Illinois State Board of Education

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M E M O R A N D U M

TO: District Superintendents
Directors of Special Education
Parent Organizations

FROM: Christopher Koch, Ed.D.
Director of Special Education

DATE: April 10, 2003

SUBJECT: Guidance: Appropriate Procedures for Determining Placement in the Least Restrictive Environment and Identifying and Providing Appropriate Special Education and Related Services

During the weeks of October 15, 2001, and April 22, 2002, the U.S. Department of Education, Office of Special Education Programs (OSEP) conducted a monitoring review in Illinois for the purposes of assessing compliance in the implementation of the Individuals with Disabilities Education Act (IDEA) and assisting the Illinois State Board of Education (ISBE) in developing strategies to improve results for children with disabilities. OSEP issued its monitoring findings in the December 21, 2002, document entitled "OSEP Monitoring Report – Illinois."

The OSEP report contained the following findings of noncompliance relevant to IDEA Part B:

1. ISBE's monitoring procedures are not effective in identifying and ensuring the correction of all systemic noncompliance with the requirements of Part B.
2. ISBE has not reported to the public regarding the performance of students with disabilities in the alternate assessment.
3. ISBE has not ensured that all children with disabilities are educated in the least restrictive environment.
4. ISBE has not ensured that children with behavioral or emotional disabilities are receiving all of the services that they need as part of a free appropriate education, including psychological and counseling services.

The purpose of this memorandum is to provide procedural guidance relevant to Findings 3 and 4. (ISBE is carrying out activities to address Finding 1, including the development of a risk-based compliance monitoring system. OSEP informed ISBE that no further action is required with regard to Finding 2 since ISBE reported the performance results for the Illinois Alternate Assessment in 2002 and will do so in all subsequent years.) The information contained herein is intended to reinforce the requirements of IDEA, discuss their implications at the local level, and offer technical assistance and training resources that educators and parents may access to enhance their capacity to collaboratively fulfill those requirements.

Because it is important that all stakeholders receive consistent information, we ask that special education directors assist us by disseminating copies of this memorandum to all school administrators, teachers, related services personnel, and parents of students with disabilities in their district or special education joint agreement. Additionally, given the importance of these issues, we encourage district superintendents to discuss the implications of this procedural guidance with their administrators at an upcoming staff meeting. Finally, we ask that parent organizations distribute copies to persons who access their services and/or by posting it on their websites. The memorandum is also available on the ISBE website at www.isbe.net/spec-ed.

On behalf of ISBE, I want to extend my appreciation for your past and current efforts to provide a free appropriate public education for children with disabilities in the least restrictive environment, including the necessary special education and related services to meet their individual needs. We recognize that educational entities currently face a multitude of challenges associated with difficult economic times and diminishing resources. Thus, it is more important than ever that we all work together to maximize available resources to serve an increasingly diverse student population.

Thank you for your continued collaboration as we move forward to improve services and outcomes for students with disabilities in Illinois. Should you have any questions about the information in this memorandum or any other issue, please do not hesitate to contact the Center for Special Education at 217-782-5589 (voice) or 217-782-1900 (TTY).

Finding 3 – Education in the Least Restrictive Environment

The IDEA regulations (34 CFR 300) require that children eligible for special education and related services be provided a free appropriate public education (FAPE) in the least restrictive environment (LRE). The provisions at 34 CFR 300.550(b) require each public agency to ensure:

> *(1) That* ***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*** [emphasis added]*; and*
> *(2) That special classes, separate schooling or other* ***removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes*** ***<u>with the use of supplementary aids and services</u>*** ***cannot be achieved satisfactorily*** [emphasis added].

Section 300.551(a) requires each public agency to ensure "*that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.*" Section 300.551(b) states that *"the continuum required in paragraph (a) of this section must –*

> *(1) Include the alternative placements listed in the definition of special education under §300.26 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and*
> *(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement."*

Section 300.552 requires that when determining educational placement, each public agency must ensure:

(a) The placement decision—
(1) 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; and
(2) Is made in conformity with the LRE provisions of this subpart, including §§300.550 – 300.554;
(b) The child's placement—
(1) Is determined at least annually;
(2) Is based on the child's IEP [Individualized Education Program]*; and*
(3) ***Is as close as possible to the child's home*** [emphasis added]*;*
(c) Unless the IEP of a child with a disability requires some other arrangement, ***the child is educated in the school that he or she would attend if not disabled*** [emphasis added]*;*
(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
(e) A child with a disability ***is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum*** [emphasis added].

