

The Illinois Guardianship and Advocacy Commission receives calls from individuals and parents throughout the state trying to find answers and assistance regarding Special Education. Illinois Special Education is governed by both the federal law IDEA (Individuals with Disabilities Education Act) and State Law (Illinois Administration Rule Part 226). Below are the most commonly asked questions along with a summary and law citation. If you have any further questions, please feel free to call IGAC at 309-671-3032 laura.hart2@illinois.gov or 309-671-3034 kelly.franklin@illinois.gov.

GENERAL INFORMATION:

What do you do if you suspect your child needs special education?

In order for a child to have an Individual Education Plan (IEP) and receive services under IDEA, the child must have an evaluation. Per Ill. Admin. Code tit. 23 §226.110, a parent of a child may request an evaluation.

A request for an evaluation 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 (Ill. Admin. Code tit. 23 §226.110(b)). IGAC recommends that all requests be made in writing and that you keep a copy of the request for your records.

Within 14 school days after receiving a request for an evaluation, the district shall determine whether an evaluation is warranted and they must evaluate all areas of suspected disability. If the district determines not to conduct an evaluation, it shall provide written notice to the parents in accordance with 34 C.F.R. 300.503(b). (Ill. Admin. Code tit. 23 §226.110(c)).

Upon completion of the assessments identified pursuant to subsection (c)(3), but no later than 60 school days following the date the parent signs the written consent to perform the needed assessments, the determination of eligibility shall be made and the IEP meeting shall be completed (Ill. Admin. Code tit. 23 §226.110(d)).

Can I get a copy of my child's school records?

A parent or any person specifically designated as a representative by a parent shall have the right to inspect and copy all school student permanent and temporary records of that parent's child. A student shall have the right to inspect and copy his or her school student permanent record. (105 ILCS 10/5(a))

A parent's or student's request to inspect and copy records, or to allow a specifically designated representative to inspect and copy records, must be granted within a reasonable time, and in no case later than 10 business days after the date of receipt of such request by the official records custodian. (105 ILCS 10/5(c))

The school may charge its reasonable costs for the copying of school student records, not to exceed the amounts fixed in schedules adopted by the State Board, to any person permitted to

copy such records, except that no parent or student shall be denied a copy of school student records as permitted under this Section 5 for inability to bear the cost of such copying. (105 ILCS 10/5(d))

What is the difference between an IEP and 504?

- IEP (Individualized Education Plan) is governed by the Individuals with Disabilities Education Act. This law is the federal special education law for children with disabilities. In order to receive services under this law, a child must have one or more of the 13 disabilities outlined in IDEA and the disability must impact their education and or ability to learn in a general education setting. An IEP is generally used for children who require specialized instruction. <https://sites.ed.gov/idea/?src=policy-page>
- 504 is governed by Section 504 of the Rehabilitation Act of 1973. In order to receive 504 services a child must have a disability (but the type is not specified) and the disability must impact their ability to learn in a general education setting, but the impairment does not need to have an adverse impact on educational performance. A 504 is generally used for children who need environmental accommodations vs needing specialized instruction. <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>

What is FAPE?

A "free appropriate public education ("FAPE")" as defined at 34 C.F.R. 300.17, must be made available by school districts to children with disabilities in accordance with 34 C.F.R. 300.101 through 300.103 (Ill. Admin. Code tit. 23 §226.50). FAPE means your child must be making meaningful progress. FAPE means that the school needs to provide an education that is designed to meet the unique needs of your child.

What is LRE?

LRE = Least restrictive environment. The LRE requirements state that each school district ensures, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. (34 C.F.R. §300.114)

EVALUATION:

What qualifications does my child need to meet to be eligible for Special Education?

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, 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 C.F.R. 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. (Ill. Admin. Code tit. 23 §226.75)

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. (34 C.F.R. 300.39)

A helpful resource is <https://www.isbe.net/Documents/Parent-Guide-Special-Ed-Aug20.pdf>

What tests should the school do to evaluate my child?

The school should “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent” (34 C.F.R 300.304)

For more information on evaluation types and reading evaluations go here <https://www.wrightslaw.com/info/test.index.htm>

How long does the school have to evaluate my child?

The school should take no more than 60 school days following the date the parent signs the written consent to perform the needed assessments. (Ill. Admin. Code tit. 23 §226.110(d)).

If I disagree with the evaluation can I request a re-evaluation?

- A separate written statement may be provided by anyone on the team that wishes to be on record as disagreeing with the conclusions of the team.
- A parent can get an Independent Educational Evaluation (IEE) at public expense. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. If the school feels their evaluation was appropriate and they do not want to pay for an independent evaluation they must file for due process to show its evaluation is appropriate. If the parent gets an IEE, the results must be considered by the school. (34 C.F.R 300.502). IGAC recommends that all requests be made in writing and that you keep a copy of the request for your records.

Does it cost to get my child evaluated?

Special Education evaluations and services are to be provided at no cost to the parent. Each State may use whatever State, local, Federal, and private sources of support that are available in the State to meet the requirements of FAPE. (34 C.F.R. §300.103)

Who determines if my child qualifies for an IEP?

The school 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. (Ill. Admin. Code tit. 23 §226.110(c))

Upon completion of the assessments identified pursuant to subsection (c)(3), but no later than 60 school days following the date the parent signs the written consent to perform the needed

assessments, the determination of eligibility shall be made and the IEP meeting shall be completed. (Ill. Admin. Code tit. 23 §226.110(d))

INDIVIDUAL EDUCATION PLANS (IEP):

What is an IEP?

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324. (34 C.F.R. 300.22) *see above*

My school says that my child does not qualify for the IEP?

