



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB3845

Introduced 2/25/2005, by Rep. Ruth Munson

SYNOPSIS AS INTRODUCED:

5 ILCS 100/5-170 new

Amends the Illinois Administrative Procedure Act. Provides that certain rules of the Illinois State Board of Education (ISBE) concerning special education are changed by operation of law. Provides that ISBE may amend the rules only by general rulemaking under the Act.

LRB094 07162 NHT 37317 b

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Administrative Procedure Act is
5 amended by adding Section 5-170 as follows:

6 (5 ILCS 100/5-170 new)

7 Sec. 5-170. Notwithstanding any other provision of this
8 Act or any other law to the contrary, the following special
9 education rules of the Illinois State Board of Education (ISBE)
10 in Part 226 of Title 23 of the Illinois Administrative Code are
11 amended to read as follows by operation of law. These rules, as
12 set forth in this Section, take effect on the effective date of
13 this amendatory Act of the 94th General Assembly and may be
14 amended by ISBE only by general rulemaking as provided in
15 Section 5-40 of this Act.

16 Section 226.75. Definitions.

17 Assistive Technology Device: Any item, piece of equipment,
18 or product system, whether acquired commercially off the shelf,
19 modified, or customized, that is used to increase, maintain, or
20 improve the functional capabilities of a child with a
21 disability.

22 Behavioral Intervention: An intervention based on the
23 methods and empirical findings of behavioral science and
24 designed to influence a child's actions or behaviors
25 positively.

26 Case Study Evaluation: See "Evaluation"

27 Date of Referral: The date on which written parental
28 consent to complete an evaluation is obtained or provided.

29 Day: A calendar day, unless otherwise indicated as
30 "business day" or "school day".

31 Business Day: Monday through Friday, except for federal and

1 State holidays (unless holidays are specifically included in
2 the designation of business days, as at 34 CFR
3 300.403(d)(1)(ii)).

4 School Day: Any day including a partial day, during the
5 regular school year that students are in attendance at school
6 for instructional purposes.

7 Developmental Delay: Delay in physical development,
8 cognitive development, communication development, social or
9 emotional development, or adaptive development (may include
10 children from three through seven years of age).

11 Disability: Any of the following specific conditions.

12 Autism: A developmental disability significantly
13 affecting verbal and nonverbal communication and social
14 interaction, generally evident before age three that
15 adversely affects a child's educational performance. (A
16 child who manifests the characteristics of autism after age
17 3 could be diagnosed as having autism if the other criteria
18 of this Section are satisfied.) Other characteristics
19 often associated with autism are engagement in repetitive
20 activities and stereotyped movements, resistance to
21 environmental change or change in daily routines, and
22 unusual responses to sensory experiences. The term does not
23 apply if a child's educational performance is adversely
24 affected primarily because the child has an emotional
25 disturbance.

26 Deaf-Blindness: Concomitant hearing and visual
27 impairments, the combination of which causes such severe
28 communication and other developmental and educational
29 needs that they cannot be accommodated in special education
30 programs solely for children with deafness or children with
31 blindness.

32 Deafness: A hearing impairment that is so severe that
33 the child is impaired in processing linguistic information
34 through hearing, with or without amplification, that
35 adversely affects a child's educational performance.

36 Emotional Disturbance (includes schizophrenia, but

1 does not apply to children who are socially maladjusted,
2 unless it is determined that they have an emotional
3 disturbance): A condition exhibiting one or more of the
4 following characteristics over an extended period of time
5 and to a marked degree that adversely affects a child's
6 educational performance:

7 An inability to learn that cannot be explained by
8 intellectual, sensory, or health factors;

9 An inability to build or maintain satisfactory
10 interpersonal relationships with peers and teachers;

11 Inappropriate types of behavior or feelings under
12 normal circumstances;

13 A general pervasive mood of anxiety or unhappiness
14 or depression; or

15 A tendency to develop physical symptoms or fears
16 associated with personal or school problems.

17 Hearing Impairment: An impairment in hearing, whether
18 permanent or fluctuating, that adversely affects a child's
19 educational performance but that is not included under the
20 definition of deafness.

