

In Brief

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NEW PUBLIC ACT MAKES SIGNIFICANT CHANGES TO SPECIAL EDUCATION PROCEDURES AND REQUIRES PRODUCTION OF DRAFT DOCUMENTS TO PARENTS/GUARDIANS THREE SCHOOL DAYS BEFORE ELIGIBILITY AND IEP MEETINGS

House Bill 3586 (HB 3586), now known as PA 101-05015, makes significant changes to the special education provisions of the *Illinois School Code*. It was passed by both houses of the Illinois legislature and was signed into law by Governor Pritzker on August 23, 2019, effective immediately.

HB 3586 amends the *Illinois School Code* by changing Sections 14-6.01 and 14-8.02f and by adding Section 14-8.02g. It also amends the *Illinois School Student Records Act*. The changes to Section 14-6.01 apply only to CPS, so we will not address those changes here. The changes to the *Illinois School Code* and the special education procedures are designed to promote informed parental participation in the IEP process.

The new requirements for all school districts include the following:

1. **Providing all evaluations and collected data to parents/guardians three (3) school days before eligibility and IEP meetings.** This disclosure must include copies of all written material that will be considered by the IEP team at the meeting, including for a child who already has an IEP, a copy of all IEP components other than the proposed educational and related service minutes and the proposed educational placement. For eligibility meetings convened to consider initial evaluations and reevaluations, this material would include all reports/documentation of evaluation results, which should include all new data gathered, all data abstracted as part of a record review and all data gathered as part of a functional behavioral assessment or data gathered pursuant to a behavior intervention plan. For all IEP meetings, other than an

IEP meeting convened simultaneously with an initial eligibility or subsequent eligibility meeting, this material would include present levels of academic achievement and functional performance, proposed goals and objectives/benchmarks, proposed supplementary aids, accommodations and modifications, proposed testing accommodations, and proposed behavior intervention plan data and suggested behavior intervention plans. For students for whom a transition plan is required to be included in their IEP, it would also include a proposed transition plan. The collected data need not be provided separately if contained within evaluation reports and/or draft IEP components. All documents sent to parents/guardians in advance of a meeting should be marked "draft."

2. **Maintaining and making available to the child's parents/guardians, at the annual review of the child's IEP and upon request, related service logs that record the type of related services administered under the child's IEP and the minutes of related service that have been administered.** In addition, school districts must also inform the child's parents/guardians within twenty (20) school days from the beginning of the school year (including the 2019-2020 school year) or upon establishment of an IEP of his or her ability to request the related service logs. This notice may be published in the Student Handbook. The obligation related to maintenance and provision of related service logs applies to all related service providers. Under the IDEA, related services include speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy services, recreation services, including therapeutic recreation, early identification and

assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. To the extent that any of these services are included in a student's IEP as part of the student's educational program, the related service provider must maintain a log that identifies the date services were provided and the minutes of service provided. Be sure related service providers bring their logs to the IEP meeting so they are available if the parents/guardians ask to review them or request a copy. The *Illinois School Student Records Act* was amended to specifically note that these required related service logs are considered student temporary records which a district must maintain for five years after a student has transferred, graduated or otherwise withdrawn from the school district. As a school student record, a parent or guardian may request and review the related service log at any time.

3. **Notifying parents/guardians that services that the child's IEP team determined are required for the child to receive a FAPE were not administered within ten (10) school days after a date or frequency required by the child's IEP within three (3) school days of the failure to administer.** This notice must include information on the parent's/guardian's ability to request compensatory services.

HB 3586 also defines "response to scientific, research-based intervention" and "multi-tiered systems of support". Pursuant to HB 3586, response to scientific researched based interventions and multi-tiered systems of support require the following components:

- Use of a problem-solving method to define the problem
- Analysis of the problem using data to determine why there is a discrepancy between what is expected and what is occurring
- Establishment one or more student performance goals
- Development of an intervention plan to address the performance goals, and

- Delineation of how the student's progress will be monitored and how implementation integrity will be ensured.

The statutory language makes clear that parents are part of this problem-solving process. Under HB 3586, school districts must utilize these interventions as part of the evaluation procedure to determine if a child is eligible for special education services due to a specific learning disability. HB 3586 also provides that school districts may utilize the data generated during the response to scientific, research-based intervention or multi-tiered systems of support process in an evaluation to determine if a child is eligible for special education services due to any category of disability.

School districts will need to review and prepare for these significant special education changes because they impact important procedural requirements for the 2019-2020 school year. **As noted above, these new requirements are effective immediately.** Please contact Robbins Schwartz with any questions as to how this legislation will affect your institution or if you would like to receive sample language to include in your Student Handbooks related to the obligation to maintain related service logs and make them available to parents/guardians.