

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

PART 226
SPECIAL EDUCATION

SUBPART A: GENERAL

Section

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

SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

Section

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226.160 Determination of Eligibility (Repealed)
226.170 Criteria for Determining the Existence of a Specific Learning Disability (Repealed)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226.190 Reevaluation (Repealed)

SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Section

- 226.200 General Requirements
226.210 IEP Team
226.220 Development, Review, and Revision of the IEP
226.230 Content of the IEP
226.240 Determination of Placement
226.250 Child Aged Three Through Five

226.260 Child Reaching Age Three

SUBPART D: PLACEMENT

Section

226.300 Continuum of Placement Options
226.310 Related Services
226.320 Service to Students Living in Residential Care Facilities
226.330 Placement by School District in State-Operated or Nonpublic Special Education Facilities
226.340 Nonpublic Placements by Parents Where FAPE is at Issue
226.350 Service to Parentally-Placed Private School Students

SUBPART E: DISCIPLINE

Section

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226.410 Manifestation Determination Review (Repealed)
226.420 Appeals (Repealed)
226.430 Protection for Children Not Yet Eligible for Special Education (Repealed)
226.440 Referral to and Action by Law Enforcement and Judicial Authorities (Repealed)

SUBPART F: PROCEDURAL SAFEGUARDS

Section

226.500 Language of Notifications
226.510 Notification of Parents' Rights
226.520 Notification of District's Proposal
226.530 Parents' Participation
226.540 Consent
226.550 Surrogate Parents
226.560 Mediation
226.570 State Complaint Procedures

SUBPART G: DUE PROCESS

Section

226.600 Calculation of Timelines
226.605 Request for Hearing; Basis (Repealed)
226.610 Information to Parents Concerning Right to Hearing
226.615 Procedure for Request
226.620 Denial of Hearing Request (Repealed)

226.625	Rights of the Parties Related to Hearings
226.630	Qualifications, Training, and Service of Impartial Due Process Hearing Officers
226.635	Appointment, Recusal, and Substitution of Impartial Due Process Hearing Officers
226.640	Scheduling the Hearing and Pre-Hearing Conference
226.645	Conducting the Pre-Hearing Conference
226.650	Child's Status During Due Process Hearing (Repealed)
226.655	Expedited Due Process Hearing
226.660	Powers and Duties of Hearing Officer
226.665	Record of Proceedings
226.670	Decision of Hearing Officer; Clarification
226.675	Monitoring and Enforcement of Decisions; Notice of Ineligibility for Funding
226.680	Reporting of Decisions (Repealed)
226.690	Transfer of Parental Rights

SUBPART H: ADMINISTRATIVE REQUIREMENTS

Section	
226.700	General
226.710	Policies and Procedures
226.720	Facilities and Classes
226.730	Class Size for 2009-10 and Beyond
226.731	Class Size Provisions for 2007-08 and 2008-09
226.735	Work Load for Special Educators
226.740	Records; Confidentiality
226.750	Additional Services
226.760	Evaluation of Special Education
226.770	Fiscal Provisions

SUBPART I: PERSONNEL

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

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SUBPART A: GENERAL

Section 226.10 Purpose

This Part establishes the requirements for the treatment of children and the provision of special education and related services pursuant to the Individuals with Disabilities Education Improvement Act (also referred to as “IDEA”) (20 USC 1400 et seq.), its implementing regulations (34 CFR 300, as amended by 71 Fed. Reg. 46540 (August 14, 2006, no later amendments or editions included)), and Article 14 of the School Code [105 ILCS 5/Art.14]. This Part also distinguishes between requirements derived from federal authority and those imposed additionally pursuant to Article 14 of the School Code or the authority of the State Board of Education. The requirements of IDEA, its implementing regulations, and this Part shall apply in every instance when a child is or may be eligible for special education and related services.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

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

A “free appropriate public education (“FAPE”)” as defined at 34 CFR 300.17, must be made available by school districts to children with disabilities in accordance with 34 CFR 300.101 through 300.103, unless otherwise specified in this Section.

a) Transfer Students

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

- 1) In the case of an eligible student transferring into a district from another district within Illinois, when the new district obtains a copy of the student’s IEP before or at the time the child is presented for enrollment:
 - A) The district may adopt the IEP of the former local school district without an IEP meeting if:
 - i) the parents indicate, either orally or in writing, satisfaction with the current IEP; and
 - ii) the new district determines that the current IEP is appropriate and can be implemented as written.
 - B) If the district does not adopt the former IEP and seeks to develop a new IEP for the child, within ten days after the date of the child’s enrollment the district must provide written notice to the parent including the proposed date of the IEP meeting, in conformance with Section 226.530 of this Part. While the new IEP is under development, the district shall implement services comparable to those described in the IEP from the former district.
- 2) If the new school district does not receive a copy of the child’s current IEP or a verbal or written confirmation of the requirements of that IEP from the previous school district when the child is presented for enrollment, the child shall be enrolled and served in the setting that the receiving district believes will meet the child’s needs until a copy of the current IEP is obtained or a new IEP is developed by the school district.

- A) In no case shall a child be allowed to remain without services during this interim.
 - B) The new district shall request the student's records from the sending district or school by the end of the next business day after the date of enrollment.
 - C) No later than ten days after expiration of the time allotted under Section 2-3.13a of the School Code [105 ILCS 5/2-3.13a] for the sending district or school to forward the child's records, the new district shall initiate an IEP meeting for the purpose of developing a new IEP, unless the sending district's or school's IEP arrives before this time elapses, the student has transferred from a district within Illinois, and the new district adopts the previously held IEP.
- b) Jurisdictional Disputes
- Each school district is responsible for ensuring that no eligible child for whom services are sought is denied FAPE due to jurisdictional disputes among Illinois agencies. Provision of FAPE to such a student shall not preclude a district from seeking repayment for costs incurred from any other school district or entity that is determined responsible for such costs.
- c) Eligibility; Graduation or Completion of Program
- 1) An eligible student who requires continued public school educational experience to facilitate his or her integration into society shall be eligible for such services through age 21, inclusive (i.e., through the day before the student's 22nd birthday) (see 34 CFR 300.101(a)).
 - 2) The provision of FAPE is not required with respect to a student with a disability who has graduated with a regular high school diploma.
 - 3) A student with a disability who has fulfilled the minimum State graduation requirements set forth in Section 27-22 of the School Code [105 ILCS 5/27-22] shall be eligible for a regular high school diploma.
 - A) If the student's individualized education program prescribes special education, transition planning, transition services, or related services beyond that point, issuance of that diploma shall

be deferred so that the student will continue to be eligible for those services.

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

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

d) Exception for Certain Students Incarcerated as Adults

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

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.60 Charter Schools

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

- a) When a school's charter is issued by a local board of education pursuant to Section 27A-8 of the School Code [105 ILCS 5/27A-8], that charter school shall be considered as a school within the district over which that board of education exercises jurisdiction.
- b) When a school's charter is issued by the State Board of Education pursuant to Section 27A-9(f) of the School Code [105 ILCS 5/27A-9(f)], that charter school shall be considered as a local educational agency.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.75 Definitions

Assistive Technology Device: See 34 CFR 300.5.

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

Case Study Evaluation: See "Evaluation".

Day; Business Day; School Day: See 34 CFR 300.11.

Developmental Delay: See 34 CFR 300.8 and 300.111(b). Delay in physical development, cognitive development, communication development, social or emotional development, or adaptive development (may include children from three through nine years of age).

Disability: IDEA identifies 13 disabilities as the basis for students' eligibility for special education and related services. These disabilities (autism, deaf-blindness, deafness, emotional disability, hearing impairment, cognitive disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment) shall be defined as set forth in 34 CFR 300.8(c). In addition, for purposes of this Part, "autism" shall include, but not be limited to, any Autism Spectrum Disorder that adversely affects a child's educational performance.

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

Equipment (a programmatic definition, not intended to coincide with the definition of "equipment" given in the Program Accounting Manual at 23 Ill. Adm. Code 110.120): See 34 CFR 300.14.

Evaluation: See 34 CFR 300.15.

Extended School Year Services: See 34 CFR 300.106(b).

Functional Behavioral Assessment: An assessment process for gathering information regarding the target behavior, its antecedents and

consequences, controlling variables, the student's strengths, and the communicative and functional intent of the behavior, for use in developing behavioral interventions.

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

IEP Team: See 34 CFR 300.23.

Independent Educational Evaluation: See 34 CFR 300.502(a)(3)(i).

Individualized Education Program or IEP: See 34 CFR 300.22. An IEP shall be considered "linguistically and culturally appropriate" if it addresses the language and communication needs of a student as a foundation for learning, as well as any cultural factors that may affect the student's education.

Individualized Family Service Plan or IFSP: See 34 CFR 300.24.

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

Limited English Proficient: See 34 CFR 300.27.

Native Language: See 34 CFR 300.29.

Parent: See 34 CFR 300.30.

Personally Identifiable (with reference to information): See 34 CFR 300.32.

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

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

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

Related Services: See 34 CFR 300.34.

Special Education: See 34 CFR 300.39.

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

Supplementary Aids and Services: See 34 CFR 300.42.

Transition Services: See 34 CFR 300.43.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

Section 226.100 Child Find Responsibility

This Section implements the requirements of 34 CFR 300.111.

