

Legal Boot Camp for New Special Education Administrators

**IAASE 17th Annual Fall Conference
October 2, 2015**

I. Welcome and Introductions

II. Attachments

- A.** New Administrator Checklist
- B.** Special Education Timelines Chart
- C.** Sample Prior Written Notice (PWN) letter denying an evaluation

III. Recent Special Education Legislation

A. Service Animals

Effective August 14, 2012, P.A. 97-0956 designates miniature horses as service animals. The animal must be trained to assist with or any other physical, mental, or intellectual disability, including (but not limited to) hearing, guiding/mobility, seizures, psychiatric, autism, etc. ISBE has provided additional guidance at <http://www.isbe.state.il.us/spec-ed/pdfs/guidance-service-animals.pdf>. Schools can consider:

1. The type, size, and weight of the miniature horse and whether the facility can accommodate its features;
2. Whether the handler has sufficient control of the miniature horse;
3. Whether the miniature horse is house broken; and
4. Whether the miniature horse's presence in the facility compromises the legitimate safety requirements necessary for operation.

B. Restraint and Seclusion

In May 2012, the U.S. Department of Education issued guidance on the use of restraint and seclusion (<http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>). Secretary Duncan states “Every effort should be made to prevent the need for the use of restraint and seclusion,” and notes that “there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.” Although the guidance is nonbinding, it is a useful resource.

C. Epi-Pen Administration

See ISBE Guidance updated May 2015: “Self-Administration and Self-Carry of Medications for Asthma and Allergy.” http://www.isbe.net/school_health.htm

D. Self-Administration of Insulin

On August 1, 2014, Pubic Act 98-0844 created the *Public Self-Care of Diabetes Act*, which rejected the proposition that insulin must be injected outside of the public’s view or in a confined area, *e.g.*, the nurse’s office. This Act provides that, as insulin is necessary for a diabetic student’s continued health, a person with diabetes, or a parent or legal guardian of a person with diabetes, may self-administer insulin or administer insulin:

1. In any location (public or private)
2. Where the student or parent/guardian is authorized to be
3. Without concern if the injection site is uncovered during or incidental to the administration of insulin

E. Home and Hospital Instruction for Students

On July 14, 2011, Public Act 97-0123 was enacted, effective immediately, amending Section 5/14-13.01 of the *Illinois School Code* regarding home and hospital instruction for students.

1. Prior to this amending Act, a student received home or hospital instruction when a physician, licensed to practice medicine in all of its branches, certified that (1) the student had a medical condition causing that student to be unable to attend school for two or more consecutive weeks due to his or her condition, or (2) the student had a medical condition causing “ongoing intermittent” absences (a term that was not defined). If the student had an IEP, in response to ongoing intermittent absences, the student’s IEP team was to consider the need for home or hospital services based upon the student’s condition, the impact on the student’s ability to participate in education, and the anticipated duration or nature of the student’s absence from school.
2. The amended Act alters the standards for determining home or hospital instruction. Now, a child qualifies for home or hospital instruction when a

doctor, licensed to practice medicine in all of its branches, anticipates that a student will be unable to attend school for two or more consecutive weeks due to a medical condition.

3. A child also qualifies if a doctor anticipates that a student's medical condition will cause ongoing intermittent absences. The Act now defines the term "ongoing intermittent" absence to mean the student's medical condition is of such a nature or severity that the student is anticipated to be absent for periods of at least "two days at a time multiple times during the school year totaling at least 10 days or more of absences." There is no minimum number of days a student must be absent before he or she qualifies for home or hospital instruction.
4. The Act states that home or hospital instruction may begin as soon as the school district receives a doctor's statement, but not later than five days after receipt of a doctor's statement.
5. The Act states that special education and related services required by a student's IEP or Section 504 plan must be implemented as part of the student's home or hospital instruction. However, IEP and Section 504 teams may modify a student's receipt of special education and related services during home or hospital instruction.

F. Parent/Expert Visits and Independent Evaluations

Effective August 25, 2009, Public Act 96-0657 required that parents, independent educational evaluators, and qualified professionals retained by or on behalf of a parent or child be afforded "reasonable access" to educational facilities, personnel, classroom, and buildings, and to the child. 105 ILCS 5/14-8.02(g-5).

1. What is the duration and scope of access? The duration and scope of the access depends on the type of individual:
 - a) Parents must be granted access to observe their child and the child's educational program, or to observe a placement or program "proposed" for the child. Of special note, the Act is silent regarding the meaning of "proposed program or placement." It is arguably both the program or placement recommended by the IEP team and/or requested by the parents.
 - b) Independent educational evaluators and qualified professionals must be given access sufficient to conduct an evaluation of the child or his or her current or proposed educational program, which includes the right to conduct interviews of staff members.
2. School districts retain rights to influence some terms of the required access, such as the ability to negotiate time and place of access, and to limit interviews to personnel having information relevant to the child's current educational services.

G. Online Concussion Certificate

On August 19, 2014, the *Interscholastic Athletic Organization Act* was amended to require schools to establish an online certification program on concussion awareness and reduction of repetitive sub-concussive hits and concussions. 105 ILCS 25/1.15. The amendment also mandates that, as of the effective date, all high school coaching personnel and athletic directors be online concussion certified. Coaching staff and athletic directors hired before the date of enactment have one year to comply while new employees are subject to the provision effective immediately. The program is to be offered at no charge to member high schools, updated annually, and include a video. Additional requirements as to content of the concussion awareness training can be found on the [ILGA Website](#). To obtain concussion certification, coaching personnel and athletic directors must:

1. Review the online material and demonstrate proficiency on a test developed by the association
2. Renew their certification every 2 years
3. Annually require student athletes to watch the online concussion certification video
4. Encourage coaches of youth sports organizations to consider this certification

H. Reading Disabilities-Dyslexia

As of July 14, 2014, Public Act 98-0705 (105 ILCS 5/2-3.160) requires the State Board of Education to:

1. Provide every school board with information on screening instruments available to identify students who exhibit indicators of dyslexia and other reading disabilities.
2. Develop and provide local school boards guidance on appropriate intervention strategies for students who are diagnosed.

Local school boards must:

1. Implement age appropriate screening techniques for early diagnosis of dyslexia.
2. Ensure that every enrolled kindergarten student in the district is screened for dyslexia and other reading disabilities.
3. If a student is diagnosed with a reading disability, the local school board must then ensure that appropriate intervention strategies are implemented.

The Act also establishes [requirements](#) on professional development, incorporation of the International Dyslexia Association's definition of dyslexia, and additional written tests for educator licensure candidates.

IV. Legal Framework — IDEA

Individuals with Disabilities Education Improvement Act

20 U.S.C. §1400 *et seq.* (effective December 3, 2004)

34 C.F.R. Part 300 (effective July 5, 2006, amended December 1, 2008)

A. Free Appropriate Public Education (FAPE)

Board of Education of the Hendrick Hudson Central School District v. Rowley,
458 U. S. 176, 553 IDELR 656, 553 LRP 7494 (1982)

1. The “free appropriate public education” required by the Act is tailored to the unique needs of the handicapped child by means of an individualized educational program.
2. The Act itself does not define ‘appropriate education,’ but leaves to the courts and the hearing officers the responsibility of giving content to the requirement of an appropriate education.
3. A “free appropriate public education” consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child “to benefit” from the instruction.
4. The [lower courts] erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon States which receive funding under the Act. Rather, Congress sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education.
5. We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

B. Least Restrictive Environment (LRE)

1. The “LRE Mandate” (34 C.F.R. §300.114) requires schools to ensure:
 - a) That children with disabilities, including children in public or private institutions or other care facilities, are educated with nondisabled children to the maximum extent appropriate.
 - b) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2. The school the student would attend if he/she was not disabled should generally always be considered by the IEP team as one placement option.
3. The “continuum of alternative placements” to meet the unique educational needs of students with disabilities highlights the importance of “individualized decisions,” never a “one size fits all” approach. Other options along this continuum include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. §300.551.

Regular education w/ or w/o supportive services	Resource pull out or push in	Self Contained Instructional	Therapeutic Day Public or Private	Residential	Home Hospital
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V. Legal Framework — Section 504

A. Introduction

Section 504 of the Rehabilitation Act of 1973 (Section 504), prohibits discrimination on the basis of disability, by any program or activity which receives or benefits from federal financial assistance. Section 504 requires that disabled students be provided with a free appropriate public education (“FAPE”) and sets forth requirements concerning identification, evaluation, appropriate services, and procedural safeguards.

The *ADA Amendments Act of 2008*, effective January 1, 2009, significantly broadened who qualifies for protection under the *Americans with Disabilities Act* (ADA) and Section 504. Since these changes, the Office of Civil Rights in the Department of Education (“OCR”) has clarified how the changes affect school district’s obligations to provide services to students under Section 504 (see: <http://ed.gov/about/offices/list/ocr/504faq.html>).

