



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/09/04, by Ruth Munson

**SYNOPSIS AS INTRODUCED:**

5 ILCS 100/5-170 new

Amends the Illinois Administrative Procedure Act. Provides that certain rules of the Illinois State Board of Education (ISBE) concerning special education are changed by operation of law. Provides that ISBE may amend the rules only by general rulemaking under the Act. Effective January 1, 2005.

LRB093 20069 NHT 47355 b

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Administrative Procedure Act is  
5 amended by adding Section 5-170 as follows:

6 (5 ILCS 100/5-170 new)

7 Sec. 5-170. Illinois State Board of Education special  
8 education rules. Notwithstanding any other provision of this  
9 Act or any other law to the contrary, the following special  
10 education rules of the Illinois State Board of Education (ISBE)  
11 in Part 226 of Title 23 of the Illinois Administrative Code are  
12 amended to read as follows by operation of law. These rules, as  
13 set forth in this Section, take effect on the effective date of  
14 this amendatory Act of the 93rd General Assembly and may be  
15 amended by ISBE only by general rulemaking as provided in  
16 Section 5-40 of this Act.

17 Section 226.50. Requirements for a Free Appropriate Public  
18 Education (FAPE). Each local school district shall ensure that  
19 a free appropriate public education (FAPE) is available to each  
20 child with a disability who is between the ages of 3 and 21,  
21 resides in the State and is enrolled in the district, and  
22 requires special education and related services to address the  
23 adverse effect of the disability on his or her education. The  
24 special education and related services must be provided  
25 according to the child's individualized education program  
26 (IEP) at no cost to the parent and in accordance with this  
27 Part. As public schools, charter schools are also bound by  
28 these requirements, and children with disabilities who attend  
29 public charter schools and their parents retain all rights  
30 under this Part.

31 (a) As part of this obligation, each local district shall

1 develop and implement procedures for creating public awareness  
2 of special education and related services and for advising the  
3 public of the rights of children with disabilities.

4 (1) All such procedures shall ensure that information  
5 is made available in each of the major languages  
6 represented in the local school district and in language  
7 that will be understandable to parents, regardless of  
8 ethnic or cultural background or hearing or visual  
9 abilities.

10 (2) Procedures developed by a district pursuant to this  
11 Section shall include, but need not be limited to:

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

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

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

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

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

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

36 (e) The district shall provide nonacademic and

1 extracurricular services and activities in a manner necessary  
2 to afford children with disabilities an equal opportunity to  
3 participate in those services and activities.

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

8 (g) No eligible child from three through 21 years of age  
9 may be permanently excluded from the public schools, either by  
10 direct action by the board of education, by indication of the  
11 district's inability to provide an educational program, or by  
12 informal agreement between the parents and the school district  
13 to allow the child to remain without an educational program.

14 (1) A public agency need not provide services during  
15 periods of removal to a child with a disability who has  
16 been removed from his or her current placement for ten  
17 school days or fewer in that school year, if services are  
18 not provided to a child without disabilities who has been  
19 similarly removed. An eligible child who has been suspended  
20 or expelled from school for more than ten school days  
21 during the school year must continue to receive services  
22 necessary to enable the child to appropriately progress in  
23 the general curriculum and appropriately advance toward  
24 achieving the goals set out in the child's IEP.

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

29 (h) Transfer Students

30 (1) If a child who is receiving special education from  
31 a local school district transfers to another district, the  
32 new district is responsible for ensuring FAPE by providing  
33 special education and related services in conformity with  
34 an IEP. When a transfer student is presented for  
35 enrollment, the district shall enroll and initiate  
36 educational services to the student immediately. The new

1 school district shall ensure that the child has an IEP in  
2 effect.

3 (A) The district may adopt the IEP that the former  
4 local school district developed for the child. Such  
5 adoption does not require an IEP meeting if:

6 (i) a copy of the child's current IEP is  
7 available;

8 (ii) the parents indicate satisfaction with  
9 the current IEP; and

10 (iii) the new district determines that the  
11 current IEP is appropriate and can be implemented  
12 as written.

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

19 (C) The district may develop a new IEP for the  
20 child if the school district or the parents do not  
21 believe the current IEP is appropriate. In such a case,  
22 the district shall, within ten days after the date of  
23 the child's enrollment, initiate an IEP meeting for the  
24 purpose of developing the new IEP. While the new IEP is  
25 under development, the district shall implement the  
26 IEP from the former district.

27 (2) If the new school district does not receive a copy  
28 of the child's current IEP or a verbal confirmation of the  
29 requirements of that IEP from the previous school district  
30 when the child is presented for enrollment, the child shall  
31 be enrolled and served in the setting that the receiving  
32 district believes will meet the child's needs until a copy  
33 of the current IEP is obtained or a new IEP is developed by  
34 the new school district.

35 (A) In no case shall a child be allowed to remain  
36 without services during this interim.

1           (B) The new district shall request the student's  
2           records from the sending district or school by the end  
3           of the next business day after the date of enrollment.

4           (C) No later than ten days after expiration of the  
5           time allotted under Section 2-3.13a of the School Code  
6           (105 ILCS 5/2-3.13a) for the sending district or school  
7           to forward the child's records, the new district shall  
8           initiate an IEP meeting for the purpose of developing a  
9           new IEP, unless the sending district's or school's IEP  
10           arrives before this time elapses and the conditions set  
11           forth in subsection (h) (1) (A) of this Section apply.

12           (i) Jurisdictional Disputes

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

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

24           (k) Eligibility; Graduation or Completion of Program

25           (1) An eligible student who requires continued public  
26           school educational experience to facilitate his or her  
27           integration into society shall be eligible for such  
28           services through age 21.

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

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

34           (4) A student with a disability who has satisfactorily  
35           completed a secondary program shall be granted a regular  
36           high school diploma. Prior to a student's anticipated

1 graduation, both the parent and the student shall receive  
2 written notification in conformance with the requirements  
3 of Section 226.520(b) of this Part that eligibility for  
4 public school special education services ends following  
5 the granting of a diploma and that the parent (or the  
6 student, if Section 226.690 of this Part applies) may  
7 request a review of the recommendation for graduation.

8 (5) Students who have graduated but have not been  
9 awarded regular high school diplomas continue to be  
10 eligible to receive FAPE through age 21.

11 (1) Exception for Certain Students Incarcerated as Adults  
12 Pursuant to 34 CFR 300.311, the right to receive FAPE does not  
13 extend to students from 18 through 21 years of age who are  
14 incarcerated and who were not identified as eligible and did  
15 not have IEPs in their educational placements immediately prior  
16 to incarceration.

17 Section 226.75. Definitions.

18 Assistive Technology Device: Any item, piece of equipment,  
19 or product system, whether acquired commercially off the shelf,  
20 modified, or customized, that is used to increase, maintain, or  
21 improve the functional capabilities of a child with a  
22 disability.

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

27 Case Study Evaluation: See "Evaluation"

28 Cultural Identification: Identifying the family's general  
29 cultural factors, such as ethnicity and language spoken, that  
30 may have an impact on the design of the case study evaluation  
31 procedures used.