- a) Each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district (and those parentally-placed private school children for whom the district is responsible under 34 CFR 300.131) who may be eligible for special education and related services. Procedures developed to fulfill the child find responsibility shall include:
 - 1) An annual screening of children under the age of five for the purpose of identifying those who may need early intervention or special education and related services.
 - 2) Ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services.
 - 3) Ongoing coordination with early intervention programs to identify children from birth through two years of age who have or are suspected of having disabilities, in order to ensure provision of services in accordance with applicable timelines. Each local school district shall participate in transition planning conferences arranged by the designated lead agency under 20 USC 1437(a)(9) in order to develop a transition plan enabling the public school to implement an IFSP or IEP no later than the third birthday of each eligible child.
- b) 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 in this Subpart B shall apply.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.110 Evaluation Procedures

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

a) 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 district; and
- 5) Identify the process for providing the parents with notice of their rights with respect to procedural safeguards.

b) 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.

c) 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 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 district shall determine whether an evaluation is warranted. If the district determines not to conduct an evaluation, it shall provide written notice to the parents in accordance with 34 CFR 300.503(b). If an evaluation is to be conducted:
 - A) The district shall convene a team of individuals (including the parent) having the knowledge and skills necessary to administer and interpret evaluation data. The composition of the team will vary depending upon the nature of the child's symptoms and other relevant factors.
 - B) The team shall identify the assessments necessary to complete the evaluation in accordance with 34 CFR 300.305 and shall prepare a written notification for the parents as required under 34 CFR 300.304(a). For each domain, the notification shall either describe the needed assessments or explain why none are needed.
 - C) The district shall ensure that the notification of the team's conclusions is transmitted to the parents within the 14-school-day timeline applicable under this subsection (c)(3), along with the district's request for the parents' consent to conduct the needed assessments.
- d) Upon completion of the assessments identified pursuant to subsection (c)(3) of this Section, but no later than 60 school days following the date of written consent from the parent to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed.
- e) At the conclusion of the meeting convened pursuant to subsection (d) of this Section, the team shall prepare a report describing its consideration of pre-existing information about the child, all new evaluation reports obtained, and any other information relevant to the decision about the child's eligibility. This description shall relate the information considered to the child's needs and shall further conform to the requirements of Section 226.130 of this Part if applicable. The IEP Team's report shall also include:
 - 1) the date of the meeting;

- 2) the signatures of the participants, indicating their presence at the meeting; and
 - 3) any separate written statement provided by a participant who wishes to be on record as disagreeing with the conclusions expressed in the team's report.
- f) The school district shall provide a copy of the IEP Team's report to the parent at the conclusion of the team's meeting. In addition, the district shall provide to the parent, within ten school days after the meeting, written notice conforming to the requirements of Section 226.520 of this Part as to the eligibility determination reached with respect to the child. The parent shall also be entitled to receive copies of any evaluation reports upon request.
 - g) A copy of the IEP Team's report, together with all documentation upon which it is based, shall become a part of the child's temporary student record.
 - h) If an assessment is conducted under nonstandard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report. This information is needed so that the team of evaluators can assess the effects of these variances on the validity and reliability of the information reported and determine whether additional assessments are needed. For example, the use of a translator when a qualified bilingual specialist is not available may create nonstandard conditions.
 - i) If any needed portion of the evaluation cannot be completed due to lack of parental involvement, religious convictions of the family, or inability of the child to participate in an evaluative procedure, the district shall note the missing portions in the child's evaluation report and state the reasons why those portions could not be completed.
 - j) In the event that the student is determined to be eligible for special education and related services pursuant to the procedures described in subsections (d) and (e) of this Section, the IEP meeting shall be conducted within 30 days after the date of that determination.
 - k) If a district fails to conduct the evaluation, the parent of the child in question (or the student, if Section 226.690 of this Part applies) may appeal this failure in an impartial due process hearing.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.120 Reevaluations

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

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

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

- a) In addition to the requirements set forth in Sections 226.110 and 226.120 of this Part, the district shall adhere to the procedures set forth at 34 CFR 300.307, 300.308, 300.309, 300.310, and 300.311 when evaluating a student who is suspected of, or who has previously been identified as having, a specific learning disability as described in 34 CFR 300.8.
- b) Provided that the requirements of this subsection (b) are met, each district shall, no later than the beginning of the 2010-11 school year, implement the use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 CFR 300.304. When a district implements the use of a process of this type, the district shall not use any child's participation in the process as the basis for denying a parent's request for an evaluation.
 - 1) No later than January 1, 2008, the State Superintendent of Education shall, in consultation with the statewide teacher organizations, statewide school management organizations, and State Advisory Council on Education of Students with Disabilities, prepare and disseminate a plan outlining the nature and scope of the professional development that is necessary to permit implementation of a process of this type and describing any additional activities or resources that the Superintendent finds to be essential.
 - 2) The plan shall quantify the estimated cost of the professional development and other necessary resources and shall identify sources of funding that are or may become available to the State Superintendent for these purposes.
 - 3) The plan shall include:
 - A) a method of identifying school districts that are less able than others to implement a process of the required type without technical or financial assistance from the State;
 - B) a timeframe for the provision of training, other technical assistance and materials, or financial resources for related purposes that demonstrates the State Superintendent's best efforts to secure and provide relevant support to districts; and

- C) a method of allocating resources that affords first consideration to districts that may otherwise be unable to implement a process of the required type without diverting necessary support from other aspects of the educational program.
- c) No later than January 1, 2009, each district shall develop a plan for the transition to the use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 CFR 300.304. Each district's plan shall identify the resources the district will devote to this purpose and include an outline of the types of State-level assistance the district expects to need, with particular reference to the professional development necessary for its affected staff members to implement this process. The transition plan developed pursuant to this subsection (c) may be incorporated into a district's district improvement plan (see 23 Ill. Adm. Code 1.85(b)) if one exists.
- d) In addition to using an identification process of the type required by subsection (b) of this Section, a district may use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

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

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

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.140 Modes of Communication and Cultural Identification

Before a child is given an evaluation, the local school district shall ensure compliance with the requirements of Section 14-8.02 of the School Code by determining the primary language of the child's home, general cultural identification, and mode of communication.

- a) Determination of the child's language use pattern and general cultural identification shall be made by determining the languages spoken in the child's home and the languages used most comfortably and frequently by the child.
- b) If the child has a non-English-speaking background, a determination shall be made of his or her proficiency in English. This determination shall be conducted in accordance with the provisions of 23 Ill. Adm. Code 228 (Bilingual Education), which specifies the assessment procedures and eligibility criteria for bilingual education programs (see 23 Ill. Adm. Code 228.15).
- c) Determination of the child's mode of communication shall be made by assessing the extent to which the child uses verbal expressive language and the use he or she makes of other modes of communication (e.g., gestures, signing, unstructured sounds) as a substitute for verbal expressive language.
- d) The child's language use pattern, proficiency in English, mode of communication, and general cultural identification shall be noted in the child's temporary student record, and this information shall be used in the evaluation and in the development and implementation of the individualized education program.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.150 Evaluation to be Nondiscriminatory

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

- a) The languages used to evaluate a child shall be consistent with the child's primary language or other mode of communication. (See Section 226.140 of this Part.) If the language use pattern involves two or more languages or modes of communication, the child shall be evaluated by qualified specialists or, when needed, qualified bilingual specialists using each of the languages or modes of communication used by the child. The provisions of subsections (b) and (c) of this Section shall apply when a qualified bilingual specialist is needed but unavailable.
- b) If documented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the district shall use an individual who possesses the professional credentials required under Section 226.840 of this Part to complete the specific components of the evaluation. This qualified specialist shall be assisted by a certificated school district employee or other individual who has demonstrated competencies in the language of the child.
- c) If documented efforts to locate and secure the services of a qualified bilingual specialist or a qualified specialist assisted by another individual as provided in subsection (b) of this Section are unsuccessful, the district shall conduct assessment procedures which do not depend upon language. Any special education resulting from such alternative procedures shall be reviewed annually until the student's proficiency is determined no longer to be limited pursuant to 23 Ill. Adm. Code 228 (Transitional Bilingual Education; see Section 228.15).
- d) Tests given to a child whose primary language is other than English shall be relevant, to the maximum extent possible, to his or her culture.
- e) If the child's receptive and/or expressive communication skills are impaired due to hearing and/or language deficits, the district shall utilize test instruments and procedures that do not stress spoken language and one of the following:
 - 1) Visual communication techniques in addition to auditory techniques.
 - 2) An interpreter to assist the evaluative personnel with language and testing.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.160 Determination of Eligibility (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

**Section 226.170 Criteria for Determining the Existence of a Specific Learning Disability
(Repealed)**

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.180 Independent Educational Evaluation

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

- a) If the parents disagree with the district's evaluation and wish to obtain an independent educational evaluation at public expense, their request to that effect shall be submitted in writing to the local school district superintendent.
- b) When an independent evaluation is obtained at public expense, the party chosen to perform the evaluation shall be either:
 - 1) an individual whose name is included on the list of independent educational evaluators developed by the State Board of Education pursuant to Section 226.830 of this Part with regard to the relevant types of evaluation; or
 - 2) another individual possessing the credentials required by Section 226.840 of this Part.
- c) If the parent wishes an evaluator to have specific credentials in addition to those required by Section 226.840 of this Part, the parent and the school district shall agree on the qualifications of the examiner and the specific evaluations to be completed prior to the initiation of an independent educational evaluation at public expense. If agreement cannot be reached, the school district shall initiate a due process hearing subject to the time constraints set forth in this Section, as applicable.
- d) The 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 district shall send the notice within ten days after the parent requests a meeting to consider the results.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.190 Reevaluation (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Section 226.200 General Requirements

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

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.210 IEP Team

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

- a) The general education teacher who serves as a member of a child's IEP Team shall be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to instruct the child.
- b) For a child age three through five years who has not yet entered the primary grades, the team shall include an individual qualified to teach preschool children without identified disabilities.
- c) If the child is receiving only speech and language services, the speech and language pathologist shall fulfill the role of the special education teacher set forth at 34 CFR 300.321(a)(3).
- d) The representative of the public agency required by 34 CFR 300.321(a)(4) must, in addition to the requirements set forth in that portion of the federal regulations, have the authority to make commitments for the provision of resources and be able to ensure that the services set out in the IEP will be implemented.
- e) The IEP Team shall include a qualified bilingual specialist or bilingual teacher, if the presence of such a person is needed to assist the other participants in understanding the child's language or cultural factors as they relate to the child's instructional needs. If documented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the district shall instead meet the requirements set forth in Section 226.150(b) of this Part.
- f) In the case of a child whose behavior impedes his or her learning or the learning of others, the team shall include a person knowledgeable about positive behavior strategies.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.220 Development, Review, and Revision of the IEP

The development, review, and revision of each child's IEP shall conform to the requirements of 34 CFR 300.324 and 300.328. The additional requirements of this Section shall also apply.

- a) When an IEP has been developed or revised, a notice in accordance with 34 CFR 300.503(b) and (c) shall be provided immediately to the parents, and implementation of the IEP shall occur no later than ten days after the provision of this notice.
- b) Either a child's educational provider or a child's parent may request an IEP meeting at any time. Within ten days after receipt of such a request, the district shall either agree and notify the parent in accordance with 34 CFR 300.503 or notify the parents in writing of its refusal, including an explanation of the reason no meeting is necessary to ensure the provision of FAPE for the child.
- c) The development of an IEP for a child who has a disability on the autism spectrum shall include consideration of the factors specified in Section 14-8.02(b) (1) through (7) of the School Code.

(Source: Amended at 32 Ill. Reg. 4828, effective March 21, 2008)

Section 226.230 Content of the IEP

The content of each child's IEP shall conform to the requirements of 34 CFR 300.320. The additional requirements of this Section shall also apply.

