

## **Administrative Rule 342.1**

Model Local Educational Agency

Special Education

Policies and Procedures

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# **Model Local Educational Agency Special Education Policies and Procedures**

## **Preface**

As a condition of funding under the Individuals with Disabilities Education Act (IDEA), local educational agencies are required to establish written policies and procedures for implementing federal special education laws. In addition, Wisconsin law requires local educational agencies to establish written policies and procedures for implementing state and federal special education requirements. *Model Local Educational Agency Special Education Policies and Procedures* has been developed to help local educational agencies meet their obligation to establish and implement special education requirements. A local educational agency may establish special education requirements by adopting the model policies and procedures. The document may also be used as a reference tool and for staff development activities to promote understanding of and compliance with special education requirements.

The state special education statutes, Subchapter V, Chapter 115, Wis. Stats., incorporate the statutory provisions of Part B of the IDEA. Local educational agencies in Wisconsin must also comply with IDEA's regulations. Therefore, the model policies and procedures are derived primarily from Wisconsin special education statutes and IDEA regulations. A small number of policies and procedures are derived from Wisconsin special education rules, chapter PI 11, Wis. Admin. Code. Because specific model policies and procedures frequently contain language from more than one legal source, citations are not provided. The underlying law can be found by using the following tools:

1. the index to the IDEA Regulations found at Appendix B to 34 CFR Part 300, beginning on page 12481;
2. the table of contents of the state special education statute, Subchapter V, Chapter 115, Wis. Stats.; and
3. the table of contents for the state special education rules, Chapter PI 11, Wis. Admin. Code.

## Definitions

For the purpose of these policies, the following definitions apply:

- "Assistive technology device" means any item, piece of equipment or product system that is used to increase, maintain or improve the functional capabilities of a child with a disability.
- "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device, including all of the following:
  - evaluating the needs of the child, including a functional evaluation of the child in the child's customary environment;
  - purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children;
  - selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices;
  - coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitative plans and programs;
  - training or technical assistance for the child or, if appropriate, the child's family; and
  - training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers or other individuals who provide services to, employ or are otherwise substantially involved in the major life functions of that child.
- "Business day" means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business day.
- "Child" means any person who is at least three years old but not yet 21 years old and who has not graduated from high school and, for the duration of a school term, any person who becomes 21 years old during that school term and who has not graduated from high school.
- "Child caring institution" means a child welfare agency licensed under § 48.60, Wis. Stats.
- "Child with a disability" means a child who, by reason of any of the following, needs special education and related services:
  - cognitive disabilities;
  - hearing impairments;
  - speech or language impairments;
  - visual impairments;
  - emotional disturbance;
  - orthopedic impairments;
  - autism;
  - traumatic brain injury;
  - other health impairments; and/or
  - learning disabilities.

If the local educational agency determines through an appropriate evaluation that a child has one of the impairments listed above but only needs a related service and not special education, the child is not a child with a disability. "Child with a disability" may, at the discretion of the local educational agency and consistent with Department of Public Instruction rules, include a child who, by reason of his or her significant developmental delay, needs special education and related services.

- "Consent" means:
  - 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;
  - the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

- the parent also understands the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i. e. it does not negate an action that has occurred after the consent was given and before the consent was revoked).
- "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, V in section 202(c) of the Controlled Substance Act [21 U.S.C. 812(c)].
- "Day" means calendar day unless otherwise indicated as business day or school day.
- "Destruction," as used in the section on confidentiality in these policies, means physical destruction or removal of personal identifiers from information so the information is no longer personally identifiable.
- "Division" means the Division for Learning Support: Equity and Advocacy in the Department of Public Instruction.
- "Education records" means the type of records covered under the definition of "education records" set forth in the regulations implementing the Family Educational Rights and Privacy Act of 1974.
- "Evaluation" means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.
- "Extended school year services" means special education and related services that are provided to a child with a disability and meet the standards of the State of Wisconsin. These services are provided beyond the normal school year of the local educational agency, in accordance with the child's individualized education program, and at no cost to the parents of the child.

- "Free appropriate public education" means special education and related services that are provided at public expense and under public supervision and direction, meet the standards of the Department of Public Instruction, include an appropriate preschool, elementary or secondary school education and are provided in conformity with an individualized education program.
- "General curriculum" means the same curriculum as for nondisabled children.
- "Hearing officer" means an independent examiner appointed to conduct hearings under § 115.80, Wis. Stats.
- "Illegal drug" means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.
- "Include" means the items named are not all of the possible items that are covered whether like or unlike the ones named.
- "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.
- "Individualized educational program" means a written statement for a child with a disability that is developed, reviewed and revised in accordance with § 115.787, Wis. Stats.
- "Local educational agency," except as otherwise provided, means the school district in which the child with a disability resides, the Department of Health and Family Services if the child with a disability resides in an institution or facility operated by the Department of Health and Family Services, or the Department of Corrections if the child with a disability resides in a Type 1 secured correctional facility, as defined in § 938.02(19), Wis. Stats., or a Type 1 prison, as defined in § 301.01(5), Wis. Stats.
- "Native language," for individuals with limited English proficiency, means the language normally used by that individual. For children with limited English proficiency, the term means the language normally used by the parents of the child, except that in all direct contact with a child (including evaluation of the child), the term means the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).
- "Nonacademic and extracurricular services and activities" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities and employment by the public agency and assistance in making outside employment available.
- "Parent" means any of the following: a biological parent; a husband who has consented to the artificial insemination of his wife under § 891.40; a male who is presumed to be the child's father under § 891.41; a male who has been adjudicated the child's father under Subch. VIII of Ch. 48, under §§ 767.45 to 767.51, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state; an adoptive parent; a legal guardian; a person acting as a parent of a child; a person appointed as a sustaining parent under § 48.428; or a person assigned as a surrogate parent under § 115.792(1)(a)2; a foster parent, if the right and responsibility of all of the aforementioned individuals to make educational decisions concerning the child has been extinguished by

termination of parental rights, by transfer of guardianship or legal custody or by other court order; the foster parent has an ongoing, long-term parental relationship with the child; the foster parent is willing to make educational decisions required of parents under special education law; and the foster parent has no interests that would conflict with the interests of the child.

