race and ethnicity, who are receiving early intervention services;
  - c. The number of children with disabilities, by race, ethnicity, and disability category, who are participating in regular education;
  - d. The number of children with disabilities, by race, ethnicity, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;
  - e. The number of children with disability, by race, ethnicity, and disability category, who, for each year of age from age 14 to 21, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services;

- f. The number of children with disabilities, by race and ethnicity, who from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons;
  - g. The number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of § 1415(k)(1) of IDEA, are removed to an interim alternative educational setting; the acts or items precipitating those removals; and the number of children with disabilities who are subject to long-term suspensions or expulsions;
  - h. The number of special education teachers;
  - i. The number of related services personnel;
  - j. The cost of all personnel;
  - k. The number of children receiving special education transportation;
  - l. The types of alternative placements available for children with disabilities; and
  - m. The number of children served in each type of placement.
2. The School District shall also annually collect information regarding the facilities, personnel and services necessary to accomplish the full educational opportunity goal.

LEGAL REF.: 20 U.S.C. §§ 1412 (State eligibility), 1413 (local educational agency eligibility), 1418 (program information).

34 C.F.R. §§ 300.123 (full educational opportunity goal-FEOG), 300.124 (FEOG-timetable), 300.125 (child find).

23 Ill. Admin. Code §§ 226.700 (general), 226.760 (evaluation of special education), 226.800 (personnel required to be qualified).

**Section 12. Confidentiality of Personally Identifiable Information**

A. Confidentiality

1. The school student records of a child with disabilities shall be maintained confidentially in accordance with the requirements of the *Individuals with Disabilities Education Act*, the *Family Educational Rights and Privacy Act*, the *Illinois School Student Records Act*, the *Illinois School Code*, the *Illinois Mental Health and Developmental Disabilities Confidentiality Act*, and their respective implementing regulations.
2. The School District shall designate a Records Custodian to take all reasonable measures to comply with the confidentiality requirements of each of the above statutes.
3. The Records Custodian shall assume responsibility for the following:
  - a. Respond to any request for inspection and review of school student records, including a request for a copy of school student records;
  - b. Respond to any request for an explanation or interpretation of a school student record;
  - c. Respond to any request to amend or destroy a school student record;
  - d. Respond to any request to disclose or release personally identifiable information and/or school student records;
  - e. Keep a record of parties obtaining access to school student records including the name of the party, the date access took place, and the purpose of the authorized use;
  - f. Maintain, for public inspection, a current listing of the names and positions of the employees who may have access to personally identifiable information;

- g. Provide upon request from the Parent(s) or the child at the age of majority, a list of the types and locations of school student records collected, maintained, or used by the School District;
    - h. Take all reasonable measures to protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages of maintenance of school student records.
- 4. The school principal, person with like duties, or principal's designee, shall take all action necessary to assure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality of personally identifiable information.
- 5. The School District will notify the Parent(s) or the child with disabilities at the age of majority of the right to access the school student records, to request amendments and to request a records hearing:
  - a. The school will notify annually the child and the student's Parent(s) if the child is under the age of majority, of their rights under the federal and State law with respect to access including, but not limited to, the following:
    - (1) The types and location of information contained in the permanent and temporary school student records;
    - (2) The right to inspect and copy permanent and temporary school student records and the cost of copying such records;
    - (3) The right to control access to and release of school student records and the right to request a copy of information released;
    - (4) The rights and procedures for challenging the contents of school student records that may be inaccurate, misleading or improper;
    - (5) The persons, agencies or organizations having access to the school student records without parental informed written consent;

(6) The right to copy any school student record or information contained therein which is proposed to be destroyed or deleted and the school's schedule for reviewing and destroying such information;

(7) The categories of information the school has designated as "directory information" and the right of the Parent(s) to prohibit the release of such information.

b. Notice will be delivered by the means most likely to reach the Parent(s) or the child at the age of majority, including direct mail, parent-teacher conferences, delivery by the child to the Parent, or incorporated in a "parent-student" handbook or other informational brochure for children and Parents disseminated by the school.