32 Date of Referral: The date on which written parental  
33 consent to complete an evaluation is obtained or provided.

34 Day: A calendar day, unless otherwise indicated as  
35 "business day" or "school day".

1           Business Day: Monday through Friday, except for  
2           federal and State holidays (unless holidays are  
3           specifically included in the designation of business days,  
4           as at 34 CFR 300.403(d)(1)(ii)).

5           School Day: Any day including a partial day, during the  
6           regular school year that students are in attendance at  
7           school for instructional purposes.

8           Developmental Delay: Delay in physical development,  
9           cognitive development, communication development, social or  
10           emotional development, or adaptive development (may include  
11           children from three through nine years of age).

12           Disability: Any of the following specific conditions.

13           Autism: A developmental disability significantly  
14           affecting verbal and nonverbal communication and social  
15           interaction, generally evident before age three that  
16           adversely affects a child's educational performance. (A  
17           child who manifests the characteristics of autism after age  
18           3 could be diagnosed as having autism if the other criteria  
19           of this Section are satisfied.) Other characteristics  
20           often associated with autism are engagement in repetitive  
21           activities and stereotyped movements, resistance to  
22           environmental change or change in daily routines, and  
23           unusual responses to sensory experiences. The term does not  
24           apply if a child's educational performance is adversely  
25           affected primarily because the child has an emotional  
26           disturbance.

27           Deaf-Blindness: Concomitant hearing and visual  
28           impairments, the combination of which causes such severe  
29           communication and other developmental and educational  
30           needs that they cannot be accommodated in special education  
31           programs solely for children with deafness or children with  
32           blindness.

33           Deafness: A hearing impairment that is so severe that  
34           the child is impaired in processing linguistic information  
35           through hearing, with or without amplification, that  
36           adversely affects a child's educational performance.



1           Emotional Disturbance (includes schizophrenia, but  
2           does not apply to children who are socially maladjusted,  
3           unless it is determined that they have an emotional  
4           disturbance): A condition exhibiting one or more of the  
5           following characteristics over an extended period of time  
6           and to a marked degree that adversely affects a child's  
7           educational performance:

8                   An inability to learn that cannot be explained by  
9                   intellectual, sensory, or health factors;

10                   An inability to build or maintain satisfactory  
11                   interpersonal relationships with peers and teachers;

12                   Inappropriate types of behavior or feelings under  
13                   normal circumstances;

14                   A general pervasive mood of anxiety or unhappiness  
15                   or depression; or

16                   A tendency to develop physical symptoms or fears  
17                   associated with personal or school problems.

18           Hearing Impairment: An impairment in hearing, whether  
19           permanent or fluctuating, that adversely affects a child's  
20           educational performance but that is not included under the  
21           definition of deafness.

22           Mental Retardation: Significantly subaverage general  
23           intellectual functioning, existing concurrently with  
24           deficits in adaptive behavior and manifested during the  
25           developmental period, that adversely affects a child's  
26           educational performance.

27           Multiple Disabilities: Concomitant impairments (such  
28           as            mental            retardation-blindness,            mental  
29           retardation-orthopedic impairment, etc.), the combination  
30           of which causes such severe educational needs that they  
31           cannot be accommodated in special education programs  
32           solely for one of the impairments (does not include  
33           deaf-blindness)).

34           Orthopedic Impairment: A severe orthopedic impairment  
35           that adversely affects a child's educational performance;  
36           includes impairments caused by congenital anomaly (e.g.,

1 clubfoot, absence of some member, etc.), impairments  
2 caused by disease (e.g., poliomyelitis, bone tuberculosis,  
3 etc.), and impairments from other causes (e.g., cerebral  
4 palsy, amputations, and fractures or burns that cause  
5 contractures).

6 Other Health Impairment: Limited strength, vitality or  
7 alertness, including a heightened sensitivity to  
8 environmental stimuli, that results in limited alertness  
9 with respect to the educational environment, that:

10 is due to chronic or acute health problems, such as  
11 asthma, attention deficit disorder or attention  
12 deficit hyperactivity disorder, diabetes, epilepsy, a  
13 heart condition, hemophilia, lead poisoning, leukemia,  
14 nephritis, rheumatic fever, and sickle cell anemia;  
15 and  
16 adversely affects a child's educational  
17 performance.

18 Specific Learning Disability: A disorder in one or more  
19 of the basic psychological processes involved in  
20 understanding or in using language, spoken or written, that  
21 may manifest itself in an imperfect ability to listen,  
22 think, speak, read, write, spell, or do mathematical  
23 calculations, including such conditions as perceptual  
24 disabilities, brain injury, minimal brain dysfunction,  
25 dyslexia, and developmental aphasia. (The term does not  
26 include learning problems that are primarily the result of  
27 visual, hearing, or motor disabilities, of mental  
28 retardation, of emotional disturbance, or of  
29 environmental, cultural, or economic disadvantage.) [105  
30 ILCS 5/14-1.03(a)]

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

35 Traumatic Brain Injury: An acquired injury to the brain  
36 caused by an external physical force, resulting in total or

1 partial functional disability or psychosocial impairment,  
2 or both, that adversely affects a child's educational  
3 performance. The term applies to open or closed head  
4 injuries resulting in impairments in one or more areas,  
5 such as cognition; language; memory; attention; reasoning;  
6 abstract thinking; judgment; problem-solving; sensory,  
7 perceptual, and motor abilities; psychosocial behavior;  
8 physical functions; information processing; and speech.  
9 The term does not apply to brain injuries that are  
10 congenital or degenerative or to brain injuries induced by  
11 birth trauma.

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

15 Domain: All areas of suspected disability that must be  
16 considered in the course of designing an evaluation. The  
17 domains are health, vision, hearing, social and emotional  
18 status, general intelligence, academic performance,  
19 communication status, and motor abilities.

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

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

26 Machinery, utilities, and built-in equipment and any  
27 necessary enclosures or structures to house the machinery,  
28 utilities, or equipment; and

29 All other items necessary for the functioning of a  
30 particular facility as a facility for the provision of  
31 educational services, including items such as  
32 instructional equipment and necessary furniture; printed,  
33 published and audio-visual instructional materials;  
34 telecommunications, sensory, and other technological aids  
35 and devices; and books, periodicals, documents, and other  
36 related materials.

1       Evaluation: A series of procedures designed to provide  
2 information about a child's suspected disability; the nature  
3 and extent of the problems that are or will be adversely  
4 affecting his/her educational development; and the type of  
5 intervention and assistance needed to alleviate these  
6 problems.

7       Extended School Year Services: Special education and  
8 related services that are provided to a child with a disability  
9 beyond the normal school year of the public agency in  
10 accordance with the child's IEP and at no cost to the parents  
11 of the child and meet the requirements of Section 226.750(c) of  
12 this Part.

13       Functional Behavioral Assessment: An assessment process  
14 for gathering information regarding the target behavior, its  
15 antecedents and consequences, the student's strengths, and the  
16 communicative and functional intent of the behavior, for use in  
17 developing behavioral interventions.