- a) Each IEP shall include:
 - 1) A statement of measurable annual goals that reflect consideration of the State Goals for Learning and the Illinois Learning Standards (see 23 Ill. Adm. Code 1), as well as benchmarks or short-term objectives developed in accordance with the child's present levels of educational performance.
 - 2) A statement regarding the child's ability to participate in State and district-wide assessments.
 - 3) A statement as to the languages or modes of communication in which special education and related services will be provided, if other than or in addition to English.
 - 4) A statement as to whether the child requires the provision of services beyond the district's normal school year in order to receive FAPE ("extended school year services") and, if so, a description of those services that includes their amount, frequency, duration, and location.
- b) The IEP of a student who requires a behavioral intervention plan shall:
 - 1) Summarize the findings of the functional behavioral assessment;
 - 2) Summarize prior interventions implemented;
 - 3) Describe any behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors;
 - 4) Identify the measurable behavioral changes expected and methods of evaluation;
 - 5) Identify a schedule for a review of the interventions' effectiveness; and
 - 6) Identify provisions for communicating with the parents about their child's behavior and coordinating school-based and home-based interventions.

- c) Beginning not later than the first IEP to be in effect when the child turns 14 1/2, and updated annually thereafter, the IEP shall include:
- 1) appropriate, measurable, postsecondary goals based upon age-appropriate assessments related to employment, education or training, and, as needed, independent living;
 - 2) the transition services that are needed to assist the child in reaching those goals, including courses of study and any other needed services to be provided by entities other than the school district; and
 - 3) any additional requirements set forth in Section 14-8.03 of the School Code [105 ILCS 5/14-8.03].
- d) For purposes of 34 CFR 300.320(c), the age of majority under Illinois law is 18. The IEP 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 that conform to the requirements of Section 14-8.02 of the School Code.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.240 Determination of Placement

The determination of placement shall conform to the requirements of 34 CFR 300.114 through 300.116, 300.327, and 300.501(c), and the IEP Team shall take into consideration the student's eligibility for other educational programs and services such as bilingual education, career and technical education, gifted education, and federal Title I programs. The placement determination shall be reviewed at least annually or any time the IEP is revised.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.250 Child Aged Three Through Five

In the case of an eligible child three through five years of age, an IFSP that contains the material described in 34 CFR 300.323(b) may serve as a child's IEP if using that plan is agreed to by the local school district and the child's parents. If a district proposes to use an IFSP, the local school district shall:

- a) Provide a detailed explanation of the differences between an IFSP and an IEP to the child's parents;
- b) Obtain informed, written consent from the parents for the use of the IFSP; and
- c) Ensure that the IFSP is developed in accordance with the IEP requirements found in Subpart C of this Part.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.260 Child Reaching Age Three

- a) Child with an Individualized Family Service Plan (IFSP)

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

- b) Child Without an IFSP

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

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

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

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

SUBPART D: PLACEMENT

Section 226.300 Continuum of Placement Options

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

- a) The child receives services at home or in a hospital or other setting because he or she is unable to attend school elsewhere due to a medical condition.
- b) When an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school or ongoing intermittent absences, the IEP Team for that child shall consider the need for home or hospital services. Such consideration shall be based upon a written statement from a physician licensed to practice medicine in all its branches which specifies:
 - 1) the child's condition;
 - 2) the impact on the child's ability to participate in education (the child's physical and mental level of tolerance for receiving educational services); and
 - 3) the anticipated duration or nature of the child's absence from school.
- c) If an IEP Team determines that home or hospital services are medically necessary, the team shall develop or revise the child's IEP accordingly.
- d) The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to the child's educational needs and physical and mental health needs. The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week.
- e) A child whose home or hospital instruction is being provided via telephone or other technological device shall receive not less than two hours per week of direct instructional services.
- f) Instructional time shall be scheduled only on days when school is regularly in session, unless otherwise agreed to by all parties.

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

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.310 Related Services

Each school district shall ensure that related services (defined in 34 CFR 300.34) are provided if necessary to assist an eligible child in benefiting from his or her special education.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.320 Service to Students Living in Residential Care Facilities

Children with disabilities may be placed into public or nonpublic residential facilities for reasons other than education by various public entities such as the Department of Corrections, the Department of Children and Family Services, or the juvenile courts. Except as provided in Section 14-8.01 of the School Code, the school district within whose boundaries such a facility is located is responsible for ensuring special education and related services in the least restrictive environment to those students who are eligible pursuant to this Part. "Residential facilities" refers to any of the following.

- a) "Children's Home" or "Orphanage": any licensed residential institution, other than those directly operated by the State of Illinois, which cares for disabled, neglected, delinquent, and/or dependent children.
- b) "Foster Family Home": an individual residential unit which cares for one or more disabled, neglected, delinquent, or dependent children who are not members of the primary family. Such a home accepts foster children for care under specific and written authority of a municipal, county, or State agency authorized to make such placement.
- c) "State Residential Units": residential housing units which are directly operated by the State of Illinois, on property owned by the State, and primarily funded by an agency of the State.

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

When an IEP Team determines that no less restrictive setting on the continuum of alternative placements will meet a child's needs, the child may be placed in a State-operated or nonpublic special education facility. In such a case, use of a State-operated program should be given first consideration. However, the district shall refer the child to the agency or facility which is most appropriate to the individual situation. This determination shall be based upon recent diagnostic assessments and other pertinent evidence and made in light of such other factors as proximity to the child's home. Evidence of a condition that presents a danger to the physical well-being of the student or to other students may be taken into consideration in identifying the appropriate placement for a particular child.

- a) When it appears that a child will require a placement pursuant to this Section, the IEP Team shall invite representatives of potential service providers to assist in identifying or verifying the appropriate placement for that child. If one or more needed representatives cannot attend, the district shall use other methods to ensure their participation.
- b) The local school district is responsible for ensuring implementation of the child's IEP and convening any needed IEP meetings, including the annual review. If the district allows a State-operated or nonpublic school to initiate and conduct the IEP meeting, the district must ensure that the parent and a representative of the district are invited to participate in any decision about the child's IEP and agree to any proposed changes in the program before the changes are implemented. The district remains responsible for the development and implementation of the child's IEP and for compliance with the requirements of this Part.
- c) No school district shall place any child in a nonpublic special education program, nor shall any such program accept placement of any child with a disability under Section 14-7.02 of the School Code [105 ILCS 5/14-7.02], unless all the following conditions have been met.
 - 1) The program has been approved by the State Board of Education pursuant to the criteria set forth in 23 Ill. Adm. Code 401 (Special Education Facilities Under Section 14-7.02 of the School Code) for the school year for which placement is sought.
 - 2) The allowable costs for the program have been established pursuant to Section 14-7.02 of the School Code.

- 3) The district has made the certification of inability to meet the student's needs to the State Superintendent of Education, if required pursuant to Section 14-7.02 of the School Code, and the State Superintendent has found the district in substantial compliance with Section 14-4.01 of the School Code [105 ILCS 5/14-4.01].
 - 4) The program has been approved by the State Board of Education for all of the disability categories applicable to the student and requiring services pursuant to the IEP.
 - 5) The program has been approved by the State Board of Education for the age range that includes the age of the student.
 - 6) The district has determined that all educational programming and related services specified on the child's IEP will be provided to the student. The use of a facility or program pursuant to 23 Ill. Adm. Code 401 does not relieve the local school district of the responsibility for ensuring that the student will receive all programming and related services required by the IEP, whether from one source or from multiple sources.
 - 7) The school district and the facility have entered into the contractual agreement required by subsection (d) of this Section.
 - 8) The child will receive an education that meets the standards applicable to education provided by the school district.
- d) If a nonpublic school placement is chosen, the district and the facility shall enter into an agreement utilizing a format provided by the State Board of Education. The agreement shall provide for, but need not be limited to:
- 1) The child's IEP, as developed by the local school district;
 - 2) The amount of tuition that will be charged;
 - 3) Assurance that the special education staff of the placing school district may inspect the private facility and confer with the staff at reasonable times; and
 - 4) Assurances that the placement will result in no cost to parents.

- e) When a nonpublic facility is used, the school district shall be responsible for the payment of tuition and the provision of transportation as provided by Section 14-7.02 of the School Code. (See also Section 226.750(b) of this Part.)
- f) Each local school district shall be responsible for monitoring the performance of each State-operated or nonpublic facility where it has placed one or more eligible students, to ensure that the implementation of each IEP conforms to the applicable requirements of this Part.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.340 Nonpublic Placements by Parents Where FAPE is at Issue

This Section shall apply to students with disabilities who have been, or are to be, placed in a non-public facility by their parents following the parents' refusal to accept an offer of FAPE by a school district. For such students, the reimbursement obligations and other requirements set forth at 34 CFR 300.148 shall be applicable. If a determination is made by a hearing officer or court of law that the school district is not obligated to provide special education or reimbursement to such a student, the school district shall treat the student as a student defined by Section 226.350 of this Part.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.350 Service to Parentally-Placed Private School Students

“Parentally-Placed Private School Students” shall be defined as set forth in 34 CFR 300.130. As noted in Section 226.100 of this Part, school districts shall conduct child find for parentally-placed private school students in conformance with the requirements of 34 CFR 300.131. Each school district shall also conform to the requirements of 34 CFR 300.132 through 300.144. In fulfilling the requirements of 34 CFR 300.134 (Consultation) and 300.135 (Affirmation), school districts that are members of the same special education joint agreement are permitted to conduct jointly their consultation with private school and parent representatives. However, even when multiple districts’ funds are pooled by a joint agreement, the amounts that are required to be used for services to parentally-placed private school students must be spent in accordance with each member district’s “proportionate share” obligation. School districts that are members of the same special education joint agreement shall be prohibited from aggregating proportionate share funds when determining services for parentally-placed private school students.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

SUBPART E: DISCIPLINE

Section 226.400 Disciplinary Actions

With respect to disciplinary action concerning children with disabilities, school districts shall conform to the requirements of 34 CFR 300.530 through 300.536, as well as Section 10-22.6 of the School Code [105 ILCS 5/10-22.6]. In addition, upon the occurrence of any act that may subject the student either to expulsion from school or suspension resulting in more than ten cumulative days of suspension during any one school year, the district shall be required to convene a meeting of the IEP Team to review the student's behavioral intervention plan or, if a behavioral intervention plan has not yet been developed, to develop one.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.410 Manifestation Determination Review (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.420 Appeals (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.430 Protection for Children Not Yet Eligible for Special Education (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

**Section 226.440 Referral to and Action by Law Enforcement and Judicial Authorities
(Repealed)**

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

SUBPART F: PROCEDURAL SAFEGUARDS

Section 226.500 Language of Notifications

The notices to individual parents required in this Subpart F shall conform to the requirements of 34 CFR 300.503(c).