**"Parent" does not include any person whose parental rights have been terminated; the state or a county or a child welfare agency if a child was made a ward of the state or a county or child welfare agency under Ch. 880 or if a child has been placed in the legal custody or guardianship of the state or a county or a child welfare agency under Ch. 48 or Ch. 767; or an American Indian tribal agency if the child was made a ward of the agency or placed in the legal custody or guardianship of the agency.**

- "Person acting as a parent of a child" means a relative of the child or a private individual allowed to act as a parent of a child by the child's biological or adoptive parents or guardian, and includes the child's grandparent, neighbor, friend or private individual caring for the child with the explicit or tacit approval of the child's biological or adoptive parents or guardian. "Person acting as a parent of a child" does not include any person that receives public funds to care for the child if such funds exceed the cost of such care. The local educational agency only permits a foster parent to act as a parent of a child if the natural parents' authority to make educational decisions on the child's behalf has been extinguished under state law; and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under the Act and has no interest that would conflict with the interests of the child.
- "Participating agency" means a state or local agency other than the local educational agency that is financially and legally responsible for providing transition services to the student.
  - "Participating agency," as used in the section on *Confidentiality of Information* in these policies, means any agency or institution that collects, maintains or uses personally-identifiable information, or from which information is obtained, under the Individuals with Disabilities Education Act.
- "Personally identifiable" means that information includes the name of the child, the child's parent or other family member; the address of the child; a personal identifier such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- "Private school children with disabilities" are children with disabilities enrolled by their parents in private schools or facilities.
- "Qualified" means a person has met the Department of Public Instruction-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he/she is providing special education or related services.
- "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, physical and occupational therapy, recreation, 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. The term also includes school health services, social work services in schools, and parent counseling and training. In this definition:
  - "Audiology" includes:
    - identification of children with hearing loss;



- determination of the range, nature, and degree of hearing loss including referral for medical or other professional attention for the habilitation of hearing;
  - provision of habilitative activities such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation and speech conservation;
  - creation and administration of programs for prevention of hearing loss;
  - counseling and guidance of pupils, parents and teachers regarding hearing loss; and
  - determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.
- "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors or other qualified personnel.
- "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- "Medical services" means services provided by a licensed physician to determine a child's medically-related disability that results in the child's need for special education and related services.
- "Occupational therapy" includes:
- improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
  - improving ability to perform tasks for independent functioning if functions are impaired or lost; and
  - preventing, through early intervention, initial or further impairment or loss of function.
- "Orientation and mobility services" means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, including:
- teaching students spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street);
  - teaching students to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
  - teaching students to understand and use remaining vision and distance low vision aids, as appropriate; and
  - other concepts, techniques, and tools, as determined appropriate.
- "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's individualized education program.
- "Physical therapy" means services provided by a qualified physical therapist.
- "Psychological services" includes:
- administering psychological and educational tests, and other assessment procedures;
  - interpreting assessment results;

- obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
  - consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
  - planning and managing a program of psychological services, including psychological counseling for children and parents; and
  - assisting in developing positive behavioral intervention strategies.
- "Recreation" includes:
- assessment of leisure function;
  - therapeutic recreation services;
  - recreation programs in schools and community agencies; and
  - leisure education.
- "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
- "School health services" means services provided by a qualified school nurse or other qualified person.
- "Social work services in schools" includes:
- preparing a social or developmental history on a child with a disability;
  - group and individual counseling with the child and family;
  - working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
  - mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
  - assisting in developing positive behavioral intervention strategies.
- "Speech-language pathology services" includes:
- identification of children with speech or language impairments;
  - diagnosis and appraisal of specific speech or language impairments;
  - referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
  - provision of speech and language services for the habilitation or prevention of communicative impairments; and
  - counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- "Transportation" includes:
- travel to and from school and between schools;
  - travel in and around school buildings; and
  - specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

- "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including children with and without disabilities.
- "Secondary school" means a nonprofit institutional day or residential school that provides secondary education, as determined under Wisconsin law, except that it does not include any education beyond grade 12.
  - "Special education" means specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:
    - instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings;
    - instruction in physical education;
    - speech-language pathology services, or any other related service, if the service consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under Wisconsin standards;
    - travel training if it consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability; and
    - vocational education if it consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

The terms in the definition of special education are defined as follows:

- "At no cost" means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
- "Physical education" means the development of:
  - physical and motor fitness;
  - fundamental motor skills and patterns; and
  - skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adaptive physical education, movement education and motor development.

- "Specially-designed instruction" means adapting content, methodology or delivery of instruction:
  - to address the unique needs of an eligible child under this part that result from the child's disability and
  - to ensure access of the child to the general curriculum, so he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.
- "Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities and any other children with disabilities who require this instruction to:
  - enable them to develop an awareness of the environment in which they live and
  - learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work and in the community).
- "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career

requiring other than a baccalaureate or advanced degree.

- "Substantial evidence" means beyond a preponderance of the evidence.
- "Supplementary aids and services" means aids, services and other supports that are provided in regular education classes or other education-related settings to enable a child with a disability to be educated with nondisabled children to the maximum extent appropriate.
- "Transition services" means a coordinated set of activities for a student with a disability:
  - is designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation;
  - is based on the individual student's needs, taking into account the student's preferences and interests; and
  - includes:
    - instruction;
    - related services;
    - community experiences;
    - the development of employment and other post-school adult living objectives; and
    - if appropriate, acquisition of daily living skills and functional vocational evaluation.
- "Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### **Full Educational Opportunity Goal**

It is the goal of the local educational agency to provide full educational opportunity to all children with disabilities in the area served by the local educational agency. The local educational agency has available to all of its children with disabilities the variety of educational programs and services available to nondisabled children in the local educational agency, including: art, music, industrial arts, consumer and homemaking education, and vocational education or any program or activity in which nondisabled children participate. The local educational agency provides nonacademic and extra-curricular services and activities that afford children with disabilities an equal opportunity for participation.