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

22       IEP Team: The group of individuals enumerated in Section  
23 226.210 of this Part, except that in three instances the team  
24 shall be expanded to include any other qualified professionals  
25 whose expertise is necessary to administer and interpret  
26 evaluation data and make an informed determination as to  
27 whether the child needs special education and related services  
28 (i.e., when identifying the specific assessments required in  
29 order to evaluate a child's individual needs; when determining  
30 whether the child is eligible pursuant to this Part; and when  
31 conducting a Manifestation Determination Review).

32       Independent Educational Evaluation: An evaluation  
33 conducted by a qualified examiner who is not employed by the  
34 school district responsible for the education of the child in  
35 question. (See Section 226.180 of this Part.)

36       Individualized Education Program (IEP): A written

1 statement for a child with a disability that is developed,  
2 reviewed, and revised in a meeting in accordance with Subpart C  
3 of this Part.

4 Individualized Family Service Plan (IFSP): A written plan  
5 for providing the early intervention services to a child  
6 eligible under 34 CFR 303 and the child's family.

7 Interim Plan: A portion of an IEP that identifies the  
8 services that will be provided as a temporary measure, either  
9 when the child's complete IEP cannot be implemented or when the  
10 parents and the district have only agreed to a portion of the  
11 services that will be needed, and that sets out the specific  
12 conditions and timelines to which both the parents and the  
13 district have agreed.

14 Least Restrictive Environment (LRE): The setting that  
15 permits a child to be educated with nondisabled children to the  
16 maximum extent appropriate. (See Section 226.240(c) of this  
17 Part.)

18 Parent: A natural or adoptive parent of a child; a guardian  
19 but not the State if the child is a ward of the State; a person  
20 acting in the place of a parent of a child (such as a  
21 grandparent or stepparent with whom a child lives); a person  
22 who is legally responsible for a child's welfare, or a  
23 surrogate parent who has been appointed in accordance with  
24 Section 226.550 of this Part. A foster parent is a "parent"  
25 when the natural parent's authority to make educational  
26 decisions on the child's behalf has been extinguished under  
27 State law and the foster parent has an ongoing, long-term  
28 parental relationship with the child, is willing to make the  
29 educational decisions required of parents under IDEA, and has  
30 no interest that would conflict with the interests of the  
31 child.

32 Participating Agency: A State or local agency, other than  
33 the local school district, that is or may be legally  
34 responsible for providing or funding services to a student who  
35 is eligible under this Part.

36 Personally Identifiable (with reference to information):

1 Including the name of the child, the child's parent, or other  
2 family member; the address of the child; a personal identifier,  
3 such as the child's Social Security number or student number;  
4 or a list of personal characteristics or other information that  
5 would make it possible to identify the child with reasonable  
6 certainty.

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

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

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

15 Referral: A formal procedure established by a school  
16 district which involves a request for a case study evaluation.

17 Related Services: Transportation and such developmental,  
18 corrective, and other supportive services as are required to  
19 assist a child with a disability to benefit from special  
20 education, including speech-language pathology and audiology  
21 services, psychological services, physical and occupational  
22 therapy, recreation (including therapeutic recreation), early  
23 identification and assessment of disabilities in children,  
24 counseling services (including rehabilitation counseling),  
25 orientation and mobility services, and medical services for  
26 diagnostic or evaluation purposes; also including school  
27 health services, social work services in schools, and parent  
28 counseling and training. (See Section 226.310 of this Part.)  
29 Related services do not include those performed by licensed  
30 physicians or dentists (except for diagnostic or evaluative  
31 services or consultation to staff), registered or licensed  
32 practical nurses (except when functioning as school nurses), or  
33 other medical personnel involved in the provision of ongoing  
34 medical care.

35 Special Education: Specially designed instruction, at no  
36 cost to the parents, to meet the unique needs of a child with a

1 disability, including instruction conducted in the classroom,  
2 in the home, in hospitals, in institutions, and in other  
3 settings, and including instruction in physical education.

4 Special School: An educational setting which is  
5 established by the local school district exclusively to meet  
6 the needs of eligible children.

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

9 Supplementary Aids and Services: Aids, services, and other  
10 supports that are provided in regular education classes or  
11 other education-related settings to enable children with  
12 disabilities to be educated with nondisabled children to the  
13 maximum extent appropriate.

14 Transition Services: A coordinated set of activities for a  
15 student with a disability that:

16 Is designed within an outcome-oriented process, that  
17 promotes movement from school to post-school activities,  
18 including postsecondary education, vocational training,  
19 integrated employment (including supported employment),  
20 continuing and adult education, adult services,  
21 independent living, or community participation;

22 Is based on the individual student's needs, taking into  
23 account the student's preferences and interests; and

24 Includes instruction, related services, community  
25 experiences, the development of employment and other  
26 post-school adult living objectives, and, if appropriate,  
27 acquisition of daily living skills and functional  
28 vocational evaluation.

29 Section 226.110. Referral. When there is reason to believe  
30 that a child may have a disability requiring special education  
31 and related services, the child shall be referred for a special  
32 education case study evaluation.

33 (a) Referral Procedures

34 Each school district shall develop and make known to all  
35 concerned persons procedures by which a case study evaluation

1 may be requested. These procedures shall:

2 (1) Designate the steps to be taken in making a  
3 referral;

4 (2) Designate the person(s) to whom a referral may be  
5 made;

6 (3) Identify the information which must be provided;

7 (4) Provide any assistance that may be necessary to  
8 enable persons making referrals to meet any related  
9 requirements established by the district;

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

13 (b) A referral may be made by any concerned person,  
14 including but not limited to school district personnel, the  
15 parent(s) of a child, an employee of a community service  
16 agency, another professional having knowledge of a child's  
17 problems, a child, or an employee of the State Board of  
18 Education.

19 (c) District Response to Referral

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

23 (2) To determine whether the referred child requires a  
24 case study evaluation, the district may utilize screening  
25 data and conduct preliminary procedures such as  
26 observation of the child, assessment for instructional  
27 purposes, consultation with the teacher or other referring  
28 agent, and a conference with the child.

29 (3) The district shall determine whether or not to  
30 conduct a case study evaluation and notify the parent of  
31 the decision and the basis on which it was reached.

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

34 (1) Pursuant to Section 14-8.02 of the School Code [105  
35 ILCS 5/14-8.02], the case study evaluation and IEP meeting  
36 shall be completed within 60 school days after the date of



1 referral or the date of the parent's application for  
2 admittance of the child to the public school.

3 (2) The IEP meeting shall be conducted within 30 days  
4 after the child is determined eligible. The overall limit  
5 specified in subsection (d)(1) of this Section still  
6 applies.

7 (3) When a child is referred for evaluation with fewer  
8 than 60 days of pupil attendance left in the school year,  
9 the eligibility determination shall be made and, if the  
10 child is eligible, an IEP shall be in effect prior to the  
11 first day of the next school year.

12 (e) If the parent refuses consent for initial evaluation,  
13 the district may continue to pursue the evaluation by using the  
14 mediation or due process procedures described in Section  
15 226.560 and Subpart G of this Part.