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.510 Notification of Parents' Rights

A copy of the notice of procedural safeguards available to the parents of a child with a disability shall be given to the parents in accordance with, and shall conform to the requirements of, 34 CFR 300.504.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.520 Notification of District's Proposal

The written notice a school district is required to provide to a parent prior to a proposal or refusal to initiate or change the identification, evaluation, or educational placement of, or the provision of FAPE to, a child shall conform to the requirements of 34 CFR 300.503. "Reasonable time", for purposes of 34 CFR 300.503(a), is defined as ten days. A parent may waive the ten-day notice period before placement, allowing the district to place the child in the recommended program as soon as practicable.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.530 Parents' Participation

With respect to parents' participation in meetings, school districts shall conform to the requirements of 34 CFR 300.322 and 300.501. For purposes of 34 CFR 300.322(a)(1), "notifying parents of the meeting early enough to ensure that they will have an opportunity to attend" shall mean notification no later than ten days prior to the proposed date of the meeting. In addition, the district shall take whatever action is necessary to facilitate the parent's understanding of and participation in the proceedings at a meeting, including arranging for and covering the expense of an interpreter for parents who are deaf or whose native language is other than English.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.540 Consent

Consent, as defined in 34 CFR 300.9, shall be obtained and may be revoked in accordance with the requirements of 34 CFR 300.154(e), 300.300, 300.323, and 300.622. In addition, the following requirements shall apply:

- a) A parent may revoke consent for any action by the district or cooperative entity serving his or her child that requires parental consent. If a parent desires to revoke consent, he or she may do so either in writing or orally. If the revocation of consent is communicated orally, the district or cooperative entity shall commit the parent's request to writing and provide a copy of this written summary to the parent within five days.
- b) Any revocation of consent is effective immediately, subject to the provisions of subsection (c) of this Section, but is not retroactive, i.e., it does not negate an action that occurred after the consent was given and before it was revoked. For purposes of this subsection (b), a district shall be considered to have given immediate effect to a parent's revocation of consent when it either discontinues the action that is the subject of the revocation prior to its next scheduled occurrence or provides to the parent a written explanation of the timeline for the district's action and the reasons for that timeline. The district or cooperative entity shall ensure that each staff member whose activities are affected by the revocation of consent is promptly informed of the revocation.
- c) If a district disagrees with a parent's revocation of consent, the district may request a due process hearing pursuant to Subpart G of this Part.
 - 1) If the parent's revocation of consent pertains to an evaluation or re-evaluation of the student, the district shall not proceed with the evaluation or re-evaluation during the pendency of due process.
 - 2) If the parent's revocation of consent pertains to a special education placement for the student that is already in effect, the district's request for a due process hearing shall have the effect of staying that placement, provided that the district submits the request in writing to the State Board of Education in keeping with the provisions of Section 226.615 of this Part and within five business days after the parent's revocation occurred.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.550 Surrogate Parents

The qualifications, responsibilities, and appointment procedures for surrogate parents shall conform to the requirements of 34 CFR 300.519 and Section 14-8.02a of the School Code [105 ILCS 5/14-8.02a]. In addition, the following requirements shall apply:

- a) When a child who is a ward of the State is placed in a residential facility, a representative of that facility shall submit to the State Board of Education a request for the appointment of a surrogate parent if the district has not already done so.
- b) The State Board of Education shall appoint a surrogate parent for each child who requires one, in keeping with the criteria set forth in 34 CFR 300.519(d) and the following requirements.
 - 1) All reasonable efforts shall be made to secure a surrogate parent whose racial, linguistic, and cultural background is similar to the child's.
 - 2) The surrogate parent shall have been trained by the State Board.
- c) When a surrogate parent is appointed, the State Board of Education shall provide written notification to the local school district, the individual appointed, and, if applicable, the residential facility of the name and address of the surrogate parent, the specific responsibilities to be fulfilled, and the length of time for which the appointment is valid.
- d) When a child living in a residential facility no longer requires a surrogate parent, a representative of the facility shall notify the State Board of Education in writing to that effect. This notification shall include the reason for withdrawal of the request.
- e) When a surrogate parent's appointment is terminated, the State Board of Education shall so notify the surrogate parent, the local school district, and, if applicable, the residential facility.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.560 Mediation

The procedures for mediation shall conform to the requirements of 34 CFR 300.506.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.570 State Complaint Procedures

This Section sets forth the State Board of Education's written complaint procedures, as required by 34 CFR 300.151, 300.152, and 300.153.

- a) A parent, individual, organization, or advocate may file a signed, written complaint with the State Board of Education alleging that a local school district, cooperative service unit or the State has violated the rights of one or more children with disabilities. Such a complaint shall include:
 - 1) A statement that a responsible public entity has violated a requirement of Part B of the IDEA, 34 CFR, Article 14 of the School Code, or this Part;
 - 2) The facts on which the statement is based;
 - 3) The signature and contact information for the complainant;
 - 4) The names and addresses of the students involved (and the names of the schools of attendance), if known;
 - 5) A description of the nature of the problem of the child, including the facts relating to the problem; and
 - 6) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- b) A complaint shall only be considered if it alleges that the violation occurred not more than one year prior to the date on which the complaint is received.
- c) Within 60 days after a valid complaint is filed, the State Board of Education shall:
 - 1) Carry out an independent on-site investigation, if deemed necessary by the State Board of Education.
 - 2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
 - 3) Provide the public entity with the opportunity to:
 - A) offer a proposal to resolve the complaint; and

- B) offer to engage the parent in mediation or alternative means of dispute resolution.
- 4) Review all relevant information and make an independent determination as to whether the public entity is violating a requirement of Part B of the IDEA, 34 CFR, Article 14 of the School Code, or this Part.
 - 5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
 - A) findings of fact and conclusions;
 - B) the reasons for the State Board of Education's final decision;
 - C) orders for any actions, including without limitation technical assistance activities and negotiation, that are necessary to bring the public entity into compliance with applicable requirements.
 - d) An extension of the time limit set forth in subsection (c) of this Section shall be allowed if exceptional circumstances exist with respect to a particular complaint or if the parent and the public entity agree to extend the time to conduct the activities pursuant to subsection (c)(3)(B) of this Section.
 - e) If a written complaint is received by the State Board of Education involving one or more issues that are also the subject of a due process hearing, the State Board shall hold those portions of the complaint in abeyance pending the completion of the hearing. However, any issues that are not the subject of the hearing shall be resolved as provided in this Section.
 - f) If a complaint is filed about an issue that has previously been decided in a due process hearing involving the same parties, the decision arising from that hearing shall be considered binding, and the State Board shall inform the complainant to that effect. A complaint alleging a public entity's failure to implement a decision arising from due process, however, shall be resolved by the State Board pursuant to Section 226.675 of this Part.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

SUBPART G: DUE PROCESS

Section 226.600 Calculation of Timelines

In calculating the timelines specified in this Subpart G, Section 1.11 of the Statute on Statutes [5 ILCS 70/1.11] shall apply.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.605 Request for Hearing; Basis (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.610 Information to Parents Concerning Right to Hearing

Each school district shall notify parents in writing of the procedures for requesting a due process hearing in accordance with 34 CFR 300.507 and 300.508. This written notice shall be provided to the parent by the district upon receipt of a request for a due process hearing. Written notice provided to parents as required under Section 226.510 of this Part shall be deemed sufficient notice for purposes of this Section.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.615 Procedure for Request

The filing, basis for, and content of due process requests, whether by a parent, a student, or a local school district, shall conform to the requirements of 34 CFR 300.507 and 300.508. (See Section 226.655 of this Part for requirements pertaining to expedited due process hearings.) In addition, in order to fulfill the requirement to “forward a copy of the due process complaint to the SEA”, as specified in 34 CFR 300.508(a)(2), the school district superintendent shall, within five days after receipt of the request, forward the request to the State Board of Education in Springfield by certified mail or another means that provides written evidence of the delivery.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.620 Denial of Hearing Request (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.625 Rights of the Parties Related to Hearings

The hearing rights of parties shall conform to the requirements of 34 CFR 300.512 and Section 14-8.02a of the School Code [105 ILCS 5/14-8.02a]. In addition, the following requirements shall apply.

- a) The parents shall have access to the district's list of independent evaluators and may obtain an independent evaluation of their child at their own expense.
 - 1) If the parents believe that acquisition of a completed independent evaluation will require a delay in convening the hearing, the parents shall request such a delay as provided in Section 226.640(c) of this Part.
 - 2) The parents may ask the hearing officer to determine whether an independent evaluation is needed. If the hearing officer concludes, after reviewing the available information, that an independent evaluation is necessary to inform the hearing officer concerning the services to which the student may be entitled, it shall be so ordered and provided at the school district's expense. The hearing officer shall delay the hearing as provided for in Section 226.640(b) of this Part.
 - 3) This subsection (a) shall not apply to expedited hearings conducted pursuant to Section 226.655 of this Part.
- b) Either party, or any other person participating in the hearing, may request that an interpreter be available during the hearing because one of the participants is hearing impaired and/or uses a primary language other than English. Interpreters shall be provided at the school district's expense.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

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

- a) Impartial due process hearing officers must possess qualifications in conformance with the requirements of 34 CFR 300.511 and Section 14-8.02c(b) of the School Code [105 ILCS 5/14-8.02c(b)]. “Relevant experience”, as used in Section 14-8.02c(b) of the School Code, means at least three years’ experience, whether paid or voluntary, in special education, disability-related issues, or advocacy.
- b) An individual wishing to be considered as an impartial due process hearing officer shall submit an application to the State Board. In completing the application form, which shall be provided by the State Board, the individual shall disclose at least the following information:
 - 1) name and address;
 - 2) degrees held;
 - 3) current employment status, including, if applicable, the employer's name and the title of the employee's position;
 - 4) school district of residence; and
 - 5) professional background and relevant experience.
- c) Conditions of Service

Hearing officers’ terms of service and subsequent reappointment shall be as provided in Section 14-8.02c(d) and (e) of the School Code.

- 1) A hearing officer shall accept each case to which he or she is assigned, unless:
 - A) the hearing officer is ill;
 - B) the hearing officer has a personal, professional, or financial interest that would conflict with his or her objectivity with respect to a particular case; or
 - C) the hearing officer is ineligible to accept a particular case pursuant to Section 226.635(a) of this Part.

- 2) A hearing officer whose other commitments will interfere with his or her ability to accept cases for more than 15 days shall so notify the State Board of Education in writing.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.635 Appointment, Recusal, and Substitution of Impartial Due Process Hearing Officers

The appointment, recusal, and substitution of due process hearing officers shall conform with the requirements of Section 14-8.02a(f-5) of the School Code [105 ILCS 5/14-8.02a(f-5)]. A request for substitution of the hearing officer, as permitted by that Section, shall be submitted via letter or facsimile to the Due Process Coordinator at the State Board of Education and shall be postmarked or transmitted no later than five days after the party requesting the substitution receives notification from the State Board of the original hearing officer's appointment.