#### Free Appropriate Public Education

**GENERAL.** All children with disabilities for whom the local educational agency is responsible, including non-resident children attending the local educational agency under the Full-Time Open Enrollment law, § 118.51, Wis. Stats., are provided a free appropriate public education. Special education and related services are provided to all resident children with disabilities, including, as required by 34 CFR § 300.121(d), children with disabilities who have been suspended or expelled from school. Children with disabilities entitled to a free appropriate public education are children age three, but not yet 21 who have not graduated from high school with a regular high school diploma and, for the duration of a school term, persons who become 21 years old during that school term and who have not graduated

from high school with a regular diploma. The special education and related services provided to children addresses all of their special education and related services needs.

The local educational agency provides prior written notice of a change in placement consistent with the requirements in the law when a child with a disability graduates from high school with a regular diploma.

The local educational agency ensures that an individualized education program is in effect for each eligible child no later than the child's third birthday. If the child's third birthday occurs during the summer, the child's individualized education program team determines when the individualized education program services will begin.

If a placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, is provided at no cost to the parents of the child.

The local educational agency admits a nonresident child if the program is appropriate for the child's disability. When a resident child is refused admittance to another local educational agency, the resident local educational agency ensures that a free appropriate public education is provided to the child. When board and lodging are not furnished to a resident child with a disability, the local educational agency provides transportation, except:

- if there is a plan of transportation under the state statute that authorizes County Children with Disabilities Education Boards, the County Children with Disabilities Education Board provided transportation and
- if the child is a non-resident child attending the local educational agency under the Full-Time Open Enrollment law, the local educational agency provides the transportation.

After a child with a disability has been removed from his or her current placement for more than ten school days in a school year, for any subsequent removals, the local educational agency provides services necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the child's individualized education program goals. These services are provided when school personnel remove a child for not more than ten consecutive school days as long as that removal does not constitute a change of placement. In such a case, school personnel, in consultation with the child's special education teacher, determine the extent of the services.

When the local educational agency conducts a manifestation determination and determines that the behavior at issue is not a manifestation of the child's disability, the local educational agency provides services necessary to enable a child to appropriately progress in the general curriculum and appropriately advance toward achieving the individualized education program goals during a period of removal. In such a case, the child's individualized education program team determines the extent of the services.

The local educational agency provides services consistent with requirements relating to an appropriate interim alternative educational setting, if the removal is:

- for drug or weapons offenses under the law; or
- based on a hearing officer decision that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

**HEARING AIDS.** The local educational agency ensures that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

**PHYSICAL EDUCATION.** Physical education services, specially designed if necessary, are made available to every child with a disability. Each child with a disability is afforded the opportunity to participate in regular physical education programs available to nondisabled children unless the child is enrolled full time in a separate facility, or the child needs specially-designed physical education as prescribed in the child's individualized education program.

If specially-designed physical education is prescribed in a child's individualized education program, the local educational agency provides the services directly or makes arrangements for those services to be provided through other public or private programs. The local educational agency ensures that a child with a disability who is enrolled in a separate facility receives appropriate physical education services in compliance with the law.

**ASSISTIVE TECHNOLOGY.** The local educational agency makes available assistive technology devices or assistive technology services, or both, to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services. If a child's individualized education program team determines that access to school-purchased assistive technology devices or services in the child's home or in other settings is necessary for the child to receive a free appropriate public education, the devices or services are provided.

**EXTENDED SCHOOL YEAR.** The local educational agency ensures that extended school year services are available to each child with a disability as necessary to provide a free appropriate public education. Extended school year services are provided when a child's individualized education program team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education to the child. The local educational agency does not limit extended school year services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services.

**PARTICIPATION IN ASSESSMENTS.** Children with disabilities, including non-resident children attending the local educational agency under the Full-Time Open Enrollment law, are included in state-wide and district-wide assessments with appropriate accommodations and modifications if necessary. Those children who cannot participate in state-wide or district-wide assessments participate in alternative assessments. Needed accommodations and modifications or alternate assessments are identified by the individualized education program team and are specified in the child's individualized education program.

**METHODS OF ENSURING A FREE APPROPRIATE PUBLIC EDUCATION.** If a public agency, other than an educational agency, fails to meet its obligation under federal or state law or under state policy or interagency agreement to provide or pay for any services that are also considered special education and related services that are necessary for ensuring a free appropriate public education to a child, the local educational agency provides or pays for these services to the child in a timely manner.

The local educational agency may provide special education and related services to children with disabilities who are less than three years of age under an interagency agreement with the county agency responsible for early intervention programs.

When the local educational agency uses Medicaid or other public insurance benefits programs in which a child participates to provide or pay for special education and related services necessary for the child

to receive a free appropriate public education as permitted under the public insurance program, the local educational agency does not:

- require parents to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education under Part B of the Act;
- require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for special education and related services; or
- use a child's benefits under a public insurance program if that use would:
  - decrease available lifetime coverage or any other insured benefit,
  - result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school,
  - increase premiums or lead to the discontinuation of insurance or
  - risk loss of eligibility for home and community-based waivers based on aggregate health-related expenditures.

Each time the local educational agency proposes to access the proceeds of a parents' private insurance to provide services necessary for the child to receive a free appropriate public education, the local educational agency:

- obtains informed parent consent in accordance with the law; and
- informs the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

The local educational agency ensures there is no delay in implementing a child's individualized education program including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

Except for the circumstances provided for in § 118.51(12)(a)&(b)2 of the Full-Time Open Enrollment law, if a non-resident child with a disability is attending the local educational agency under the Full-Time Open Enrollment law, the local educational agency provides an educational placement for the child. If tuition charges are required by the placement, the local educational agency pays tuition charges instead of the school district in which the child resides.

