

Changes Effective 1-13-2016

ILLINOIS RULES AND REGULATIONS PART 226 UPDATE AND LEGAL ISSUES

SECTION 226.75 DEFINITIONS

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

SECTION 226.100 CHILD FIND RESPONSIBILITIES

- ✘ 1) ~~An annual screening~~ Annual and ongoing screenings of children under the age of five for the purpose of identifying those who may need early intervention or special education and related services.
- ✘ 2) Ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems which that interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services.

SECTION 226.110 EVALUATION PROCEDURES

- ✖ a) Procedures for Requesting an Initial Evaluation Each school district shall develop and make known to all concerned persons procedures by which an evaluation may be requested. These procedures shall:
 - + 1) Designate the steps to be taken in making a request for an evaluation;
 - + 2) Designate the persons to whom a request may be made;
 - 3) Identify the information that must be provided;
 - + 4) Provide any assistance that may be necessary to enable persons making requests to meet any related requirements established by the district; and
 - + 5) Identify the process for providing the parents with notice of their rights with respect to procedural safeguards.

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- ✘ b) A request may be made by a parent of a child or by an employee of a State educational agency, another State agency, a local educational agency, or a community service agency.
 - ✘ c) District's Response to Request 1) The school district shall be responsible for processing the request, deciding what action should be taken, and initiating the necessary procedures.

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- ✖ 2) To determine whether the child requires an evaluation, the district may utilize screening data and conduct preliminary procedures, such as observation of the child, assessment for instructional purposes, consultation with the teacher or other individual making the request, and a conference with the child.

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- ✖ Within 14 school days after receiving a request for an evaluation, the district shall determine whether an evaluation is warranted. If the district determines not to conduct an evaluation, it shall provide written notice to the parents in accordance with 34 CFR 300.503(b). If an evaluation is to be conducted:

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- ✖ A) The district shall convene a team of individuals (including the parent) having the knowledge and skills necessary to administer and interpret evaluation data. The composition of the team will vary depending upon the nature of the child's symptoms and other relevant factors.

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- ✖ B) The team shall identify the assessments necessary to complete the evaluation in accordance with 34 CFR 300.305 and shall prepare a written notification for the parents as required under 34 CFR 300.304(a). For each domain, the notification shall either describe the needed assessments or explain why none are needed.

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- ✖ C) The district shall ensure that the notification of the team's conclusions is transmitted to the parents within the 14-school-day timeline applicable under this subsection (c)(3), along with the district's request for the parents' consent to conduct the needed assessments.

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- ✖ d) Upon completion of the assessments identified pursuant to subsection (c)(3) ~~of this Section~~, but no later than 60 school days following the date ~~of~~ **the parent signs the** written consent ~~from the parent~~ to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed.

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- ✖ If fewer than 60 school days remain in a school year after the date of parental consent, the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year. (Section 14-8.02(b) of the School Code)

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- ✘ The school district shall provide a copy of the IEP Team's report to the parent at the conclusion of the team's meeting. In addition, the district shall provide to the parent, ~~within ten school days after the meeting,~~ written notice conforming to the requirements of Section 226.520 ~~of this Part~~ as to the eligibility determination reached with respect to the child. The parent shall also be entitled to receive copies of any evaluation reports upon request.

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- ✘ h) If an assessment is conducted under nonstandard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report. This information is needed so that the team of evaluators can assess the effects of these variances on the validity and reliability of the information reported and determine whether additional assessments are needed. For example, the use of a translator when a qualified bilingual specialist is not available may create nonstandard conditions.

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- ✖ i) If any needed portion of the evaluation cannot be completed due to lack of parental involvement, religious convictions of the family, or inability of the child to participate in an evaluative procedure, the district shall note the missing portions in the child's evaluation report and state the reasons why those portions could not be completed.

SECTION 226.120 SPECIFIC LEARNING DISABILITY: DYSLEXIA

- ✦ For the purposes of this Section, dyslexia means a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge. (Definition from the Board of Directors of the International Dyslexia Association.)

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- ✖ b) In accordance with 34 CFR 300.8(b)(10), dyslexia is one of a number of disorders included as a specific learning disability that may adversely affect the student's educational performance and result in the child's eligibility for special education and related services.
 - ✖ c) Each child suspected of having dyslexia or identified as dyslexic shall be referred for an evaluation in accordance with the requirements of 34 CFR 300.304 through 300.311 and Subpart B of this Part.