Finally, with regard to a child's IEP, 34 CFR 300.347 requires:

(a) General. *The IEP for each child with a disability must include—*
(1) A statement of the child's present levels of performance, including—
(i) How the child's disability ***affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as nondisabled children)*** [emphasis added]*; or*
(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to—
(i) Meeting the child's needs that result from the child's disability ***to enable the child to be involved in and progress in the general curriculum…or for preschool children, as appropriate, to participate in appropriate activities*** [emphasis added]...
(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided for the child—
(i) To advance appropriately toward attaining annual goals;
(ii) ***To be involved in and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities*** [emphasis added]*; and*
*(iii)****To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section*** [emphasis added]*;*
(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section.

Given the requirements of 34 CFR 300 pertaining to placement in the LRE through the IEP process, school personnel and parents are reminded that when determining appropriate placement, the first option considered must be the age-appropriate general education classroom a child would attend if not disabled, with the provision of the necessary special education and related services, supplementary aids and services, and program modifications or supports for school personnel, in accordance with the child's individual needs. (Please note that for children aged 3 to 5 years, typical early childhood settings, rather than a general education classroom, are considered to be more age-appropriate starting points when determining placement in the LRE.) If, after fully considering this placement option and the child's individual needs, the IEP team reaches consensus that a more restrictive option is more appropriate, then the district must make the appropriate placement available. Regardless of the placement determined to be most appropriate, children with disabilities must have access to, be involved in, and make progress in the general curriculum, which is the same curriculum as nondisabled children.

It is also important to remember that placement decisions cannot be based solely on a child's disability category. Within each of the 13 disability categories, there exists a wide range of characteristics and learning needs. For example, children identified as having a disability in the autism spectrum often display very different characteristics and have a wide variation in learning needs. If ISBE monitored a district with a self-contained program in which all of its children with autism are placed, the monitoring team may investigate whether the placement decision for each child had been made on an individual basis.

Of equal importance is the need for appropriate planning and preparation to ensure that services to children are maintained in less restrictive settings. It would be inappropriate, for example, to move a child with an IEP from a setting where he/she is receiving services to a general education classroom where the necessary services are not provided. Both teachers and students must be adequately supported as such transitions occur to ensure uninterrupted services. Appropriate special education and related services, supplementary aids and services, and program modifications must follow each child, and appropriate supports for school personnel must be provided on behalf of the child.

Finding 4 – Appropriate Services for Children with Behavioral or Emotional Disabilities

The provisions at 34 CFR 300.24 provide a definition of related services, as well as individual definitions of related services terms.

> *(a)* General. *As used in this part, the term* related services *means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services,* ***psychological services*** [emphasis added]*, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children,* ***counseling services*** [emphasis added]*, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services****, social work services in schools*** [emphasis added]*, and parent counseling and training.*

The following are definitions from 34 CFR 300.24(b) for the terms that appear in bold above.

(2) Counseling services *means services provided by qualified social workers, psychologists, guidance counselors,* ***or other qualified personnel*** [emphasis added].

(9) Psychological services *include—*
(i) Administering psychological and educational tests, and other assessment procedures;
(ii) Interpreting assessment results;
(iii)Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests;
(v) Planning and managing a program of psychological services, ***including psychological counseling for children and parents*** [emphasis added]*; and*
(vi) ***Assisting in developing positive behavioral intervention strategies*** [emphasis added].

(13) Social work services in schools *includes—*
(i) Preparing a social or developmental history on a child with a disability;
(ii) ***Group and individual counseling with the child and family*** [emphasis added]*;*
(iii)Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
(iv) ***Mobilizing school and community resources*** [emphasis added] *to enable the child to learn as effectively as possible in his or her educational program; and*
(v) ***Assisting in developing positive behavioral intervention strategies*** [emphasis added].

The need for each of the related services listed and defined in 34 CFR 300.24 must be determined through the IEP process discussed under Finding 3 (see citation of 34 CFR 300.347(a)(3)). Such services must be provided in accordance with a child's individual needs as a part of FAPE. The school district or special education joint agreement must also ensure that appropriately qualified individuals provide the services.

