

# Special Education Legal Updates For Related Services Providers

Oswego Community Unit School  
District 308

April 4, 2023

Presented By:  
Luis A. Rodriguez, Esq.

ECB&S

Engler Callaway  
Baasten & Sraga, LLC

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## Before We Begin:

- Closed captioning is available
- This presentation is being recorded
- Given time limitations, a live Q&A session will not be available during the presentation
- Submit questions through the Q&A document previously shared by the Related Services Leads

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## I. A FEW KEY REMINDERS FOR DEFENSIBLE IEPS



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**REMINDER #1: DON'T LOSE SIGHT OF THE FAPE STANDARD (AND HOW TO SHOW IT'S BEEN OFFERED AND PROVIDED).**



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**ENDREW F. AND IDEA'S FAPE STANDARD**

*Endrew F. v. Douglas County School District Re-1*,  
137 S.Ct. 988 (3/22/17):

The U.S. Supreme Court found that in order to meet its substantive obligation under the IDEA, **"a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."**

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**ENDREW F. AND IDEA'S FAPE STANDARD**

- The Court noted that **for a student who participates fully in general education classes**, the IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."
- **For students not fully integrated into the general education classroom**, the Court found that the programming provided should be "appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom."

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### ENDREW F. AND IDEA's FAPE STANDARD

- The Court noted that determinations of what is "appropriate" will vary on a case-by-case basis.
- Finally, the Court noted that deference should be given to the school district's educational decisions, but that the **school district should "be able to offer a cogent and responsive explanation for their decisions"** and how those decisions comply with the new standard.

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### REMINDER #2: KNOW THE APPLICABLE TIMELINES FOR EACH STEP IN THE SPECIAL EDUCATION PROCESS AND PLAN ACCORDINGLY

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### APPLICABLE TIMELINES

- |                                   |   |
|-----------------------------------|---|
| • PWN                             | 10 Calendar Days  |
| • Completed Domain/Consent        | 14 School Days  |
| • Notice Re: Related Service Logs | 20 School Days From Beg. of SY  |
| • Evaluation/Eligibility/IEP      | 60 School Days<br>If Less Than 60 School Days in SY,<br>By 1 <sup>st</sup> day of Next SY |
| • Response to IEE request         | 5 Calendar Days   |
| • NOC to consider IEE             | 10 Calendar Days From Receipt   |
| • Implement IEP                   | No Later Than 10 School Days*   |
| • Homebound Services              | 5 School Days From Receipt of Valid Physician's Statement                                 |

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## APPLICABLE TIMELINES

At least 3 school days prior to an eligibility determination meeting or IEP meeting, or as soon as possible if a meeting was scheduled within 3 school days, the District must provide the parent/guardian copies of all written materials that will be considered by the child's IEP team.

Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday
By 10:00 a.m. Written materials due to parents					10:00 a.m. IEP Meeting		

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## APPLICABLE TIMELINES

- The parent/guardian may choose from the available methods of delivery, which must include regular mail and picking up materials at school.
- In addition, parents must be informed of their right to review and copy their child's school student records prior to any eligibility or IEP meeting.

105 ILCS 5/14-8.02f

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## APPLICABLE TIMELINES

- If the IEP meeting is scheduled with 3 or less school days before the meeting and parent/guardian provides written consent (i.e., waives 10-day notice), provide written materials as soon as possible.
- If timeline cannot be met, reschedule IEP meeting to allow timely provision of written materials; or request approval from parent to proceed with scheduled meeting.

105 ILCS 5/14-8.02f

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## APPLICABLE TIMELINES

Ensure that all IEP services are initiated **no later than 10 school days after** the IEP meeting (\*or, if applicable, after the service was to be initiated).

- If the IEP team determines that a certain service is required for the child to receive a FAPE and that service is not implemented within 10 school days after the meeting at which it is recommended (or after the service was to be initiated), the district must provide the parents with written notification that the service has not yet been implemented.