B. OCR Guidance

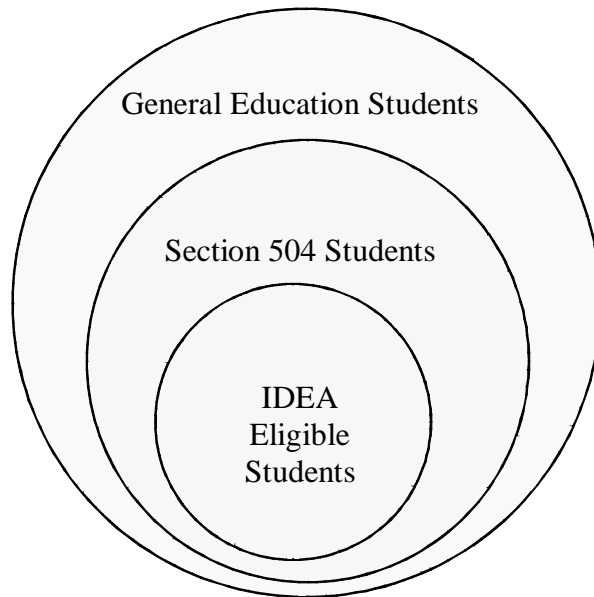
The Office for Civil Rights has issued a series of guidance documents which outline the obligations of public elementary and secondary schools under Section 504. For example, OCR issued a Dear Colleague Letter on January 25, 2013 addressing the requirement that students have an equal opportunity for participation in nonacademic and extracurricular services and activities.

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201301-504.html>

A January 19, 2012 Dear Colleague letter and FAQ provides information on the Amendments Act and discusses the obligations of school districts, including the requirement to evaluate students to determine eligibility for regular or special education services.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html>

C. Relationship Between Section 504 and the Individuals with Disabilities Education Improvement Act (“IDEA”)

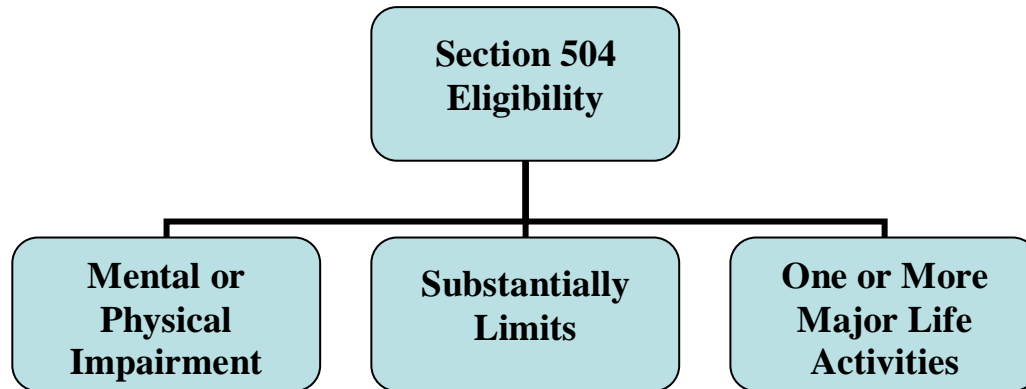


- Section 504 is not a funding statute, *i.e.*, school districts do not receive state or federal money for serving Section 504 students.
- Section 504 is broader in scope, *e.g.*, it requires that schools and other public entities be physically accessible to persons with disabilities. Section 504 applies to both students and school district employees.
- Section 504 prohibits discrimination on the basis of disability, while IDEA mandates appropriate educational placements and related services, regardless of discriminatory intent.
- IDEA and Section 504 apply to different categories of individuals and define disability in different ways:

IDEA — 20 U.S.C. §1401(3)(A)	SECTION 504 — 29 U.S.C. §794
Applies only to students ages 3 – 21 in public elementary and secondary schools	Schools that receive federal funds are prohibited from discriminating against individuals on the basis of disability
“Child with a disability” means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities	A person has a disability under Section 504 if he or she has a mental or physical impairment, defined as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities
AND	Which substantially limits
Who, by reason thereof, needs special education and related services (<i>i.e.</i> , specially designed instruction in response to a specific “adverse effect”)	One or more major life activities, which includes but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending , speaking, breathing, learning, reading, concentrating, thinking, communicating , and working *ADA Amendments Act changes in bold

D. The Effect of the ADA Amendments Act of 2008 on Section 504

The ADA Amendments Act of 2008 did *not* change the three criteria for eligibility under Section 504; however, the definitions of “substantially limits” and “major life activities” were broadened.



E. Definition of “mental or physical impairment” remained the same

The definition of “mental or physical impairment” is still defined as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

F. Definition of “substantially limits” was relaxed

1. **Episodic impairments:** The 2008 amendments provide that “[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” For example, a student with Crohn’s Disease who may have periodic flare-ups that require hospitalization must be evaluated based on how the disease affects him or her during those flare-ups, and not when the disease is inactive.
2. **Mitigation:** The 2008 Amendments clarified that a student may be eligible under Section 504 even if the student’s disability or condition is controlled or mitigated, *e.g.*, by medication, cochlear implants, hearing aids, etc. The definition of mitigating measures also includes “reasonable accommodations” and other steps that a school district can take to address learning issues. Mitigating measures include, but are not limited to:
 - Medication
 - Medical supplies, equipment, or appliances
 - Low-vision devices (excluding eyeglasses and contact lenses)

- Prosthetics (including limbs and devices)
- Hearing aids, cochlear implants or other implantable hearing devices
- Mobility devices
- Oxygen therapy equipment and supplies
- Assistive technology devices

The only exception is that a school district may consider the ameliorative effects of ordinary eyeglasses and contact lenses. “Ordinary eyeglasses or contact lenses” are lenses that are intended to correct visual acuity or eliminate refractive error. “Low vision devices,” on the other hand, are devices that magnify, enhance, or otherwise augment a visual image.

G. The definition of “major life activity” was expanded

1. The definition of “major life activity” was expanded (in fact, it was doubled) by the 2008 Amendments (new language in bold): “major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, **eating, sleeping,** walking, **standing, lifting, bending,** speaking, breathing, learning, **reading, concentrating, thinking, communicating,** and working
2. A major life activity also includes the “operation of a major bodily function,” including but not limited to functions of the immune system, normal cell growth, digestive bowel bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

H. Do the new changes mean that virtually all students will now be eligible for a Section 504 Plan?

1. No. An impairment in and of itself is not a disability under Section 504. A student’s impairment must *substantially limit* one or more major life activities in order to be considered a disability under Section 504.
2. For example, a student who has a physical or mental impairment would not be considered a student eligible for services under Section 504 if the impairment only results in some minor or moderate limitation, rather than a substantial limitation. *See Knapp v. Northwestern Univ.*, 101 F.3d 473, 481 (7th Cir. 1996) (“not every impairment that affects an individual’s major life activities is a substantially limiting impairment”).

I. Does a school district still have to provide services to a student whose learning is not substantially limited by her impairment?

1. Yes. Learning is not the only major life activity for which a student may be found eligible. Under Section 504, a student may qualify as disabled even if his or her disability does not substantially limit learning.
2. Learning is only one of 18 major life activities, such as breathing, walking, caring for oneself, etc., that districts should consider during the evaluation process to determine whether a student has a disability under Section 504.

J. Is there a “substantial limitations” test?

No, there is no litmus test for determining whether an impairment substantially limits a major life activity. Rather, the determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. Consider the following when deciding the question of substantially limits:

1. The nature and severity of the impairment;
2. The duration or expected duration of the impairment; and
3. The permanent, long-term impact or expected impact of the impairment. *Snowflake (AZ) Unified School District*, 102 LRP 38676 (OCR 1998).

K. What questions can the Section 504 team members ask?

1. What is the nature and severity of the impairment?
2. What is the duration or expected duration of the impairment?
3. Does the student consistently need substantial changes to complete assignments?
4. Does the student consistently exhibit difficulties with planning and organization?
5. Has the student shown a consistent downward slope in academic progress?
6. Has the student shown a consistent pattern of negative behaviors?
7. Does the student need assistance to participate fully in any portion of the school day, including those where academics are not at issue?

Remember — the determination of whether an impairment substantially limits a major life activity must be made on a **case-by-case basis**.

L. Can school districts determine Section 504 eligibility on the basis of a medical diagnosis alone?

1. No. A medical diagnosis of an illness does not automatically mean a student can receive Section 504 services. The illness must cause a substantial limitation on the student’s ability to learn or another major life activity. *OCR FAQ Question #24*. OCR has consistently held that a medical diagnosis can and should be considered among other sources in evaluating a student for Section 504 eligibility. Other sources to be considered include: aptitude and achievement tests, teacher recommendations, physical condition of student, social and cultural background and adaptive behavior.
2. If the parent/guardian provides an independent, private evaluation or medical diagnosis, OCR advises that: “Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student’s individual circumstances.”