16 (f) If the district decides not to conduct an evaluation:

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

23 (2) The parent shall be provided written notice of:

24 (A) The date of the referral and the reasons for  
25 which the case study evaluation was requested; and

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

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

32  
33 Section 226.180. Independent Educational Evaluation.  
34 Parents have the right to obtain an independent educational  
35 evaluation of their child, subject to the provisions of this  
36 Section.

1           (a) (Blank).

2           (b) If the parents disagree with the district's  
3 evaluation and wish to obtain an independent educational  
4 evaluation at public expense, they shall submit to the  
5 local school district superintendent a written request to  
6 that effect.

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

14           (d) An independent educational evaluation at public  
15 expense must be completed within 30 days after receipt of a  
16 parent's written request, unless the school district  
17 initiates a due process hearing or the parties agree that  
18 the 30-day period should be extended. If either party  
19 wishes such an extension and is unable to obtain the other  
20 party's agreement, the district shall initiate a due  
21 process hearing within ten school days after the date on  
22 which the extension was proposed.

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

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

32           (g) If the parent is entitled to an independent  
33 educational evaluation at public expense, it shall be  
34 completed within 30 days after the decision is rendered,  
35 unless the parties agree that the 30-day period should be  
36 extended. If either party wishes such an extension and is

1 unable to obtain the other party's agreement, the school  
2 district shall initiate a due process hearing within ten  
3 school days after the date on which the extension was  
4 proposed.

5 (h) When an independent evaluation is obtained at  
6 public expense, the party chosen to perform the evaluation  
7 shall be either:

8 (1) an individual whose name is included on the  
9 list provided by the State Board of Education with  
10 regard to the relevant type(s) of evaluation; or

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

13 (i) If the parent wishes an evaluator to have specific  
14 credentials in addition to those required by Section  
15 226.840 of this Part, the parent(s) and the school district  
16 shall agree on the qualifications of the examiner and the  
17 specific evaluation(s) to be completed prior to the  
18 initiation of an independent educational evaluation at  
19 public expense. If agreement cannot be reached, the school  
20 district shall initiate a due process hearing subject to  
21 the time constraints set forth in this Section, as  
22 applicable.

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

36 (k) If the parent obtains an independent educational

1 evaluation, the written result of that evaluation shall be  
2 considered by the IEP Team. The district shall send the  
3 notice convening the IEP Team's meeting within ten days  
4 after receiving the evaluation report or after the parent  
5 requests a meeting to consider the results of an  
6 independent evaluation.

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

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

13  
14 Section 226.200 General Requirements.

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

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

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

25 (1) When an IEP is developed or revised, notice to the  
26 parents shall be provided immediately in accordance with  
27 Section 226.520 of this Part, and implementation of the IEP  
28 shall occur as soon as possible following the IEP meeting.

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

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

7           (d) A child's IEP shall be reviewed at least annually to  
8           determine whether the goals for the child are being achieved.

9           (e) (Blank).

10          (f) A child's IEP shall be revised if necessary to address:

11           (1) any lack of expected progress related to the annual  
12           goals or the general curriculum, if appropriate;

13           (2) the child's anticipated needs;

14           (3) information about the child provided to or by the  
15           parents; or

16           (4) any other relevant matters.

17          (g) Each district shall have procedures in place for  
18          providing to involved staff members the information they need  
19          about the results of a child's IEP meeting, including any  
20          responsibilities they will have for implementation of the IEP.

21          Section 226.210. IEP Team. The composition of the IEP Team  
22          for a particular child, and the participation of the team  
23          members and other individuals in the IEP meeting, shall conform  
24          to the requirements of this Section. Nothing in this Section  
25          shall be construed as requiring the attendance of any member of  
26          an IEP Team for the entire duration of a meeting.

27           (a) The child's parents shall be members of the IEP Team.

28           (b) The IEP Team shall include at least one regular  
29           education teacher if the child is participating or may  
30           participate in the regular education environment.

31           (1) This should be the teacher who is or may be  
32           responsible for implementing a portion of the IEP, so that  
33           the teacher can participate in discussions about how best  
34           to teach the child. The responsibilities of this teacher  
35           shall include assisting in:

1           (A) the determination of appropriate positive  
2           behavioral interventions and strategies for the child;  
3           and

4           (B) the identification of supplementary aids and  
5           services, program modifications, and supports for  
6           school personnel, consistent with 34 CFR  
7           300.347(a) (3).

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

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

15           (c) The team shall include at least one special education  
16           teacher or, if appropriate, at least one special education  
17           provider of the child.

18           (d) If the child has more than one regular or special  
19           education teacher, the local school district may designate  
20           which teacher(s) will participate.

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

23           (1) Is qualified to provide, or supervise the provision  
24           of, specially designed instruction to meet the unique needs  
25           of children with disabilities;

26           (2) Is knowledgeable about the general curriculum;

27           (3) Is knowledgeable about the district's resources;

28           and

29           (4) Has the authority to make commitments for the  
30           provision of services.

31           (f) The IEP Team may include a qualified bilingual  
32           specialist or bilingual teacher, if the presence of such a  
33           person is needed to assist the other participants in  
34           understanding the child's language and cultural factors as they  
35           relate to the child's instructional needs.

36           (g) In the case of a child whose behavior impedes his or

1 her learning or the learning of others, the team may include a  
2 person knowledgeable about positive behavior strategies, who  
3 may be one of the individuals enumerated in subsections (b)  
4 through (f) and (h) of this Section.

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

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

17 (j) Participation of Student

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

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

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

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

1       Section 226.230. Content of the IEP. Nothing in this  
2 Section shall be construed to require the inclusion of  
3 information in one section of a child's IEP that is already  
4 contained in another section.

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

7           (1) A statement of the child's present levels of  
8 educational performance, including:

9               (A) How the child's disability affects the child's  
10 involvement and progress in the general curriculum; or

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

14           (2) A statement of measurable annual goals that reflect  
15 consideration of benchmarks or short-term objectives,  
16 related to:

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

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

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

33               (A) Parents of children with disabilities shall be  
34 informed of their children's progress at least as often  
35 as parents of children without disabilities are  
36 informed of their children's progress.



1           (B) The information provided to the parents of a  
2           child served pursuant to this Part shall include a  
3           description of the child's progress toward his or her  
4           annual goals and an indication of the extent to which  
5           that progress is sufficient to enable the child to  
6           achieve those goals by the time the current IEP will  
7           require annual review.

8           (4) A statement of the child's ability to participate  
9           in State and district-wide assessments.

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

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

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

19                   (ii) How the child's performance will be  
20                   assessed, including a description of the alternate  
21                   assessments to be used.

22           (5) A statement as to the language(s) or mode(s) of  
23           communication in which special education and related  
24           services will be provided, if other than or in addition to  
25           English.

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

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

35                   (A) To advance appropriately toward attaining the  
36                   annual goals;

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

4           (8) The projected beginning date for the services and  
5           modifications described in subsection (a)(7) of this  
6           Section; the amount, frequency, location, and duration of  
7           each of the services and modifications.

8           (9) A statement as to whether the child requires the  
9           provision of services beyond the district's normal school  
10           year in order to receive FAPE ("extended school year  
11           services").