105 ILCS 5/14-8.02f; 23 Ill. Admin. Code §226.220(b)

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## APPLICABLE TIMELINES

- This notice must be provided within 3 school days after the district's non-compliance with the IEP and must inform the parent about the District's procedures for requesting compensatory education services.
- For this requirement, "school days" does not include days a child is absent for reasons unrelated to the lack of IEP services or when the service is available but the child is unavailable.

105 ILCS 5/14-8.02f; 23 Ill. Admin. Code §226.220(b)

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**REMINDER #3: CHECK YOURSELF - ARE YOUR STATEMENTS OF ADVERSE EFFECTS, STUDENT NEEDS, AND PLAAFPS SPECIFIC AND CONSISTENT? IF NOT, THEY CAN LEAD TO INACCURATE OR INADEQUATE IEPS**

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### CONSISTENT STATEMENTS OF ADVERSE EFFECTS/IDENTIFIED NEEDS AND PLAAFPS

Every IEP must include specific (and, to the greatest extent possible, data-supported) descriptions of a student's present levels of academic achievement and functional performance, including:

- How the disability affects the student's involvement and progress in the general education curriculum; or
- For pre-school children, how the disability affects the child's participation in appropriate activities.

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### CONSISTENT STATEMENTS OF ADVERSE EFFECTS/IDENTIFIED NEEDS AND PLAAFPS

"Without a clear identification of a student's present levels of performance, the IEP cannot set measurable goals to evaluate the child's progress and determine which educationally related services are needed. The present level of performance statement helps establish a baseline, or starting point, for measuring the student's progress."

*North Independent School District, 117 LRP 3037 (SEA TX 2016)*

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### CONSISTENT STATEMENTS OF ADVERSE EFFECTS/IDENTIFIED NEEDS AND PLAAFPS

**Common errors made by school personnel in this area include:**

- Failing to create a specific, descriptive list of identified adverse effects and need statements that clearly identify all needs stemming directly or indirectly from the student's disability
- Stating adverse effects/needs in terms of subject or domain area, instead of skill and performance deficits
- Describing student needs only with respect to service delivery, rather than types of instruction, services, and supports

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### CONSISTENT STATEMENTS OF ADVERSE EFFECTS/IDENTIFIED NEEDS AND PLAAFPs

- Failing to update adverse effects/needs and PLAAFPs based on recent evaluation data and/or PLAAFP data from implementing the student's prior IEP or other interventions implemented to address disability-based deficits
- Failing to provide explicit baseline information in the PLAAFP as the foundation for the goal statement and short-term objective or benchmarks

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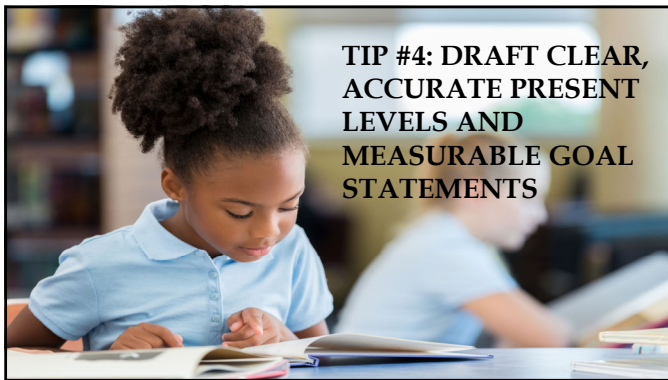
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### IEP GOALS AND OBJECTIVES

Every IEP must include measurable annual goals that reflect consideration of the State Goals for Learning and Illinois Learning Standards (and Common Core State Standards), including academic and functional goals designed to:

- meet the student's needs that result from the disability to enable the student to be involved and progress in the general education curriculum; and
- meet each of the student's other educational needs that result from the disability.