M. What if the parent/guardian either refuses or fails to provide the school district with a medical diagnosis? Can eligibility under Section 504 be denied on this basis alone?

1. No. School districts may properly *request* that the parent/guardian provide a medical diagnosis. However, under no circumstance may the Section 504 team automatically deny eligibility based on the parent/guardian's failure to provide a medical diagnosis. In these situations, if the team feels that a referral is appropriate, they should seek parental consent to conduct an evaluation targeting the area of concern.
2. Importantly, school personnel NEED NOT make a medical diagnosis; they must simply determine whether the student exhibits signs evidencing a mental or physical impairment. Reaching this decision can typically be achieved through the standard evaluation process.
3. Another option is to reimburse or pay for a private medical evaluation of the student regarding the specific area of concern. The school district only pays for the evaluation itself, not any follow-up treatment, etc. This option is not strictly mandated by law, but is an option to consider in situations where a student requires assistance and the team feels that a medical diagnosis is a necessity.

VI. IDEA Evaluations

A. Evaluations by the School District

1. **Timeline for completion of evaluations [§226.110]**

Evaluations must be conducted within 60 school days of receipt of parent consent. Exception: The 60 day timeline will not apply in cases where the parent repeatedly refuses to produce the child for the evaluation or enrolls the child in another public school after the 60 days has started to run but before the first school district has made an eligibility determination.

2. **Post-referral timeline [§226.110]**

Within **14 school days** after receiving a request for an evaluation, the district shall determine whether an evaluation is warranted. The district may utilize screening data and conduct preliminary procedures such as observe the student, conduct assessments for instructional purposes, consult with the student's teacher or other individuals and talk with the student.

a) **If no evaluation is warranted**, the district shall send written notice to the parents that includes:

- A statement that the evaluation is not warranted;

- An explanation why the school district believes that an evaluation is not warranted;
 - A description of what the school did or what personnel reviewed in order to reach that decision, *e.g.*, evaluation procedures, assessment, records, reports, etc.;
 - A statement that the parents of a child with a disability have protections under the procedural safeguards issued by ISBE and how to obtain a copy (best practice is to simply include a copy of the procedural safeguards with this notice);
 - Sources for the parents to contact to obtain assistance in understanding their rights;
 - A description of other options, if any, the school considered and why those options were rejected; and
 - A description of other factors that are relevant to the school's decision not to conduct an evaluation.
- b) **If an evaluation is warranted**, the district shall convene a team of individuals, including the parent, who have the knowledge and skills necessary to administer and interpret evaluation data (in other words, the child find team – 10 day notice is not required since this is not an IEP meeting). The team shall identify the assessments necessary to complete the evaluation and complete the domain sheet and ensure that the parents receive written notification of the team's conclusions along with a consent form.
- c) Keep in mind that the district must ensure that notification of the team's conclusions is transmitted to the parent within the 14-school-day timeline along with the domain and consent forms.

3. **Date of referral [23 Ill.Adm.Code §226.110]**

The “date of referral” is defined as “the date of written parental consent for an evaluation.”

4. **Individuals who can make a referral [§226.110(b)]**

A referral may be made by a “parent of a child or by an employee of a State educational agency, another State agency, a local educational agency, or a community service agency.” Language allowing “any concerned person” and “another professional having knowledge of a child's problems” has been deleted.

5. **Parental consent for Initial Evaluation [§300.300(b)]**

School districts must obtain written parental consent to initiate a case study evaluation. School districts may, but are not required to, file for due process to override parents' refusal to consent to initial evaluations.

6. **Parental consent for Reevaluation [§300.301(c)(ii)]**

School districts must obtain written parental consent to initiate a reevaluation. School districts may, but are not required to, file for due process in instances when parents do not consent to a reevaluation.

7. **Refusal to consent to initial placement [§300.300(b)(3)]:**

If a parent denies consent for (or refuses to respond) his/her child's initial special education placement, the school district is not allowed to file for due process. The school district is not responsible to provide FAPE or hold IEP meetings for such children.

COMMON QUESTION -- WHAT DO PARENTS CONSENT TO?

- **Evaluation/Reevaluation**
- **Initial Placement**
- **NOT A CHANGE OF PLACEMENT – NOT LABEL**

8. **Screenings [§300.302, §226.110]**

The screening of a student by a teacher or specialist to determine instructional strategies for curriculum implementation is not considered an evaluation that requires parental consent.

9. **Evaluations of transfer students [§300.304(c)(5)]**

Evaluations for students who transfer school districts mid-year must be coordinated between the school districts "as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations."

10. **Frequency of Reevaluations [§300.303]**

Reevaluations must be conducted at the request of a parent or teacher, but not more than one time per year (unless the parties agree otherwise) and at least once every three years.

B. Independent Educational Evaluations (IEE) [§300.502]

1. Right to request an IEE

Parents have the right under IDEA to obtain an independent educational evaluation, defined as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.”

2. When a parent requests an IEE

a) Has the parent put their request in writing and does he/she disagree with an evaluation obtained by the public agency? These are the “triggering events” that will determine whether or not due process must be filed in order to protest payment for the IEE.

b) The school district must provide parents with “information about where an [IEE] may be obtained.”

c) The school district must provide its “criteria applicable for IEEs.”

d) The school district may “ask for the parent’s reason why he or she objects to the public evaluation.” HOWEVER, the school district “may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.”

e) The school district must “without unnecessary delay,” either:

- Ensure that an IEE is provided at public expense; or
- File a due process complaint in **5 calendar days** to request a hearing to show that its evaluation is appropriate.

3. If the school district **agrees to pay** for the IEE, the parties shall agree on the evaluator and the specific evaluation to be completed. If agreement cannot be reached, the school district shall request a due process hearing. Once the evaluation is completed, the school district shall send notice convening the IEP Team within ten calendar days after receiving the independent educational evaluation.

4. If the school district **does not agree to pay for an IEE**, the federal regulations require that “without unnecessary delay” (defined as **5 calendar days** in Illinois) the district must request a due process hearing.

5. When a parent obtains a private evaluation at his/her own expense, the school district “shall send the [IEP meeting] notice within ten [calendar] days after the parent requests a meeting to consider the results.”

C. Eligibility under IDEA

1. Once an evaluation is completed an IEP team must convene to consider whether or not the child is eligible for special education services. This team should include the evaluators, or professionals able to interpret the evaluations. In order to be eligible for special education services, the child must meet the criteria established in one or more of the 13 recognized disability categories:
 - Autism
 - Deaf-Blindness
 - Deafness
 - Emotional Disability
 - Hearing Impairment
 - Intellectual Disability
 - Multiple Disabilities
 - Orthopedic Impairment
 - Other Health Impairment
 - Specific Learning Disability
 - Speech or Language Impairment
 - Traumatic Brain Injury
 - Visual Impairment
2. State and federal regulations set out, very specifically, the eligible criteria for each of these categories. Students must meet all of the criteria of a disability in order to be eligible for services.
3. Importantly, all eligibility criteria require the child's disability to have an adverse effect on his or her educational performance. Accordingly, a child who has accommodated for his or her disability and is successful in school may not be eligible for services, even if the other eligibility criteria for a disability are met.

VII. Response to Intervention

A. DOE Guidance

1. On January 21, 2011, the U.S. Department of Education Office of Special Education Programs (OSEP) issued a memorandum to all state special education directors clarifying the relationship between Response to Intervention (RtI) and special education evaluations under IDEA. Specifically, OSEP confirmed that RtI cannot be used to delay or deny an evaluation to a child suspected of having a disability.

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>

2. OSEP’s memorandum confirms that a district cannot reject a request for an evaluation, or delay providing an evaluation, on the basis that a child has not participated in an RtI framework.
3. According to OSEP, if a parent requests that a school district conduct an initial case study evaluation of a student, a school district cannot delay or deny providing the evaluation based solely on the fact that RtI strategies are being implemented.
4. If the district agrees with the parent that the child may be a child who is eligible for special education and related services, the district must evaluate the child. If the district does not suspect that a child has a disability and denies the request for an evaluation, the district must provide notice to the parents explaining its decision and the information that was used as the basis for the decision.
5. In light of this new guidance, school districts should continue to carefully and individually assess each request for an evaluation. If the district believes the student may have a disability, it must conduct an evaluation regardless of where the student is in the RtI process. If the district does not suspect that the student has a disability, it may deny the request so long as it does not base the decision solely on the student’s participation (or lack thereof) in the RtI framework.

VIII. IEP Process

Federal and state law emphasize three primary IEP concepts: (1) the involvement and progress of students with disabilities in the general curriculum; (2) the involvement of parents and students with school district personnel to make individual educational decisions; and (3) the preparation of students with disabilities for post-school activities.