## Public Information

The local educational agency regularly publicizes information about its special education procedures and services. Further, the local educational agency makes available to any person, upon request, all documents relating to the local educational agency's eligibility for state and federal special education funds. Any state or federal aid that is made available to the local educational agency for special education and related services are used by the local educational agency to comply with the requirements of special education law.

If the local educational agency receives a notice from the Department of Public Instruction that it is in noncompliance with respect to state or federal special education law and the Department of Public Instruction is proposing to reduce or withhold any further payments to the local educational agency until the Department of Public Instruction is satisfied the local educational agency is complying with that requirement, the local educational agency gives public notice of the pending state actions.

## Child Find

**GENERAL.** The local educational agency identifies, locates and evaluates all children with disabilities, regardless of the severity of their disability, who are in need of special education and related services, including children attending private schools, children who are not yet three years of age, highly mobile children such as migrant and homeless children and children who are suspected of being a child with a disability even though they are advancing from grade to grade.

The local educational agency locates, identifies and evaluates all private school children with disabilities, including religious-school children residing in the jurisdiction of the local educational agency. The activities undertaken to carry out this responsibility for private school children with disabilities are comparable to activities undertaken for children with disabilities in the local educational agency. The local educational agency consults with appropriate representatives of private school children with disabilities on how to locate, identify, and evaluate private school children with disabilities. The local educational agency ensures the confidentiality of data collected and used to meet the requirements of child identification are protected pursuant to the confidentiality requirements of the law.

**REFERRAL.** The local educational agency accepts and processes referrals of children suspected to have a disability. The local educational agency has written procedures for accepting and processing referrals. School personnel who reasonably believe a child has a disability are required to make a referral.

Prior to submitting a referral, the people required to make referrals inform the parents of their intent to make a referral. If the local educational agency to whom the referral is made is the local educational agency the child is attending under the Full-Time Open Enrollment law, the local educational agency provides the name of the child and related information to the local educational agency of residence. Whenever the local educational agency receives a referral for a resident child attending school in another local educational agency under the Full-Time Open Enrollment law, the local educational agency provides the name of the child and related information to the local educational agency of attendance.



The local educational agency accepts written referrals. Each referral includes the name of the child and reasons why the person making the referral believes that the child is a child with a disability. The local educational agency documents and dates the receipt of each referral.

At least annually, the local educational agency informs parents and persons required by law to make referrals about the local educational agency's referral and evaluation procedures.

The local educational agency provides information and inservice opportunities for its licensed staff to familiarize them with the local educational agency's referral procedures.

### **Individualized Education Program Team**

The local educational agency establishes an individualized education program team for each child referred to the local educational agency, including children attending the local educational agency under the Full-Time Open Enrollment law.

**PARTICIPANTS.** The individualized education program team for each child consists of all of the following:

- the parents of the child;
- at least one regular education teacher of the child if the child is, or may be, participating in a regular educational environment;
- at least one special education teacher who has extensive and recent training and experience related to the child's known or suspected disability or, where appropriate, at least one special education provider of the child;
- a representative of the local educational agency:
  - who is qualified to provide or supervise the provision of special education,
  - who is knowledgeable about the general curriculum,
  - who is knowledgeable about the availability of and authorized to commit the resources of the local educational agency and
  - who may be another local educational agency member of the IEP team if the criteria above are met;
- an individual who can interpret the instructional implications of evaluation results, who may otherwise be a team participant;
- when determining the child's educational placement, individuals who are knowledgeable about the child and the placement options;
- at the discretion of the parent or local educational agency, other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate (the determination of the individual's knowledge or special expertise is made by the party [parents or public local educational agency] who invited the individual to be a member of the individualized education program);
- whenever appropriate, the child;

- when transition is being discussed, other agencies who may be responsible for the provision or payment of transition services; and
- when the purpose of the meeting will be consideration of transition services, the student.

If an invited agency does not send a representative to the meeting, the local educational agency takes other steps to obtain the agency's participation in planning transition services. If the student does not attend the individualized education program meeting, the local educational agency takes other steps to ensure consideration of the student's preferences and interests.

**PARENT PARTICIPATION IN INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETINGS.** The local educational agency takes steps to ensure that one or both of the parents of a child with a disability are present at each individualized education program meeting or are afforded the opportunity to participate, including:

- notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and
- scheduling the meeting at a mutually agreed on time and place.

The notice required in this policy:

- indicates the purpose, time, and location of the meeting and who will be in attendance and
- informs the parents of the provisions in these policies relating to the participation of other individuals on the individualized education program team who have knowledge or special expertise about the child.

For a student with a disability beginning at age 14, or younger, if appropriate, the notice also:

- indicates that a purpose of the meeting will be the development of the required statement of the transition services needs of the student and
- indicates that the local educational agency will invite the student.

For a student with a disability beginning at age 16, or younger, if appropriate, the notice:

- indicates a purpose of the meeting is the consideration of needed transition services for the student;
- indicates the local educational agency will invite the student; and
- identifies any other agency that will be invited to send a representative.

If neither parent can attend, the local educational agency uses other methods to ensure parent participation, including individual or conference telephone calls.

The local educational agency conducts meetings without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the local educational agency has a record of its attempts to arrange a mutually agreed on time and place, such as:

- detailed records of telephone calls made or attempted and the results of those calls;
- copies of correspondence sent to the parents and any responses received; and
- detailed records of visits made to the parent's home or place of employment and the results of those visits.

The local educational agency takes whatever action is necessary to ensure that the parent understands the proceedings at the individualized education program meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The local educational agency gives the parent a copy of the child's individualized education program at no cost to the parent.