How was this determined? Was an evaluation completed? If no, a parent can request an evaluation. If yes, a parent can get an Independent Educational Evaluation, IEE, and the results must be considered by the school. (34 C.F.R 300.502)

Who is part of an IEP team?

Parents, students (the student may attend if the parent decides he/she should be present or if the child has reached 14½ and transition will be discussed), at least one general education teacher, special education teacher, local educational agency, evaluation personnel, others with knowledge or special expertise about the student. (Ill. Admin. Code tit. 23 §226.210)

Who schedules IEP meetings and how do I know when they are?

The school is responsible for “notifying parents of the meeting early enough to ensure that they will have an opportunity to attend” means the district shall provide written notification no later than ten days prior to the proposed date of the meeting. In addition, the district shall take whatever action is necessary to facilitate the parent's understanding of and participation in the proceedings at a meeting, including arranging for and covering the expense of an interpreter for parents whose native language is other than English or for an interpreter licensed pursuant to the Interpreter for the Deaf Licensure Act of 2007 [225 ILCS 443] for parents who are deaf. (Ill. Admin. Code tit. 23 §226.530)

Can I bring someone to the IEP meeting?

Yes. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (34 C.F.R. 300.321)

What should be included in my child's IEP goals?

The IEP must include “measurable annual goals, including academic and functional goals.” (Section 1414(d)(1)(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, as well as benchmarks or short-term objectives developed in accordance with the child's present levels of academic and functional performance. 2) A statement regarding the child's ability to participate in State and

district-wide assessments. 3) A statement as to the languages or modes of communication in which special education and related services will be provided, if other than or in addition to English. 4) A statement as to whether the child requires the provision of services beyond the district's normal school year in order to receive FAPE ("extended school year services") and, if so, a description of those services that includes their amount, frequency, duration, and location. (Ill. Admin. Code tit. 23 §226.230)

How is placement decided?

The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. It is determined at least annually based on the child's IEP and should be as close as possible to the child's home. (34 C.F.R. 300.116)

What's the difference between a paraprofessional and an aide?

IDEA Personnel Qualifications can be found at 34 C.F.R. 300.156. You will notice that there is no federal legal definition of an aide.

Illinois Administrative Code lists Special education qualifications in Ill. Admin. Code tit. 23 §226.800. You will notice that there is no state legal definition of an aide.

What do I do when my child (with an IEP) is facing discipline?

If a student with a disability is facing discipline. The school must consider a manifestation determination to see if the actions were a manifestation of the student's disability.

Here is the IDEA information about Manifestation Determination. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (34 C.F.R. 300.530)

Accommodations vs. Modification and related requirements

Modification = changes what student is taught or expected to learn (i.e. Reading two sentences vs. a full paragraph).

Accommodation = Does not change content or expectation of learning but changes how taught. (i.e. Extra time, get lecture ahead of time, use of computer vs. written assignments).

504 PLAN:

What is a 504 Plan?

If your child does not qualify for special education a 504 Plan can be created instead of an IEP. The child must have a physical or mental impairment that substantially limits one or more life activities. The impairment does not need to have an adverse impact on educational performance.

More information regarding 504 Plans can be found at the OCR website: <https://www2.ed.gov/about/offices/list/ocr/504faq.html>

RE-EVALUATION:

Why is my child being re-evaluated?

A child may be re-evaluated if the school determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parent or teacher requests a reevaluation. Please note that a student may not be re-evaluated more than once a year, unless the parent and the public agency agree otherwise; and the student must be re-evaluated at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. (34 C.F.R. 300.303)

TRANSITION PLANNING:

My special needs child is turning 18 what do I need to do?

When your child reaches the age of 18 he/she will have the ability to make his/her own decisions regarding education unless your student has signed a Delegation of Rights (provided by the school district) or you have obtained a guardianship over your child. See (Ill. Admin. Code tit. 23 §226.690) below:

“When a student with a disability reaches the age of majority (18 years of age; see 755 ILCS 5/11-1) or becomes an emancipated minor pursuant to the Emancipation of Minors Act [750 ILCS 30] (except for a student with a disability who has been adjudged as a disabled person pursuant to 755 ILCS 5/11a-2 or who has executed a Delegation of Rights that is in effect as provided in Section 14-6.10 of the School Code):

- 1) The school district shall provide any notice required by this Part to both the individual and the parents, and all other rights accorded to parents under Part B of the Individuals with Disabilities Education Act, the implementing regulations at 34 C.F.R. 300, and this Part shall transfer to the student; and
- 2) All rights accorded to parents under Part B of the Individuals with Disabilities Education Act, the implementing regulations at 34 C.F.R. 300, and this Part shall

transfer to a child who is incarcerated in an adult or juvenile, State, or local correctional institution.”

What are transition services?

IDEA defines transition services as 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 is based on the individual child's needs, taking into account the child's strengths, preferences, and interests (34 C.F.R. 300.43).

In IL, transition services should be built into the IEP when the student turns 14.5 years of age (Ill. Admin. Code tit. 23 §226.230).

OTHER:

What is mediation?

Schools must ensure that procedures are established and implemented to resolve disputes through a mediation process (34 C.F.R. 300.506)

You can find more useful information about mediation here:

<https://www.wrightslaw.com/info/mediation.index.htm>

What is due process?

Due process is a formal process of dispute resolution that gives the parent the right to present evidence and witnesses to an impartial hearing officer (34 C.F.R. 300.507)

You can find more useful information about due process here:

<https://www.wrightslaw.com/info/dp.index.htm>

If you still have questions or concerns regarding your student's special education services or you want to discuss a complaint, please call The Guardianship and Advocacy Commission Special Education Division at 309-671-3032 laura.hart2@illinois.gov or 309-671-3034 kelly.franklin@illinois.gov.