A. IEP Summary Notes are Critically Important

IEP notes are one of the first things that counsel will review when a case is developing. The notes need to be detailed enough to “tell the story” of what happened at the meeting, but not so detailed that taking notes is cumbersome. Taking IEP notes is a skill – make sure that your teams understand the importance of taking accurate notes. Here is a common example of a problem with notes:

1. “Social work services were discontinued.” Why? Whose idea was this? Better language: “Social work services were discontinued at Mrs. Doe’s request. Mrs. Doe is angry that the social worker contacted DCFS in the fall to report suspected abuse/neglect against Mrs. Doe. The team offered to assign social worker #2 to serve John, but Mrs. Doe declined. The school team members feel strongly that John is benefitting from social work services and will begin services again if Mrs. Doe changes her mind.”

B. IEP Summary

The guarantee of a free appropriate public education (FAPE) is the cornerstone of the IDEA. The United States Supreme Court set out a two-part test to determine whether a child has been provided with FAPE. *Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley*, 458 U. S. 176, 553 IDELR 656, 553 LRP 7494 (1982).

1. First, the school district must comply with the procedural safeguards set out in the Act.
2. Second, the IEP proposed by the school district must be appropriate, i.e., “reasonably calculated to enable the child to receive educational benefits.” In adopting this standard, the Supreme Court expressly held that school districts need not maximize a student’s educational potential.

C. IEP Team [§300.321]

1. The **parents** of the student;
2. The **student**, whenever appropriate. The student must be invited if the purpose of the meeting involves consideration of postsecondary goals and/or transition services. If the student does not attend, the school district must take other steps to ensure that the child’s preferences and interests are considered.
3. Not less than one **regular education teacher** of the child (if the child is, or may be, participating in the regular education environment);
4. Not less than one **special education teacher** of the child, or where appropriate, not less than one special education provider of the child;
5. A **representative** of the school district (**LEA rep**) who is:
 - a) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
 - b) Knowledgeable about the general education curriculum; and
 - c) Knowledgeable about the availability of resources of the public agency.
6. An individual who can interpret the instructional implications of evaluation results (this person may be one of the members already listed);
7. Related service personnel, as appropriate;
8. Any other individuals who have knowledge or special expertise regarding the student, at the discretion of either the parent or the school district. The decision as to whether the individual has “knowledge or special expertise” is made by the person/entity who is doing the inviting.

D. Full Participation

It is crucial that IEP team members work together to create a beneficial IEP. Each team member brings his or her own expertise and experience to the table, and should share his or her knowledge with the rest of the team. In addition, when other team members are sharing information in their particular area of expertise, the rest of the team should listen, learn, and be respectful.

E. Who is a “regular education teacher” and what is his/her role?

At least one regular education teacher must attend the student’s IEP meetings if the student is (or may be) participating in the regular education environment. 34 C.F.R. 300.321(a)(2). The regular education teacher participating in the IEP meeting should be a teacher who is (or may be) responsible for implementing all or a portion of the student’s IEP. If the student has more than one regular education teacher and only one attends the IEP meeting, the school district is encouraged to seek input from those regular education teachers not in attendance and must inform them of the results of the meeting.

The U.S. Department of Education has indicated that the regular education teacher may not need to participate in all decisions made by the IEP team, and may not have to stay for an entire IEP meeting or attend every meeting. In determining the extent of the regular education teacher’s participation, school districts and parents should try to reach an agreement on whether the teacher will attend a particular meeting and, if so, for what period of time. This determination should be made on a case-by-case basis. 64 Fed.Reg. 12477.

F. Can changes be made to an IEP summary without meeting? [§300.324(a)(4) and (a)(6)]

Yes, the parent and the school district may agree not to meet for the purpose of making a change to the IEP summary, and may instead develop a written document to amend or modify the child’s current IEP. If this occurs, the school district must ensure that the child’s IEP team is informed of the changes. Upon request, a parent must be provided with a revised copy of the IEP summary with the amendments incorporated. Importantly – make sure any changes are incorporated into the full IEP summary.

IX. Parental Rights and Responsibilities

A. To what extent must parents participate in the IEP process?

1. With the passage of the 1997 Amendments, parents unquestionably became members of the IEP team. 20 U.S.C. 1414(d)(1)(B)(i). Thus, parents must be given the opportunity to participate in all meetings with respect to the identification, evaluation, and educational placement of their child. 34 C.F.R. 300.321.

2. “Meetings” do not include (1) informal or unscheduled conversations involving school personnel, (2) conversations on issues such as teaching methodology, lesson plans or coordination of services, and (3) preparatory activities that school personnel engage in to develop a proposal or response to a parent’s proposal that will be discussed at a later IEP meeting. 34 C.F.R. 300.501(b)(3).
3. School districts must make reasonable efforts to ensure parents participate in and understand group discussions regarding their child, including providing an interpreter for parents if necessary.
4. When parents cannot attend a meeting, the school district must use other methods to ensure their participation, including individual or conference telephone calls. 34 C.F.R. §300.328 and §300.501(3).
5. When the IEP Team makes a placement decision (specifically a “placement decision” in the regulations, although this is advisable for any decision), and the parent is not in attendance at the meeting, the school district must maintain a record of its attempts to ensure the parent’s involvement.

B. Parental Consent

1. When Required
 - a) Initial Evaluation
 - b) Reevaluation
 - c) Initial Placement

C. Revocation of consent [§226.540(c)]

1. Effective December 1, 2008, the U.S. Department of Education adopted a new section of the federal regulations that allows parents to revoke consent for IDEA services at any time after the child has begun receiving services. 34 C.F.R. §300.300(b)(4) provides that when a parent revokes consent for continued IDEA services:
 - a) Within 10 calendar days after receipt of the written revocation (not counting the day that the written revocation is received or oral revocation is communicated), the school district must provide the parent with prior written notice (defined below).
 - b) All IDEA services shall cease at the time when prior written notice is provided to the parent/guardian.
 - c) The school district may not utilize mediation or due process procedures to obtain agreement or a ruling that services may be provided to the child.

- d) The district will not be deemed in violation of the IDEA requirement to provide a free appropriate public education (FAPE) to the student.
 - e) The district is not required to convene an IEP Team meeting or develop an individualized education program (IEP) for the child for further provision of special education and related services. However, the school district may invite the parent to an IEP meeting to discuss the issue of revocation.
2. *What if the parent revokes consent orally?* The federal regulations require that revocation of consent be provided in writing. However, the Illinois State Board of Education requires that school districts also honor oral revocations of consent. In situations where a parent revokes consent orally, the school district must memorialize the oral revocation in a written summary that must be sent to the parent within five calendar days of the date that the oral revocation is communicated.
 3. *When is the revocation effective?* At the time that the school district provides the parent with prior written notice (see next section), which must be provided within 10 calendar days after receipt of the revocation (not counting the day that the written revocation is received or oral revocation is communicated).
 4. *Can a student revoke consent?* Yes, if the student is age 18 or older and no guardian has been appointed. Also, you will want to ensure that the student did not delegate decision-making authority to another individual.
 5. *How do we respond if parent asks for all special education information to be removed from the student's records?* 34 C.F.R. § 300.9 provides that if the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove references to the child's receipt of special education and related services.
 6. *What if parents just want to "revoke" a related service or a part of a student's IEP?* This is not considered revocation. Revocation of service means everything – special education eligibility in its entirety. "Partial revocations" are handled by the IEP team, and the consensus of the team will govern. For example, if parent requests that social work services be discontinued, the team should consider the request, but it can say no – IEPs are not menus! If the consensus of the team is to honor parent's request, that's fine. Just make sure the IEP notes clearly reflect whose idea it was.

X. Prior Written Notice

A. What is prior written notice?

1. A description of the action proposed or refused by the school district;
2. An explanation of why the school district proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
4. A statement that the parents of a child with a disability have protection under the procedural safeguards contained in IDEA and the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the ramifications of a revocation of consent;
6. A description of other options that the IEP team considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the school district's proposal or refusal

B. When is PWN required?

1. Under 34 CFR §300.503(a), a school district must provide PWN whenever it: (1) proposes to begin or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education (FAPE) to a child; or (2) refuses to begin or change the identification, evaluation, or educational placement of a child or the provision of FAPE to a child.
2. PWNs are advisable when you are denying a parent's request to convene an IEP meeting, denying a request for an evaluation/reevaluation, when a parent/guardian or student revokes consent for IDEA eligibility and at least one year prior to a student's anticipated graduation from high school with a regular high school diploma (considered a change in placement pursuant to 23 Ill. Adm. Code 226.50(c)(3)(B)).

C. Are there any other requirements for the PWN letter?

1. Written in language understandable to the general public.
2. Written in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
3. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure that the

notice is translated orally or by other means to the parent in his or her native language or other mode of communication.

4. The school district must ensure that the parent understands the content of the notice and that there is written evidence that the parent understood the notice.