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

14           (b) (Blank).

15           (c) The IEP for a student who has reached the age of 14  
16           shall also include a description of the student's transition  
17           service needs under the applicable components of the IEP, with  
18           specific reference to the student's courses of study.

19           (d) The IEP for a student who has reached the age of 14 1/2  
20           shall include goals for employment, postsecondary education,  
21           or community living alternatives and a description of  
22           transition supports or services, based on the student's needs,  
23           including identification of the agency responsible for  
24           delivering any needed support or service and, as applicable,  
25           any interagency responsibilities or needed linkages.

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

31           (f) The IEP of a student who may, after reaching age 18,  
32           become eligible to participate in the home-based support  
33           services program for mentally disabled adults authorized by the  
34           Developmental Disability and Mental Disability Services Act  
35           [405 ILCS 80] shall set forth specific plans related to that  
36           program that conform to the requirements of Section 14-8.02 of

1 the School Code.

2 (g) Students Incarcerated as Adults.

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

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

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

13 (2) The IEP Team may modify a student's IEP or  
14 placement if the State has demonstrated a bona fide  
15 security or compelling penological interest that cannot  
16 otherwise be accommodated. The requirements of Section  
17 226.240(c) of this Part regarding placement in the least  
18 restrictive environment shall not apply in these  
19 circumstances.

20 Section 226.400. Disciplinary Actions.

21 (a) School personnel may order the removal of an eligible  
22 child from his or her current placement for periods of no more  
23 than ten consecutive school days each in response to separate  
24 incidents of misconduct, as long as such repeated removals do  
25 not constitute a pattern based on consideration of factors such  
26 as the length of each removal, the total amount of time the  
27 child is removed, and the proximity of the removals to one  
28 another. In such a case, these removals shall not be considered  
29 to constitute a change in placement.

30 (1) After an eligible child has been removed from his  
31 or her placement for ten school days in the same school  
32 year, the district shall provide services to the child on  
33 any subsequent day(s) of removal.

34 (2) School personnel, in consultation with the child's  
35 special education teacher, shall determine the extent of

1       the services to be provided, which shall be adequate to  
2       enable the child to progress appropriately in the general  
3       curriculum and advance toward achieving the goals set forth  
4       in his or her IEP.

5       (b) Any removal of a student (i.e., any "suspension") shall  
6       be reported immediately to the student's parents, along with a  
7       full statement of the reasons for the suspension, a copy of  
8       which shall also be given to the school board. The district  
9       shall provide the parents notice of their right to request that  
10       the district review the suspension decision, as required by  
11       Section 10-22.6 of the School Code [ 105 ILCS 5/10-22.6] .

12       (c) When a district first removes a child for more than ten  
13       school days in a school year or initiates a removal that will  
14       constitute a change in placement, the district shall, no later  
15       than ten business days after the date of such removal, either:

16               (1) convene an IEP meeting to review and, if necessary,  
17               revise the child's existing behavioral intervention plan  
18               as appropriate to address the child's behavior; or

19               (2) if the district has not conducted a functional  
20               behavioral assessment and if the child does not have a  
21               behavior intervention plan, convene an IEP meeting to  
22               develop an assessment plan.

23       (d) Upon any subsequent removal of a child that does not  
24       constitute a change in placement, the members of the IEP Team  
25       shall review the child's behavioral intervention plan and its  
26       implementation. If any one member of the team believes that the  
27       plan needs to be modified, the district shall convene an IEP  
28       meeting to review the plan and revise it as the team deems  
29       appropriate.

30       (e) A student may be suspended from using the  
31       transportation provided by the school district if his or her  
32       behavior warrants such a measure. When suspending  
33       transportation privileges results in the student's absence  
34       from school on a given day, that day shall be considered a day  
35       of suspension or removal, and the requirements of Section  
36       10-22.6 of the School Code shall apply.

1       (f) School personnel may order a change in placement for an  
2 eligible child to an interim alternative educational setting  
3 for the same amount of time that a child without a disability  
4 would be subject to discipline, up to a maximum of 45 days, if:

5           (1) the child carries a weapon, as defined at 34 CFR  
6 300.520, to school or to a school function under the  
7 jurisdiction of a state or a local school district; or

8           (2) the child knowingly possesses or uses illegal drugs  
9 or sells or solicits the sale of a controlled substance,  
10 both as defined at 34 CFR 300.520, while at school or a  
11 school function under the jurisdiction of a state or a  
12 local school district.

13       (g) No later than ten business days after making the  
14 decision to place the child in an alternative setting, the  
15 district shall convene an IEP meeting as delineated in  
16 subsection (c) of this Section.

17       (h) The interim alternative educational setting in which a  
18 child is placed pursuant to subsection (f) of this Section  
19 shall be identified by the child's IEP Team.

20           (1) The setting shall be selected so as to enable the  
21 child to continue to progress in the general curriculum.

22           (2) While the child is served in the interim  
23 alternative educational setting, he or she shall continue  
24 to receive the services and modifications set forth in the  
25 IEP.

26           (3) The placement shall include services and  
27 modifications designed to address the behavior that  
28 resulted in the child's being removed from his or her  
29 current educational placement and to prevent that behavior  
30 from recurring.

31       (i) Interim alternative educational settings for students  
32 who exhibit behavior that is likely to result in injury to  
33 themselves or others are subject to the provisions of Section  
34 226.655 of this Part.

35       (j) No eligible child shall be expelled for behavior that  
36 is a manifestation of the child's disability. If a district is

1 considering expelling an eligible student, the district shall:

2 (1) Conduct a manifestation determination review as  
3 described in Section 226.410 of this Part; and

4 (2) Adhere to the requirement of Section 10-22.6(a) of  
5 the School Code regarding meeting with the parent(s).

6 (k) An expulsion constitutes a change in placement and  
7 requires revision of the child's IEP in a manner that conforms  
8 to the applicable requirements of Subpart C of this Part.  
9 Cessation of services to an eligible child is prohibited during  
10 a period of expulsion.

11 Section 226.410. Manifestation Determination Review. The  
12 requirements of this Section shall apply whenever a  
13 disciplinary action is contemplated with respect to an eligible  
14 child that will constitute a change in placement and that  
15 action is being considered because of behavior that violates  
16 any rule or code of conduct of the school district that applies  
17 to all students.

18 (a) On the date when the district determines that  
19 disciplinary action will be taken, the district shall notify  
20 the parents in writing to that effect and shall notify them of  
21 the procedural safeguards that apply.

22 (b) As soon as possible, but in no event more than ten  
23 school days after the date on which the district determines  
24 that disciplinary action will be taken, the district shall  
25 conduct a review of the relationship between the child's  
26 disability and the behavior that is subject to the disciplinary  
27 action (a "manifestation determination review").

28 (c) The manifestation determination review shall be  
29 conducted by the IEP Team and other qualified personnel in a  
30 meeting.

31 (d) In carrying out a manifestation determination review,  
32 the IEP Team and other qualified personnel shall determine  
33 whether the child's behavior was a manifestation of his or her  
34 disability. In making its determination, the IEP Team shall  
35 consider all available relevant information, including:

1           (1) evaluation and diagnostic results, including  
2           information supplied by the child's parent(s);

3           (2) observations of the child; and

4           (3) the child's current IEP and placement.