21 Mental Retardation: Significantly subaverage general
22 intellectual functioning, existing concurrently with
23 deficits in adaptive behavior and manifested during the
24 developmental period, that adversely affects a child's
25 educational performance.

26 Multiple Disabilities: Concomitant impairments (such
27 as mental retardation-blindness, mental
28 retardation-orthopedic impairment, etc.), the combination
29 of which causes such severe educational needs that they
30 cannot be accommodated in special education programs
31 solely for one of the impairments (does not include
32 deaf-blindness).

33 Orthopedic Impairment: A severe orthopedic impairment
34 that adversely affects a child's educational performance;
35 includes impairments caused by congenital anomaly (e.g.,
36 clubfoot, absence of some member, etc.), impairments

1 caused by disease (e.g., poliomyelitis, bone tuberculosis,
2 etc.), and impairments from other causes (e.g., cerebral
3 palsy, amputations, and fractures or burns that cause
4 contractures).

5 Other Health Impairment: Limited strength, vitality or
6 alertness, including a heightened sensitivity to
7 environmental stimuli, that results in limited alertness
8 with respect to the educational environment, that:

9 is due to chronic or acute health problems, such as
10 asthma, attention deficit disorder or attention
11 deficit hyperactivity disorder, diabetes, epilepsy, a
12 heart condition, hemophilia, lead poisoning, leukemia,
13 nephritis, rheumatic fever, and sickle cell anemia;
14 and

15 adversely affects a child's educational
16 performance.

17 Specific Learning Disability: A disorder in one or more
18 of the basic psychological processes involved in
19 understanding or in using language, spoken or written, that
20 may manifest itself in an imperfect ability to listen,
21 think, speak, read, write, spell, or do mathematical
22 calculations, including such conditions as perceptual
23 disabilities, brain injury, minimal brain dysfunction,
24 dyslexia, and developmental aphasia. (The term does not
25 include learning problems that are primarily the result of
26 visual, hearing, or motor disabilities, of mental
27 retardation, of emotional disturbance, or of
28 environmental, cultural, or economic disadvantage.) [105
29 ILCS 5/14-1.03(a)].

30 Speech or Language Impairment: A communication
31 disorder, such as stuttering, impaired articulation, a
32 language impairment, or a voice impairment, that adversely
33 affects a child's educational performance.

34 Traumatic Brain Injury: An acquired injury to the brain
35 caused by an external physical force, resulting in total or
36 partial functional disability or psychosocial impairment,

1 or both, that adversely affects a child's educational
2 performance. The term applies to open or closed head
3 injuries resulting in impairments in one or more areas,
4 such as cognition; language; memory; attention; reasoning;
5 abstract thinking; judgment; problem-solving; sensory,
6 perceptual, and motor abilities; psychosocial behavior;
7 physical functions; information processing; and speech.
8 The term does not apply to brain injuries that are
9 congenital or degenerative or to brain injuries induced by
10 birth trauma.

11 Visual Impairment: An impairment in vision that, even
12 with correction, adversely affects a child's educational
13 performance (includes both partial sight and blindness).

14 Domain: All areas related to the suspected disability that
15 must be considered in the course of designing an evaluation.
16 The domains are health, vision, hearing, social and emotional
17 status, general intelligence, academic performance,
18 communication status, and motor abilities.

19 Eligible: Identified in accordance with this Part as having
20 any of the disabilities defined in this Section and needing
21 special education and related services.