(Source: Amended at 32 Ill. Reg. 4828, effective March 21, 2008)

Section 226.640 Scheduling the Hearing and Pre-Hearing Conference

The provisions of this Section shall not apply to expedited hearings conducted pursuant to Section 226.655 of this Part.

- a) The hearing officer shall schedule a pre-hearing conference in accordance with the requirements of Section 14-8.02a(g-40) of the School Code [105 ILCS 5/14-8.02a(g-40)].
- b) Either party may request a delay in convening the hearing and/or the pre-hearing conference. The party requesting a delay shall do so in writing to the hearing officer, with a copy sent at the same time to the other party. The requesting party shall set forth the reasons for the request. The hearing officer shall either grant or deny the request and shall so inform the parties and the State Board of Education in writing. The hearing officer shall determine a new time and date for convening the hearing and/or pre-hearing conference.
 - 1) If the parties jointly propose a delay in convening the hearing or pre-hearing conference, it shall be delayed as agreed. The hearing officer, being advised of such agreement, shall confirm the delay in writing to the parties and the State Board of Education. Such notice shall become part of the administrative record.
 - 2) If the parties cannot agree to a mutually convenient time and place for convening the hearing and/or pre-hearing conference, the hearing officer shall fix the time and place, notify the parties in writing, and proceed to convene and conduct the pre-hearing conference and hearing, provided that the delay shall not continue for a period longer than necessitated by the circumstances that precipitated the delay.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.645 Conducting the Pre-Hearing Conference

- a) The hearing officer shall convene the pre-hearing conference in accordance with Section 14-8.02a(g-40) of the School Code.
- b) The provisions of this Section shall not apply to expedited hearings conducted pursuant to Section 226.655 of this Part.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.650 Child's Status During Due Process Hearing (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.655 Expedited Due Process Hearing

Requests for expedited due process hearings shall be made in accordance with 34 CFR 300.532 and 300.533 and Section 14-8.02b of the School Code [105 ILCS 5/14-8.02b].

- a) The hearing officer shall determine:
 - 1) whether the child shall be placed in the proposed alternative educational setting; or
 - 2) whether the local school district has demonstrated that the child's behavior was not a manifestation of the child's disability.
- b) The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:
 - 1) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
 - 2) Whether the child's current placement is appropriate;
 - 3) Whether the district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 - 4) Whether the interim alternative educational setting will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring.
- c) If all the conditions set forth in subsection (b) of this Section are met, the hearing officer shall order a change in the child's placement to an appropriate interim alternative educational setting for not more than 45 school days. If the district demonstrates that the student is substantially likely to injure himself or herself or others if returned to the placement that was used prior to the student's removal, the hearing officer may order that the student remain in the interim setting for subsequent periods of up to 45 school days each.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.660 Powers and Duties of Hearing Officer

The hearing officer shall conduct the hearing and, with respect to the hearing, shall have, but is not limited to, the following powers:

- a) To administer, or to authorize the court reporter to administer, oaths;
- b) To examine witnesses;
- c) To authorize the issuance of subpoenas;
- d) To rule upon the admissibility of evidence;
- e) To order independent evaluations;
- f) To grant specific extensions of time;
- g) To read into the hearing record any stipulations of fact and other matters agreed upon at the pre-hearing conference and to enter into the record any pre-hearing orders;
- h) To render decisions and issue orders and clarifications.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.665 Record of Proceedings

A record of the hearing shall be made and the cost of such record borne in accordance with 34 CFR 300.512(a)(4) and Section 14-8.02a(g-55) of the School Code [105 ILCS 5/14-8.02a(g-55)].

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.670 Decision of Hearing Officer; Clarification

The bases and timelines for decisions of hearing officers shall conform to the requirements of 34 CFR 300.513 and Section 14-8.02a(h) of the School Code [105 ILCS 5/14-8.02a(h)]. In addition, the hearing officer's decision shall be sent by certified mail to the parties enumerated in Section 14-8.02a(h) of the School Code. The decision shall be translated into the native language of the parents if their primary language is other than English.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.675 Monitoring and Enforcement of Decisions; Notice of Ineligibility for Funding

Upon receipt of the hearing officer's decision, the State Board of Education shall review the decision and monitor compliance by the parties with the terms of the decision. If the district fails to comply with the decision in the time specified by the hearing officer, the State Board of Education shall notify the parties in writing by certified mail that it finds the district to be in noncompliance with the decision, and that the noncompliance may result in loss of recognition status of the district's programs by the State, withholding of State or federal funds which the district would otherwise be eligible to receive, or in other enforcement action unless the district remedies the noncompliance within the time period specified in the notice of noncompliance.

Section 226.680 Reporting of Decisions (Repealed)

(Source: Repealed at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.690 Transfer of Parental Rights

This Section implements 34 CFR 300.520 and Section 14-6.10 of the School Code [105 ILCS 5/14-6.10].

- a) When a student with a disability reaches the age of majority (18 years of age; see 755 ILCS 5/11-1) or becomes an emancipated minor pursuant to the Emancipation of Minors Act [750 ILCS 30] (except for a student with a disability who has been adjudged as a disabled person pursuant to 755 ILCS 5/11a-2 or who has executed a Delegation of Rights that is in effect as provided in Section 14-6.10 of the School Code):
 - 1) The school district shall provide any notice required by this Part to both the individual and the parents, and all other rights accorded to parents under Part B of the Individuals with Disabilities Education Act, the implementing regulations at 34 CFR 300, and this Part shall transfer to the student; and
 - 2) All rights accorded to parents under Part B of the Individuals with Disabilities Education Act, the implementing regulations at 34 CFR 300, and this Part shall transfer to a child who is incarcerated in an adult or juvenile, State, or local correctional institution.
- b) Whenever rights are transferred to a student pursuant to this Section, the district shall notify the student and the parents of the transfer of rights.
- c) All notices that are required under this Part and 34 CFR 300 shall be provided to the student and the parent after the student reaches the age of majority.

(Source: Amended at 32 Ill. Reg. 4828, effective March 21, 2008)

SUBPART H: ADMINISTRATIVE REQUIREMENTS

Section 226.700 General

- a) Each school district, independently or in cooperation with other districts, shall provide a comprehensive program of special education for children with disabilities who are from three through 21 years of age and who are resident in the district. A “comprehensive program” is one that includes:
 - 1) A viable organizational and financial structure;
 - 2) Systematic procedures for identifying and evaluating the need for special education and related services;
 - 3) A continuum of appropriate alternative placements available to meet the needs of children for special education and related services (see Section 226.300 of this Part);
 - 4) Qualified personnel who are employed in sufficient number to provide:
 - A) Administration of the program;
 - B) Supervisory services;
 - C) Instructional and resource services;
 - D) Related services; and
 - E) Transportation services;
 - 5) Appropriate and adequate facilities, equipment and materials;
 - 6) Functional relationships with public and private agencies that can supplement or enhance the special education services of the public schools;
 - 7) Interaction with parents and other concerned persons that facilitates the educational development of children with disabilities;
 - 8) Procedures for internal evaluation of the special education services provided; and

- 9) Continuous planning for program growth and improvement based on internal and external evaluation.
- b) The school district is the primary agent for the delivery of special education services. Districts may carry out their obligations with regard to special education by forming cooperatives or joint agreements. These entities are:
- 1) Authorized by State law to develop, manage, and provide services or programs on behalf of school districts;
 - 2) Recognized as agencies for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;
 - 3) Considered as service agents of the participating districts; and
 - 4) Directed by, and responsible to, all the participating local districts.
- c) Special education and related services that would not comply with specific requirements of this Part shall require written approval from the State Board of Education prior to their implementation. A district's request for approval shall be submitted in writing to the State Board and shall include a description of the district's proposal. In determining whether to approve such a request, the State Board's staff shall consider whether the proposed program or service will compromise students' educational opportunity or prevent the full implementation of any student's IEP, in light of such factors as the students' disabilities and the proposed class size, staff qualifications, physical plant and evaluation plan. Denial of such a request may be appealed to the State Superintendent of Education.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.710 Policies and Procedures

- a) Each local school district, or the cooperative entity of which it is a member, shall develop written policies and procedures conforming to the requirements of subsection (b) of this Section and shall submit these to the State Board of Education for approval, using a format supplied by the State Board. The State Board shall approve those that conform to the requirements of this Section and are consistent with applicable federal and State statutes and regulations. The State Board shall notify districts of any deficiencies that must be remedied before approval will be granted.
- b) Each set of policies and procedures shall address the district's compliance with at least the requirements for:
 - 1) the provision of a free appropriate public education;
 - 2) child find;
 - 3) evaluation and determination of eligibility;
 - 4) Individualized Education Programs;
 - 5) students' participation in assessments;
 - 6) serving students in the least restrictive environment;
 - 7) the provision of extended school year services;
 - 8) transition of children served under Part C of the Individuals with Disabilities Education Act into preschool programs;
 - 9) serving students who attend nonpublic schools;
 - 10) procedural safeguards;
 - 11) establishing the goal of full educational opportunity;
 - 12) confidentiality of personally identifiable information; and
 - 13) the use of federal matching funds under the Medicaid (Title XIX) or Children's Health Insurance (KidCare; Title XXI) program to

supplement special education programs and services (if the district is participating in one or more of those federal programs).

- c) Any revision of a set of policies and procedures shall be submitted to the State Board for approval prior to its implementation.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.720 Facilities and Classes

- a) Facilities used for special education services shall be appropriate to, and adequate for, the specific programs or services for which they are used and, pursuant to Section 14-8.01 of the School Code, shall be subject to the applicable provisions of 23 Ill. Adm. Code 180 (Health/Life Safety Code for Public Schools). The facilities shall be comparable to those provided to the students in the general education environment.
- b) The age range of students within a special education grouping shall not exceed four years at the elementary level and six years at the secondary level. Early childhood classes and services shall serve only children from three through five years of age, except that a district shall not be prohibited from permitting a child who reaches his or her sixth birthday during a year to complete that year.
- c) Special education classes and services shall be delivered in age-appropriate settings.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.730 Class Size for 2009-10 and Beyond

- a) When a student's IEP calls for services in a general education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs, that utilizes the general curriculum, that is taught by an instructor certified for general education, and that is not designated as a general remedial classroom.
- b) Class size means the total number of students an educator serves during any special education class. As used in this subsection (b), "class" means any circumstance where only students with IEPs are served and at least one special education teacher is assigned and provides instruction and/or therapy exclusively to students with IEPs. In the formation of special education classes, consideration shall be given to the age of the students, the nature and severity of their disabilities, the educational needs of the students, and the degree of intervention necessary, subject to the limitations of this subsection (b).
 - 1) Except as provided in subsection (b)(5) of this Section, classes in which all the students receive special education services for 20 percent of the school day or less shall have at least one qualified teacher for each 15 students in attendance during any given class. However, the district may increase the class size by a maximum of two students when a paraprofessional is provided for the entire class.
 - 2) Except as provided in subsection (b)(5) of this Section, each class in which any student receives special education services for more than 20 percent of the school day but no more than 60 percent of the school day shall have at least one qualified teacher for each ten students in attendance during that class. However, the district may increase the class size by a maximum of five students when a paraprofessional is provided for the entire class.
 - 3) Except as provided in subsection (b)(5) of this Section, each class in which any student receives special education services for more than 60 percent of the school day shall have at least one qualified teacher for each eight students in attendance during that class. However, the district may increase the class size by a maximum of five students when a paraprofessional is provided for the entire class.
 - 4) Each class for children ages three through five shall have at least one qualified teacher for each five students in attendance during that

class. However, the district may increase the class size by a maximum of five students when a paraprofessional is provided for the entire class.