B. Type of Records Subject to Disclosure

1. School student records available for review by Parent(s) or authorized persons are those writings or other recorded information concerning a child and by which a child may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored. The following are not school student records and are not subject to disclosure. Writings or other recorded information maintained by an employee of the School District or other person at the direction of the School District for his/her exclusive use, provided that all such writings and other recorded information are destroyed not later than the student's graduation or permanent withdrawal from the school, and provided further that no such records or recorded information may be released or disclosed to any person except a person designated by the school as a substitute unless they are first incorporated in a school student record and made subject to all of the provisions of federal and State law.

2. School student records do not include information maintained by law enforcement professionals working in the school.

C. Inspection and Review of School Student Records

*Section 12 - Confidentiality of Personally Identifiable Information*

1. The School District shall permit Parents and any other authorized persons the opportunity to inspect, review, and copy all school student records.
2. The Records Custodian shall respond to and grant any written request to inspect and to copy school student records to a Parent(s) or authorized representative within 15 school days after the date of receipt of such written request by the Records Custodian.
3. If requested by an authorized person, the Records Custodian shall provide a copy of the school student record if he/she determines that the Parent(s) will be effectively prevented from exercising his/her right to inspect and review school student records at the location where such records are normally maintained (or at any other location where the School District offers to produce such records). The School District may charge a reasonable fee for copies of records. The School District shall not charge a fee when the Records Custodian determines that, a Parent(s) is unable to bear the cost of such copying.

D. Release of Personally Identifiable Information

1. The School District shall obtain informed written parental consent or informed written consent from the child at age of majority before permitting personally identifiable information to be released or used except as otherwise authorized by law.
2. The School District may not release, transfer, disclose or otherwise disseminate information maintained in the school student record, except as follows and as provided by law:
  - a. To a Parent(s) or child or person specifically designated as a representative by a Parent, or;
  - b. To an employee or official of the school or School District or ISBE with current demonstrable educational or administrative interest in the student, in furtherance of such interest.

- c. To the official records custodian of another school within Illinois or an official with similar responsibilities of a school outside Illinois, in which the child has enrolled, or intends to enroll, upon the request of such official or student.
- d. To any person for the purpose of research, statistical reporting or planning, provided that no child or Parent(s) can be identified from the information released and the person to whom the information is released signs an affidavit agreeing to comply with all applicable statutes and rules pertaining to school student records.
- e. Pursuant to a court order, provided that the Parent(s) shall be given prompt written notice upon receipt of such order of the terms of the order, the nature and substance of the information proposed to be released in compliance with such order and an opportunity to inspect and copy the school student records and to challenge their contents.
- f. To any person as specifically required by State or federal law.
- g. To juvenile authorities when necessary for the discharge of their official duties who request information prior to adjudication of the child and who certify in writing that the information will not be disclosed to any other party except as provided under law or order of the court. For purposes of this Section, a juvenile authority means:
  - (1) A judge of the circuit court and members of the staff of the court designated by the judge;
  - (2) Parties to the proceedings under the Juvenile Court Act of 1987 and their attorneys;
  - (3) Probation officers and court-appointed advocates for the juvenile authorized by the judge hearing the case;

- (4) Any individual, public or private agency having custody of the child pursuant to court order;
- (5) Any individual, public or private agency providing education, medical or mental health service to the child when the requested information is needed to determine the appropriate service or treatment for the minor;
- (6) Any potential placement provider when such release is authorized by the court for the limited purpose of determining the appropriateness of the potential placement;
- (7) Law enforcement officers and prosecutors;
- (8) Adult and juvenile prisoner review boards;
- (9) Authorized military personnel; or
- (10) Individuals authorized by court.

- h. Subject to regulations of ISBE, in connection with an emergency, to appropriate persons if the knowledge of such information is necessary to protect the health or safety of the child or other persons.
- i. To any person, with the prior specific-dated informed written consent of the Parent(s) designating the person to whom the records may be released, provided that at the time any such consent is requested or obtained, the Parent(s) shall be advised in writing that he has the right to inspect and copy such records, to challenge their contents, and to limit any such consent to designated records or designated portions of the information contained therein, as provided by law and as described herein.