22 Equipment (a programmatic definition, not intended to
23 coincide with the definition of "equipment" given in the
24 Program Accounting Manual at 23 Ill. Adm. Code 110.120):

25 Machinery, utilities, and built-in equipment and any
26 necessary enclosures or structures to house the machinery,
27 utilities, or equipment; and

28 All other items necessary for the functioning of a
29 particular facility as a facility for the provision of
30 educational services, including items such as
31 instructional equipment and necessary furniture; printed,
32 published and audio-visual instructional materials;
33 telecommunications, sensory, and other technological aids
34 and devices; and books, periodicals, documents, and other
35 related materials.

36 Evaluation: A series of procedures designed to provide

1 information about a child's suspected disability; the nature
2 and extent of the problems that are or will be adversely
3 affecting his/her educational development; and the type of
4 intervention and assistance needed to alleviate these
5 problems.

6 Extended School Year Services: Special education and
7 related services that are provided to a child with a disability
8 beyond the normal school year of the public agency in
9 accordance with the child's IEP and at no cost to the parents
10 of the child and meet the requirements of Section 226.750(c) of
11 this Part.

12 Functional Behavioral Assessment: An assessment process
13 for gathering information regarding the target behavior, its
14 antecedents and consequences, controlling variables, the
15 student's strengths, and the communicative and functional
16 intent of the behavior, for use in developing behavioral
17 interventions.

18 General Curriculum: The curriculum adopted and/or used by a
19 local school district or by the schools within a district for
20 nondisabled students; the content of the program, as opposed to
21 whether the curriculum is offered in the general or special
22 education setting.

23 IEP Team: The group of individuals enumerated in Section
24 226.210 of this Part, except that in three instances the team
25 shall be expanded to include any other qualified professionals
26 whose expertise is necessary to administer and interpret
27 evaluation data and make an informed determination as to
28 whether the child needs special education and related services
29 (i.e., when identifying the specific assessments required in
30 order to evaluate a child's individual needs; when determining
31 whether the child is eligible pursuant to this Part; and when
32 conducting a Manifestation Determination Review).

33 Independent Educational Evaluation: An evaluation
34 conducted by a qualified examiner who is not employed by the
35 school district responsible for the education of the child in
36 question. (See Section 226.180 of this Part.).

1 Individualized Education Program (IEP): A written
2 statement for a child with a disability that is developed,
3 reviewed, and revised in a meeting in accordance with Subpart C
4 of this Part.

5 Individualized Family Service Plan (IFSP): A written plan
6 for providing the early intervention services to a child
7 eligible under 34 CFR 303 and the child's family.

8 Interim Plan: A portion of an IEP that identifies the
9 services that will be provided as a temporary measure, either
10 when the child's complete IEP cannot be implemented or when the
11 parents and the district have only agreed to a portion of the
12 services that will be needed, and that sets out the specific
13 conditions and timelines to which both the parents and the
14 district have agreed.

15 Least Restrictive Environment (LRE): The setting that
16 permits a child to be educated with nondisabled children to the
17 maximum extent appropriate. (See Section 226.240(c) of this
18 Part.)

19 Parent: A natural or adoptive parent of a child; a guardian
20 but not the State if the child is a ward of the State; a person
21 acting in the place of a parent of a child (such as a
22 grandparent or stepparent with whom a child lives); a person
23 who is legally responsible for a child's welfare, or a
24 surrogate parent who has been appointed in accordance with
25 Section 226.550 of this Part. A foster parent is a "parent"
26 when the natural parent's authority to make educational
27 decisions on the child's behalf has been extinguished under
28 State law and the foster parent has an ongoing, long-term
29 parental relationship with the child, is willing to make the
30 educational decisions required of parents under IDEA, and has
31 no interest that would conflict with the interests of the
32 child.

33 Participating Agency: A State or local agency, other than
34 the local school district, that is or may be legally
35 responsible for providing or funding services to a student who
36 is eligible under this Part.

1 Personally Identifiable (with reference to information):
2 Including the name of the child, the child's parent, or other
3 family member; the address of the child; a personal identifier,
4 such as the child's Social Security number or student number;
5 or a list of personal characteristics or other information that
6 would make it possible to identify the child with reasonable
7 certainty.

