

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER I: STATE BOARD OF EDUCATION  
SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 226  
SPECIAL EDUCATION  
(Excerpt - as it pertains to CLD Students)

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## SUBPART A: GENERAL

### Section 226.75 Definitions

**Cultural** Identification: Identifying the family's general **cultural** factors, such as ethnicity and **language** spoken, which may have an impact on the design of the case study evaluation procedures used.

Qualified **Bilingual** Specialist: An individual who holds the qualifications described in Section 226.800(f) of this Part.

## SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

### 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.

- b) The IEP Team shall review and evaluate existing information about the child, including:
  - 5) Information from specialized evaluations such as those performed by independent evaluators, medical evaluators, behavioral intervention specialists, **bilingual** specialists, etc.

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### Section 226.130 Evaluation Requirements

Each local school district shall establish written procedures to ensure that the following requirements are met.

- a) Tests and other materials used to evaluate a child:
  - 1) Shall be selected and administered so as not to be discriminatory on a racial or **cultural** basis;
  - 2) Shall be provided and administered in the child's **native language** or other mode of communication, unless it is clearly not feasible to do so;
  - i) 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** professional is not available may create nonstandard conditions.

### Section 226.140 Mode(s) of Communication and **Cultural** Identification

Before a child is given a case study evaluation, the local school district shall determine the **primary language** of the child's home, general **cultural** identification, and mode of communication.

- a) Determination of the child's **language use pattern** and general **cultural** identification shall be made by determining the **language(s)** spoken in the child's home and the **language(s)** used most comfortably and frequently by the child.
- b) If the child has a **non-English**-speaking background, a determination shall be made of his or her **proficiency in English**. Such a determination shall be conducted in accordance with the provisions of 23 Ill. Adm. Code 228 (**Bilingual** Education), which specifies the assessment procedures and eligibility criteria for **bilingual** education programs (see 23 Ill. Adm. Code 228.15).
- c) Determination of the child's mode of communication shall be made by assessing the extent to which the child uses expressive language and the use he or she makes of other modes of communication (e.g., gestures, signing, unstructured sounds) as a substitute for expressive language.
- d) The child's **language use pattern**, **proficiency in English**, mode of communication, and general **cultural** identification shall be noted in the child's temporary student record, and this information shall be used in the evaluation and in the development and implementation of the individualized education program.

#### Section 226.150 Case Study to be Nondiscriminatory

Each evaluation shall be conducted so as to ensure that it is **linguistically**, **culturally**, racially, and sexually nondiscriminatory.

- a) The **language(s)** used to evaluate a child shall be consistent with the child's **primary language** of the home or other mode of communication. (See Section 226.140 of this Part.) If the **language use pattern** involves two or more **languages** or modes of communication, the child shall be evaluated by qualified specialists or, when needed, qualified **bilingual** specialists using each of the **languages** or modes of communication used by the child. The provisions of subsections (b) and (c) of this Section shall apply when a qualified **bilingual** specialist is needed but unavailable.
- b) If documented efforts to locate and secure the services of a qualified **bilingual** specialist are unsuccessful, the district shall use an individual who possesses the professional credentials required under Section 226.840 of this Part to complete the specific components of the evaluation. This qualified specialist shall be assisted by a certificated school district employee or other individual who has demonstrated competencies in the **language** of the child.
- c) If documented efforts to locate and secure the services of a qualified **bilingual** specialist or a qualified specialist assisted by another individual as provided in subsection (b) of this Section are unsuccessful, the district shall conduct assessment procedures which do not depend upon **language**. Any special education resulting from such alternative procedures shall be reviewed annually until the child acquires a predominantly English **language use pattern**.
- d) Tests given to a child whose **primary language** is **other than English** shall be relevant, to the maximum extent possible, to his or her culture.
- e) If the child's receptive and/or expressive communication skills are impaired due to hearing and/or language deficits, the district shall utilize test instruments and procedures that do not stress spoken language and one of the following:

- 1) Visual communication techniques in addition to auditory techniques.
- 2) An **interpreter** to assist the evaluative personnel with **language** and testing.

#### 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.

- 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.

### SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

#### 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.

- f) The IEP Team may include a qualified **bilingual** specialist or **bilingual** teacher, if the presence of such a person is needed to assist the other participants in understanding the child's **language** and **cultural** factors as they relate to the child's instructional needs.

#### Section 226.220 Factors in Development of the IEP

In developing a child's IEP, the IEP Team shall consider the strengths of the child and the concerns of the parents for enhancing the child's education, as well as the results of the most recent valid evaluation and any available assessment information that may be useful. If the IEP Team determines that one or more of the factors described in this Section could impede learning or that the child needs a particular device or service (including an intervention, accommodation, behavioral intervention or strategy, or other program modification or support for school personnel) in order for the child to receive FAPE, these needs shall be documented in the IEP.

- c) In the case of a child of **limited English proficiency**, the team shall consider the **language**-related needs of the child.

#### Section 226.230 Content of the IEP

Nothing in this Section shall be construed to require the inclusion of information in one section of a child's IEP that is already contained in another section.

- a) Each IEP shall include all the components enumerated in this subsection (a).
- 5) A statement as to the **language(s)** or mode(s) of communication in which special education and related services will be provided, if other than or in addition to English.