E. Transfer of Records

- 1. The School District shall forward, within 10 days of receipt of notice of the student's transfer to any other private or public elementary or secondary school located in this or any other state, a copy of the student's unofficial  
*Section 12 - Confidentiality of Personally Identifiable Information*

record of the student's grades to the school to which the child is transferring. The School District at the same time shall forward to the school to which the child is transferring the remainder of the student's school student record and a Certification of Good Standing form. "In good standing" means that the student's medical records are up-to-date and complete and the child is not currently subject to suspension or expulsion.

- a. Written notice as required by State and federal law must be provided to the Parent(s) regarding the nature and substance of the information being released/transferred.

F. Amendment of School Student Records

1. A Parent(s) who believes that information in the school student records is inaccurate or misleading or violates the privacy or other rights of the student, exclusive of grades of the child and references to expulsions or out-of-school suspensions, may if the challenge is made at the time the student's records are forwarded to another school into which the child is transferring, challenge the specific entry in question.
2. The request for a hearing must be submitted in writing and contain notice of the specific entry or entries to be challenged and the root of the challenge.
3. The school principal, or principal's designee, upon receiving a written request from a Parent(s), shall hold an informal conference with the Parent(s) within 15 school days from the date of receipt of the request. The school principal, or principal's designee, will amend or delete information he/she determines to be inaccurate, irrelevant or improper. If the school principal, or principal's designee, refuses to amend the information, he or she shall inform the Parent(s) of the refusal and advise the Parent(s) of his/her right to proceed with a hearing.
4. If the dispute is not resolved by the informal conference, formal procedures shall be initiated:

- a. A hearing officer, who shall not be employed in the attendance center where the child is enrolled, shall be appointed by the School District.
  - b. The hearing officer shall conduct a hearing within a reasonable time, but no later than 15 days after the informal conference, unless the Parent(s) and school officials agree upon an extension of time. The hearing officer shall notify the Parent(s) and the school officials of the time and place of the hearing.
  - c. A verbatim record of the hearing shall be made by a tape recorder or a court reporter.
5. The written decision of the hearing officer shall, no later than 10 days after the conclusion of the hearing, be transmitted to the Parent(s) and the School District. It shall be based solely on the information presented at the hearing and shall be one of the following:
  - a. To retain the challenged contents of the student record;
  - b. To remove the challenged contents of the student record; or
  - c. To change, clarify or add to the challenged contents of the student record.
6. Any party shall have the right to appeal the decision of the local hearing officer to the Regional Superintendent within 20 school days after such decision is transmitted. If the Parent(s) appeals, the Parent(s) shall so inform the school and within 10 school days, the School District shall forward a transcript of the hearing, a copy of the record entry in question and any other pertinent materials to the Regional Superintendent. The School District may initiate an appeal by the same procedures. Upon receipt of such documents, the Regional Superintendent shall examine the documents and records to determine whether the School District's proposed action in regard to the student's record is in compliance with the Illinois School Student Records Act, make findings and issue a written decision to the Parent(s) and the School District within 20 school days of the receipt of the appeal documents. If the subject of the appeal

involves the accuracy, relevance, or propriety of any entry in special education records, the Regional Superintendent should seek advice from special education personnel:

- a. Who were not authors of the entry; and
  - b. Whose special education skills are relevant to the subject(s) of the entry in question.
7. The School District shall implement the decision of the Regional Superintendent.
  8. If, as a result of the hearing, it is determined that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the School District shall amend the information and inform the Parent(s) in writing.
  9. If, as a result of the hearing, it is determined that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the School District shall inform the Parent(s) of his/her right to place in the record a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the School District.
  10. The School District shall ensure that a statement placed in an education record as described above:
    - a. Is maintained by the School District as part of the record of the child as long as the record or contested portion is maintained by the School District; and
    - b. Is disclosed by the School District to any party to whom the records of the child are disclosed.