If the district or joint agreement does not employ qualified staff or if the identified related services are beyond the scope of those which district or joint agreement staff are able to provide, thus requiring the purchased services of personnel not employed by the district, the district must secure and pay for the appropriate services through a qualified external entity. It is not permissible to remove existing or not initially identify needed services in a child's IEP because of a lack of qualified personnel or the cost associated with securing the services of a qualified external entity. It is also not appropriate to refer the child's parents to private service providers to obtain such services at their own expense or to mental health agencies where parents pay on a sliding scale or through Medicaid.

OSEP Finding 4 specifically mentions psychological counseling services for children with behavioral or emotional disabilities. In its December 2001 monitoring report for Illinois, OSEP states "*A public agency may meet a child's need for counseling as a related service through services provided by a school counselor* ***if*** *those services meet the unique needs of the child as determined by the IEP team. However, if a child needs psychological counseling services in*

order to benefit from his/her education, the IEP team must include those services in the child's IEP and the public agency must provide them as part of a free appropriate public education." Thus, if the services necessary and appropriate to meet a child's individual needs include psychological counseling services, such services must be identified on the IEP and subsequently provided, regardless of the availability of appropriately qualified district or joint agreement personnel employed or the inability of existing personnel to provide the necessary services. If the provision of the needed service(s) requires the purchase of psychological counseling services through a qualified external entity, the district or joint agreement must secure and pay for those services.

School districts, joint agreements, and parents are also reminded of the requirements related to positive behavioral intervention strategies for children with disabilities, including those with behavioral or emotional disabilities. As required by 34 CFR 300.346:

> *(a)(2)(i)* [The IEP team shall] *In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate,* ***strategies, including positive behavioral interventions, strategies, and supports to address the behavior*** [emphasis added]...
>
> *(c) If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service* ***(including an intervention, accommodation, or other program modification)*** [emphasis added] *in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.*
>
> *(d)* Requirement with respect to regular education teacher. *The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revisions of the child's IEP, including assisting in the determination of—*
>
> *(1)* ***Appropriate positive behavioral interventions and strategies*** [emphasis added] *for the child; and*
>
> *(2)* ***Supplementary aids and services*** [emphasis added]*, program modifications, or supports for school personnel that will be provided for the child, consistent with §300.347(a)(3).*

In developing the IEP for a child with a behavioral or emotional disability, it is important that the IEP team fully consider positive behavioral interventions and strategies as a means of addressing the needs of the child in the learning environment. Please see the Resources section below for information about Positive Behavior Intervention and Services (PBIS) in Illinois.

Resources

ISBE recognizes that districts, joint agreements, and parents may need access to technical assistance and training resources to increase their capacity to ensure FAPE for children with disabilities in the LRE and to identify and provide appropriate special education and related services. Through federal IDEA discretionary grants, ISBE funds a number of projects, most of which provide free technical assistance and training services and/or workshops and conferences at a nominal cost. A brief description and contact information for several projects are provided below.

EBD/PBIS Network

ISBE funds the statewide Emotional and Behavioral Disorders (EBD) Network to continue and expand the development of coordinated community-based service delivery across the state. Services are provided through four regions, each with a coordinator and team of consultants who can provide technical assistance and support on both child/family and system levels.

The EBD Network also has a Positive Behavior Intervention and Services (PBIS) component. PBIS provides a proactive systems approach for creating and maintaining safe and effective learning environments in schools. PBIS focuses on data-based decision making around discipline and academics at school, district, regional, and state levels, integrating related school improvement initiatives and structures such as 21st Century, Reading First, No Child Left Behind, and Safe Schools, and building skills and therefore capacity of school-based leadership teams through coaching and technical assistance. The goals of PBIS are to:

- Increase consistent use of positive teaching and reinforcement strategies among all school staff at school-wide, classroom, and individual student levels.
- Reduce use of reactive discipline measures in schools (i.e., office discipline referrals, detentions, suspensions, and expulsions) for all students.
- Increase data-based decision making about behavior and academic instruction and reinforcement across all school settings.
- Implement effective comprehensive supports/services/interventions for students with the most intensive behavioral/emotional needs through wraparound plans that address home, school, and community settings.

PBIS has proven to be an effective research-based approach to supporting children with EBD and other disabilities in school settings. For additional information, please contact Lucille Eber, Statewide Coordinator, at 708-447-3706, send an e-mail to bfwrapil@aol.com, or visit the website at www.ebdnetwork-il.org/, which includes a list of regional contact persons.

