

ISBE Rules and Regulations (current)

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Or go to:

<http://www.isbe.net/rules/archive/pdfs/226ark.pdf>

Important Sections of Illinois Regulations Relating to Referrals, Evaluations, and Re-evaluations

Section 226.110 Referral

When there is reason to believe that a child may have a disability requiring special education and related services, the child shall be referred for a special education evaluation.

a) Referral Procedures

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 referral;
- 2) Designate the person(s) to whom a referral may be made;
- 3) Identify the information which must be provided;
- 4) Provide any assistance that may be necessary to enable persons making referrals to meet any related requirements established by the district;
- 5) Identify the process for providing the parents with notice of their rights with respect to procedural safeguards.

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

c) District Response to Referral

- 1) The school district shall be responsible for processing the referral, deciding what action should be taken, and initiating the necessary procedures.
- 2) To determine whether the referred 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 referring agent, and a conference with the child.

- 3) The district shall determine whether or not to conduct an evaluation and notify the referring party and the parent of the decision and the basis on which it was reached.
- d) If the district decides to conduct an evaluation, parental consent must be obtained.
 - 1) Pursuant to Section 14-8.02 of the School Code [105 ILCS 5/14-8.02], the evaluation and IEP meeting shall be completed within 60 school days after the date of referral or the date of the parent's application for admittance of the child to the public school.
 - 2) The IEP meeting shall be conducted within 30 days after the child is determined eligible. The overall limit specified in subsection (d)(1) of this Section still applies.
 - 3) When a child is referred for evaluation with fewer than 60 days of pupil attendance left in the school year, the eligibility determination shall be made and, if the child is eligible, an IEP shall be in effect prior to the first day of the next school year.
- e) If the parent refuses consent for initial evaluation, the district may continue to pursue the evaluation by using the mediation or due process procedures described in Section 226.560 and Subpart G of this Part.
- f) If the district decides not to conduct an evaluation:
 - 1) The referring party shall be provided written notice of the district's decision not to conduct an evaluation and, subject to the requirements of the Illinois School Student Records Act [105 ILCS 10] and 23 Ill. Adm. Code 375 (Student Records), the reasons for that decision; and
 - 2) The parent shall be provided written notice of:
 - A) The date of the referral and the reasons for which the evaluation was requested; and
 - B) The reasons for which the district decided not to conduct a case study evaluation.
- g) If a district refuses or fails to conduct an evaluation, the parent of the child in question (or the student, if Section 226.690 of this Part applies) may appeal such refusal or failure in an impartial due process hearing.

Section 226.120 Identification of Needed Assessments

Each school district shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services. An evaluation shall cover all domains (see Section 226.75 of this Part) that are relevant to the individual child under consideration. The IEP Team shall determine the specific assessments needed to evaluate the individual needs of the child.

- a) The IEP Team that identifies the assessments and procedures needed must have the knowledge and skills necessary to administer and interpret the resulting evaluation data and make an informed determination as to whether the child needs special education and related services. The composition of the team will vary depending upon the nature of the child's presenting symptoms and other relevant factors.
- b) The IEP Team shall review and evaluate existing information about the child, including:
 - 1) Information from a variety of formal and informal sources, including information provided by the child's parents;
 - 2) Current classroom-based assessments and observations;
 - 3) Observations by teachers and providers of related services;
 - 4) Information provided by the child; and
 - 5) Information from specialized evaluations such as those performed by independent evaluators, medical evaluators, behavioral intervention specialists, bilingual specialists, etc.
- c) The team may conduct its review without a meeting.
- d) The team shall determine what additional evaluation data are needed in each of the relevant domains, and from what sources that information should be obtained, in order for the team to determine:
 - 1) Whether the child has, or continues to have, one or more of the disabilities defined in Section 226.75 of this Part;
 - 2) The present levels of performance and educational needs of the child;
 - 3) Whether the disability is adversely affecting the child's education;
 - 4) Whether the child needs (or continues to need) special education and related services; and
 - 5) Whether any additions or modifications to the child's special education and related services are needed to enable the child to meet the goals set out in his or her IEP and to participate appropriately in the general curriculum.
- e) If the IEP Team identifies the need for additional evaluations, the school district shall administer or arrange for such tests and other evaluation procedures as may be needed to produce the needed information.
- f) If the IEP Team determines that no additional information is needed, the district shall provide written notice to the child's parents of:
 - 1) the determination and the reasons for it; and
 - 2) the parents' right to request an assessment to determine whether the child is or continues to be eligible for special education and related services.
- g) Within ten school days after a parent requests an assessment pursuant to subsection (f)(2) of this Section, the district shall either:

- 1) Notify the parent that it will conduct the assessment and make the necessary arrangements, or
 - 2) If the district does not wish to conduct the assessment, request a due process hearing or notify the parent (in keeping with the requirements of Section 226.520 of this Part) of his or her right to request a due process hearing.
- h) The IEP Team shall document its evaluation decisions, the basis for the determination made in each domain, and its decisions under subsections (d) and (f) of this Section. This information shall be provided to the parents in the form of a written notice in accordance with Section 226.520 of this Part.