SECTION 226.130 ADDITIONAL PROCEDURES FOR STUDENTS SUSPECTED OF OR HAVING A SPECIFIC LEARNING DISABILITY

- ✘ b) Provided that the requirements of this subsection (b) are met, each district shall, ~~no later than the beginning of the 2010-11 school year,~~ implement the use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 CFR 300.304. When a district implements the use of a process of this type, the district shall not use any child's participation in the process as the basis for denying a parent's request for an evaluation.

- ✘ c) ~~No later than January 1, 2009, each~~ **Each** district shall ~~develop~~ **have** a plan for the ~~transition to the~~ use of a process that determines how the child responds to scientific, research-based interventions as part of the evaluation procedure described in 34 CFR 300.304. Each district's plan shall identify the resources the district will devote to this purpose and include an outline of the types of State-level assistance the district expects to need, with particular reference to the professional development necessary for its affected staff members to implement this process. The ~~transition~~ plan developed pursuant to this subsection (c) may be incorporated into a district's district improvement plan (see 23 Ill. Adm. Code 1.85(b)) if one exists.

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- ✖ d) In addition to using an identification process of the type required by subsection (b) ~~of this Section~~, a district may use a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability

SECTION 226.135 ADDITIONAL PROCEDURES FOR STUDENTS SUSPECTED OF OR HAVING A ~~COGNITIVE~~ **AN INTELLECTUAL** DISABILITY

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

SECTION 226.160 MEDICAL REVIEW

- ✖ 2) Beginning July 1, 2016, the practitioners who are qualified to conduct certain components of the medical review, as identified in this subsection (b)(2), shall be limited to:
 - + A) An individual who holds a professional educator license endorsed ~~for~~ with a school support personnel in **endorsement for school nursing nurse**, pursuant to 23 Ill. Adm. Code 25.245 (Endorsement for School Nurses), who may conduct any of the components listed in subsections (a)(1) through (5) ~~of this Section~~; or

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- ✖ B) An individual licensed to practice medicine in all of its branches pursuant to the Medical Practice Act of 1987 [225 ILCS 60], who may conduct any of those components listed in subsections (a)(1) through (4) ~~of this Section~~; or
 - ✖ C) An individual licensed as a registered professional nurse pursuant to Article 60 of the Nurse Practice Act [225 ILCS 65/Art. 60] and who also holds a bachelor's degree in nursing, education or a related field, who may conduct any of those components listed in subsections (a)(1) through (4) ~~of this Section~~; or

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- ✖ D) An individual licensed as an advanced practice nurse pursuant to Article 65 of the Nurse Practice Act [225 ILCS 65/Art. 65], who may conduct any of those components listed in subsections (a)(1) through (4) ~~of this Section.~~

SECTION 226.180 INDEPENDENT EDUCATIONAL EVALUATION

- ✖ Parents have the right to obtain an independent educational evaluation of their child at public expense in accordance with 34 CFR 300.502 and Section 14-8.02(b) and (g-5) of the School Code. The following rights and requirements shall also apply.
 - + a) If the parents disagree with the district's evaluation and wish to obtain an independent educational evaluation at public expense, their request to that effect shall be submitted in writing to the local school district superintendent.

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- ✖ b) When an independent evaluation is obtained at public expense, the party chosen to perform the evaluation shall be either:
 - + 1) an individual whose name is included on the list of independent educational evaluators developed by the State Board of Education pursuant to Section 226.830 ~~of this Part~~ with regard to the relevant types of evaluation; or
 - + 2) another individual possessing the credentials required by Section 226.840 ~~of this Part~~.

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- ✘ c) If the parent wishes an evaluator to have specific credentials in addition to those required by Section 226.840 ~~of this Part~~, the parent and the school district shall agree on the qualifications of the examiner and the specific evaluations to be completed prior to the initiation of an independent educational evaluation at public expense. If agreement cannot be reached, the school district shall initiate a due process hearing subject to the time constraints set forth in this Section, as applicable.

- ✘ d) ~~The~~ Within 10 days after receiving a report of an independent evaluation conducted at either public or private expense, the district shall provide written notice ~~convening~~ stating the date upon which the IEP Team's meeting within ten days after receiving the report of an evaluation conducted at public ~~expense~~ Team will meet to consider the results. In the case of an evaluation conducted at private expense, the district shall send the notice within ten days after the parent requests a meeting to consider the results. (Also see Section 226.530.)