G. Retention and Destruction of Records

1. The School District maintains two types of school student records: permanent and temporary.

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- a. The permanent record shall include:
  - (1) Basic identifying information;
  - (2) Academic transcripts;
  - (3) Attendance record;
  - (4) Accident and health reports;
  - (5) Scores received on the Prairie State Achievement Examination; and
  - (6) Information pertaining to release of this record.
  
- b. The permanent record may also include:
  - (1) Honors and awards; and
  - (2) School-sponsored activities and athletics.
  
- c. No other information shall be placed in the permanent record. The permanent record shall be maintained for at least 60 years after the child graduated, withdrew, or transferred.
  
- d. The temporary record shall include:
  - (1) Disciplinary information, specifically including information regarding an expulsion, suspension, or other punishment for misconduct involving drugs, weapons, or bodily harm to another;
  - (2) Achievement test results, including scores on the Illinois Standards Achievement Test;
  - (3) Any DCFS final reports finding that a student is an indicated victim of physical or sexual abuse; and
  - (4) Information pertaining to release of this record.
  
- e. The temporary record may include:

- (1) Family background;
  - (2) Intelligence and aptitude scores;
  - (3) Psychological reports;
  - (4) Participation in extracurricular activities;
  - (5) Honors and awards;
  - (6) Teacher anecdotal records;
  - (7) Special education files;
  - (8) Verified reports or information from non-educational persons, agencies or organizations; and
  - (9) Other verified information of clear relevance to the student's education
- f. Information in the temporary record will indicate authorship and date.
- g. The School District will maintain the student's temporary record for at least 5 years after the child transfers, graduates, or permanently withdraws.
2. The School District's destruction of school student records, shall be pursuant to prior notice to the Parents and in accordance with federal and State law, including the Local Records Act.

LEGAL REF.: 20 U.S.C. §§ 1232g (Family Educational Rights and Privacy Act), 20 U.S.C. §§ 1412 (State eligibility), 1413 (local educational agency eligibility).

34 C.F.R. §§ 300.127, 300.560-576, 300.740.

34 C.F.R. Part 99.

105 ILCS 10/1 *et seq.*; 740 ILCS 110/1 *et seq.*; 50 ILCS 205/1 *et seq.*

23 Ill. Admin. Code Subpart K and §§ 226.50 (requirements for FAPE), 226.75 (definitions), 226.220 (factors in development of the IEP), 226.740 (records; confidentiality).

23 Ill. Admin. Code Part 375 (student records).

**Section 13 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 School District is Participating in One or More of those Federal Programs)**

- A. The School District may look to non-educational entities, such as Medicaid and insurance programs, to pay for required special education services for which such entities are otherwise responsible.
- B. The School District will use federal matching funds received under Medicaid or a children’s health insurance program (e.g., KidCare, SCHIP) only to supplement special education programs and services.
- C. In seeking matching funds under Medicaid or a children’s health insurance program, the School District:
  - 1. May not condition a child’s FAPE on their Parent(s)’ enrollment in Medicaid or insurance programs;
  - 2. May not require Parent(s) to incur an out-of-pocket expense (e.g., payment of a deductible or co-pay amount) for services rendered in providing FAPE, except the School District may use Part B funds to pay the Parent(s)’ costs for such services;
  - 3. May not use a child’s Medicaid or health insurance benefits if such use would:
    - a. Decrease available lifetime coverage or any other insured benefit;
    - b. Result in the family paying for services that would otherwise be covered by Medicaid or health insurance and that are required for the child outside of the time the child is in school;
    - c. Increase premiums or lead to the discontinuation of benefits or insurance;  
or
    - d. Risk loss of home and community-based waiver eligibility, based on aggregate health-related expenditures;

4. Must obtain voluntary, informed, written parental consent each time access to Medicaid or insurance benefits is sought; and
5. Must notify Parent(s) that their refusal to allow the School District's access to their public benefits or insurance does not relieve the School District of its obligation to provide FAPE at no cost to the Parent(s).

LEGAL REF.:       34 C.F.R. § 300.154 (methods of ensuring services).  
                      23 Ill. Admin. Code § 226.770 (special education fiscal provisions).