### SUBPART D: PLACEMENT

#### Section 226.310 Related Services

Related services shall be provided if necessary to assist an eligible child in benefiting from his or her special education. The related services that will be provided to a particular child shall be described in the IEP in conformance with the requirements of Section 226.230(a)(7) and (8) of this Part. The most commonly provided related services include assistive technology; audiology; counseling services; early identification and assessment of disabilities; diagnostic medical services; occupational therapy; orientation and mobility services; parent counseling and training; physical therapy; recreation; rehabilitation counseling; school health services; school psychological services; school social work services; special readers, braillists, typists, and interpreters; speech-language pathology services; transition services; transportation; and vocational education.

## SUBPART F: PROCEDURAL SAFEGUARDS

### Section 226.500 Language of Notifications

- a) The notices to individual parents required in this Subpart F shall be:
  - 1) Written in language understandable to the general public; and
  - 2) Provided in such a way as to accommodate the **primary language** or other mode of communication of the respective parent, unless it is clearly not feasible to do so.
- b) If the **primary language** or other mode of communication of the parent is not a written language, the local school district shall ensure that:
  - 1) The notice is translated orally or by other means to the parent in his or her **native language** or other mode of communication;
  - 2) The parent understands the content of the notice; and
  - 3) There is written evidence in the child's record that the requirements of this subsection (b) have been met.

### Section 226.530 Parents' Participation

- b) Whenever a meeting is to be held which a parent has a right to attend, the requirements of this subsection (b) shall apply.
- 4) 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 an **interpreter** for parents who are deaf or whose **native language** is **other than English**.

### Section 226.540 Consent

- a) A parent shall be considered to have given consent only when:
  - 1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her **native language** or other mode of communication;

### Section 226.550 Surrogate Parents

b) The State Board of Education shall appoint a surrogate parent for each child who requires one, in keeping with the following requirements.

1) All reasonable efforts shall be made to secure a surrogate parent whose racial, **linguistic**, and **cultural** background is similar to the child's.

## SUBPART G: DUE PROCESS

### Section 226.625 Rights of the Parties Related to Hearings

g) Either party, or any other person participating in the hearing, may request that an **interpreter** be available during the hearing because one of the participants is hearing impaired and/or uses a **primary language other than English**. Such **interpreters** shall be provided at the school district's expense.

### Section 226.670 Decision of Hearing Officer; Clarification

b) The hearing officer's decision shall be sent by certified mail to the parties enumerated in Section 14-8.02a(h) of the School Code. The decision shall be translated into the **native language** of the parents if their **primary language** is **other than English**.

## SUBPART I: PERSONNEL

### Section 226.800 Personnel Required to be Qualified

f) Qualified **Bilingual** Specialists

Professional staff otherwise qualified pursuant to this Section shall be considered "qualified **bilingual** specialists" if they meet the applicable requirements set forth in this subsection (f).

1) A holder of a special certificate endorsed in the area of responsibility pursuant to 23 Ill. Adm. Code 25.40 or 25.43 shall successfully complete a **language** examination in the **non-English language** of instruction and shall have completed coursework covering:

A) Psychological/educational assessment of students with disabilities who have **limited English proficiency**;

B) Theoretical foundations of **bilingual** education and English as a second language, including the study of first and second **language** acquisition; and

C) Methods and materials for teaching students of **limited English proficiency** or students with disabilities who have **limited English proficiency**.

2) A holder of an early childhood, elementary, or high school certificate who also holds special education approval in the area of responsibility (see Section 226.810 of this Part) shall successfully complete a **language** examination in the **non-English language** of instruction and shall have completed the coursework listed in subsections (f)(1)(A), (B), and (C) of this Section.

3) A holder of an early childhood, elementary, or high school certificate who also holds approval to teach **bilingual** education or English as a second **language** shall have completed coursework covering:

A) Methods for teaching in the special education area of assignment;

- B) Psychological/educational assessment of students with disabilities who have **limited English proficiency**, or psychological diagnosis for children with all types of disabilities; and
  - C) Characteristics of students, or characteristics of students with **limited English proficiency** specifically, in the special education area of assignment.
- 4) A holder of a transitional **bilingual** certificate issued pursuant to 23 Ill. Adm. Code 25.90 and endorsed for the **language** of assignment shall have completed two years of successful teaching experience and have completed coursework covering:
- A) Survey of children with all types of disabilities;
  - B) Assessment of the **bilingual** student, or psychological/educational assessment of the student with disabilities who has **limited English proficiency**;
  - C) Theoretical foundations of **bilingual** education and English as a second **language**, including the study of first and second **language** acquisition;
  - D) Methods for teaching in the special education area of assignment; and
  - E) Characteristics of students, or characteristics of students with **limited English proficiency** specifically, in the special education area of assignment.
- 5) A holder of a school service personnel certificate endorsed for guidance, school social work, or school psychology shall successfully complete an examination in the **non-English language** and shall have completed coursework in assessment of the **bilingual** student or psychological/educational assessment of the student with disabilities who has **limited English proficiency**.

#### Section 226.830 List of Independent Evaluators

- c) An individual who wishes to be considered a qualified **bilingual** specialist shall identify any **language(s) other than English** in which he or she is proficient and identify the specific qualifications held that correspond to the relevant requirements of Section 226.800(f) of this Part.