**INDIVIDUALIZED EDUCATION PROGRAM TEAM DUTIES.** The individualized education program team does all of the following:

- evaluates the child to determine the child's eligibility or continued eligibility for special education and related services, and the educational needs of the child;
- if the child being evaluated is a non-resident child attending the local educational agency under the Full-Time Open Enrollment law as part of its initial evaluation of the child and as part of any reevaluation of the child, the local educational agency's individualized education program team collaborates with appropriate personnel designated by the school board of the child's school district of residence;
- develops an individualized education program for the child;
- develops the child's individualized education program in collaboration with appropriate personnel designated by the school board of the school district in which the child resides, if a non-resident child is attending the local educational agency under the Full-Time Open Enrollment law; and
- determines the special education placement for the child, including a preschool child, in conformity with the least restrictive environment policies of the local educational agency.

**TIMELINE.** The local educational agency provides a notice of placement to the parents within 90 calendar days from the receipt of the referral or the initiation of a reevaluation. Before the expiration of the 90-day period, if an extension is needed the local educational agency informs the child's parents of the need and reasons for an extension. The local educational agency requests the child's parent to agree in writing to a specific extension of time beyond the 90-day period. If parental approval cannot be obtained, the local educational agency may request an extension from the Department of Public Instruction, Division for Learning Support: Equity and Advocacy, before the expiration of the 90-day period. The local educational agency informs the division of the reasons for the request and demonstrates that it has acted in good faith and that there is good cause for an extension.

At the beginning of any meeting to address the evaluation, individualized education program, or placement, the local educational agency informs the child's parents of their right to additional time and their right to a copy of the evaluation report. If the parents of the child or local educational agency staff determines at any point during the process of evaluation, development of the individualized education program, or placement, that additional time is needed to permit meaningful parent participation, the local educational agency provides it.

## **Evaluation**

**GENERAL.** As part of an initial evaluation of a child and as part of any reevaluation of a child, the individualized education program team and other qualified professionals, as determined by the local educational agency:

- reviews existing evaluation data on the child, including evaluations and information provided by the child's parents, previous interventions and the effects of those interventions, current classroom-based assessments and observations, and observations by teachers and related services providers; and
- on the basis of that review and information provided by the child's parents, identifies the additional data, if any, that are needed, and the qualifications of the evaluators that are needed, to determine:
  - whether the child has a particular category of disability or, in case of a reevaluation of a child, whether the child continues to have such a disability;
  - the present levels of performance and educational needs of the child;
  - whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and/or
  - whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable, annual goals specified in the child's individualized education program and to participate, as appropriate, in the general curriculum.

The local educational agency does not require parental consent before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, the local educational agency requires consent for all children.

The local educational agency notifies the parents of the child, in accordance with the notice provisions in the law, of any evaluation procedures the agency proposes to conduct, the qualifications of the individuals who will conduct the evaluation and their names, if known.

The local educational agency obtains informed consent from the child's parent before administering tests or other evaluation materials to the child. Parental consent for the evaluation does not constitute consent for placement for receipt of special education and related services.

If the child being evaluated is a non-resident child attending the local educational agency under the Full-Time Open Enrollment law as part of its initial evaluation of the child and as part of any reevaluation of the child, the local educational agency's individualized education program team collaborates with appropriate personnel designated by the school board of the child's school district of residence.

Each individualized education program team participant who administers tests, assessments or other evaluation materials as part of an evaluation or reevaluation of a child prepares and makes available to all team participants at a team meeting a written summary of the participant's findings that will assist with program planning.

**INDIVIDUALIZED EDUCATION PROGRAM TEAM DETERMINATION OF ELIGIBILITY OR CONTINUING ELIGIBILITY (INITIAL AND REEVALUATION).** Following a review of existing data and administration of tests and other

evaluation materials (if any), the individualized education program team determines whether the child is or continues to be a child with a disability. For a child who does not otherwise meet the eligibility criteria under state law, the individualized education program team does not determine that the child is a child with a disability solely because the child has received insufficient instruction in reading or math or because the child has limited proficiency in English. In interpreting evaluation data for the purpose of determining if a child is a child with a disability, and the educational needs of the child, the local educational agency draws upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The local educational agency ensures that information obtained from all of these sources is documented and carefully considered.

**REEVALUATION.** In conducting reevaluations, the individualized education program team:

- evaluates a child with a disability in accordance with the law before determining that the child is no longer a child with a disability and
- reevaluates a child with a disability in accordance with the law if the local educational agency determines that conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years.

The local educational agency obtains informed consent from the child's parent before administering new tests and other evaluation materials. The local educational agency proceeds without consent only if the local educational agency has taken reasonable measures to obtain the consent and the child's parents have failed to respond. Reasonable measures are the measures required for conducting an individualized education program meeting without a parent in attendance.

If the individualized education program team finds no additional information is needed to determine whether a child continues to be a child with a disability, the local educational agency notifies the child's parents of that finding and the reasons for it, and that the parent has a right to request an assessment to determine whether the child continues to have a disability. The local educational agency conducts such an assessment if the parent requests it.

**EVALUATION REPORT.** If the individualized education program team determines a child is or continues to be a child with a disability, the team prepares an evaluation report that includes documentation of the determination of eligibility. The local educational agency asks each individualized education program team participant if he or she wants a copy of the evaluation report or additional time before the team develops the child's individualized education program. If any individualized education program team participant requests a copy of the evaluation report at any point in the process of developing the child's individualized education program or considering the child's educational placement, the local educational agency gives a copy of the report to each individualized education program team participant before continuing with the process. If no individualized education program team participant requests a copy of the evaluation report, the local educational agency gives a copy to the child's parents with the notice of placement.

If the individualized education program team determines a child is not a child with a disability, the team prepares an evaluation report. The report identifies any educational needs of the child and any services offered by the local educational agency from which the child may benefit and includes information about any programs and services, other than those offered by the local educational agency, that may benefit the child. The local educational agency gives a copy of the evaluation report to the child's parents with the notice that the child does not have a disability.