SECTION 226.220 DEVELOPMENT, REVIEW, AND REVISION OF THE IEP

- ✗ a) When an IEP has been developed or revised, the district shall provide notice in accordance with 34 CFR 300.503(b) and (c) immediately to the parents, and implementation of the IEP shall occur no later than ~~ten~~ **10 school** days after the provision of this notice **or by the beginning of the following school year if the IEP is developed or revised with fewer than 10 school days remaining in the school year. If the new or revised IEP requires extended-year services, those services shall be provided in accordance with the provisions of the IEP.**

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- ✖ b) Either a child's educational provider or a child's parent may request an IEP meeting at any time. Within ~~ten~~ **10** days after receipt of ~~such~~ a request, the district shall either agree and notify the parent in accordance with 34 CFR 300.503 or notify the parents in writing of its refusal, including an explanation of the reason no meeting is necessary to ensure the provision of FAPE for the child.

SECTION 226.230 CONTENT OF THE IEP

- ✕ a) Each IEP shall include:
 - + 1) A statement of measurable annual goals that reflect consideration of the State Goals for Learning and the Illinois Learning Standards (see 23 Ill. Adm. Code 1), as well as benchmarks or short-term objectives developed in accordance with the child's present levels of educational **academic and functional** performance.

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- ✖ c) Beginning not later than the first IEP to be in effect when the child turns 14½, and updated annually thereafter, the IEP shall include:
 - + 1) appropriate, measurable, postsecondary goals based upon age-appropriate assessments related to employment, education or training, and, ~~as needed,~~ independent living

SECTION 226.300 CONTINUUM OF ALTERNATIVE PLACEMENT OPTIONS

- ✖ c) Special education and related services required by the child's IEP must be implemented as part of the child's home or hospital instruction, unless the IEP Team determines that modifications are necessary during the home or hospital instruction due to the child's condition. (Section 14-13.01 of the School Code)
- ✖ ~~d)~~ 1) The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to the child's educational needs and physical and mental health needs.
- ✖ 2) The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week. In the event that the child's illness or a teacher's absence reduces the number of hour in a given week to which the child is entitled, the school district shall work with the IEP Team and the child's parents to provide the number of hours missed, as medically advisable for the child.

✖-e)d) A child whose home or hospital instruction is being provided via telephone or other technological device shall receive not less than two hours per week of direct instructional services.

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- ✱~~f~~)**e**) Instructional time shall be scheduled only on days when school is regularly in session, unless otherwise agreed to by all parties.
 - ✱~~g~~)**f**) Home or hospital instructors shall meet the requirements of 23 Ill. Adm. Code 1.610 (Personnel Required to be Qualified).
 - ✱~~h~~)**g**) In accordance with Section 14-13.01(a) of the School Code, services required by the IEP shall be implemented not later than five school days after the district receives the physician's statement.

SECTION 226.730 CLASS SIZE FOR 2009-10 AND BEYOND

- ✗ a) When a student's IEP calls for services in a general education classroom, the student must be served in a class that is composed of students of whom at least 70 percent are without IEPs, that utilizes the general curriculum, that is taught by an instructor ~~certified~~ **holding an educator license** for general education **and who is employed for that purpose**, and that is not designated as a general remedial classroom. For purposes of this subsection (a), a student who receives speech services outside of the general education classroom and who does not require modifications to the content of the general education curriculum shall be included in the calculation of the percentage of students without IEPs. (See 105 ILCS 5/14-2.)

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- ✖ b) Class size means the total number of students an educator serves during any special education class. As used in this subsection (b), "class" means any circumstance in which only students with IEPs are served and at least one special education teacher is assigned and provides instruction and/or therapy exclusively to students with IEPs. In the formation of special education classes, consideration shall be given to the age of the students, the nature and severity of their disabilities, the educational needs of the students, and the degree of intervention necessary, subject to the limitations of this subsection (b).

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- ✖ 1) Except as provided in subsection (b)(5) of ~~this Section~~, classes in which all the students receive special education services for 20 percent of the school day or less shall have at least one qualified teacher for each 15 students in attendance during any given class. However, the district may increase the class size by a maximum of two students when a paraprofessional educator is provided for the entire class.

- ✖ 2) Except as provided in subsection (b)(5) of this ~~Section~~, each class in which any student receives special education services for more than 20 percent of the school day but no more than 60 percent of the school day shall have at least one qualified teacher for each ~~ten~~ 10 students in attendance during that class. However, the district may increase the class size by a maximum of five students when a paraprofessional educator is provided for the entire class.

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- ✖ 3) Except as provided in subsection (b)(5) of ~~this Section~~, each class in which any student receives special education services for more than 60 percent of the school day shall have at least one qualified teacher for each eight students in attendance during that class. However, the district may increase the class size by a maximum of five students when a paraprofessional **educator** is provided for the entire class.