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## IEP GOALS AND OBJECTIVES

**Common errors made by school personnel in this area include:**

- Failing to use specific, objective, and quantifiable terms in the goal statement and objectives
- Failing to prepare at least one goal for every identified skill-related deficit/need

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## IEP GOALS AND OBJECTIVES

- Combining related/overlapping skill deficits in one goal area
- Including goals and/or objectives with multiple components to measure
- Proposing evaluation procedures or criteria without an explicit baseline or that don't call for the collection of sufficient data points
- Repeating the same IEP goals and objectives in a student's IEPs

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## IEP GOALS AND OBJECTIVES

**Some Practical Tips:**

- Gather and read relevant progress monitoring data, prior goal progress reports, and evaluation reports or assessment results, if any
- Pull relevant data only for the goal PLAAFP statement
- For social-emotional goals, review the Illinois Social Emotional Learning Standards Goals and Performance Descriptors

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## IEP GOALS AND OBJECTIVES

### Practical Tips:

- After drafting a goal and objectives, look back at PLAAFP statement to see if you have a measurable baseline for the written goal
- Ensure that goals address specific area(s) of need identified by the team
- Review any goals drafted by other team members

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**REMINDER #5: STICK TO  
THE PROPER PROCESS  
WHEN MAKING STUDENT  
PLACEMENT DECISIONS**



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## PLACEMENT DECISIONS

Every IEP must include:

- An explanation of the extent, if any, to which the student will not participate with non-disabled students in the regular class, extracurricular, or other nonacademic activities.
- A placement determination (including a student's eligibility for other educational programs services such as bilingual education, career and technical education, gifted education, and Title I programs).

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## PLACEMENT DECISIONS

Special classes, separate schooling, or other removal of children with disabilities from the regular education environment should occur **only when** the nature or severity of the child's disability is such that regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.

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## PLACEMENT DECISIONS

Placement decisions must not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience.

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## PLACEMENT DECISIONS

**Common errors made by school personnel in this area include:**

- Discussing placement and LRE at the IEP meeting without the participation and input of a regular education teacher
- Failing to include or obtain input from representatives of any private program where student is or may be receiving services
- Thinking in terms of the District's existing programs, not the continuum of placement options

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## PLACEMENT DECISIONS

- Failing to consider parent placement requests, including requests for the most restrictive placements such as home-based or residential programming
- Failing to research and be knowledgeable about the parents' proposed placements
- Failing to consider having school personnel observe any placement options proposed by the parents
- Using generic statements to describe why the IEP team has rejected other placement options

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## PLACEMENT DECISIONS

- Discussing more restrictive options than full-time placement in the general education setting with supplementary aids and service (including, but not limited to training, consultation, and/or other supports for school personnel) before the team has answered the question:

**Can all, or at least some of this IEP, be implemented satisfactorily throughout all, or at least some, of the school day in the general education environment?**

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## PLACEMENT DECISIONS

- Forgetting that the LRE mandate applies to nonacademic and extracurricular activities
- Using phrases like "as appropriate" when describing when or to what extent the student will participate with his/her nondisabled peers during the school day and/or in extracurricular activities
- Predetermining what the placement (or any other part of the IEP) should/will be for the student

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## PLACEMENT DECISIONS

**See *Harrison School District Two*, 116 LRP 34796 (SEA CO 2016):**

Hearing officer found that the school district predetermined placement when the IEP team discussed the pros and cons of three placement options and then the district had the IEP team members vote. The IEP team consisted of the parent, a teacher from the child's unilateral placement, and district personnel (who outnumbered the parent). When the parent asked for an explanation about the reasoning for the staff members' recommendation, the LEA representative cut off the parent and stated that the team had voted and determined the student's placement. The hearing officer concluded that the district made no true effort to build consensus on the placement determination.