**EVALUATION SAFEGUARDS.** When a local educational agency evaluates a child with a disability, it:

- ensures materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure they measure the extent to which the child has a disability and needs special education rather than measuring the child's English language skills and
- administers such tests and other evaluation materials as may be needed to produce the data necessary to make the determinations listed above.

The individualized education program team:

- does not use any single procedure as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child;
- uses a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the child's parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;
- uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors; and
- ensures all of the following:
  - tests and other evaluation materials used to assess a child are selected and administered so as not to be racially or culturally discriminatory and are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;
  - any standardized tests given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of such tests;
  - the child is assessed in all areas of suspected disability; and
  - assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are used.

The local educational agency gathers relevant functional and developmental information about the child using a variety of assessment tools and strategies, including information provided by the parent and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program.

If an assessment is not conducted under standard conditions, the local educational agency includes in the evaluation report a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration).

In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all the child's special education and related services needs whether or not commonly linked to the disability category in which the child has been classified.

The local educational agency ensures tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient.

The local educational agency ensures tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills (unless those skills are the skills the test purports to measure).

**ADDITIONAL REQUIREMENTS FOR LEARNING DISABILITIES.** For evaluation of a child suspected of having a learning disability, the following additional requirements are met:

- The determination of whether a child suspected of having a specific learning disability is a child with a disability is made by the child's parents and a team of qualified professionals which includes:
  - the child's regular teacher; or
  - if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
  - for a child of less than school age, an individual qualified by the Department of Public Instruction to teach a child of his or her age.
- At least one member of the individualized education program team, other than the child's regular teacher, observes the child's academic performance in the regular classroom setting. In the case of a child of less than school age or out of school, a team member observes the child in an environment appropriate for a child of that age.
- The individualized education program team evaluation report includes a statement of:
  - whether the child has a specific learning disability;
  - the basis for making that determination;
  - the relevant behavior noted during observation of the child;
  - the relationship of that behavior to the child's academic functioning;
  - the educationally relevant medical findings, if any;
  - whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
  - the determination of the team concerning the effects of environmental, cultural, or economic disadvantage.
- Each individualized education program team participant certifies in writing whether the report reflects his or her conclusion. If the evaluation report does not reflect the individualized education program team participant's conclusions, the participant submits a separate statement presenting his or her conclusions.

### **Determination of Eligibility**

An evaluation conducted by an IEP team under s. 115.782, Stats., shall focus on the consideration of information and activities that assist the IEP team in determining how to teach the child in the way he or she is most capable of learning. Specifically, the IEP team shall meet the evaluation criteria specified under s. 115.782 (2) (a), Stats., when conducting tests and using other evaluation materials in determining a child's disability.

A child shall be identified as having a disability if the IEP team has determined from an evaluation conducted under s. 115.782, Stats., that the child has an impairment under s. PI 11.36 that adversely affects the child's educational performance, and the child, as a result thereof, needs special education and related services. As part of an evaluation or reevaluation under s. 115.782, Stats., conducted by the IEP team in determining whether a child is or continues to be a child with a disability, the IEP team shall identify all of the following:

- The child's needs that cannot be met through the regular education program as structured at the time the evaluation was conducted.
- Modifications, if any, that can be made in the regular education program, such as adaptation of content, methodology or delivery of instruction to meet the child's needs identified by the IEP team that will allow the child to access the general education curriculum and meet the educational standards that apply to all children.
- Additions or modifications, if any, the child needs which are not provided through the general education curriculum, including replacement content, expanded core curriculum or other supports.

### **Areas of Impairment**

All provisions in these policies shall be construed consistent with 20 USC 1400 et. seq. and the regulations promulgated thereunder.

**AUTISM.** Autism means a developmental disability significantly affecting a child's social interaction and verbal and non-verbal communication, generally evident before age 3, that adversely affects learning and educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in PI 11.36 (7).

The results of standardized or norm-referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessments, achievement assessments, observation and work samples, shall be considered to identify a child under this paragraph. Augmentative communication strategies, such as facilitated communication, picture boards or signing shall be considered when evaluating a child under this paragraph. To identify a child as a child with autism, the criteria under 1. and 2. and one or more criteria under 3. through 6. shall be met.



1. The child displays difficulties or differences or both in interacting with people and events. The child may be unable to establish and maintain reciprocal relationships with people. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.
2. The child displays problems which extend beyond speech and language to other aspects of social communication, both receptively and expressively. The child's verbal language may be absent or, if present, lacks the usual communicative form which may involve deviance or delay or both. The child may have a speech or language disorder or both in addition to communication difficulties associated with autism.
3. The child exhibits delays, arrests or regressions in motor, sensory, social or learning skills. The child may exhibit precocious or advanced skill development, while other skills may develop at normal or extremely depressed rates. The child may not follow normal developmental patterns in the acquisition of skills.
4. The child exhibits abnormalities in the thinking process and in generalizing. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverant thinking and impaired ability to process symbolic information may be present.
5. The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement. The child may have a visual or hearing impairment or both in addition to sensory processing difficulties associated with autism.
6. The child displays marked distress over changes, insistence on following routines and a persistent preoccupation with or attachment to objects. The child's capacity to use objects in an age-appropriate or functional manner may be absent, arrested or delayed. The child may have difficulty displaying a range of interests or imaginative activities or both. The child may exhibit stereotyped body movements.