8 Qualified Personnel: Staff members or other individuals
9 who hold the certificate, license, registration, or credential
10 that is required for the performance of a particular task.

11 Qualified Bilingual Specialist: An individual who holds
12 the qualifications described in Section 226.800(f) of this
13 Part. Qualified Specialist: An individual who holds the
14 applicable qualifications described in Subpart I of this Part.

15 Referral: A formal procedure established by a school
16 district which involves a request for a case study evaluation.

17 Related Services: Transportation and such developmental,
18 corrective, and other supportive services as are required to
19 assist a child with a disability to benefit from special
20 education, including speech-language pathology and audiology
21 services, psychological services, physical and occupational
22 therapy, recreation (including therapeutic recreation), early
23 identification and assessment of disabilities in children,
24 counseling services (including rehabilitation counseling),
25 orientation and mobility services, and medical services for
26 diagnostic or evaluation purposes; also including school
27 health services, social work services in schools, and parent
28 counseling and training. (See Section 226.310 of this Part.)
29 Related services do not include those performed by licensed
30 physicians or dentists (except for diagnostic or evaluative
31 services or consultation to staff), registered or licensed
32 practical nurses (except when functioning as school nurses), or
33 other medical personnel involved in the provision of ongoing
34 medical care.

35 Special Education: Specially designed instruction, at no
36 cost to the parents, to meet the unique needs of a child with a

1 disability, including instruction conducted in the classroom,
2 in the home, in hospitals, in institutions, and in other
3 settings, and including instruction in physical education.

4 Special School: An educational setting which is
5 established by the local school district exclusively to meet
6 the needs of eligible children.

7 Student Record: See Section 2 of the Illinois School
8 Student Records Act [105 ILCS 10/2].

9 Supplementary Aids and Services: Aids, services, and other
10 supports that are provided in regular education classes or
11 other education-related settings to enable children with
12 disabilities to be educated with nondisabled children to the
13 maximum extent appropriate.

14 Transition Services: A coordinated set of activities for a
15 student with a disability that:

16 Is designed within an outcome-oriented process, that
17 promotes movement from school to post-school activities,
18 including postsecondary education, vocational training,
19 integrated employment (including supported employment),
20 continuing and adult education, adult services,
21 independent living, or community participation;

22 Is based on the individual student's needs, taking into
23 account the student's preferences and interests; and

24 Includes instruction, related services, community
25 experiences, the development of employment and other
26 post-school adult living objectives, and, if appropriate,
27 acquisition of daily living skills and functional
28 vocational evaluation.

29 Section 226.400. Disciplinary Actions.

30 (a) School personnel may order the removal of an eligible
31 child from his or her current placement for periods of no more
32 than ten consecutive school days each in response to separate
33 incidents of misconduct, as long as such repeated removals do
34 not constitute a pattern based on consideration of factors such
35 as the length of each removal, the total amount of time the

1 child is removed, and the proximity of the removals to one
2 another. In such a case, these removals shall not be considered
3 to constitute a change in placement.

4 (1) After an eligible child has been removed from his
5 or her placement for ten school days in the same school
6 year, the district shall provide services to the child on
7 any subsequent day(s) of removal.

8 (2) School personnel, in consultation with the child's
9 special education teacher, shall determine the extent of
10 the services to be provided, which shall be adequate to
11 enable the child to progress appropriately in the general
12 curriculum and advance toward achieving the goals set forth
13 in his or her IEP.

14 (b) Any removal of a student (i.e., any "suspension") shall
15 be reported immediately to the student's parents, along with a
16 full statement of the reasons for the suspension, a copy of
17 which shall also be given to the school board. The district
18 shall provide the parents notice of their right to request that
19 the district review the suspension decision, as required by
20 Section 10-22.6 of the School Code [105 ILCS 5/10-22.6] .