5           (e) The team may determine that the subject behavior was  
6           not a manifestation of the child's disability only if it is  
7           determined that:

8           (1) The child's IEP and placement were appropriate, and  
9           special education services, supplementary aids and  
10           services, and behavioral intervention strategies were  
11           provided consistent with that IEP and that placement.

12           (2) The child's disability did not impair his or her  
13           ability to understand the impact and consequences of the  
14           behavior.

15           (3) The child's disability did not impair his or her  
16           ability to control the behavior.

17           (f) If the child's behavior is determined to have been a  
18           manifestation of his or her disability, the district shall  
19           immediately initiate steps to remedy any deficiencies  
20           identified in the IEP or its implementation, so that such  
21           deficiencies may be removed as soon as possible.

22           (g) If the child's behavior is determined not to have been  
23           a manifestation of the disability, the district may apply  
24           relevant disciplinary procedures in the same manner as it would  
25           with respect to children without disabilities. In such a case,  
26           the district shall ensure that the student's special education  
27           and disciplinary records are provided for consideration by the  
28           person(s) making the final determination regarding the  
29           disciplinary action to be taken.

30           (h) When the application of a disciplinary measure results  
31           in a change in placement, services shall be provided to the  
32           extent determined necessary by the IEP Team to enable the  
33           student to progress in the general curriculum and advance  
34           appropriately toward achieving the goals set forth in his or  
35           her IEP.

1       Section 226.430. Protection for Children Not Yet Eligible  
2       for Special Education.

3       (a) A child who has not been determined eligible under this  
4       Part and who has engaged in behavior that violated any rule or  
5       code of conduct of the local school district may assert any of  
6       the protections provided for in this Part if the school  
7       district had knowledge that the child might be an eligible  
8       child before the occurrence of the behavior that precipitated  
9       disciplinary action.

10       (b) A district shall be deemed to have knowledge that a  
11       child may be an eligible child if, prior to the incident:

12               (1) The parent of the child has expressed concern in  
13               writing (or orally, if the parent is illiterate in English  
14               or has a disability that prevents a written statement) to  
15               personnel of the school district that the child is in need  
16               of special education and related services;

17               (2) The behavior or performance of the child  
18               demonstrates the need, or a potential need, for such  
19               services;

20               (3) The parent of the child has requested an evaluation  
21               of the child pursuant to Sections 300.530 through 300.536;  
22               or

23               (4) The child's teacher or another school employee has  
24               expressed concern in writing about the behavior or  
25               performance of the child to the director of special  
26               education or to other district personnel, in accordance  
27               with the district's child find or referral procedures.

28       (c) A district shall not be deemed to have knowledge that a  
29       child may be an eligible child if:

30               (1) the district determined that no evaluation was  
31               necessary or conducted an evaluation and determined that  
32               the child was not eligible; and

33               (2) provided written notice to the child's parents of  
34               its determination.

35       (d) If a district does not have knowledge that a child is  
36       or may be an eligible child prior to taking disciplinary



1 measures against the child, the child may be subjected to the  
2 same disciplinary measures as those applied to children without  
3 disabilities engaging in comparable behavior.

4 (1) When a request is made for an evaluation of a child  
5 during the time period when the child is subjected to  
6 disciplinary measures, the district shall conduct an  
7 evaluation in an expedited manner.

8 (2) The child shall remain in the educational placement  
9 determined by school authorities, which may include  
10 suspension or expulsion without educational services,  
11 until the evaluation is completed.

12 (3) The district shall provide special education and  
13 related services after developing an IEP if the child is  
14 determined to be eligible for special education and related  
15 services.

16 (e) A district shall further be deemed not to have  
17 knowledge that a child may be an eligible if:

18 (1) The parent refused or revoked consent for  
19 evaluation; or

20 (2) The parent refused or revoked consent for  
21 placement.

22 Section 226.500. Language of Notifications.

23 (a) The notices to individual parents required in this  
24 Subpart F shall be:

25 (1) Written in language understandable to the general  
26 public; and

27 (2) Provided in the native language of the parent or  
28 other mode of communication used by the parent, unless it  
29 is clearly not feasible to do so.

30 (b) If the primary language or other mode of communication  
31 of the parent is not a written language, the local school  
32 district shall ensure that:

33 (1) The notice is translated orally or by other means  
34 to the parent in his or her native language or other mode  
35 of communication;

1           (2) The parent understands the content of the notice;  
2           and

3           (3) There is written evidence in the child's record  
4           that the requirements of this subsection (b) have been met.

5           Section 226.540. Consent.

6           (a) A parent shall be considered to have given consent only  
7           when:

8           (1) The parent has been fully informed of all  
9           information relevant to the activity for which consent is  
10           sought, in his or her native language or other mode of  
11           communication;

12           (2) The parent understands and agrees in writing to the  
13           carrying out of the activity for which his or her consent  
14           is sought, and the consent describes that activity and  
15           lists the records (if any) that will be released and to  
16           whom; and

17           (3) The parent understands that his or her granting of  
18           consent is voluntary and may be revoked at any time.

19           (b) A school district may not require parental consent as a  
20           condition of any benefit to the parent or the child except for  
21           the service or activity for which consent is required.

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

25           (d) If the parents of a child with a disability refuse  
26           consent for initial evaluation or a reevaluation, the district  
27           may continue to pursue those evaluations by using the due  
28           process procedures or the mediation procedures. Informed  
29           parental consent need not be obtained for reevaluation if the  
30           district can demonstrate that it has taken reasonable measures  
31           to obtain that consent, and the child's parent has failed to  
32           respond.

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

35           (f) Parental consent shall be obtained prior to the use of

1 the parent's private insurance to pay for services required by  
2 a child's IEP.

3 (g) Parental consent shall be obtained for the disclosure  
4 of personally identifiable information about a child,  
5 consistent with the requirements of the Student Records Act.

6 (h) Parental consent shall be obtained for the use of an  
7 IFSP instead of an IEP.

8 (i) A parent may revoke consent for any action by the  
9 district or cooperative entity serving his or her child that  
10 requires parental consent. If a parent desires to revoke  
11 consent, he or she may do so either in writing or orally. If  
12 the revocation of consent is communicated orally, the district  
13 or cooperative entity shall commit the parent's request to  
14 writing and provide a copy of this written summary to the  
15 parent within five days.

16 (j) Any revocation of consent is effective immediately,  
17 subject to the provisions of subsection (k) of this Section,  
18 but is not retroactive, i.e., it does not negate an action that  
19 occurred after the consent was given and before it was revoked.  
20 For purposes of this subsection (j), a district shall be  
21 considered to have given immediate effect to a parent's  
22 revocation of consent when it either discontinues the action  
23 that is the subject of the revocation prior to its next  
24 scheduled occurrence or provides to the parent a written  
25 explanation of the timeline for the district's action and the  
26 reasons for that timeline. The district or cooperative entity  
27 shall ensure that each staff member whose activities are  
28 affected by the revocation of consent is promptly informed of  
29 the revocation.