XI. Transition Services

IDEA requires that IEPs for students age 16 and older (**14½ in Illinois**) include a plan for a coordinated set of services designed to successfully transition special education students from school to post-school settings. Congress strengthened this mandate in 2004, concerned that high-school age special education students are at greater risk of dropping out of school or graduating from school unprepared for adult life and responsibilities. Accordingly, IEP teams are required to:

1. Draft transition plans
2. Consider and develop post-secondary goals
3. Determine what services and courses of study are needed to assist the student in achieving those goals

For students age 14½ and older, transition plans, etc., are the centerpieces of their IEPs. The Office for Civil Rights (OCR) issued a guidance document in 2007, updated in March of 2011, providing educators with guidance for developing and implementing appropriate transition plans.

<http://www2.ed.gov/about/offices/list/ocr/transitionguide.html>

B. Overview

1. In General

Transition services help students with disabilities bridge the gap from school to post-secondary activities, preparing them for adult life and providing them with skills to obtain gainful employment, if appropriate. The provision of these services is a process involving a partnership of students, parents, school-age service providers, post-school service providers, and local communities.

2. Purpose

The purpose of the IDEA is “to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C. § 1400(d)(1)(A)–(C) (emphasis added).

More specifically, transition services emphasize the acquisition of functional skills and hands-on knowledge, enabling students to enter the

workforce or continue their education and to live as autonomously as possible, given the extent of their disabilities.

3. **Definition (34 C.F.R. §300.43)**

Transition services means a coordinated set of activities:

- a) Designed to be a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; and
- b) Based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes:
 - Instruction;
 - Related services;
 - Community experiences;
 - The development of employment and other post-school adult living objectives; and
 - Acquisition of daily living skills and provision of a functional vocational evaluation.
- c) Transition services may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

4. **Responsibility for Providing Services**

The responsibility for transition services does not fall entirely on the school district (at least in theory). Any agency other than the district that is financially and legally responsible for providing transition services to students is defined as a participating agency. For example, agencies such as the state departments of vocational rehabilitation, mental health and social services, and the Social Security Administration provide a variety of services, including vocational training, job coaching, assistance in finding employment, funding for job-related equipment, counseling, and assistance in independent living.

The school district, however, is expected to take a leadership position in contacting agencies expected to provide services to the student once he or she exits the school system, and to act as a liaison between the parents and the other agencies while the student is enrolled in school.

C. Eligibility for Transition Services

1. Graduation/through age 21 [§300.102]

Eligible students must be served through age of 21 (in Illinois, this is defined as “through the day before the student’s 22nd birthday”) unless the student has graduated with a regular high school diploma.

2. **Related Note:** In Illinois, “Brittany’s Law” [105 ILCS 5/14-16] requires that special education eligible students who will have completed four years of high school at the end of a school year must be allowed to participate in the high school graduation ceremony and other graduation activities with their graduating class, in the discretion of the students and their parents/guardians. If the student’s individualized education program prescribes that the students are entitled to continue to receive special education and/or related services beyond their four years of high school, they may receive a certificate of completion in lieu of a diploma during the graduation ceremony.

D. Student Attendance at Transition IEP Meeting [§300.321(b)]

School districts must invite the student to his/her IEP meeting to consider postsecondary goals and transition services. If the student does not attend the IEP meeting, the IEP summary must summarize why the student is not in attendance and school district personnel must take steps to ensure that his/her preferences are considered.

E. Courses of Study

1. **Facilitating Transition:** Transition services must include courses of study that focus on improving the academic and functional achievement of the child to facilitate movement from school to life after secondary school.
2. **Alignment:** Courses of study listed in the IEP should align with the student’s post-secondary goals. For example, if a post-secondary goal requires completion of certain minimum courses, then the IEP should include those specific high school classes.

F. Post-Secondary Goals [§300.320(b)]

Beginning not later than the first IEP to be in effect when the child turns 14½, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include appropriate, measurable, post-secondary goals based on age-appropriate assessments related to:

1. **Education and/or vocational training:** Attendance at a college, university, or technical/ trade/ vocational school; and/or vocational or career field training, such as an apprenticeship or on-the-job training.
2. **Employment:** Paid employment or non-paid employment such as volunteer work.
3. **Independent living skills:** Independent living skills, such as health and safety, finance, transportation, social relationships, recreation, self-advocacy and future planning, etc.

Effective August 22, 2013, Public Act 98-0517 amended the *Illinois School Code* to provide that goals and services related to independent living skills are now required to be included in every student's transition plan.

G. Coordinated Set of Activities

For each post-secondary goal, activities designed to achieve that goal should be coordinated. In other words, (a) instruction, (b) related services, (c) community experience, (d) development of employment and other post-school adult living objectives (if appropriate), (e) acquisition of daily living skills, and (f) the provision of functional vocational skills should all be coordinated to help ensure that the post-secondary goal will be met.

H. Age-Appropriate Transition Assessments

The use of a transition assessment for the post-secondary goals should be documented in the student's IEP. In other words, for each post-secondary goal, there should be evidence that the IEP team based the goal on an age-appropriate transition assessment[s] that provided information on the student's needs and took into account the student's strengths, preferences, and interests regarding the post-secondary goal. Note that transition assessments are not the same as vocational evaluations. Comprehensive vocational evaluations are not specifically mandated, but may be appropriate considering the unique needs of each student.

I. Integrated and Supported Employment

Although the IDEA does not define the terms "integrated employment" or "supported employment," definitions for these terms are found in the *Rehabilitation Act of 1973* and its implementing regulations. Transition activities that promote integrated or supported employment may include career exploration, job searching, vocational education, job shadowing, preparing a resume and interviewing for a job.

1. "Integrated" work settings allow special education students to interact on a regular basis with non-disabled workers or the public in the performance of job duties.
2. "Supported employment" is work performed in an integrated work setting with ongoing support services for wages that meet minimum rates of the *Fair Labor Standards Act*.

J. Evidence of Coordination Between School District and Post-School Service Providers

For each post-secondary goal, the IEP should document evidence of coordination between the school district and post-secondary service provider[s]. For example, there should be evidence in the IEP or the student’s file of the following:

1. The IEP team discussed and listed potential post-school service providers;
2. The parent and/or student were asked for their input regarding potential post-school service providers;
3. The parent (or child who has reached the age of majority) was asked to provide consent to invite an outside agency to the IEP meeting;
4. Post-secondary service providers (post-secondary education providers, vocational education providers, employers, independent living, community participation providers, etc.) were invited to the IEP meeting to discuss transition;
5. For those post-secondary service providers who were unable to attend the IEP meeting, alternate forms of communication were used to support networking/access for the IEP team; and
6. A commitment by any post-secondary service provider to meet any financial responsibilities it may have in the provision of transition services.

K. Implementation of Transition Services

Districts are not relieved of their obligation to provide transition services even if the demographics of the local area make it impossible to develop relationships with potential employers or to otherwise find cooperating entities for other adult-living objectives. See *Letter to Bereuter*, 20 IDELR 536 (OSEP 1993).

L. Failure to Meet Transition Objectives [§300.324(c)]

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

M. Summary of Performance [§300.305(e)]

When eligibility terminates due to graduation from high school or aging out, school districts must provide the child with a “summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.”

N. Notice Prior to Graduation [§226.50(c)(3)(B)]

At least one year prior to the anticipated date of issuance of a diploma, both the parent and the student shall receive written notification that eligibility for public school special education services will end following the granting of a diploma and that the parent (or student who has reached the age of majority) may request an IEP meeting to review the recommendation that the student receive a diploma.

O. Notice of Transfer of Rights [§226.690, §300.320(c)]:

1. At least one year prior to the student's 18th birthday (*i.e.*, on or before his/her 17th birthday), the school must notify the student and parent in writing that the rights accorded to parents under IDEA shall transfer to the student upon reaching age 18. However, keep in mind that all notices that are required shall continue to be provided to the student and the parent after the student reaches the age of majority.
2. Effective August 23, 2007, in Illinois [105 ILCS 5/14-6.10]:
 - a) When a student who is eligible for special education reaches the majority age of 18 years, all rights accorded to the student's parents under the IDEA transfer to the student.
 - b) This transfer of rights also applies to students who are incarcerated in an adult or juvenile State or local correctional institution.
 - c) A student with a disability who has reached majority age has the right to have an adult of his or her choice, including, but not limited to, the student's parent, assist the student in making decisions regarding the student's individualized education program.
 - d) The school district must notify the student and the student's parents of the transfer of rights in writing at a meeting convened to review the student's individualized education program during the school year in which the student turns 17 years of age. At that time, the school district must provide the student with a copy of the Delegation of Rights form. The school district must mail the notice and a copy of the Delegation of Rights form to the student and to the student's parents, addressed to their last known address, if they do not attend the meeting.
 - e) Rights do not transfer to the student if the student has been adjudged incompetent under State law or the student has executed a Delegation of Rights form to allow another individual to make educational decisions for him/her. A student may terminate the Delegation of Rights at any time. The Delegation of Rights remains in effect for one year and may be renewed annually.