21 (c) When a district first removes a child for more than ten
22 school days in a school year or initiates a removal that will
23 constitute a change in placement, the district shall, no later
24 than ten business days after the date of such removal, either:

25 (1) convene an IEP meeting to review and, if necessary,
26 revise the child's existing behavioral intervention plan
27 as appropriate to address the child's behavior; or

28 (2) convene an IEP meeting to develop a plan for a
29 functional behavioral assessment for the child and, as soon
30 as possible thereafter, develop a behavioral intervention
31 plan for the child in light of that assessment.

32 (d) Upon any subsequent removal of a child that does not
33 constitute a change in placement, the members of the IEP Team
34 shall review the child's behavioral intervention plan and its
35 implementation. If any one member of the team believes that the
36 plan needs to be modified, the district shall convene an IEP

1 meeting to review the plan and revise it as the team deems
2 appropriate.

3 (e) A student may be suspended from using the
4 transportation provided by the school district if his or her
5 behavior warrants such a measure. When suspending
6 transportation privileges results in the student's absence
7 from school on a given day, that day shall be considered a day
8 of suspension or removal, and the requirements of Section
9 10-22.6 of the School Code shall apply.

10 (f) School personnel may order a change in placement for an
11 eligible child to an interim alternative educational setting
12 for the same amount of time that a child without a disability
13 would be subject to discipline, up to a maximum of 45 days, if:

14 (1) the child carries a weapon, as defined at 34 CFR
15 300.520, to school or to a school function under the
16 jurisdiction of a state or a local school district; or

17 (2) the child knowingly possesses or uses illegal drugs
18 or sells or solicits the sale of a controlled substance,
19 both as defined at 34 CFR 300.520, while at school or a
20 school function under the jurisdiction of a state or a
21 local school district.

22 (g) No later than ten business days after making the
23 decision to place the child in an alternative setting, the
24 district shall convene an IEP meeting as delineated in
25 subsection (c) of this Section.

26 (h) The interim alternative educational setting in which a
27 child is placed pursuant to subsection (f) of this Section
28 shall be identified by the child's IEP Team.

29 (1) The setting shall be selected so as to enable the
30 child to continue to progress in the general curriculum.

31 (2) While the child is served in the interim
32 alternative educational setting, he or she shall continue
33 to receive the services and modifications set forth in the
34 IEP.

35 (3) The placement shall include services and
36 modifications designed to address the behavior that

1 resulted in the child's being removed from his or her
2 current educational placement and to prevent that behavior
3 from recurring.

4 (i) Interim alternative educational settings for students
5 who exhibit behavior that is likely to result in injury to
6 themselves or others are subject to the provisions of Section
7 226.655 of this Part.

8 (j) No eligible child shall be expelled for behavior that
9 is a manifestation of the child's disability. If a district is
10 considering expelling an eligible student, the district shall:

11 (1) Conduct a manifestation determination review as
12 described in Section 226.410 of this Part;

13 (2) Adhere to the requirement of Section 10-22.6(a) of
14 the School Code regarding meeting with the parent(s); and

15 (3) Maintain the child in an appropriate placement.

16 (k) An expulsion constitutes a change in placement and
17 requires revision of the child's IEP in a manner that conforms
18 to the applicable requirements of Subpart C of this Part.
19 Cessation of services to an eligible child is prohibited during
20 a period of expulsion.

21 Section 226.430. Protection for Children Not Yet Eligible
22 for Special Education.

23 (a) A child who has not been determined eligible under this
24 Part and who has engaged in behavior that violated any rule or
25 code of conduct of the local school district may assert any of
26 the protections provided for in this Part if the school
27 district had knowledge that the child might be an eligible
28 child before the occurrence of the behavior that precipitated
29 disciplinary action.