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## PLACEMENT DECISIONS

**See *Letter to Richards*, 55 IDELR 107 (OSEP 2010):**

- The IEP team should work towards a general agreement, but the school district is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a FAPE.
- It is not appropriate to make IEP decisions based on a majority "vote."
- If the team cannot reach agreement, the district must determine the appropriate services and provide the parents with prior written notice of the determinations regarding the child's IEP and of the parents' right to initiate a due process hearing or file a State complaint.

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## PLACEMENT DECISIONS

**But see *In re: Student with a Disability*, 122 LRP 20916 (SEA CT 2022):**

Staff member who served as the LEA representative at an IEP meeting testified at hearing that she believed herself to be the final decision-maker. Hearing officer ruled that allowing the LEA representative to "make decisions as a substitute for the collective decision of the entire planning and placement team" constituted a procedural violation of *IDEA* that resulted in a denial of FAPE to the student in question.

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## PLACEMENT DECISIONS

### Practical Tips:

- Consider assigning different staff members to facilitate the meeting, complete the IEP documentation, and write the Additional Notes.
- Keep participants on task and focused on the relevant issues (if not relevant, reduce details), but do not overly limit the parents.
- Redirect conversation back to the available data.
- Prompt *all* IEP team members (not just a select few) to provide their feedback and opinions.

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## PLACEMENT DECISIONS

- Invite dissenters to explain their rationale before making a final determination.
- Stop the IEP meeting if uncivil or otherwise inappropriate conduct by the parent/advocate/attorney or staff persists despite a warning to refrain.
- If the parent leaves the IEP meeting prematurely, document the departure time and consider whether to proceed or reschedule the meeting.

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## II. Functional Behavior Assessments/Behavior Intervention Plans

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### FBA/BIP

If a student's behavior impedes his/her or other students' learning, the IEP team must consider positive behavioral interventions, supports, and strategies.

34 C.F.R. §300.324

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### FBA/BIP

An FBA is an assessment process for gathering information regarding the target behavior, its antecedents and consequences, controlling variables, the student's strengths, and the communicative and functional intent of the behavior, for use in developing behavioral interventions.

23 Ill. Admin. Code §226.75

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### FBA/BIP

If an FBA is being conducted as part of an evaluation or reevaluation of a particular student, in order to determine positive behavioral interventions and supports for a particular student to be set out in his or her IEP, and/or as a first step in the development of a BIP that will be added to a student's IEP, prior written parental consent for the FBA must be obtained.

*Letter to Anonymous*, 112 LRP 23125 (OSEP 2012); *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007).

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## FBA/BIP

- Any person who is knowledgeable about behavioral science and positive behavior strategies may be given responsibility for conducting an FBA.
- School social work and psychological services in the federal and State special education regulations specifically include, but are not limited to, assisting in completing a functional behavioral assessment, and in the development of positive behavioral intervention strategies.

34 C.F.R. §§300.34(10), (14); 23 Ill. Admin. Code §226.310

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## FBA/BIP

*Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders (OSEP/OSERS 7/19/22)*

Although *IDEA* does not provide specific requirements for what should be included in the FBA process, it is generally understood that an effective FBA process is individualized and, at a minimum, should:

- Clearly define the interfering behavior.
- Collect indirect and direct data on the occurrence and nonoccurrence of the behavior.
- Analyze data to determine trends and develop a hypothesis of the function of the behavior.
- Lead to the development or revision of a BIP (which is monitored, evaluated, and adjusted as needed).

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## FBA/BIP

- The first step in the FBA process is to clearly define interfering behavior to ensure that it is measurable and observable, and that data are collected on the specific behavior. Data collection provides information on:
  - frequency, duration, conditions, location, and individuals present when the interfering behavior does and does not occur;
  - events or conditions that typically occur before and after the interfering behavior; and
  - other relevant information.
- Based on the analysis of the data, a hypothesis is developed indicating the settings or events that may trigger the occurrence of the interfering behavior (antecedent), a description of the interfering behavior (behavior), and the responses that perpetuate the interfering behavior (consequence). Each of these components should be carefully considered to ensure that appropriate and effective interventions are identified and implemented.