Section 226.180 Independent Educational Evaluation

Parents have the right to obtain an independent educational evaluation of their child, subject to the provisions of this Section.

- a) The district shall provide to the parents, upon their request, the list of independent educational evaluators developed by the State Board of Education pursuant to Section 226.830 of this Part.
- b) If the parents disagree with the district's evaluation and wish to obtain an independent educational evaluation at public expense, they shall submit to the local school district superintendent a written request to that effect.
- c) If the district disagrees with the need for an independent educational evaluation, it shall initiate a due process hearing to demonstrate that its evaluation is appropriate. Such a hearing must be initiated by the local school district within five days following receipt of a written parental request for an independent educational evaluation.

Section 226.210 IEP Team

The composition of the IEP Team for a particular child, and the participation of the team members and other individuals in the IEP meeting, shall conform to the requirements of this Section.

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

Section 226.160 Determination of Eligibility

Each school district shall develop written eligibility criteria that comply with the definitions of the disability categories identified in Section 226.75 of this Part.

- a) Upon completing the administration of tests and any other evaluation procedures, the IEP Team shall meet to interpret the evaluation data. This shall be done for the purpose of determining whether the child is eligible

for special education and related services. In making this determination, the IEP Team shall:

- 1) Draw upon information from a variety of sources, including aptitude and achievement tests, parental input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
 - 2) Ensure that information obtained from all of these sources is documented and considered; and
 - 3) Ensure that a psychological evaluation has been conducted and a recommendation for eligibility has been made by a school psychologist for all children determined mentally impaired.
- b) A child may not be determined eligible under this Part if the determinant factor for that determination is lack of instruction in reading or math or limited English proficiency and the child does not otherwise meet the district's eligibility criteria.
- c) At the conclusion of the IEP Team's meeting, the team shall prepare a report describing its consideration of pre-existing information about the child, all new evaluation reports obtained, and any other information relevant to the decision about the child's eligibility. This description shall relate the information considered to the child's needs and shall further conform to the requirements of Section 226.170(d) of this Part if applicable. The team's report shall also include:
- 1) the date of the meeting;
 - 2) the signatures of the participants, indicating their presence at the meeting; and
 - 3) any separate written statement provided by a participant who wishes to be on record as disagreeing with the conclusions expressed in the team's report.
- d) 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.
- e) A copy of the IEP Team's report, together with all documentation upon which it is based, shall become a part of the child's temporary student record.
- f) If a child is determined eligible for special education and related services, an IEP shall be developed in accordance with Subpart C of this Part.

Section 226.75 Definitions (State)

Assistive Technology Device:
Behavioral Intervention:
Case Study Evaluation: See “Evaluation”.
Cultural Identification:
Date of Referral:
Day:
Business Day:
Developmental Delay:
Disability:
 Autism:
 Deaf-Blindness:
 Emotional Disturbance
 Hearing Impairment:
 Mental Retardation:
 Multiple Disabilities:
 Orthopedic Impairment:
 Other Health Impairment:
 Speech or Language Impairment:
 Traumatic Brain Injury:
 Visual Impairment:
Domain:
Evaluation:
Extended School Year Services:
Functional Behavioral Assessment:
General Curriculum:
IEP Team:
Independent Educational Evaluation:
Individualized Family Service Plan (IFSP): Interim Plan:
Least Restrictive Environment (LRE):
Parent:
Participating Agency:
Qualified Personnel:
Qualified Bilingual Specialist:
Qualified Specialist:
Referral:
Related Services:
Special Education:
Special School:
Student Record:
Supplementary Aids and Services:
Transition Services:

§300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if--

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2)

(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of--

- (i) A visual, hearing, or motor disability;
- (ii) Mental retardation;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of

appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306--

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction

in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal

assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special

education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by

mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)--

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided

instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

SUMMARY OF MAJOR CHANGES IN THE REGULATIONS

The following is a summary of the major substantive changes in these final regulations from the regulations proposed in the NPRM prepared by the U. S. Department of Education (the rationale for each of these changes is discussed in the Analysis of Comments and Changes section of this preamble).

• **Section 300.101(c) has been revised** to clarify that a **free appropriate public education (FAPE)** must be available to any individual child with a disability who needs special education and related services, even though the **child has not failed or been retained in a course, and is advancing from grade to grade.**

(4) A **new §300.311(a)(7)** has been added to provide that **if the child has participated in a process that assesses the child's response to scientific, research-based intervention**, the documentation must include the instructional strategies used and the student-centered data collected, and documentation that the child's parents were notified about

- (A) the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided,
- (B) strategies for increasing the child's rate of learning, and
- (C) the parents' right to request an evaluation.

<http://www.wrightslaw.com/idea/law/idea.regs.sumry.chngs.pdf>

Resources

Wrightslaw:

<http://www.wrightslaw.com>

Illinois State Special Education Regulations, guidance, information resources for parents

<http://www.isbe.net/spec-ed/>

U.S. Department of Education Office of Special Education and Rehabilitative Services

<http://www.ed.gov/about/offices/list/osers/index.html>