**COGNITIVE DISABILITY.** Cognitive disability means significantly subaverage intellectual functioning that exists concurrently with deficits in adaptive behavior and that adversely affects educational performance. The IEP team may identify a child as having a cognitive disability if the child meets the criteria under 1.a. or b., 2. and 3.a. or b. as follows:

- 1.a. The child has a standard score of 2 or more standard deviations below the mean on at least one individually administered intelligence test developed to assess intellectual functioning.
- b. The child has a standard score between 1 and 2 standard deviations below the mean on at least one individually administered intelligence test, the child has been documented as having a cognitive disability in the past, and the child's condition is expected to last indefinitely.
2. The child has deficits in adaptive behavior as demonstrated by a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments that include interviews of the parents, tests, and observations of the child in adaptive behavior which are relevant to the child's age, such as:
  - a. Communication.
  - b. Self-care.
  - c. Home living skills.
  - d. Social skills.
  - e. Appropriate use of resources in the community.
  - f. Self-direction.

- g. Health and safety.
  - h. Applying academic skills in life.
  - i. Leisure.
  - j. Work.
- 3.a. The child is age 3 through 5 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in at least 2 of the following areas: academic readiness, comprehension of language or communication, or motor skills.
  - b. The child is age 6 through 21 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in general information and at least 2 of the following areas: written language, reading, or mathematics.

*NOTE: Cognitive disabilities typically manifest before age 18. An etiology should be determined when possible, so the IEP team can use this information for program planning.*

**EMOTIONAL BEHAVIORAL DISABILITY.** Emotional behavioral disability, pursuant to s. 115.76 (5) (a) 5, Stats., means social, emotional or behavioral functioning that so departs from generally accepted, age appropriate ethnic or cultural norms that it adversely affects a child's academic progress, social relationships, personal adjustment, classroom adjustment, self-care or vocational skills.

The IEP team may identify a child as having an emotional behavioral disability if the child meets the preceding definition and meets all of the following:

- The child demonstrates severe, chronic and frequent behavior that is not the result of situational anxiety, stress or conflict.
- The child's behavior described under par. (a) occurs in school and in at least one other setting.
- The child displays any of the following:
  - Inability to develop or maintain satisfactory interpersonal relationships.
  - Inappropriate affective or behavior response to a normal situation.
  - Pervasive unhappiness, depression or anxiety.
  - Physical symptoms, pains or fears associated with personal or school problems.
  - Inability to learn that cannot be explained by intellectual, sensory or health factors.
  - Extreme withdrawal from social interactions.
  - Extreme aggressiveness for a long period of time.
  - Other inappropriate behaviors that are so different from children of similar age, ability, educational experiences and opportunities that the child or other children in a regular or special education program are negatively affected.

The IEP team shall rely on a variety of sources of information, including systematic observations of the child in a variety of educational settings and shall have reviewed prior, documented interventions. If the IEP team knows the cause of the disability under this paragraph, the cause may be, but is not required to be, included in the IEP team's written evaluation summary.

The IEP team may not identify or refuse to identify a child as a child with an emotional behavioral disability solely on the basis that the child has another disability, or is socially maladjusted, adjudged delinquent, a dropout, chemically dependent, or a child whose behavior is primarily due to cultural

deprivation, familial instability, suspected child abuse or socio-economic circumstances, or when medical or psychiatric diagnostic statements have been used to describe the child's behavior.

**HEARING IMPAIRMENT.** Hearing impairment, including deafness, means a significant impairment in hearing, with or without amplification, whether permanent or chronically fluctuating, that significantly adversely affects a child's educational performance including academic performance, speech perception and production, or language and communication skills. A current evaluation by an audiologist licensed under ch. 459, Stats., shall be one of the components for an initial evaluation of a child with a suspected hearing impairment.

**SPECIFIC LEARNING DISABILITY.** Specific learning disability, pursuant to s. 115.76 (5) (a) 10., Stats., means a severe learning problem due to a disorder in one or more of the basic psychological processes involved in acquiring, organizing or expressing information that manifests itself in school as an impaired ability to listen, reason, speak, read, write, spell or do mathematical calculations, despite appropriate instruction in the general education curriculum. Specific learning disability may include conditions such as perceptual disability, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.

The IEP team shall base its decision of whether a child has a specific learning disability on formal and informal assessment data on intellectual ability, academic achievement, and learning behavior from sources such as standardized tests, error analysis, criterion referenced measures, curriculum-based assessments, student work samples, interviews, observations, and an analysis of the child's response to previous interventions, classroom expectations, and curriculum in accordance with s. 115.782, Stats. The IEP team may identify a child as having a specific learning disability if all of the following are true:

- Classroom achievement. Upon initial identification, the child's ability to meet the instructional demands of the classroom and to achieve commensurate with his or her age and ability levels is severely delayed in any of the following areas:
  - Oral expression.
  - Listening comprehension.
  - Written expression.
  - Basic reading skill.
  - Reading comprehension.
  - Mathematical calculation.
  - Mathematical reasoning.
- Significant discrepancy. Upon initial identification, a significant discrepancy exists between the child's academic achievement in any of the areas above and intellectual ability as documented by the child's composite score on a multiple score instrument or the child's score on a single score instrument. The IEP team may base a determination of significant discrepancy only upon the results of individually administered, standardized achievement and ability tests that are reliable and valid. A significant discrepancy means a difference between standard scores for ability and achievement equal to or greater than 1.75 standard errors of the estimate below expected achievement, using a standard regression procedure that accounts for the correlation between ability and achievement measures. This regression procedure shall be used except under any of the following conditions:
  - The regression procedure under this subdivision may not be used to determine a significant discrepancy if the IEP team determines that the child cannot attain valid and reliable standard scores for intellectual ability or achievement because of the child's test

behavior, the child's language, another impairment of the child that interferes with the attainment of valid and reliable scores or the absence of valid and reliable standardized, diagnostic tests appropriate for the child's age.