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## FBA/BIP

- The IEP team may rely on the information collected and analyzed through the FBA process to understand factors that contribute to the occurrence and non-occurrence of the child's behavior and to inform the development of an effective BIP and identify additional supports and services to be included in the IEP.
- Guided by the data and information collected through the FBA that identified the function of the behavior, a BIP takes an **individualized, proactive, and preventative approach** to addressing the interfering behavior.
- In general, a BIP describes how antecedents that trigger the interfering behavior will be addressed and **how new skills and replacement behaviors will be taught and reinforced**.

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## FBA/BIP

- A BIP is a component of the IEP and must be developed by the IEP team.
- For a student who requires a BIP, the IEP must:
  - Summarize the findings of the FBA
  - Summarize prior interventions implemented
  - Describe any behavioral interventions to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors
  - Identify the measurable behavioral changes expected and methods of evaluation
  - Identify a schedule for a review of the interventions' effectiveness
  - Identify provisions for communicating with the parents about the student's behavior and coordinating school-based and home-based interventions

34 C.F.R. §300.324; 23 Ill. Admin. Code §226.230

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## FBA/BIP

### Common Mistakes:

- Failing to consider the need to conduct an FBA
- Thinking that FBAs/BIPs are only for externalizing behaviors
- Not consulting with school social worker, school psychologist, and/or other school support team members (*e.g.*, BCBA) when first attempting behavioral supports and strategies
- Finalizing/revising the BIP outside of an IEP meeting

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## FBA/BIP

### Common Mistakes:

- Failing to specify setting/location in which strategies and supports will be provided
- Inadequate monitoring of effectiveness of the BIP's supports and strategies
- Failing to ensure that all appropriate staff know about the BIP and how to implement the supports and strategies during various school/school-related activities
- Failing to revise the BIP if the existing supports and strategies are not effective in reducing target behaviors

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## III. REVISIONS TO ISBE SPECIAL EDUCATION RULES



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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

On 8/17/22 the ISBE approved several proposed changes to the Part 226 rules to be published in the Illinois Register for public comment.

On 2/17/23 the amended ISBE special education rules were adopted with an effective date of February 6, 2023.

The revisions to the ISBE special education rules include (but aren't limited to):

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### REVISIONS TO ISBE SPECIAL EDUCATION RULES

- Updates to reflect recent statutory changes due to:
  - Public Act 101-654, regarding children who receive EI services before their 3<sup>rd</sup> birthday, are eligible for an IEP, and have a birthday between May 1 and August 31, continuing with EI services until the following SY
  - Public Act 102-254, regarding informing parents prior to a residential placement of the option to place the student in an Illinois residential facility
  - Public Act 102-516, regarding the expanded definition of transition services

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### REVISIONS TO ISBE SPECIAL EDUCATION RULES

- Residential Placement Options:

Districts will be required to make referrals to in-state residential facilities before they can consider out-of-state residential facilities for placement.

(Districts were already required to notify parents/guardians of in-state options on annual basis but were not required to seek an in-state options prior to placing a student out-of-state.)

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### REVISIONS TO ISBE SPECIAL EDUCATION RULES

- Issues related to interpretation and translation:
  - Section 227.75 Definitions
  - Section 226.500 Language of Notifications
  - Section 226.520 Notification of District's Proposal
  - Section 226.530 Parents' Participation
  - Section 226.710 Policies and Procedures
  - Section 226.800 Personnel Required to be Qualified

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

### Section 227.75 Definitions

- “Common languages” means the five most commonly spoken languages other than English that are used in the State of Illinois, based on the most recent Home Language Survey results; and for a given school district, any language that is spoken by more than 20 total families in that school district.
- “Less common languages” means any language that is not considered a common language, as defined by the rules.