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- ✖ 5) For any school year in which the amount of State reimbursement for teachers identified in Section 14-13.01 of the School Code [105 ILCS 5/14-13.01] exceeds the amount in effect on January 1, 2007 by at least 100 percent and no corresponding reduction has been made in other State sources of support for special education:
 - + A) The maximum class size stated in subsection (b)(1) of ~~this Section~~ shall be 13 rather than 15;
 - + B) The maximum class size stated in subsection (b)(2) of ~~this Section~~ shall be eight rather than 10; and
 - + C) The maximum class size stated in subsection (b)(3) of ~~this Section~~ shall be six rather than eight.

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- ✖ 6) The provisions of subsections (b)(1) through (5) ~~of this Section~~ notwithstanding, class size shall be limited according to the needs of the students for individualized instruction and services.

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- ✘ c) The maximum class sizes set forth in subsection (b) ~~of this Section~~ shall, if necessary, be further restricted at the local level to account for the activities and services in which the affected educators participate in order to provide students with IEPs the free, appropriate public education in the least restrictive environment to which they are entitled.

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- ✖ 4) Each class for children ages three through five shall have at least one qualified teacher for each five students in attendance during that class. However, the district may increase the class size by a maximum of five students when a paraprofessional **educator** is provided for the entire class.

YEAR IN REVIEW LEGAL UPDATE

BRANDON WRIGHT

2-20-19

- ✗ Currently 700+ cases litigated in the US each year.
- ✗ Often in order to recover Attorney's fees.

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- ✖ The US District Court, Eastern District of Arkansas denied summary judgment to a school district that disputed a hearing officer's decision requiring the district to evaluate a fifth-grader with ADHD and autism under the IDEA.
 - ✖ The court held that the district incorrectly concluded that the student's good grades, recognition as an honor student, and commendation to the gifted and honors program relieved its responsibility to evaluate .

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- ✖ A Connecticut District did not violate its child find obligation when it declined to evaluate a 10th grader with emotional issues when his parents first requested an assessment in March 2012.
 - ✖ The IDEA defines "Emotional Disturbance" to mean a condition exhibiting certain characteristics over a long period of time. It may be reasonable for a district to hold off on evaluating a student who recently developed emotional problems. But should monitor the student.

M.G. WILLIAMSON COUNTY SCHOOLS, 71 ODELR 102 (6TH CIR. 2018)

- ✖ The court noted “Although Plaintiffs challenge WSC’s conclusions by pointing to M.G.’s doctor’s prescription for OT and PT, “ a physician cannot simply prescribe special education”

MARSHALL JOINT SCH. DIST. NO. 2 V. C.D EX REL. BRIAN D., (7TH CIRCUIT 2010)

- ✗ The IDEA does not require schools to provide PT or OT to all students who might “benefit from or need” those services outside of the educational context; rather, the IDEA only requires schools to provide those services to student who require them in order to receive “the full benefit of special education instruction”

JACKSON V. CHICAGO PUBLIC SCHOOLS

- ✘ District took more than 60 school days to finalize an IEP for a preschooler with Developmental Delays.
- ✘ The U.S. District Court, ND of Illinois found that the delay was excusable in light of the district's efforts to include the parent in the IEP process.

J.R. V SMITH (2018)

- ✖ Meeting notes reflected discussion regarding placement so regardless of an employees remark to the parents that they needed to be ready for a fight, No Predetermination.

ENDREW F, V DOUGLAS COUNTY SCHOOL DISTRICT RE-1 (2018)

- ✘ Goals carried over from previous year were not reasonably calculated to provide FAPE
- ✘ New standard for FAPE- IEP should be reasonable calculated to enable the student to make progress that was appropriate in light of his unique circumstances.
- ✘ Previously – IEP needs only to provide progress that is “merely more than *de minimis*”
- ✘ Case was lost due to ineffective BIP

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- ✖ 1.32 million dollar settlement
 - ✖ 1 million to the attorneys

D.L. V.ST. LOUIS CITY PUBLIC SCHOOL DISTRICT (2018)

- ✘ Failed to account for medical diagnosis of Autism
- ✘ While assessment revealed sensory needs, no services were found related to this in the IEP.
- ✘ Appropriateness of the evaluation does not turn on classification.
- ✘ Judge ordered district to reimburse parents for expense of unilateral placement.

J.H. V ROSE TREE MEDIA SCHOOL DISTRICT (2018)

- ✖ 15 year old boy with ADHD arranged for a friend to film him assaulting a classmate in the cafeteria.
- ✖ MDR found not a manifestation due to the filming being pre arranged and not impulsive or inattentive.