30 (k) If a district disagrees with a parent's revocation of  
31 consent, the district may request a due process hearing  
32 pursuant to Section 226.605 of this Part.

33 (1) If the parent's revocation of consent pertains to  
34 an evaluation or re-evaluation of the student, the district  
35 shall not proceed with the evaluation or re-evaluation  
36 during the pendency of due process.

1           (2) If the parent's revocation of consent pertains to a  
2           special education placement for the student that is already  
3           in effect, the district's request for a due process hearing  
4           shall have the effect of staying that placement, provided  
5           that the district submits the request in writing to the  
6           State Board of Education in keeping with the provisions of  
7           Section 226.615 of this Part and within three business days  
8           after the parent's revocation occurred.

9           Section 226.625. Rights of the Parties Related to Hearing.

10          (a) The parties have the right to be represented at their  
11          own expense by counsel, or to be represented and assisted by  
12          other persons having special knowledge of this Part.

13          (b) The parents may inspect and review all school records  
14          pertaining to their child and, subject to the provisions of 23  
15          Ill. Adm. Code 375.50 (Student Records), may obtain copies of  
16          any such records at their own expense.

17          (c) The parents shall have access to the district's list of  
18          independent evaluators, and may obtain an independent  
19          evaluation of their child at their own expense.

20           (1) If the parents believe that acquisition of a  
21           completed independent evaluation will require a delay in  
22           convening the hearing, the parents shall request such a  
23           delay as provided in Section 226.640(c) of this Part.

24           (2) The parents may ask the hearing officer to  
25           determine whether an independent evaluation is needed. If  
26           the hearing officer concludes, after reviewing the  
27           available information, that an independent evaluation is  
28           necessary to inform the hearing officer concerning the  
29           services to which the student may be entitled, it shall be  
30           so ordered and provided at the school district's expense.  
31           The hearing officer shall delay the hearing as provided for  
32           in Section 226.640(c) of this Part.

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

1       (d) Either party to a hearing, other than an expedited  
2 hearing conducted pursuant to Section 226.655 of this Part, has  
3 the right to the disclosure, at least five days prior to the  
4 hearing, of any evidence to be introduced. At least five days  
5 prior to the hearing, each party shall disclose to all other  
6 parties all evaluations completed by that date and  
7 recommendations based on the offering party's evaluations that  
8 the party intends to use at the hearing. Either party may  
9 prohibit the introduction of evidence which was not disclosed  
10 to that party at least five days prior to the hearing.  
11 Disclosure of evidence with respect to an expedited hearing  
12 shall conform to the requirements of Section 14-8.02b of the  
13 School Code [ 105 ILCS 5/14-8.02b] .

14       (e) Either party may compel the attendance of any school  
15 district employee at the hearing, or any other person who may  
16 have information relevant to the needs, the abilities, the  
17 proposed program, or the status of the student. At the request  
18 of either party, the hearing officer shall authorize the  
19 issuance of subpoenas to compel the testimony of witnesses or  
20 the production of documents relevant to the case at issue. If  
21 any person refuses to comply with a subpoena issued under this  
22 Section, court action may be sought as provided in Section  
23 14-8.02a(g) of the School Code [ 105 ILCS 5/14-8.02a(g)] .

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

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

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

35       (i) The hearing officer shall conduct the hearing in a  
36 fair, impartial, and orderly manner. The hearing officer shall

1 afford each party an opportunity to present the evidence,  
2 testimony, and arguments each party believes necessary to  
3 support and/or clarify the issues in dispute and the relief the  
4 party is requesting. The hearing officer shall regulate the  
5 course of the hearing and the conduct of the parties and their  
6 counsel.

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

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

16 Section 226.800. Personnel Required to be Qualified.

17 (a) General.

18 (1) Each school district, or the cooperative entity of  
19 which it is a member, shall employ sufficient professional  
20 and noncertified personnel to deliver and supervise the  
21 full continuum of special education and related services  
22 needed by the eligible students who reside in the district.  
23 The number and types of personnel employed shall be based  
24 on students' need rather than administrative convenience.

25 (2) Each district or cooperative entity shall  
26 periodically submit to the State Board of Education, on  
27 forms supplied by the State Board, the roster of the  
28 individuals who will be or are providing special education  
29 or related services. The State Board may request any  
30 additional documentation needed in order to verify that  
31 each individual holds the qualifications that are required  
32 for his or her assignments.

33 (3) Reimbursement for personnel expenditures shall be  
34 made by the State Board only with respect to individuals  
35 who are qualified pursuant to this Section or pursuant to

1 Section 226.810 or 226.820 of this Part.

2 (4) Each district or cooperative entity shall develop  
3 and implement a comprehensive personnel development  
4 program for all personnel involved with the education of  
5 children with disabilities.

6 (b) Professional Instructional Personnel

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

9 (1) a valid special certificate and the qualifications  
10 required for the teaching area pursuant to 23 Ill. Adm.  
11 Code 25.40 and 25.43; or

12 (2) another valid teaching certificate and approval  
13 issued by the State Board of Education specific to the area  
14 of responsibility (see Section 226.810 of this Part).

15 (c) An individual assigned as a vocational coordinator  
16 shall be required to hold approval for this position, which  
17 shall be granted provided that the individual submits an  
18 application demonstrating that he or she:

19 (1) has two years' teaching experience;

20 (2) holds either a special preschool - age 21  
21 certificate or a high school certificate; and

22 (3) has completed at least 16 semester hours of college  
23 coursework, which shall at least include each of the areas  
24 identified in subsections (c)(3)(A) through (D) and may  
25 include one or more of the areas identified in subsections  
26 (c)(3)(E) through (I) of this Section:

27 (A) Survey of the exceptional child;

28 (B) Characteristics of the mentally retarded  
29 student;

30 (C) Characteristics of the socially and/or  
31 emotionally maladjusted student;

32 (D) Vocational programming for students with  
33 disabilities;

34 (E) Characteristics of other exceptionalities;

35 (F) Methods course in special education;

36 (G) Guidance and counseling;

1 (H) Educational and psychological diagnosis;

2 (I) Vocational and technical education.

3 (d) An individual assigned as a teacher coordinator shall  
4 be required to hold approval for this position, which shall be  
5 granted provided that the individual submits an application  
6 demonstrating that he or she:

7 (1) holds either a special preschool - age 21  
8 certificate endorsed for the disability area of assignment  
9 or a high school certificate with special education  
10 approval in the applicable disability area issued pursuant  
11 to Section 226.810 of this Part;

12 (2) has completed a course in vocational programming  
13 for students with disabilities; and

14 (3) has at least one year's work experience outside the  
15 field of education or has completed at least one course in  
16 either guidance and counseling or vocational and technical  
17 education.

18 (e) An individual assigned as a business manager's  
19 assistant shall hold an administrative certificate endorsed  
20 for chief school business official pursuant to 23 Ill. Adm.  
21 Code 25.344.