- 5) For any school year in which the amount of State reimbursement for teachers identified in Section 14-13.01 of the School Code [105 ILCS 5/14-13.01] exceeds the amount in effect on January 1, 2007, by at least 100 percent and no corresponding reduction has been made in other State sources of support for special education:
 - A) The maximum class size stated in subsection (b)(1) of this Section shall be 13 rather than 15;
 - B) The maximum class size stated in subsection (b)(2) of this Section shall be eight rather than 10; and
 - C) The maximum class size stated in subsection (b)(3) of this Section shall be six rather than eight.
 - 6) The provisions of subsections (b)(1) through (5) of this Section notwithstanding, class size shall be limited according to the needs of the students for individualized instruction and services.
- c) The maximum class sizes set forth in subsection (b) of this Section shall, if necessary, be further restricted at the local level to account for the activities and services in which the affected educators participate in order to provide students with IEPs the free, appropriate public education in the least restrictive environment to which they are entitled.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.731 Class Size Provisions for 2007-08 and 2008-09

- a) When a student's IEP calls for services in a general education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs, that utilizes the general curriculum, that is taught by an instructor certified for regular (general) education, and that is not designated as a general remedial classroom.
- b) A student shall be considered to require "instructional" classes when he or she receives special education instruction for 50 percent of the school day or more. Classes for such students shall be subject to the limitations of this subsection (b).
 - 1) Early childhood instructional classes shall have a maximum ratio of one qualified teacher to five students in attendance at any given time; total enrollment shall be limited according to the needs of the students for individualized programming.
 - 2) Instructional classes for students who have either a severe/profound disability or multiple disabilities shall have a maximum enrollment of five students.
 - 3) Instructional classes for children whose primary disability is a severe visual, auditory, physical, speech or language impairment, autism, traumatic brain injury, or an emotional disability or behavioral disorder shall have a maximum enrollment of eight students.
 - 4) Instructional classes for children whose primary disability is a specific learning disability or that serve children who have different disabilities shall have a maximum enrollment of ten students. Instructional programs that group students who have different disabilities shall be formulated only under the following circumstances:
 - A) The students are grouped in relation to a common educational need; or
 - B) The program can be completely individualized and the teacher is qualified to plan and provide an appropriate educational program for each student in the group.
 - 5) Instructional classes designed for children whose primary disability is

moderate visual or auditory impairment shall have a maximum enrollment of 12 students.

- 6) Instructional classes for children whose primary disability is mild/moderate cognitive disability shall have a maximum enrollment of 12 students at the primary level and 15 students at the intermediate, middle, junior high, and secondary levels.
 - 7) A school district may increase the enrollment in an instructional class by a maximum of two students in response to unique circumstances that occur during the school year. Such additions may be made only when the educational needs of all students who would be enrolled in the expanded program can be adequately and appropriately met. Alternatively, the district may increase the enrollment in an instructional class by a maximum of five students when a full-time, noncertified assistant is provided.
- c) A student shall be considered to require “resource” classes when he or she receives special education instruction for less than 50 percent of the school day. Classes for such students shall be subject to the limitations of this subsection (c).
- 1) Enrollment shall be limited to the number of students who can effectively and appropriately receive assistance, up to a maximum of 20 students.
 - 2) The teacher shall participate in determining the appropriate enrollment.
- d) The caseload/class size for any service provider includes each student who receives direct or indirect service, such as consultation services, as delineated in an IEP.

(Source: Added at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.735 Work Load for Special Educators

In order to provide students with IEPs the free, appropriate education to which they are entitled, each entity subject to this Part shall adopt a plan specifying limits on the work load of its special educators so that all services required under students' IEPs, as well as all needed ancillary and support services, can be provided at the requisite level of intensity.

- a) Each plan shall be developed in cooperation with the entity's affected employees and, where there is an exclusive representative, in accordance with the Illinois Educational Labor Relations Act (IELRA) [115 ILCS 5]. Each plan shall take effect for the 2009-10 school year, or as soon as possible after that date, if a later date is necessary to comply with an agreement under the IELRA in effect at the beginning of that school year.
- b) Each plan shall be based on an analysis of the activities for which the entity's special educators are responsible and shall encompass, but need not be limited to:
 - 1) individualized instruction;
 - 2) consultative services and other collaboration among staff members;
 - 3) attendance at IEP meetings and other staff conferences; and
 - 4) paperwork and reporting.
- c) The number of children served by a speech-language pathologist shall be based on the speech-language needs of each child. The other provisions of this Section notwithstanding, at no time shall the caseload of a speech-language pathologist exceed 60 students.

(Source: Added at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.740 Records; Confidentiality

Students' records shall be maintained in accordance with 34 CFR 300.610 through 300.627, the School Student Records Act [105 ILCS 10] and the rules of the State Board of Education (23 Ill. Adm. Code 375). In addition, the following requirements shall apply:

- a) The portion of each district's policies and procedures that is required pursuant to Section 226.710(b)(3) of this Part shall require that all information maintained concerning a student receiving special education be directly related to the provision of services to that child and shall address:
 - 1) the method by which information concerning a student will be collected;
 - 2) the confidential nature of the information;
 - 3) the use to which the information will be put;
 - 4) how the information will be recorded and maintained;
 - 5) the period for which the information will be maintained;
 - 6) the persons to whom the information will be available; and
 - 7) under what circumstances the information will be made available.
- b) The portion of each district's policies and procedures referred to in subsection (a) of this Section shall be consistent with:
 - 1) The Illinois School Student Records Act;
 - 2) 23 Ill. Adm. Code 375 (Student Records);
 - 3) 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision);
 - 4) The Family Educational Rights and Privacy Act; and
 - 5) The Illinois Domestic Violence Act of 1986 [750 ILCS 60].

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.750 Additional Services

Additional services and activities shall be provided to students whose IEPs require them in accordance with 34 CFR 300.105 (Assistive Technology), 300.106 (Extended School Year Services) and 300.108 (Physical Education). In addition, the following shall apply:

- a) Behavioral Intervention
 - 1) School districts shall establish local policies and procedures on the use of positive behavioral interventions to manage, intervene in, or change the behavior of students with disabilities.
 - 2) Each district's policies and procedures shall require that IEP teams consider strategies including positive behavioral interventions and supports to address behaviors that impede a child's functioning or that of other children in the academic setting or in noninstructional contexts such as regular transportation and extracurricular activities. The district's policies and procedures shall include criteria for determining when a particular student's possible need for a behavioral intervention plan should be reviewed.
 - 3) Behavioral interventions shall be used in consideration of the child's physical freedom, social interaction, and right to placement in the least restrictive environment and shall be administered in a manner that respects human dignity and personal privacy.
- b) Transportation

Each child who is eligible for special education and related services pursuant to this Part shall be eligible for special transportation. Such transportation shall be provided as the child's disability or the program location may require.

- 1) Arrival and departure times shall ensure a full instructional day which is comparable to that of the regular education students. Any deviation from this standard must be based upon the individual needs of the child and reflected in the child's IEP.
- 2) Every effort should be made to limit the child's total travel time to not more than one hour each way to and from the special education facility.

- 3) The special transportation shall be scheduled in such a way that the child's health and ability to relate to the educational experience are not adversely affected.
- 4) Vehicles utilized for special transportation shall be adapted to the specific needs of the children receiving this service.
- 5) Personnel responsible for special transportation shall be given training experiences which will enable them to understand and appropriately relate to children with disabilities.
- 6) When a district has placed students in a State-operated or nonpublic day program, the district shall provide transportation for the children in that program.
- 7) When a child is placed in a residential facility, the school district shall provide transportation services for the child's initial trip to the facility and return home at the close of the school term. The district shall likewise provide transportation for the child at the beginning and end of each school term thereafter.
 - A) If the district assumes responsibility for transportation arrangements, it shall provide reasonable notice to parents of departure dates and times. It shall in all instances notify the parents within 48 hours after completing those arrangements.
 - B) The modes of travel and degree of support and supervision to be provided shall be included in the student's IEP.
 - C) The district shall provide transportation services for one round trip home, at a midterm break or at another time as mutually agreed by the district and the parents, and at any additional time when the facility is to be temporarily closed.
 - D) The school district shall provide round-trip transportation at any time the district seeks additional diagnostic assessments of the student or if the parent wishes the child to be present during a due process hearing.
 - E) The school district shall provide round-trip transportation in emergencies such as serious illness of the child or death or

imminent death of an individual in the child's immediate family. "Immediate family" includes a parent, a grandparent, a sibling, or any person who resides in the child's immediate household. If the district questions the severity of an illness of the child or an immediate family member, it may require the opinion of a licensed physician to corroborate the severity of the illness.

- F) The school district may also provide transportation services to encourage family contacts and/or to reintegrate the child into the home and community. The district shall have the authority to determine, upon consultation with the parents, when transportation is appropriate for this purpose and shall incorporate this decision, with the specific reasons for it, into the student's IEP.

c) Vocational Education

Students eligible pursuant to this Part shall receive vocational education in accordance with their individual IEPs.

- 1) Community work experiences that are part of a student's IEP shall occur during the school day, unless this is precluded by the nature of the experiences.
- 2) All community work experiences which are provided by the school as part of the IEP and for which the student receives educational credit shall be supervised by school personnel.