30 (b) A district shall be deemed to have knowledge that a
31 child may be an eligible child if, prior to the incident:

32 (1) The parent of the child has expressed concern in
33 writing (or orally, if the parent is illiterate in English
34 or has a disability that prevents a written statement) to
35 personnel of the school district that the child is in need

1 of special education and related services;

2 (2) The behavior or performance of the child
3 demonstrates the need, or a potential need, for such
4 services;

5 (3) The parent of the child has requested an evaluation
6 of the child pursuant to Sections 300.530 through 300.536
7 of Part 300 of this Title; or

8 (4) The child's teacher or another school employee has
9 expressed concern in writing about the behavior or
10 performance of the child to the director of special
11 education or to other district personnel, in accordance
12 with the district's child find or referral procedures.

13 (c) A district shall not be deemed to have knowledge that a
14 child may be an eligible child if:

15 (1) the district determined that no evaluation was
16 necessary or conducted an evaluation and determined that
17 the child was not eligible; and

18 (2) provided written notice to the child's parents of
19 its determination.

20 (d) If a district does not have knowledge that a child is
21 or may be an eligible child prior to taking disciplinary
22 measures against the child, the child may be subjected to the
23 same disciplinary measures as those applied to children without
24 disabilities engaging in comparable behavior.

25 (1) When a request is made for an evaluation of a child
26 during the time period when the child is subjected to
27 disciplinary measures, the district shall conduct an
28 evaluation in an expedited manner.

29 (2) The child shall remain in the educational placement
30 determined by school authorities, which may include
31 suspension or expulsion without educational services,
32 until the evaluation is completed.

33 (3) The district shall provide special education and
34 related services after developing an IEP if the child is
35 determined to be eligible for special education and related
36 services.

1 Section 226.540. Consent.

2 (a) A parent shall be considered to have given consent only
3 when:

4 (1) The parent has been fully informed of all
5 information relevant to the activity for which consent is
6 sought, in his or her native language or other mode of
7 communication;

8 (2) The parent understands and agrees in writing to the
9 carrying out of the activity for which his or her consent
10 is sought, and the consent describes that activity and
11 lists the records (if any) that will be released and to
12 whom; and

13 (3) The parent understands that his or her granting of
14 consent is voluntary and may be revoked at any time.

15 (b) A school district may not require parental consent as
16 a condition of any benefit to the parent or the child except
17 for the service or activity for which consent is required.

18 (c) Parental consent shall be obtained before conducting an
19 initial evaluation of a child. Consent for initial evaluation
20 shall not be construed as consent for initial placement.

21 (d) Parental consent shall be obtained before conducting
22 any reevaluation of a child. If a parent fails or refuses to
23 provide consent for a required triennial reevaluation within
24 ten days after the district requests it, the district shall
25 request a due process hearing.

26 (e) Parental consent shall be obtained prior to the initial
27 provision of special education and related services.

28 (f) Parental consent shall be obtained prior to the use of
29 the parent's private insurance to pay for services required by
30 a child's IEP.

31 (g) Parental consent shall be obtained for the disclosure
32 of personally identifiable information about a child,
33 consistent with the requirements of the Student Records Act.

34 (h) Parental consent shall be obtained for the use of an
35 IFSP instead of an IEP.

1 (i) A parent may revoke consent for any action by the
2 district or cooperative entity serving his or her child that
3 requires parental consent. If a parent desires to revoke
4 consent, he or she may do so either in writing or orally. If
5 the revocation of consent is communicated orally, the district
6 or cooperative entity shall commit the parent's request to
7 writing and provide a copy of this written summary to the
8 parent within five days.

9 (j) Any revocation of consent is effective immediately,
10 subject to the provisions of subsection (k) of this Section,
11 but is not retroactive, i.e., it does not negate an action that
12 occurred after the consent was given and before it was revoked.
13 For purposes of this subsection (j), a district shall be
14 considered to have given immediate effect to a parent's
15 revocation of consent when it either discontinues the action
16 that is the subject of the revocation prior to its next
17 scheduled occurrence or provides to the parent a written
18 explanation of the timeline for the district's action and the
19 reasons for that timeline. The district or cooperative entity
20 shall ensure that each staff member whose activities are
21 affected by the revocation of consent is promptly informed of
22 the revocation.