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

- “Preferred language” means a parent's or guardian's native language or any other language with which both parents or guardians are fluent and have agreed upon. “Preferred language” does not include artificial or constructed languages, including, but not limited to, Klingon, Dothraki, Elvish, or Esperanto.

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

- “Vital Documents List” includes the:
  - IEP
  - Parent/Guardian Notification of Conference
  - Parent/Guardian Notification of Conference Recommendations
  - Notice of Procedural Safeguards
  - Parent/Guardian Consent for Initial Evaluation
  - Parent Consent for Reevaluation
  - Evaluation Reports
  - Eligibility Determination
  - Manifestation Determination Review documents
  - IEP Progress Reports
  - Medicaid Consent Forms

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

### Section 226.500 Language of Notifications

- Written translation of the VDL into the 10 most commonly spoken languages in Illinois (other than English) must be provided to LEP parents of children with disabilities. This includes translation of the individualized substance of documents on the VDL.
- A translated Parent/Guardian Notification of Conference Recommendations and all other applicable elements of the IEP forms must be provided simultaneously with English IEP documents and all reasonable efforts to provide the IEP within **seven school days** after the IEP meeting must be made, or as soon as possible thereafter.
- All other vital IEP documents must be translated and provided to parents as soon as practicable but not more than **30 school days** after the IEP meeting.

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

- Parents may request translation of documents not on the VDL that have a vital relation to the child's educational planning through the same process identified on the Notification of Conference, and school districts must make reasonable efforts to provide the requested translations in a timely manner.
- All translations must be performed by:
  - competent translators who have undergone sufficient professional training regarding special education terminology and processes, or
  - outside vendors that are commercially recognized as providing competent translation services, or
  - if a school district elects to utilize an automated translation program or application, the results must be reviewed and edited, as needed, by an individual qualified to determine the accuracy of the translation.
- All translations must be certified to be true and accurate by the translator to the best of the translator's knowledge or ability.

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

### Section 226.520 Notice of District's Proposal

If an IEP contains a proposal or refusal to initiate or change the educational placement of a child, the Conference Recommendations must be provided in writing in the preferred language of the parent or other mode of communication used by the parent (such as orally if the parent is illiterate).

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

### Section 226.530 Parents' Participation

- All interpreters for the common languages and American Sign Language must be qualified interpreters. If a qualified interpreter is not available, a school district may use outside vendors, including telephonic interpreters, that are commercially recognized as providing competent interpretation services.
- For the less common languages, the school district will make all reasonable efforts to provide an interpreter. (Includes requirements for such interpreter.)

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

- The annual notice and NOC language about the availability of interpretation services must be provided in English, all common languages, and in the parent's preferred language, if known and practicable.
- The district must make all reasonable efforts to fulfill a parent's request that the interpreter serve no other role in the IEP meeting.
- The annual notice and NOC must give notice to all parents of children eligible for an IEP that written translations of vital IEP process documents are available, how to request translated documents, and whom to contact with any questions or complaints about the translations; this must be provided in English, all common languages, and in the parent's preferred language, if known and practicable.

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## REVISIONS TO ISBE SPECIAL EDUCATION RULES

Section 226.530 also includes provisions related to documentation, tracking, and reporting requirements.

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#### REVISIONS TO ISBE SPECIAL EDUCATION RULES

Section 226.800, Personnel Required to be Qualified, includes expanded provisions on the requirements for qualified interpreters, including:

- Demonstrating competence by providing documentation that certified through interpreter certification program or completing certification program that meets requirements
- Completing at least 6 hours of training on special education terminology and protocol, including successful completion of a written examination\*\*
- Receiving training on the interpreter code of ethics adopted by ISBE, including successful completion of a written examination
- Scoring 80% or higher on a written examination and 70% or higher on an oral examination

*\*\*Certain exemptions for individuals with PELs with bilingual endorsements*

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#### IV. QUESTIONS

**Submit your questions  
through the Q&A  
document previously  
shared by the Related  
Services Leads**



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