Illinois Autism Training and Technical Assistance Project

The Illinois Autism Training and Technical Assistance Project is a statewide initiative that provides training and technical assistance focused on educating students with autism and other pervasive developmental disorders in the LRE. The Project is operated under a grant to the La Grange Area Department of Special Education and its primary goals are to:

- Build local capacity to establish and implement effective educational supports and services in the least restrictive environment for children and youth with autism/PDD.
- Promote a proactive approach to working with individuals with autism/PDD and their families.
- Help children and youth with autism/PDD remain with their families in their home communities and become productive community members.

Services include consultation, technical assistance, networking, parent education and support, regional training, community connections, and team training. With regard to team training, a

trainer-of-trainers model has been used to prepare a cadre of 25 regional and statewide teams to replicate a series of training modules with local school teams.

For more information, please contact Kathy Gould, Project Director, at 708-354-5730 or gouldkl@attbi.com, or visit the project website at www.illinoisautismproject.org.

Illinois Service Resource Center (ISRC)

The ISRC is funded through an ISBE grant and serves as the coordination center for a wide variety of services tailored specifically for children who are deaf or hard of hearing and exhibit behavioral, emotional, or mental health challenges. These services are available for Illinois students, parents, and professionals and include the following:

- Facilitation of individual evaluations of children;
- Evaluation Institutes, which provide comprehensive evaluations for children who are deaf or hard of hearing and exhibit behavioral or emotional challenges;
- Training for teachers, psychologists, social workers, parent groups, social service agencies, and other interested parties involved with deaf or hard of hearing students; and
- A variety of consultation and technical assistance to parents and professionals.

For more information, please contact Cheri Sinnot, ISRC Director, at 847-559-0110 (V/TTY) or isrc@interaccess.com, or visit the ISRC website at http://homepage.interaccess.com/~isrc/.

Illinois Special Education Leadership Academy (ISELA)

ISELA operates under a grant from ISBE and is designed to meet professional development needs of special education administrators. ISELA provides specific programs, such as drive-around conferences, summer workshops, statewide directors' and administrators' conferences, and regional workshops. Each of these activities is based on training topics and strategies that will help administrators acquire and/or improve their leadership and instructional skills and meet the requirements of the Administrators' Academy.

For additional information, please call 618-395-8626, send an e-mail to info@isela.org, or visit the ISELA website at www.isela.org.

Parent Training and Partnerships Project

The Parent Training and Partnerships Project is a collaborative effort of ISBE and the Illinois Parent Training and Information (PTI) centers. Under the project, each PTI receives grant funds from ISBE to conduct training and technical assistance activities. These activities are designed to enhance parents' abilities to participate in the education of their children with disabilities and thereby strengthen parent and school partnerships. The goals of the project are to:

1. Establish a coordinated system of training and technical assistance that facilitates and enhances the meaningful involvement of parents in the education of their children with disabilities.

2. Increase the understanding and knowledge of parents with regard to the rights and education of children with disabilities, special education laws and rules, and promising practices.
3. Facilitate increased collaboration and partnerships among parents of students with disabilities and school districts.

For more information, please contact the PTI in your area (see list below) or contact Deb Kunz, Project CHOICES Statewide Parent Consultant, at 217-782-5589 or dkunz@isbe.net.

Illinois Region 1 includes the following counties: Cook, Du Page, Grundy, Kane, Kendall, Lake, McHenry and Will. If you live in this area, please contact either of the following PTIs:

- **Designs for Change**, Chicago, IL
  Contact person: Bernard Lecour
  Phone: 1-800-851-8728 or 312-236-7252 ext. 234
  E-mail: blc@designsforchange.org *Website:* www.designsforchange.org

- **Family Resource Center on Disabilities**, Chicago, IL
  Contact Person: Charlotte Des Jardins
  Phone: 1-800-952-4199 or 312-939-3513
  E-mail: frcdptiil@ameritech.net *Website:* www.frcd.org

Illinois Region 2 includes the remainder of the state. If you live outside the counties listed in the region above, please contact:

- **Family Matters**, Effingham, IL
  Contact Person: Deb Einhorn
  Phone: 1-866-436-7842 or 217-347-0880 ext. 100
  E-mail: info@fmptic.org *Website:* www.fmptic.org

Project CHOICES

Project CHOICES is an LRE initiative of ISBE that is operated under a grant to the School Association for Special Education in Du Page County. There are two components to the Project: 1) CHOICES, which supports school-age children; and 2) Early CHOICES, which supports preschool-age children. The purpose of CHOICES/Early CHOICES is to increase the capacities of school districts and educational personnel to educate and provide supports and services to children and youth with disabilities in the preschool, school, and community environments in which they would participate if not identified as having a disability.