XII. Student Discipline

A. Special Education Suspensions – Days 1-10 [§300.530]

A school district may suspend a special education student for 10 school days in any given school year if the student violates school rules. During days 1 through 10, school districts are not required to provide educational services, conduct a manifestation determination (relatedness) review, or draft a behavior intervention plan for the student.

B. Special Education Suspensions – When a Change of Placement Occurs [§300.530]

There is no set “limit” on the number of days a special education student may be suspended. Special education students may be suspended as long as the removals do not constitute a change in the student’s placement.

1. What constitutes a “change in placement”? [§300.536]

A suspension or other removal from school is considered a change in placement when:

- a) The suspension or removal lasts more than ten consecutive school days
- b) The child has been subjected to a series of removals that constitute a pattern:
 - Because the series of removals total more than 10 school days in a school year; and
 - Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
 - Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

2. When days of suspension or other removal constitute a change of placement, the following requirements apply:

- a) Educational services must be provided during the suspension as determined by school personnel (*e.g.*, homebound services). The educational services “must enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in his/her IEP.”

- b) Related service minutes that are missed due to the suspension must be made up.
- c) An IEP meeting must be convened to:
 - Draft or review/revise the student’s behavior intervention plan; and
 - Conduct a manifestation determination (relatedness) review. If the misconduct is found related to the student’s disability, the suspension must be rescinded and removed from the student’s records. If the misconduct is not related to the student’s disability, the student may be suspended, even though a change in placement has occurred.
- d) Parents must be provided with procedural safeguards.

C. Special Education Expulsions [§300.530]

1. Students with disabilities may be expelled in the same manner as regular education students in instances where their misconduct is not a manifestation of (*i.e.*, not related to) their disabilities, except that all special education students who are expelled must be provided with educational services during the length of their expulsions.

The following procedures must be followed when a student with a disability is recommended for expulsion:

- a) The student should be suspended for 10 days;
- b) The school district must convene an IEP meeting;
- c) A functional behavioral assessment must be drafted or reviewed and revised, if necessary;
- d) The IEP team must draft or review/revise the student’s behavior intervention plan;
- e) The IEP team must conduct a manifestation determination (relatedness) review. If the misconduct is related to the student’s disability, the student may not be expelled. However, the IEP team may recommend a more restrictive placement. If the misconduct is not related to the student’s disability, then expulsion proceedings may proceed against the student; and
- f) The IEP team must decide what “services” to provide the student during any expulsion. Services must enable the student to appropriately progress in the general curriculum and advance toward achieving his/her IEP goals.

2. If the student is eligible for expulsion because the student's misconduct is not related to his or her disability (as determined by the IEP team), the Board of Education may expel the student in the same manner as a regular education student. All of the procedures for expulsion of a regular education student, including all notice and hearing requirements, must be followed with respect to a special education student. HOWEVER, the student must be provided with the services determined by the IEP team during any expulsion period, which must approximate a full day.
3. The Board of Education must be provided with the student's special education and disciplinary records when considering whether or not to expel the student.

D. Manifestation Determinations [§300.530(e)]

1. Manifestation determination hearings may take place with the parent and relevant members of the IEP team, rather than the entire IEP team. However, the determination as to which members are "relevant" is to be made by both the parents and the school district.
2. The relevant members of the IEP team must determine:
 - a) Was the conduct in question caused by, or had a direct and substantial relationship to, the child's disability; and
 - b) Was the conduct in question the direct result of the school district's failure to implement the student's IEP.
3. If the relevant members of the IEP team determine that the behavior was a manifestation of the child's disability, a functional analysis must be completed and a BIP implemented. If there is already a BIP in place, it must be reviewed and modified as necessary to address the behavior at issue. The child must also be returned to his/her educational placement unless otherwise agreed.

E. Functional Analysis of Behavior/Behavior Intervention Plans

1. An FBA/BIP is required for a special education student:
 - a) When the student is suspended in excess of 10 school days during a school year;
 - b) When the student is recommended for expulsion;
 - c) When the student is placed in a 45-school-day interim alternative educational placement;
 - d) When an MDR (manifestation determination review) is conducted and results in a finding of relatedness.

F. 45-Day Interim Alternative Educational Placements

School districts have the option of removing students to an interim alternative educational setting for up to 45 school days for four acts of misconduct: (1) weapon offense, (2) drug offense, (3) serious bodily injury or (4) in those instances where the school district can prove to a hearing officer that the student is substantially likely to injure him/herself or others (dangerousness).

1. Weapon Violation

The student's IEP team may place the student in an interim alternative educational setting for up to 45 school days if the student carries a weapon to school or to a school function. This includes instances where the student acquires a weapon on school grounds.

“Weapon” is defined as: “a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.” 18 U.S.C. 930.

2. Drug Violation

The student's IEP team may place the special education student in an interim alternative educational setting for up to 45 school days if the student knowingly possesses or uses an illegal drug or sells or solicits the sale of a controlled substance while at school or a school function.

“Illegal drug” is defined as a controlled substance, but it does not include a substance that is legally possessed or used under the supervision of a licensed healthcare professional. “Controlled substance” is defined in section 812 of Title 21 of the United States Code and includes over 130 various drugs. Keep in mind that alcohol is not considered an illegal drug for purposes of a 45-day placement under IDEA.

3. Serious Bodily Injury

This new category was added by IDEA 2004 for students who have “inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.” It is defined as injury which involves:

- a) A substantial risk of death;
- b) Extreme physical pain;
- c) Protracted and obvious disfigurement; or
- d) Protracted loss or impairment of the function of a bodily member, organ, or faculty.

4. **Substantially Likely to Injure Self or Others**

A hearing officer may order a change in a student’s placement to an appropriate interim alternative setting for not more than 45 school days in instances where the hearing officer determines that the district has demonstrated by substantial evidence (more than a preponderance of evidence, i.e., more than 51%) that maintaining the current placement of the student is substantially likely to result in injury to the student or others.

5. **Why Should a 45-School-Day Placement Be Used?**

a) The student will remain in the 45-school-day setting even if the parents request a due process hearing. In situations where the student has committed one of the three qualifying acts, if there is any possibility that the parents may object to a change in placement or will be challenging the expulsion (if any), a school district would be wise to invoke a 45-day placement to keep the student out of the building for at least 45 school days.

b) A 45-day placement is an option whether the misconduct is related to the student’s disability or not. In situations where misconduct is found related and expulsion is therefore not an option, a 45-day placement will remove the student from the building at least temporarily.

G. “Knowledge” That A Regular Education Student May be Entitled to Special Education Protections

1. Definition of “knowledge” [§300.534(b)]

A school district has “knowledge” that a regular education student may be entitled to special education protection if:

a) The parent of a child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or a teacher of the child that the child is in need of special education;

b) The parent of the child has requested an evaluation;

c) The teacher of the child, or other personnel of the School District has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or other supervisory personnel.

2. What happens if the school district has “knowledge?”

If a school district has “knowledge,” the school district should suspend a student from school for 10 school days and conduct an expedited case

study evaluation. If the student is found eligible for special education services, the student can be disciplined in accordance with IDEA's requirements. If the student is found not eligible, the school district can proceed to expel or otherwise discipline the student as a regular education student. Assuming that the case study evaluation and MDC/IEP meeting to determine eligibility cannot be held within 10 days (which is a fair assumption), the student must return to school after his/her 10 day suspension, unless the parents agree otherwise.

XIII. Due Process

A. Who can file? [300.507(a)]

1. Parent
2. Public Agency

B. What can be challenged in due process? [300.507(a)]

1. Identification
2. Evaluation
3. Educational Placement
4. Provision of FAPE

C. What information must the due process request contain? [300.508(b)]

1. Name of child
2. Address of the child
3. Name of the school child attends
4. If child is homeless, contact information for the child
5. Description of the nature of the problem, including facts
6. A proposed resolution of the problem, to the extent known

D. What if the parents' request does not contain this information? [300.506(d)]

The school district must file the due process with the State. However, the school district can notify the hearing officer and the parent in writing, within 15 calendar days of receiving the due process complaint, that the complaint is not sufficient. Within five calendar days of receiving this letter, the hearing officer must determine whether the complaint is sufficient and may order the complaining party to provide further detail.

E. Is there a time limit within which parents must file?

1. **Two-Year Statute of Limitations**

[§300.507(a)(2) and §300.511(e)]:

A parent has two years to file for due process from the date that he/she knew or should have known about the action that forms the basis for the complaint. This two-year timeline does not apply if the parent was prevented from filing a due process hearing complaint in cases where:

- Specific misrepresentations were made by the school district that the issue was resolved; or
- The school district withheld information from the parent.