22 (f) Qualified Bilingual Specialists  
23 Professional staff otherwise qualified pursuant to this  
24 Section shall be considered "qualified bilingual specialists"  
25 if they meet the applicable requirements set forth in this  
26 subsection (f).

27 (1) A holder of a special certificate endorsed in the  
28 area of responsibility pursuant to 23 Ill. Adm. Code 25.40  
29 or 25.43 shall successfully complete a language  
30 examination in the non-English language of instruction and  
31 shall have completed coursework covering:

32 (A) Psychological/educational assessment of  
33 students with disabilities who have limited English  
34 proficiency;

35 (B) Theoretical foundations of bilingual education  
36 and English as a second language, including the study



1 of first and second language acquisition; and

2 (C) Methods and materials for teaching students of  
3 limited English proficiency or students with  
4 disabilities who have limited English proficiency.

5 (2) A holder of an early childhood, elementary, or high  
6 school certificate who also holds special education  
7 approval in the area of responsibility (see Section 226.810  
8 of this Part) shall successfully complete a language  
9 examination in the non-English language of instruction and  
10 shall have completed the coursework listed in subsections  
11 (f) (1) (A), (B), and (C) of this Section.

12 (3) A holder of an early childhood, elementary, or high  
13 school certificate who also holds approval to teach  
14 bilingual education or English as a second language shall  
15 have completed coursework covering:

16 (A) Methods for teaching in the special education  
17 area of assignment;

18 (B) Psychological/educational assessment of  
19 students with disabilities who have limited English  
20 proficiency, or psychological diagnosis for children  
21 with all types of disabilities; and

22 (C) Characteristics of students, or  
23 characteristics of students with limited English  
24 proficiency specifically, in the special education  
25 area of assignment.

26 (4) A holder of a transitional bilingual certificate  
27 issued pursuant to 23 Ill. Adm. Code 25.90 and endorsed for  
28 the language of assignment shall have completed two years  
29 of successful teaching experience and have completed  
30 coursework covering:

31 (A) Survey of children with all types of  
32 disabilities;

33 (B) Assessment of the bilingual student, or  
34 psychological/educational assessment of the student  
35 with disabilities who has limited English proficiency;

36 (C) Theoretical foundations of bilingual education

1 and English as a second language, including the study  
2 of first and second language acquisition;

3 (D) Methods for teaching in the special education  
4 area of assignment; and

5 (E) Characteristics of students, or  
6 characteristics of students with limited English  
7 proficiency specifically, in the special education  
8 area of assignment.

9 (5) A holder of a school service personnel certificate  
10 endorsed for guidance, school social work, or school  
11 psychology shall successfully complete an examination in  
12 the non-English language and shall have completed  
13 coursework in assessment of the bilingual student or  
14 psychological/educational assessment of the student with  
15 disabilities who has limited English proficiency.

16 (g) Directors and Assistant Directors of Special Education  
17 Each school district, or the cooperative entity of which it  
18 is a member, shall employ a director of special education, who  
19 shall be the chief administrative officer of the special  
20 education programs and services of the district or cooperative  
21 entity. The provisions of subsections (g)(1) and (2) of this  
22 Section shall apply through June 30, 2005. Beginning July 1,  
23 2005, directors and assistant directors of special education  
24 shall be subject to the requirements of 23 Ill. Adm. Code  
25 29.140 and 29.150.

26 (1) Each director or assistant director of special  
27 education shall hold a valid administrative certificate  
28 issued pursuant to 23 Ill. Adm. Code 25.315 and a master's  
29 degree, including 30 semester hours of coursework  
30 distributed among all the following areas:

31 (A) Survey of exceptional children;

32 (B) Special methods courses (3 areas of  
33 exceptionality);

34 (C) Educational and psychological diagnosis and  
35 remedial techniques;

36 (D) Guidance and counseling; and

1           (E) Supervision of programs for exceptional  
2           children.

3           (2) Each individual who will function as a director or  
4           assistant director of special education shall submit an  
5           application for special education administrative approval  
6           on a form supplied by the State Board of Education.

7           (3) Each school district, or the cooperative entity of  
8           which it is a member, shall submit to the State Board of  
9           Education a letter identifying the individual employed as  
10           the director of special education. If the individual is  
11           qualified as required, the State Board shall confirm that  
12           the individual is the State-approved director of special  
13           education for the district or cooperative entity.

14           (h) Supervisors.

15           (1) Each district or cooperative entity shall employ  
16           sufficient supervisory personnel to provide consultation  
17           to and coordination of special education services.

18           (2) Each individual performing a supervisory function  
19           shall hold a master's degree, including at least 15  
20           semester hours of coursework distributed among all the  
21           following areas:

22                   (A) Survey of exceptional children;

23                   (B) Characteristics courses in the areas to be  
24                   supervised;

25                   (C) Methods courses in the areas to be supervised;

26                   (D) Educational and psychological diagnosis and  
27                   remedial techniques; and

28                   (E) Supervision of programs for exceptional  
29                   children.

30           (3) Each individual performing a supervisory function  
31           shall also hold either:

32                   (A) a valid special certificate in the area to be  
33                   supervised, endorsed for supervision pursuant to 23  
34                   Ill. Adm. Code 25.322, with two years' teaching  
35                   experience in that area; or

36                   (B) a valid school service personnel certificate

1 endorsed for supervision and two years' experience in  
2 the area to be supervised; or

3 (C) a valid administrative certificate and either  
4 a valid special certificate endorsed for the area to be  
5 supervised or special education approval in that area.

6 (i) Chief Administrator of Special School

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

11 (1) the qualifications required under 23 Ill. Adm. Code  
12 25.43 in at least one disability area served by the school;  
13 or

14 (2) approval issued by the State Board of Education  
15 pursuant to Section 226.810 of this Part for at least one  
16 disability area served by the school.

17 (j) Other Professional Personnel

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

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

24 (2) a valid license or permission to practice, if the  
25 individual's profession is governed by such a requirement  
26 and either no educational credential in the same or a  
27 related field is issued by the State Board of Education  
28 (e.g., for a physical therapist) or the School Code permits  
29 the individual to perform the functions assigned; or

30 (3) a credential, regardless of title, issued by a  
31 professional association or organization in the relevant  
32 field, when no educational credential in the same or a  
33 related field is issued by the State Board of Education and  
34 no license or permission to practice is required by the  
35 State (e.g., for a music therapist or a daily living skills  
36 specialist).

1       (k) Noncertified Personnel.

2           (1) Each noncertified professional individual employed  
3       in a special education class, program, or service, and each  
4       individual providing assistance at a work site, shall  
5       function under the general direction of a professional  
6       staff member.

7           (2) Each program assistant/aide, as well as each  
8       nonemployee providing any service in the context of special  
9       education, shall function under the direct supervision of a  
10       professional staff member.

11           (3) Each district shall provide training experiences  
12       appropriate to the nature of their responsibilities to the  
13       individuals discussed in subsections (k) (1) and (2) of this  
14       Section. Training shall be in lieu of the requirements for  
15       noncertified personnel set forth in 23 Ill. Adm. Code 1,  
16       Subpart G.

17       Section 99. Effective date. This Act takes effect January  
18       1, 2005.