

## CLIENT ALERT

February 2021



### **New Regulations Govern IEP Meeting Bilingual Interpreters By Maureen A. Lemon**

The Illinois State Board of Education (ISBE) recently issued new special education regulations governing who is qualified to interpret at Individual Education Program (IEP) meetings to assist a parent who has limited English proficiency. The amendments begin on page 1671 of [https://www.cyberdriveillinois.com/departments/index/register/volume45/register\\_volume45\\_issue\\_6.pdf](https://www.cyberdriveillinois.com/departments/index/register/volume45/register_volume45_issue_6.pdf). These regulations were required by P.A. 101-124, effective January 1, 2020. That law, in turn, was a response to a class action lawsuit against the City of Chicago Public Schools filed by parents who were not provided interpreter services at their children's IEP meetings.

While Section 226.530 of ISBE's special education regulations previously required school districts to provide an interpreter when needed by a parent to participate in an IEP meeting, ISBE previously had no specific criteria, standards and competencies for bilingual interpreters at IEP meetings. The new regulations fill that void.

### **New Qualified Interpreter Requirements**

Effective January 22, 2021, a new section was added to the ISBE special education regulations: Qualified Interpreter (23 Ill. Admn. Cd. §226.800(l)). To qualify, the individual must demonstrate proficiency in English and the target language by passing State-approved language proficiency tests in listening, speaking, and reading (if applicable). In the instance of a target language for which an exam does not yet exist, ISBE is expected to either offer a test in that language within a reasonable amount of time or, if that is not feasible, to establish a reliable alternative assessment or documentation of proficiency in that language.

A person is exempt from this proficiency testing requirement if (1) for an English language proficiency test exemption, they possess a post-secondary degree in which the official language of instruction is English; and (2) for a target language proficiency test exemption, they:

- possess a post-secondary degree in which the official language of instruction is the target language;
- possess the State Seal of Biliteracy with a minimum score of Advanced Low in the target language;
- receive a score of 4 or higher on the AP language test in the target language;
- currently possess, or has possessed, an educator license with stipulations endorsed for transitional bilingual educator or a professional educator license endorsed in LBSII/Bilingual Special Education Specialist or bilingual education; or
- currently possess an Administrative Office of the Illinois Courts Court Interpreter Certification, a Certified Medical Interpreter Certification, or an Advanced Proficiency Level Interpreter License.

In addition to being proficient in English and the target language, a qualified interpreter must demonstrate competency in (a) special education terminology and protocols; (b) interpretation standards and techniques, and (c) interpretation ethics. To achieve these standards, the individual must:

- Complete six hours of training on special education terminology and protocols. Individuals with special education licenses, endorsements, or approvals are exempt from this requirement;
- Complete at least nine hours of training on interpretation standards, techniques, and ethics, including videos demonstrating proper and improper interpretation techniques;
- Pass a written exam, with a score of at least 80%, on interpretation standards/techniques/ethics and on special education terminology and protocols;
- Pass an oral exam, with a score of at least 70%, to demonstrate proficiency in interpreting in and out of English, through consecutive or simultaneous interpreting and sight translation;
- Participate in at least six hours of ongoing professional development every two years related to interpretation in the following categories: (a) confidentiality, (b) accuracy, (c) impartiality, (d) interpreter ethics and professionalism, (e) cultural awareness, (f) special education processes, (g) special education vocabulary, and (h) language acquisition.

The new regulations amend or add several definitions at 23 Ill. Admn. Cd. §226.75. In addition to a new definition for 'Qualified Interpreter,' the regulations now define 'Preferred Language' to mean a parent's or guardian's native language or any other language with which the parent or guardian requests interpretation services. Perhaps the oddest provision in the new regulations is the explicit statement that the term 'Preferred Language' does not include artificial or constructed languages including, but not limited to, Klingon, Dothraki, Elvish, or Esperanto.

### **New Notice Requirements**

Section 226.530(b) now requires the following information to be including in each annual notice to all parents of children with disabilities and in each IEP Notice of Conference: (1) the availability of interpretation services at IEP team meetings; (2) an explanation of how parents can request an interpreter; (3) a parent's right to request that the interpreter serve no other role in the IEP meeting than as an interpreter, and that the school district should make reasonable efforts to fulfill this request; and (4) a point of contact for any questions or complaints about interpretation services.

### **New Record-keeping Requirements**

Finally, Section 226.530(c) now requires each school district to keep a record of the following: (1) whether a parent requested an interpreter, had previously requested interpretation services, or had

otherwise indicated that an interpreter was necessary to ensure meaningful parental involvement in the IEP meeting; (2) the language for interpretation; (3) whether a qualified interpreter was provided for each IEP meeting; and (4) whether a parent requested that the interpreter serve no other role in the IEP meeting and, if so, whether the school district granted that request.

The regulations do not state where this record must be maintained. One option is to add a section to your IEP paperwork to capture this information.

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These regulations became effective immediately and gave school districts no lead time to ensure that their interpreters are 'qualified.' Although not a satisfactory solution, the regulations do allow schools to use outside vendors, including telephonic interpreters, to meet these the new standards.

If you need any assistance updating your annual notice statement or your Notice of Conference form, or have other questions regarding these new regulations, please contact an ODHC attorney for assistance.

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