The project offers on-site consultation and technical assistance to those districts that are interested in entering into a collaborative agreement and sponsors or conducts workshops and conferences. For more information, please contact Ruth Henning, Project Coordinator, at 630-778-4508, send an e-mail to info@projectchoices.org, or visit the project website at www.projectchoices.org.

Project H.E.A.R.

ISBE funds Highlighting Education And Resources (H.E.A.R.) through a grant operated by the Illinois School for the Deaf. Project H.E.A.R. is a service delivery project supporting students who are deaf or hard of hearing. It provides free training, consultation, and technical assistance to school teams, parent groups, or students on topics related to deafness.

The goal of Project H.E.A.R. is to ensure appropriate comprehensive educational programming in the least restrictive environment for students who are deaf or hard of hearing. This goal is met through trainings, conference presentations, parent contacts, and technical assistance on individual student needs.

For additional information, please contact Marcia Breese, Project Coordinator, at 877-339-2686 (toll free, V/TTY), 217-479-4393 (local, V/TTY), or dhsd0234@dhs.state.il.us. You may also visit the project website at http://morgan.k12.il.us/isd/hear/index.html.

Project Reach

Project Reach is funded through an ISBE grant to the Philip J. Rock Center and School. Project Reach provides technical assistance, information, and training to address the early intervention, special education, related services, and transitional services needs of children with deaf-blindness and to enhance the state's capacity to improve services and outcomes for children and their families. Services are coordinated with other state agencies responsible for providing services to children who are deaf-blind.

Project Reach supports the activities of four specialists who live and work in the different strategic geographic areas of the state. These specialists work with local school programs and community service providers and families to identify and provide technical assistance to children (ages birth to 21).

For more information, please contact Tina Dorsey, Project Coordinator, at 630-790-2474 or prc@project-reach-illinois.org. You may also visit the project website at http://project-reach-illinois.org/index.html.

STARNET

STARNET is an ISBE grant-funded project and provides training, consultation, and resources on a regional basis to the early childhood community in Illinois. STARNET supports family-centered, researched, and effective practices in early childhood education and care. As a statewide system, STARNET assists ISBE in meeting local needs by providing services in six different regions throughout Illinois.

For additional information, please visit www.isbe.net/earlychi/professionaldev.htm for a list of the regional projects and the region(s) each serves. You may also contact the STARNET office that serves your area (see list below).

Regions I and III: Western Illinois University, Macomb, IL; 309-298-1634 or 800-227-7537; www.wiu.edu/starnet/

Region II: The Center, Des Plaines, IL; 847-803-3565; www.thecenterweb.org/starnet/star_home.htm

Region IV: St. Clair County Regional Office of Education, Belleville, IL; 618-397-8930 or 800-942-7827; www.stclair.k12.il.us/starnet/

Region V: Chicago Public Schools, Chicago, IL; 773-553-3408; www.cps.k12.il.us/AboutCPS/Departments/OSS/STAR_NET/star_net.html

Region VI: STARNET Region VI, Oak Forest, IL; 708-342-5370; www.swcccase.org/ (click on STARNET)

Transition Outreach Training for Adult Living (TOTAL)

The TOTAL Project operates under an ISBE grant administered by Sangamon County Regional Office of Education #51. The funding is the result of a three-year grant that the U.S. Department of Education, Office of Special Education and Rehabilitation Services awarded to ISBE in October 2002. The purpose of the project is to implement a multi-tiered statewide training and technical assistance package on research-based best practices in secondary transition. The key focus of TOTAL is to systematically build capacity to provide state-of-the-art transition services throughout Illinois. The project has three primary activities:

- Providing training and technical assistance to 20 competitively selected local education agency or joint agreement transition teams on implementation of four core best practices in secondary transition.
- Teaching 150 representatives, who were selected through an application process and range from regional providers of education/services to individuals with disabilities, to become trainers themselves in four core areas of best transition practices.
- Developing an array of multimedia materials that will enable individuals who do not participate directly in the TOTAL Project to learn to implement or to become trainers of best practices in secondary transition.

For additional information, please call 217-782-5589, contact Sue Walter at 618-651-9028 or smwalter@charter.net, or visit the ISBE website at http://www.isbe.net/spec-ed/transition.htm.