23 (k) If a district disagrees with a parent's revocation of
24 consent, the district may request a due process hearing
25 pursuant to Section 226.605 of this Part.

26 (1) If the parent's revocation of consent pertains to
27 an evaluation or re-evaluation of the student, the district
28 shall not proceed with the evaluation or re-evaluation
29 during the pendency of due process.

30 (2) If the parent's revocation of consent pertains to a
31 special education placement for the student that is already
32 in effect, the district's request for a due process hearing
33 shall have the effect of staying that placement, provided
34 that the district submits the request in writing to the
35 State Board of Education in keeping with the provisions of
36 Section 226.615 of this Part and within five business days

1 after the parent's revocation occurred.

2 Section 226.655. Expedited Due Process Hearing. Requests
3 for expedited due process hearings shall be made in accordance
4 with Section 14-8.02b of the School Code.

5 (a) The State Board of Education shall arrange for an
6 expedited hearing when:

7 (1) The local school district requests such a hearing
8 because school personnel maintain that it is dangerous for
9 the child to be in the current placement.

10 (2) The parent requests such a hearing because the
11 parent disagrees with the district's placement decision
12 when a child is moved to an interim alternative educational
13 setting for a weapon or drug violation.

14 (3) The parent requests such a hearing because the
15 parent disagrees with the district's determination that a
16 child's behavior was not a manifestation of the child's
17 disability.

18 (b) During the pendency of an expedited hearing, the
19 child's placement shall be the interim alternative educational
20 setting that was determined appropriate by the IEP Team.

21 (c) The hearing officer shall determine:

22 (1) whether the child shall be placed in the proposed
23 alternative educational setting;

24 (2) In a case where a parent requests a hearing because
25 the parent disagrees with the district's placement
26 decision when a child is moved to an interim alternative
27 educational setting for a weapon or drug violation, whether
28 the interim alternative educational placement:

29 (A) is selected so as to enable the child to
30 continue to progress in the general curriculum,
31 although in another setting, and to continue to receive
32 those services and modification, including those
33 services described in the child's current IEP that will
34 enable the child to meet the goals set out in the IEP;
35 and

1 (B) includes services and modifications that
2 address the behavior and are designed to prevent the
3 behavior from recurring; or

4 (3) whether the local school district has demonstrated
5 that the child's behavior was not a manifestation of the
6 child's disability (see Section 226.410 of this Part).

7 (d) The hearing officer shall consider the following
8 factors in determining whether an interim alternative
9 placement is appropriate:

10 (1) Whether the local school district has demonstrated
11 by substantial evidence (i.e., beyond a preponderance of
12 the evidence) that maintaining the current placement of the
13 child is substantially likely to result in injury to the
14 child or to others;

15 (2) Whether the child's current placement is
16 appropriate;

17 (3) Whether the district has made reasonable efforts to
18 minimize the risk of harm in the child's current placement,
19 including the use of supplementary aids and services; and

20 (4) Whether the interim alternative educational
21 setting will permit full implementation of the student's
22 IEP and includes services and modifications designed to
23 prevent the undesired behavior from recurring.

24 (e) If all the conditions set forth in subsection (d) of
25 this Section are met, the hearing officer shall order a change
26 in the child's placement to an appropriate interim alternative
27 educational setting for not more than 45 days.

28 (1) This new alternative educational setting shall be
29 identified by the IEP Team as provided in Section
30 226.400(h) of this Part.

31 (2) If the district demonstrates that the student is
32 substantially likely to injure himself or herself or others
33 if returned to the placement that was used prior to the
34 student's removal, the hearing officer may order that the
35 student remain in the interim setting for subsequent
36 periods of up to 45 days each.

1 (f) An expedited hearing shall result in a decision within
2 ten school days after the request for the hearing, unless the
3 parents and the local school district agree otherwise.