F. Steps to take when parent files

1. Notify ISBE
2. Send information about legal services to parent [300.507(b)]

When due process is filed or upon request, a school district “must inform the parent of any free or low-cost legal and other relevant services available in the area....” (This information is contained on ISBE’s website)

3. Draft Prior Written Notice [§300.503(b)]

Within **10 calendar days** of receiving a “due process complaint notice,” the school district shall send to the parent a “prior written notice” that includes:

- a) An explanation why the school district proposed or refused to take the action raised in the complaint;
- b) A description of other options that the IEP team considered and the reasons why those options were rejected;
- c) A description of each evaluation procedure, assessment, record or report the school district used as the basis for the decision; and
- d) A description of the factors that are relevant to the school district’s proposal or refusal.

4. Convene Resolution Session [§300.510(a)]

Within **15 calendar days** of receiving a due process request, the school district shall convene a “resolution session” (or alternatively, participate in mediation) with the parents and relevant members of the IEP team:

- a) The resolution session must include a representative from the school district who has decision-making authority;

- b) The school district’s attorney may not be present unless the parent is accompanied by an attorney;
- c) The parents must be allowed to discuss their complaint;
- d) School district personnel must be provided an opportunity to resolve the complaint; and
- e) If agreement is reached, the parties shall execute a legally binding written agreement setting forth their agreement that is signed by both parties and is “enforceable in any State court of competent jurisdiction or in a district court of the United States,” which may be revoked by either party within 3 business days.

G. Questions about Due Process

1. What if the parent refuses to participate in the Resolution Session? [§300.510(b)]

If the parent refuses to participate, the school district may request that the hearing officer dismiss the parent’s due process request. If the school district refuses or otherwise fails to participate, the parent may request that the due process hearing timelines begin immediately.

2. Can a due process request be amended? [§300.508(d)(3) and §300.511(d)]

A party may amend its due process request only if the other party consents in writing, or the hearing officer grants permission, but no later than 5 days before a due process hearing occurs. If a party files an amended due process request, the timelines for the resolution meeting and final decision begin again with the filing of the amended due process complaint [34 C.F.R. §300.508(d)(4)].

3. Procedural safeguards must be provided to parents when due process is filed – what other times? [300.504(a)]

Procedural safeguards need only be given one time per year, except that a copy must be given to parents:

- a) Upon initial referral
- b) When a parent requests an evaluation
- c) When due process is requested
- d) When a state complaint is filed

- e) When a change of placement occurs in relation to student misconduct (*e.g.*, suspension over 10 days cumulative, expulsion or 45-day interim alternative educational placements)
- f) Upon the request of a parent.

4. **Explain the 45-day timeline [300.515]**

- a) If the due process complaint is not resolved to the satisfaction of the parties within 30 calendar days after the school district receives the due process request, the due process hearing “must occur.” [34 C.F.R. §300.510(b)(1)];
- b) The timeline for the hearing officer’s decision begins at the expiration of this 30-day time period [34 C.F.R. §300.510(b)(2)];
- c) The federal regulations specifically provide that “the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting [resolution session/mediation] is held.” 34 C.F.R. §300.510(b)(3); and
- d) The hearing officer must issue a decision no later than 45 calendar days after the expiration of the 30-day period described above (*i.e.*, 30 calendar days for resolution/mediation + 45 calendar days for hearing decision = a written decision within 75 calendar days after the school district receives the due process request).

5. **The case has some procedural errors, is this a problem? [§300.513(a)]**

A procedural violation will result in the denial of FAPE only if a hearing officer finds that the procedural violation:

- a) Impeded the child’s right to receive FAPE;
- b) Significantly impeded the parents’ participation in the decision-making process; or
- c) Caused a deprivation of educational benefits.

6. **After the due process hearing decision is rendered, how long is the appeal period? [§300.516(b)]**

- a) Parties have 120 calendar days in Illinois to appeal a hearing officer’s decision.

XIV. Dispute Resolution

A. Communicate, Communicate, Communicate

Arguably the most important element of any relationship is communication. When parents and other IEP team members communicate well, a relationship develops that can better withstand disagreement and discord. Time and time again, parents testify at due process hearings that “no one listened to me.” Make an effort to assign at least one staff member the role of communicator – this person will not deliver bad news to the parents. This person should be a “safe” contact for the parent.

B. Tell the Truth

Ranking in importance right alongside communication is trust. A trusting relationship will not develop unless everyone is honest with each other. Educators are understandably reticent to tell parents that their child is not reading at grade level, should be retained in a grade, is exhibiting characteristics of autism, has no friends at school, etc. Do not be afraid to discuss difficult issues – parents deserve to know the truth. When IEP team members are truthful with parents about difficult issues, parents similarly trust that staff is truthful about positive news. Parents learn to trust that school staff members will be honest with them, no matter what.

C. Assign a School Staff Member the Role of “Lightning Rod”

This role often falls to the school district’s attorney or a high level administrator when the relationship between parent and school staff members disintegrates. This individual ideally delivers bad news and takes charge in difficult situations. The goal here is to protect the individuals who work with the child – preserving their relationship with the child/parent is paramount. The parent’s anger, mistrust, etc., can then be directed at individuals other than the teacher, aide, related service providers, etc.

D. Make Decisions That Need to be Made

Another common theme at due process hearings is the parent’s position that no one at the school district ever told him/her what the final decision of the team was, which is understandably frustrating. When IEP meetings turn contentious, the team must not shy away from making a decision. Even though the parent, as a team member, may disagree, it is critical that the parent at least understand what decision is being made and when the decision will be implemented. The consensus of the IEP team determines the final decision, and the consensus is determined by the case manager who facilitates the meeting.

XV. New Administrator Checklist

- Personally observe all special ed programs
- Visit all buildings/sites
- Figure out school district's model of service delivery
- Establish a contact person at ISBE
- Meet all special education staff
- Meet with outgoing director/administrator
- Meet parents/students
- Meet directors/administrators from neighboring school districts
- Meet with special education cooperative (if applicable)
- Meet with area State legislator
- Meet birth-3 year old service providers
- Meet all school district staff (principals, teachers, paraprofessionals, providers, etc.)
- Meet with sending K-8 school district (if you are working in a HS district) OR high school district (if you are working in an elementary district)
- Determine who reports to ISBE (and be very good to this person)
- Establish relationship with board's attorney (at least know his/her phone #)
- Maintain staff training schedule/list
- Maintain triage list in rank order
- Read all special ed forms, policies, procedures, procedural safeguards, audits, reports to State, complaints over last 5 years, everything (you get the idea)
- Work closely with HR director on hiring/firing
- Give monthly report to board (get to know the board in good times, not just bad)
- Assess how student records are maintained and where
- Pull 10 random IEP summaries for review
- Learn all special ed facts about your district (e.g., % in special ed, % of each eligibility category, % special ed expelled/suspended, etc.)
- Subscribe to special ed publications (e.g., IDELR reports, etc.)
- _____
- _____
- _____
- _____

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SPECIAL EDUCATION TIMELINES

IEP Meetings				
Law ¹	Action	Timeline		
		School	Calendar	Business
226.220(b)	Respond to teacher or parent request to convene IEP meeting; either agree and notify the parent or refuse in writing, including an explanation of the reason no meeting is necessary to ensure the provision of FAPE for the child.		10 days	
226.530	Advance notice to parent scheduling IEP meeting (may be waived by parent in writing)		10 days	
226.110(d)	Convene IEP meeting to determine eligibility after consent for evaluation is obtained	60 days		
226.110(j)	Convene IEP meeting to determine placement after determination of eligibility (must occur within 60-day timeframe)		30 days	
226.220(a)	Notice to parent of district's recommended action	Immediately after IEP mt		
226.110(f)	Provide copy of IEP summary to parent	Immediately after IEP mt		
226.220(a) 226.520	Waiting period before implementing IEP; can occur sooner if waived by parent. (The law was changed effective August 9, 2013 from 'calendar' days to 'school attendance' days).	10 days		
226.520 5/14- 8.02a(j)	If parents dispute the IEP and file a due process complaint, the filing must occur within 10 school days after the IEP meeting is held in order to invoke the student's stay-put placement. If the filing occurs after mediation, parents have 10 calendar days after mediation is unsuccessful to file in order to invoke stay-put.	10 days (if dp is filed before mediation)	10 days (after mediation occurs)	
Evaluations				
Law	Action	Timeline		
		School	Calendar	Business
226.110(c)	When referral for evaluation is made, make a decision and notify parents	14 days		
226.110(d)	Complete evaluation and convene IEP meeting	60 days		
226.110(f)	Provide written notice to parent concerning a student's eligibility after decision is made	10 days		
105 ILCS 5/14-8.02(b) 300.502	When parent requests IEE, district must agree or file for due process		5 days	
226.180(d)	Send notice convening IEP meeting to consider parent's IEE (after parents request a meeting to consider the results)		10 days	