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.760 Evaluation of Special Education

- a) The extent to which a school district is fulfilling its responsibilities to children with disabilities shall be determined by the State Board of Education. Official representatives of the State Board shall be authorized to examine all documentation, including student records, that would facilitate the determination.
- b) Evaluation by the State Board of Education shall focus on the district's provision of special education services, on each special education cooperative organization of which it is a participant, and on community resources utilized by the district.
- c) Evaluation of special education services shall be based on all of the following elements.
 - 1) The performance of the program, as evidenced by data that state education agencies must collect, including without limitation the information collected pursuant to 34 CFR 300.170, 300.600, 300.601, 300.602, and 300.646;
 - 2) The adequacy of the policies and procedures developed pursuant to Section 226.710 of this Part;
 - 3) The extent to which children with disabilities are being adequately served and the effectiveness of each special education service; and
 - 4) Records maintained to demonstrate compliance with the assurances furnished in applications for State and federal funds.
- d) The State Board of Education shall provide written reports of its evaluations and any subsequent recommendations or actions to the appropriate boards of education.
- e) Compliance with the requirements of this Part shall be a factor in determining a district's recognition status pursuant to 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision).
- f) A district whose status is changed to "nonrecognized" due to an unfavorable evaluation of its compliance with the requirements of this Part shall have the opportunity to request a hearing pursuant to the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10] and the State Board's rules for Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475).

(Source: Amended at 31 Ill. Reg. 9915, effective June 28, 2007)

Section 226.770 Fiscal Provisions

- a) Requirements Related to the Provision of FAPE
 - 1) A school district is responsible for developing students' IEPs and remains responsible for ensuring that children receive all the services described in their IEPs in a timely fashion, regardless of whether another agency will ultimately pay for the services.
 - 2) A school district may look to non-educational entities such as insurance companies and the Medicaid program to pay for services for which such entities are otherwise responsible. The district must have written consent from parents in order to use their private insurance.
 - 3) Services required by an IEP must be provided at no cost to the child's parents, whether they have public or private insurance. Parents shall be notified that the use of their private insurance proceeds to pay for services is voluntary. In the case of a child who is dually insured (through private insurance and Medicaid), a family shall not be required to draw upon private insurance whose use is a prerequisite to billing Medicaid if that use of insurance will result in financial costs to the family.
 - 4) "Financial costs to the family" include:
 - A) Out-of-pocket expenses incurred in filing a claim, such as the payment of a deductible or required co-payment, but not including incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim;
 - B) A decrease in available lifetime coverage or any other benefit under an insurance policy;
 - C) Payment by the family for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
 - D) An increase in premiums or the discontinuation of a policy; and
 - E) A risk in terms of loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.
- b) The federal regulations implementing the Individuals with Disabilities Education Act (see 34 CFR 300) establish detailed requirements for the use of federal funds

in connection with service to students who are eligible under this Part. School districts and cooperative entities are required to comply with those federal requirements.

- c) School districts and cooperative entities shall use federal matching funds received under Medicaid or the KidCare program only to supplement special education programs and services.

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

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

- 1) The district's cost for administration and supervision shall be computed based on the relationship that the average daily membership of children in special education classes bears to the district's total average daily membership.
- 2) The cost of buildings and facilities shall not exceed 10% of the expenditures for classes.
- 3) All payments authorized by law, including State or federal grants for the education of children, shall be deducted when program reimbursement or per capita tuition is calculated.
- 4) The total reimbursement for a child who is living in a residential care facility and who has been placed in a nonpublic special education program by the responsible district shall not exceed the amount authorized under Section 14-7.02 of the School Code.

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

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

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

- B) would not be a resident of that school district except by virtue of his or her placement in one of the residential care facilities described in Section 226.320(a) of this Part; and
 - C) has been declared eligible for special education and related services pursuant to this Part.
- 2) A student who has been declared eligible for special education and related services pursuant to this Part and is living in a State residential unit or county-operated detention center is eligible for reimbursement under Section 14-7.03 of the School Code.

(Source: Amended at 27 Ill. Reg. 8126, effective April 28, 2003)

SUBPART I: PERSONNEL

Section 226.800 Personnel Required to be Qualified

- a) General
 - 1) Each school district, or the cooperative entity of which it is a member, shall employ sufficient professional and noncertified personnel to deliver and supervise the full continuum of special education and related services needed by the eligible students who reside in the district. The number and types of personnel employed shall be based on students' need rather than administrative convenience.
 - 2) Each district or cooperative entity shall periodically submit to the State Board of Education, on forms supplied by the State Board, the roster of the individuals who will be or are providing special education or related services. The State Board may request any additional documentation needed in order to verify that each individual holds the qualifications that are required for his or her assignments.
 - 3) Reimbursement for personnel expenditures shall be made by the State Board only with respect to individuals who are qualified pursuant to this Section or pursuant to Section 226.810 or 226.820 of this Part.
 - 4) Each district or cooperative entity shall develop and implement a comprehensive personnel development program for all personnel involved with the education of children with disabilities.

b) Professional Instructional Personnel

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

- 1) a valid special certificate and the qualifications required for the teaching area pursuant to 23 Ill. Adm. Code 25.40 and 25.43; or
 - 2) another valid teaching certificate and approval issued by the State Board of Education specific to the area of responsibility (see Section 226.810 of this Part).
- c) An individual assigned as a vocational coordinator shall be required to hold approval for this position, which shall be granted provided that the individual submits an application demonstrating that he or she:

- 1) has two years' teaching experience;
 - 2) holds either a special preschool-age 21 certificate or a high school certificate; and
 - 3) has completed at least 16 semester hours of college coursework, which shall at least include each of the areas identified in subsections (c)(3)(A) through (D) and may include one or more of the areas identified in subsections (c)(3)(E) through (I) of this Section:
 - A) Survey of the exceptional child;
 - B) Characteristics of the mentally retarded student;
 - C) Characteristics of the socially and/or emotionally maladjusted student;
 - D) Vocational programming for students with disabilities;
 - E) Characteristics of other exceptionalities;
 - F) Methods course in special education;
 - G) Guidance and counseling;
 - H) Educational and psychological diagnosis;
 - I) Vocational and technical education.
- d) An individual assigned as a teacher coordinator shall be required to hold approval for this position, which shall be granted provided that the individual submits an application demonstrating that he or she:
- 1) holds either a special preschool – age 21 certificate endorsed for the disability area of assignment or a high school certificate with special education approval in the applicable disability area issued pursuant to Section 226.810 of this Part;
 - 2) has completed a course in vocational programming for students with disabilities; and

- 3) has at least one year's work experience outside the field of education or has completed at least one course in either guidance and counseling or vocational and technical education.
- e) An individual assigned as a business manager's assistant shall hold an administrative certificate endorsed for chief school business official pursuant to 23 Ill. Adm. Code 25.344.
- f) Qualified Bilingual Specialists

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

- 1) A holder of a special certificate endorsed in the area of responsibility pursuant to 23 Ill. Adm. Code 25.40 or 25.43 shall successfully complete a language examination in the non-English language of instruction and shall have completed coursework covering:
 - A) Psychological/educational assessment of students with disabilities who have limited English proficiency;
 - B) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition; and
 - C) Methods and materials for teaching students of limited English proficiency or students with disabilities who have limited English proficiency.
- 2) A holder of an early childhood, elementary, or high school certificate who also holds special education approval in the area of responsibility (see Section 226.810 of this Part) shall successfully complete a language examination in the non-English language of instruction and shall have completed the coursework listed in subsections (f)(1)(A), (B), and (C) of this Section.
- 3) A holder of an early childhood, elementary, or high school certificate who also holds approval to teach bilingual education or English as a second language shall have completed coursework covering:
 - A) Methods for teaching in the special education area of assignment;

- B) Psychological/educational assessment of students with disabilities who have limited English proficiency, or psychological diagnosis for children with all types of disabilities; and
 - C) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.
- 4) A holder of a transitional bilingual certificate issued pursuant to 23 Ill. Adm. Code 25.90 and endorsed for the language of assignment shall have completed two years of successful teaching experience and have completed coursework covering:
- A) Survey of children with all types of disabilities;
 - B) Assessment of the bilingual student, or psychological/educational assessment of the student with disabilities who has limited English proficiency;
 - C) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition;
 - D) Methods for teaching in the special education area of assignment; and
 - E) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.
- 5) A holder of a school service personnel certificate endorsed for guidance, school social work, or school psychology shall successfully complete an examination in the non-English language and shall have completed coursework in assessment of the bilingual student or psychological/educational assessment of the student with disabilities who has limited English proficiency.
- g) Directors and Assistant Directors of Special Education

Each school district, or the cooperative entity of which it is a member, shall employ a full-time director of special education, who shall be the chief administrative officer of the special education programs and services of the district or cooperative entity. The provisions of subsections (g)(1) and (2) of this

Section shall apply through June 30, 2005. Beginning July 1, 2005, directors and assistant directors of special education shall be subject to the requirements of 23 Ill. Adm. Code 29.140 and 29.150.

- 1) Each director or assistant director of special education shall hold a valid administrative certificate issued pursuant to 23 Ill. Adm. Code 25.315 and a master's degree, including 30 semester hours of coursework distributed among all the following areas:
 - A) Survey of exceptional children;
 - B) Special methods courses (3 areas of exceptionality);
 - C) Educational and psychological diagnosis and remedial techniques;
 - D) Guidance and counseling; and
 - E) Supervision of programs for exceptional children.
 - 2) Each individual who will function as a director or assistant director of special education shall submit an application for special education administrative approval on a form supplied by the State Board of Education.
 - 3) Each school district, or the cooperative entity of which it is a member, shall submit to the State Board of Education a letter identifying the individual employed as the director of special education. If the individual is qualified as required, the State Board shall confirm that the individual is the State-approved director of special education for the district or cooperative entity.
- h) Supervisors
- 1) Each district or cooperative entity shall employ sufficient supervisory personnel to provide consultation to and coordination of special education services.
 - 2) Each individual performing a supervisory function shall hold a master's degree, including at least 15 semester hours of coursework distributed among all the following areas:
 - A) Survey of exceptional children;

- B) Characteristics courses in the areas to be supervised;
 - C) Methods courses in the areas to be supervised;
 - D) Educational and psychological diagnosis and remedial techniques;
and
 - E) Supervision of programs for exceptional children.
- 3) Each individual performing a supervisory function shall also hold either:
- A) a valid special certificate in the area to be supervised, endorsed for supervision pursuant to 23 Ill. Adm. Code 25.322, with two years' teaching experience in that area; or
 - B) a valid school service personnel certificate endorsed for supervision and two years' experience in the area to be supervised;
or
 - C) a valid administrative certificate and either a valid special certificate endorsed for the area to be supervised or special education approval in that area.

i) Chief Administrator of Special School

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

- 1) the qualifications required under 23 Ill. Adm. Code 25.43 in at least one disability area served by the school; or
- 2) approval issued by the State Board of Education pursuant to Section 226.810 of this Part for at least one disability area served by the school.

j) Other Professional Personnel

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

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

- 2) a valid license or permission to practice, if the individual's profession is governed by such a requirement and either no educational credential in the same or a related field is issued by the State Board of Education (e.g., for a physical therapist) or the School Code permits the individual to perform the functions assigned; or
 - 3) a credential, regardless of title, issued by a professional association or organization in the relevant field, when no educational credential in the same or a related field is issued by the State Board of Education and no license or permission to practice is required by the State (e.g., for a music therapist or a daily living skills specialist).
- k) Noncertified Personnel
- 1) Each noncertified professional individual employed in a special education class, program, or service, and each individual providing assistance at a work site, shall function under the general direction of a professional staff member.
 - 2) Each program assistant/aide, as well as each nonemployee providing any service in the context of special education, shall function under the direct supervision of a professional staff member.
 - 3) Each district shall provide training experiences appropriate to the nature of their responsibilities to the individuals discussed in subsections (k)(1) and (2) of this Section. Training shall be in lieu of the requirements for noncertified personnel set forth in 23 Ill. Adm. Code 1, Subpart G.