DOE EX REL. DOE V. OSSEO AREA SCHOOL DISTRICT (2017)

- ✘ A Minnesota district did not discriminate against a high schooler with a Section 504 plan when it considered whether his ADHD, PTSD, and depression caused him to write racist graffiti over the inside of a stall in a school bathroom.
- ✘ The use of IDEA procedures for 504 was upheld.

BROWN V. ELK GROVE UNIFIED SCHO. DIST. (2018)

- ✖ Must allow a student an opportunity to try out and must consider whether can participate with reasonable accommodations.
- ✖ Standard for Discrimination-
 - ✖ 1. presence of a qualifying disability
 - ✖ 2. entitled to participate
 - ✖ 3. if excluded from sport
 - ✖ 4. exclusion was based on disability

PLAAFP

- ✖ Write present levels, then write goals
- ✖ The present levels must be current, and should reference most recent evaluation
- ✖ Present levels should be written with specificity, including both qualitative and quantitative measures of student's performance, such that a stranger could write an appropriate goal for the student based on the present level statements

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- ✖ There should be a clear and objective link between the present levels and the goals, benchmarks, and objectives
 - ✖ In determining whether the IEP is reasonably calculated to enable the child to make progress, the IEP team should consider the child's rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with the child's progress and additional information or input from the parents.

WHEN WRITING MEASUABLE GOALS-

✖ IEP team should consider-

- + A goal should be written for what the team expects the student to achieve within a year, so that the same goal is not repeated year to year. It must be attainable, but ambitious.
- + A student's failure to make measurable progress towards goals, and the team's repeating IEP goals that the student has still not mastered, can be evidence that the IEP is flawed

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- + Goals should be expressed in objective terms so that the team can make an analysis of whether the child was making progress
 - + An IEP goal is appropriate if a person unfamiliar with the IEP would be able to implement the goal, implement the assessment of the student's progress and determine the student's progress is satisfactory.

BEHAVIOR MATTERS

- ✗ FBA/BIP is becoming the #1 issue of due process
- ✗ Paris School District v A.H. (Ark 2017)
- ✗ Court found that district denied FAPE to a student with Autism Spectrum Disorder due to a deficient behavior intervention plan.
- ✗ Court further suggests that a school must have a fundamental understanding of a student in order to develop a BIP

PRIOR WRITTEN NOTICE (COMES AFTER THE MEETING BUT PRIOR TO IMPLEMENTATION

- ✖ A compliant PWN includes
 - + A description of the action proposed or refused by the agency.
 - + An explanation of why the agency proposes or refuses to take the action.
 - + A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.
 - + 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.

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- + Sources for parents to contact to obtain assistance in understanding the provisions of this part;
 - + A description of other options that the IEP team considered and the reasons why those options were rejected; and
 - + A description of other factors that are relevant to the agency's proposal or refusal

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- ✖ Endrew F = Continually Assess (data), debate (IEP process) and Calibrate (IEP)

MEDICAL ISSUES IN SPECIAL EDUCATION

- ✘ Ashley's Law- Parent can come to school to administer Medical Marijuana or Marijuana products, but it cannot be stored at school.

HOMEBOUND SERVICES

- ✖ A child qualifies for home or hospital instruction if it is anticipated that, due to a medical condition, the child will be unable to attend school, and instead must be instructed at home or in the hospital, for a period of 2 or more consecutive weeks or on an ongoing intermittent basis.

SCHOOL SAFETY

- ✘ One common factor- lack of a positive adult relationship at school.
- ✘ Threat Assessment- US Secret Service National Threat Assessment Center's (NATC) July 2018 school safety guide.
- ✘ Threat assessment involves determining whether a student poses a threat of violence (they have intent and means to carry out threat).

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- ✘ Removing a student from school does not eliminate the risk to the school community.
 - ✘ If removal from school exceeds the 10 days an MDR must be convened and the IEP team must review all relevant information available to the team when the conduct in question occurred, as well as be prepared to conduct additional assessments including a FBA

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- ✖ One way to ensure that school safety plans account for the unique needs of student with disabilities is to require that special educators, as part of the overall school district plan, create individual emergency plans for their students. This will provide school personnel a clear and appropriate plan to safely manage students with disabilities.

NASP RECOMMENDATIONS-

- + Making use of universal social emotional programming that increases student's problem-solving capacity
- + Conducting school wide screenings for mental health concerns
- + Improving school connectedness through a positive school climate
- + Training all school staff members to identify risk factors and warning signs of violence