¹ References to 226 refers to 23 Ill. Adm. Code §226 *et seq.*; 300 refers to 34 C.F.R. §300. *et seq.*

Revocation of Consent				
Law	Action	Timeline		
		School	Calendar	Business
300.300(b) 300.503(a) 226.520	Provide 'prior written notice' that conforms with 300.503 before ceasing special education and related services		10 days	

Student Records				
Law	Action	Timeline		
		School	Calendar	Business
105 ILCS 10/5(c)	Respond to parent/student request to inspect/copy records after receipt of request	15 days		
105 ILCS 10/8.1	Forward a transferring student's records to the receiving district, after notice to parent has been given		10 days	
226.50(a)	Send notice convening IEP meeting if incoming transfer student's old IEP is not adopted		10 days	
226.50(a)	Request transfer student's records from old district (in the event old IEP is not received)			1 day

Student Discipline				
Law	Action	Timeline		
		School	Calendar	Business
300.530(a)	Suspend special education student without need for MDR or provision of services	10 days		
226.400 300.530	Convene MDR, draft or review/revise FBA/BIP after student is suspended over 10 school days	10 days		
300.530(g)	Maximum length of placement in an interim alternative educational setting (per offense)	45 days		
300.530(g)	Convene IEP meeting after making decision to place student in interim alternative setting			10 days

Due Process				
Law	Action	Timeline		
		School	Calendar	Business
226.520 5/14- 8.02a(j)	If parents dispute the IEP and file a due process complaint, the filing must occur within 10 school days after the IEP meeting is held in order to invoke the student's stay-put placement. If the filing occurs after mediation, parents have 10 calendar days after mediation is unsuccessful to file in order to invoke stay-put.	10 days (if dp is filed before mediation)	10 days (after mediation occurs)	
226.615	Send letter requesting appointment of hearing officer after receipt of request for due process		5 days	
226.635	Request substitution of hearing officer		5 days	
300.508(e)	Non-requesting party response to due process (prior written notice from district)		10 days	
300.508(d)	Request for dismissal due to lack of sufficiency		15 days	
300.510	Convene resolution session or mediation		15 days	
300.510(e)	Revoke resolution session agreement			3 days
226.670	Request clarification of hearing officer's decision		5 days	

Special Education Discipline Chart

Suspension	<ul style="list-style-type: none"> ___ Interview student; provide opportunity for student to respond ___ Notify parent verbally and in writing ___ Offer parent opportunity to request a hearing to appeal issuance of the suspension ___ Ten (10) consecutive school days maximum for each infraction ___ Services need not be provided to student during days 1-10 <ul style="list-style-type: none"> → <i>If over 10 days cumulative in school year:</i> ___ Conduct MDR (manifestation determination) ___ Draft FBA/BIP (or review/revise existing FBA/BIP) ___ Provide services
Expulsion	<ul style="list-style-type: none"> ___ Suspend student for 10 school days (see above) ___ Place student in 45-day IAES (if conduct meets requirements, see below) ___ Conduct MDR ___ Draft FBA/BIP (or review/revise existing FBA/BIP) ___ IEP team determines placement during expulsion (therapeutic day school), in event board expels student from school (services are required) ___ Letter to parent scheduling expulsion hearing ___ Conduct expulsion hearing (before hearing officer or board) ___ Board meeting to consider hearing officer's report/board action ___ Letter to parent summarizing board action and expulsion period
45-School Day IAES Placement	<ul style="list-style-type: none"> ___ Weapon on school grounds or at a school function: "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches." ___ Drug offense: knowingly possessing or using an illegal drug or selling or soliciting the sale of a controlled substance while at school or a school function. "Illegal drug" is defined as a controlled substance, but it does not include a substance that is legally possessed or used under the supervision of a licensed healthcare professional. ___ Serious bodily injury: substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or faculty. ___ Dangerous student: a hearing officer must determine that the district has demonstrated by substantial evidence (more than a preponderance of evidence, <i>i.e.</i>, more than 51%) that maintaining the current placement of the student is substantially likely to result in injury to the student or others.
Knowledge	<ul style="list-style-type: none"> ___ The parent has expressed concern in writing to supervisory personnel or a teacher that the child is in need of special education prior to the misconduct; or ___ The parent has requested an evaluation prior to the misconduct; or ___ The child's teacher, or other personnel has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or other supervisory personnel (child find process).

Due Process Chart

Hearing Request	School district must file “District Request for an Impartial Due Process Hearing Officer” form (19-86 revised 8/06). If parent requests hearing, form must be sent to ISBE within 5 calendar days of parent’s request
Written Response 10 calendar days	<p><u>If the school district files</u>, the parent must transmit a written response to the school district and the hearing officer that specifically addresses the issues raised in the due process request.</p> <p><u>If the parent files</u>, the school district must transmit a copy of any “prior written notice” of its decision, including all supporting documentation to the parent and the hearing officer. If no “prior written notice” exists, the school district must submit a written response that includes:</p> <ul style="list-style-type: none"> • An explanation of why the district proposed or refused to take the action raised in the due process request; • A description of other options the IEP team considered and the reasons why those options were rejected; • A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; and • A description of the factors that are relevant to the school district’s proposal or refusal.
Notice of Dismissal 15 calendar days	<p><u>If the school district files</u>, the parent may seek dismissal of the due process request if the school district fails to provide the following information:</p> <ul style="list-style-type: none"> • The name, address, and telephone number of the student/parent, and of the person making the request on behalf of the school district; • The nature of the controversy to be resolved; and • The remedy being sought. <p><u>If the parent files</u>, the school district may seek dismissal of the due process request if the parent failed to provide the following information:</p> <ul style="list-style-type: none"> • The child’s name, address, name of the school attended; • A description of the nature of the problem relating to the proposed ore refused initiation or change, including facts relating to the problem; • A proposed resolution of the problem, to the extent known; and • Whether the parents will be represented by legal counsel.
Resolution Session 15 calendar days	<p>The parties are required to convene a resolution session to discuss resolution of the issues (or alternatively participate in mediation). The parties may agree to waive the resolution session in writing. The resolution session must include:</p> <ul style="list-style-type: none"> • Parents • Student, at the request of the parent • A school district representative with full decision-making authority, and • Members of the IEP team who have specific knowledge of the facts identified in the due process hearing request <p>School district’s attorney may not attend unless the parent brings an attorney If agreement is reached, it must be committed to writing Either party may void the agreement within 3 business days Parties must contact the hearing officer within 3 business days with a status report</p>
Mediation 15 calendar days	<p>Mediation may be convened as an alternative to the Resolution Session Either party may bring an attorney The mediation agreement may not be revoked or otherwise voided Parties must contact the hearing officer within 3 business days with a status report</p>

SAMPLE PRIOR WRITTEN NOTICE LETTER DENYING AN EVALUATION

METHOD OF DELIVERY

Date

Parents' names
Address

Dear _____:

The School District is denying your request for an evaluation of your son/daughter _____. This written notification meets the requirements contained at 34 C.F.R. § 300.503. A copy of ISBE form 34-57A (Parent/Guardian Notification of Decision Regarding a Request for an Evaluation) is attached.

1. **A description of the action proposed or refused by the agency:** We are denying your request for an evaluation at this time.
2. **An explanation of why the agency proposes or refuses to take the action:** [insert reasons].
3. **A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action:** [insert]
4. **A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained:** See attached procedural safeguards.
5. **Sources for parents to contact to obtain assistance in understanding the provisions of this part:** see below.
6. **A description of other options that the IEP Team considered and the reasons why those options were rejected:** See above.
7. **A description of other factors that are relevant to the agency's proposal or refusal:** none.

A copy of your procedural safeguards is enclosed. If you have any questions or concerns, please contact me directly at _____.

Additional resources that you might find helpful include:

<p>The Illinois State Board of Education (ISBE) 100 North First Street Springfield, IL 62777 217-782-5589</p>	<p>Family Resource Center on Disabilities (Parent Training and Information Center) 20 E. Jackson Blvd., Room 300 Chicago, IL 60604 312-939-3513 voice 312-939-3519 TTY & TDY 312-939-7297 FAX 800-952-4199 IL only E-mail: frcdptil@ameritech.net Website: www.frcd.org</p>	<p>Family Matters (Parent Training and Information Center) 1901 S.V11 Street, Suite 209 Effingham, IL 62401 217-347-5428 voice 217-347-5119 FAX 866-436-7842 Toll-Free E-mail: info@fmptic.org or deinhorn@arc-css.org Website: www.fmptic.org</p>
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Sincerely,

Director of Special Education

Enclosures: Explanation of Procedural Safeguards
ISBE form 34-57A (Parent/Guardian Notification of Decision Regarding A
Request for an Evaluation)