(Source: Amended at 27 Ill. Reg. 8126, effective April 28, 2003)

Section 226.810 Special Education Teaching Approval

Special education approval may be issued by the State Board of Education to an individual who does not hold a special certificate or who lacks some of the qualifications for one of the endorsements enumerated in 23 Ill. Adm. Code 25.43.

- a) Special education teaching approval will be issued in the following areas:
 - 1) Educable mentally handicapped;
 - 2) Learning disabilities;
 - 3) Social/emotional disorders;
 - 4) Trainable mentally handicapped; and
 - 5) Physically handicapped.
- b) An individual who holds an early childhood, elementary, or high school certificate shall receive approval to teach in a special education area listed in subsection (a) of this Section if he or she has successfully completed at least one college-level course in each of the following areas:
 - 1) Survey of exceptional children;
 - 2) Characteristics of special education students in the specific area of approval sought;
 - 3) Methods of teaching in the area of special education approval sought; and
 - 4) Psychological diagnosis for children with all types of disabilities.
- c) Except as provided in subsection (d) of this Section, an individual who wishes to receive special education teaching approval shall submit an application for a special certificate on a form supplied by the State Board of Education and shall comply with such other application procedures as the State Board may require.
 - 1) If the individual qualifies for a special certificate, the State Board shall issue one and endorse it as warranted.
 - 2) If the individual does not qualify for a special certificate, the State Board shall evaluate the application for special education approval and either issue such approval or notify the applicant of any deficiencies.

- d) The State Board shall issue early childhood special education approval to an individual who holds either an early childhood certificate or a special certificate in one of the areas of specialization enumerated at 23 Ill. Adm. Code 25.43, provided that the individual makes application for such approval on a form supplied by the State Board demonstrating that he or she has successfully completed coursework in all the following areas:
- 1) Survey of exceptional children;
 - 2) The development of language in young children;
 - 3) Early childhood assessment; and
 - 4) Early childhood or elementary school curriculum and organization.
- e) Special education approval shall not be limited with regard to time or district of employment but shall be valid only for the special education area(s) indicated and the grade level(s) to which the individual's certificate applies.

Section 226.820 Authorization for Assignment

In the circumstances described in this Section, neither the qualifications required by Section 226.800 of this Part nor special education approval under Section 226.810 of this Part shall be required. When authorized pursuant to this Section, reimbursement shall be available for staff providing special education and related services.

- a) No Fully Qualified Individual Available
 - 1) When a district or cooperative entity demonstrates to the State Board of Education that it is unable to secure the services of an individual who holds the required credentials for a particular assignment, the State Board may authorize the assignment of another individual if the director of special education submits a written request through the regional superintendent of schools, on a form provided by the State Board, that:
 - A) describes the position or assignment involved or the services to be provided and identifies the required certificate or approval;
 - B) describes the population to be served, including the number of students in each disability category represented;
 - C) describes the type and frequency of supervision and technical assistance to be provided to the individual, including the name(s) and title(s) of the supervisor and any other individual(s) who will provide technical assistance;
 - D) describes the unique training, education, experience, or other qualifications that will assist the individual in fulfilling the requirements of the position;
 - E) describes the district's or cooperative entity's efforts to locate a fully qualified individual to fill the position, including contacts with universities, regional superintendents, and the State Board of Education; and
 - F) indicates that the individual to be assigned is working toward attainment of the required certificate, endorsement, or approval for the position.
 - 2) The State Board's authorization to assign such an individual shall be specific to the affected position and to the district or cooperative entity requesting the authorization and shall be limited to two years in duration.

b) Interns

The State Board may also authorize the assignment of interns in school psychology, school social work, school nursing, and speech/language pathology who will work under the supervision of fully qualified professionals, subject to the requirements of this subsection (b).

- 1) For each intern in school psychology, school social work, or school nursing, the director of special education shall submit, on forms supplied by the State Board:
 - A) verification provided by an educational institution that the candidate is participating in a formal internship under its auspices; and
 - B) a request for authorization to assign the individual to an intern's position.
- 2) For each intern in speech/language pathology, the director of special education shall submit evidence that the individual holds a valid teaching certificate and has a bachelor's degree in communication disorders. The individual shall also either have completed graduate-level coursework in communication disorders or be enrolled in a program providing such coursework. The director of special education shall provide evidence that the intern will be supervised by an individual who holds a special certificate endorsed for speech and language impaired pursuant to 23 Ill. Adm. Code 25.45.

c) No Specific Credential Required

- 1) When a school district or cooperative entity needs to fill a position for which no specific certificate, endorsement, or other credential is required, the district or cooperative entity shall seek authorization from the State Board of Education to assign the individual who has been selected.
- 2) The director of special education shall submit a written request through the regional superintendent of schools, on a form provided by the State Board, that:
 - A) describes the position or the service to be provided, why it is needed, and for how long it is expected to be needed; and

- B) describes the training, education, experience, or other qualifications held by the individual selected that will be relevant to the unique needs of the students to be served (e.g., experience in teaching students with similar disabilities, experience in providing the specific service(s) involved).
- 3) The State Board's authorization to assign such an individual shall be limited to the period for which the service is stated to be needed and shall be specific to the affected position and to the requesting entity.
- d) Other Positions Attributed to Special Education

A district or cooperative entity may be reimbursed for the services of other individuals who hold regular education credentials but serve special education students, e.g., a teacher who provides adaptive physical education.

- 1) In order to claim reimbursement for the services of such individuals, the director of special education shall submit:
 - A) A description of the individual's duties and an indication of the certificate required for those duties;
 - B) Information about the special education pupils to be served and the percentage of the individual's time that will be spent serving these students; and
 - C) A description of the individual's related education and experience.
- 2) The State Board's authorization of reimbursement for such individuals shall be specific to the requesting entity but shall not be limited in duration.

Section 226.830 List of Independent Evaluators

- a) The State Board of Education shall develop a list of independent educational evaluators who hold the credentials required for the performance of the various evaluation components pursuant to Section 226.840 of this Part.
- b) No person shall be included in the State Board's list unless he or she has provided in writing to the State Board the following specific information for each credential for which the Board's acknowledgment is sought:
 - 1) name of license, certificate, or other credential;
 - 2) name of credentialing agency or body;
 - 3) number of certificate, license, registration, or other credential;
 - 4) date of issue; and
 - 5) period of validity.
- c) An individual who wishes to be considered a qualified bilingual specialist shall identify any language(s) other than English in which he or she is proficient and identify the specific qualifications held that correspond to the relevant requirements of Section 226.800(f) of this Part.
- d) Persons wishing to be included on this list may submit the information about their credentials required under subsection (b) of this Section to the State Board at any time. The State Board shall update the list as changes may warrant and shall provide the list to school districts.

Section 226.840 Qualifications of Evaluators

The following list identifies the credentials required to administer certain types of evaluations. Where no requirements are established, an evaluation may be performed by an individual who is qualified to administer it according to the technical specifications of the publisher.

<u>TYPE</u>	<u>REQUIRED QUALIFICATIONS</u>
Academic Performance	Teaching certificate/approval appropriate for the age or disability of the child, or School Service Personnel Certificate endorsed for school psychology or guidance. (See Article 21 of the School Code [105 ILCS 5/Art.21] and the State Board's rules at 23 Ill. Adm. Code 1 and 23 Ill. Adm. Code 25.)
Adapted Physical Education	Special Certificate endorsed for physical education with approval in adapted physical education (23 Ill. Adm. Code 25.40 and 25.43).
Assistive Technology	To the extent that a test is used in performing this assessment, qualification for administering the test according to the instructions provided by the test's publisher.
Audiological	License to practice as an Audiologist issued by the Department of Professional Regulation pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].
Clinical Psychological	License issued pursuant to the Clinical Psychologist Licensing Act [225 ILCS 15].
Cultural Background Assessment	School Service Personnel Certificate endorsed for school psychology, school social work, or school counseling.
Hearing Screening	License to practice as an Audiologist issued by the Department of Professional Regulation pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110], Special Certificate endorsed for speech and language impairment (23 Ill. Adm. Code

25.45), or certificate of training issued by the Department of Public Health (77 Ill. Adm. Code 675).

Learning Processes
Evaluation

School Service Personnel
Certificate endorsed for school psychology or Special
Certificate endorsed for learning disabilities.

Medical Review

School Service Personnel Certificate endorsed for school
nursing (23 Ill. Adm. Code 25.240), or license to practice
medicine in all of its branches.

Neurological
Evaluation

Licensure/registration issued by the
Department of Professional Regulation
pursuant to the Medical Practice Act of 1987 [225 ILCS
60].

Occupational Therapy
Evaluation

Certificate/Registration
issued by the Department of Professional Regulation
pursuant to the Illinois Occupational Therapy Practice Act
[225 ILCS 75].

Orientation/Mobility

Certification for orientation/mobility instruction and
evaluation (Certification for Orientation and Mobility,
Orientation and Mobility Division, Association for
Education and Rehabilitation of the Blind and Visually
Impaired, 4600 Duke Street, #430, P.O. Box 22397,
Alexandria, Virginia 22304; 1984; no later amendments or
editions are included).

Physical Therapy
Evaluation

Certificate/registration issued by the
Department of Professional Regulation pursuant to the
Illinois Physical Therapy Act [225 ILCS 90].

Psychiatric Evaluation

Licensure/registration issued by the Department of
Professional Regulation pursuant to the Medical Practice
Act of 1987.

School Psychological

School Service Personnel Certificate endorsed for school
psychology.

Social Developmental
Study (Adaptive
Behavior, Cultural

School Service Personnel
Certificate endorsed for
social work, guidance, or

Background, Family
History)

school psychology (23 Ill. Adm. Code
25.210, 25.220, or 25.230).

Speech and Language
Assessment

Special Certificate
endorsed for speech and language impairment (23 Ill. Adm.
Code 25.45).

Vision Screening

Certificate of training issued by the Department of Public
Health (77 Ill. Adm. Code 675).