- If the IEP team makes such a determination, it shall document the reasons why it was not appropriate to use the regression procedure and shall document that a significant discrepancy exists, including documentation of a variable pattern of achievement or ability, in at least one of the areas classroom achievement cited above using other empirical evidence.
- If the discrepancy between the child's ability and achievement approaches but does not reach the 1.75 standard error of the estimate cut-off, the child's performance in any of the areas in classroom achievement cited above is variable, and the IEP team determines that the child meets all other criteria relating to classroom achievement, significant discrepancy, and information processing deficit, the IEP team may consider that a significant discrepancy exists.
- Information processing deficit. The child has an information processing deficit that is linked to the child's classroom achievement delays and to the significant discrepancy. An information processing deficit means a pattern of severe problems with storage, organization, acquisition, retrieval, expression, or manipulation of information rather than relative strengths and weaknesses. The IEP team shall document the reasons for and data used to make its determination that the child has an information processing deficit.

The IEP team may not identify a child as having a specific learning disability if it determines that the significant discrepancy between ability and achievement is primarily due to environmental, cultural or economic disadvantage or any of the reasons specified under s. 115.782 (3) (a), Stats., or any of the impairments under s. 115.76(5), Stats., except s. 115.76 (5) (a) 10.

If the IEP team is concerned that a child has a significant discrepancy in oral expression or listening comprehension, the IEP team shall include a person qualified to assess speech and language impairments.

A child who is found to have a significant discrepancy between ability and achievement in the single area of oral expression or listening comprehension and who meets criteria for speech and language impairment under s. PI 11.36 (5) shall be considered to have a primary impairment in the area of speech and language.

At least one observation in the general classroom setting by a team member other than the classroom teacher shall be conducted.

Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under s. PI 11.35 (2), including specially designed instruction, is a child with a disability under this section, unless the significant discrepancy between ability and achievement is now primarily due to environmental, cultural or economic disadvantage or any of the reasons specified under s. 115.782 (3) (a), Stats., or any of the impairments under s. 115.76 (5), Stats., except s. 115.76 (5) (a) 10. If a child with a specific learning disability performs to generally accepted performance expectations in the general education classroom without specially designed instruction, the IEP team shall determine whether the child is no longer a child with a disability.

**ORTHOPEDIC IMPAIRMENT.** Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes but is not limited to impairments caused by congenital anomaly such as clubfoot or absence of some member; impairments caused by disease such as poliomyelitis or bone tuberculosis; and impairments from other causes such as cerebral palsy, amputations and fractures or burns that cause contractures.

**OTHER HEALTH IMPAIRMENT.** Other health impairment means having limited strength, vitality or alertness due to chronic or acute health problems. The term includes but is not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or acquired injuries to the brain caused by internal occurrences or degenerative conditions which adversely affects a child's educational performance.

*NOTE: With respect to the eligibility criteria under s. PI 11.36, in September 1991 the U.S. department of education issued a memorandum clarifying state and local responsibilities for addressing the educational needs of children with attention deficit disorder (ADD). (See 18 IDELR 116). As a condition of receipt of federal funds under the Individuals with Disabilities Act (IDEA), the state and local school districts are bound to comply with the federal policy outlined in that memo. (See e.g., Metropolitan School District of Wayne Township, Marion County, Indiana v. Davila, 969 F. 2d 485 (7th cir. 1992)).*

*Pursuant to that federal policy memo, a child with ADD is neither automatically eligible nor ineligible for special education and related services under Ch. 115, Stats. In considering eligibility, an IEP team must determine whether the child diagnosed with ADD has one or more impairments under this section and a need for special education. For example, pursuant to the federal policy memo, a child with ADD may be eligible for special education and related services under Ch. 115, Stats., if the child meets the eligibility criteria for "other health impaired" or any other impairment enumerated in this section. In addition, 34 CFR 300.7(c)(9)(i) now specifically lists ADD and attention deficit hyperactivity disorder among the health problems which may result in disability based on other health impairment. A copy of the federal policy may be obtained by writing the Special Education Team, Division for Learning Support: Equity and Advocacy, Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.*

**SIGNIFICANT DEVELOPMENTAL DELAY.** Significant developmental delay means children, ages 3, 4 and 5 years of age or below compulsory school attendance age, who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional or adaptive development.

All other suspected handicapping conditions, including cognitive disability, orthopedic impairment, visually handicapped, hearing handicapped, learning disability, speech and language handicapped, emotional disturbance, autism, traumatic brain injury or other health impairment are considered before identifying a child's primary handicapping condition as significant developmental delay.

A child may be identified as having significant developmental delay when delays in development significantly challenge the child in two or more of the following five major life activities:

- Physical activity in gross motor skills, such as the ability to move around and interact with the environment with appropriate coordination, balance and strength; or fine motor skills, such as manually controlling and manipulating objects such as toys, drawing utensils, and other useful objects in the environment.
- Cognitive activity, such as the ability to acquire, use and retrieve information as demonstrated by the level of imitation, discrimination, representation, classification, sequencing and problem-solving skills often observed in a child's play.
- Communication activity in expressive language, such as the production of age-appropriate content, form and use of language; or receptive language, such as listening, receiving and understanding language.

- Emotional activity such as the ability to feel and express emotions and develop a positive sense of oneself; or social activity, such as interacting with people, developing friendships with peers, and sustaining bonds with family members and other significant adults.
- Adaptive activity, such as caring for his or her own needs and acquiring independence in age-appropriate eating, toileting, dressing and hygiene tasks.

Documentation of significant developmental delays and their detrimental effect upon the child's daily life shall be based upon qualitative and quantitative measures including all of the following:

- A developmental and basic health history, including results from vision and hearing screening and other pertinent information from parents and, if applicable, other caregivers or service providers.
- Observation of the child in his or her daily living environment such as the child's home with a parent or caregiver, or an early education or care setting which includes peers who are typically developing. If observation in these settings is not possible, observation in an alternative setting is permitted.
- Results from norm-referenced instruments shall be used to document significant delays of at least one and one-half standard deviations below the mean in 2 or more of the developmental areas which correspond to the major life activities. If it is clearly not appropriate to use norm-referenced instruments, other instruments, such as criterion referenced measures, shall be used to document the significant delays.

**SPEECH OR LANGUAGE IMPAIRMENT.** Speech or language impairment means an impairment of speech or sound production, voice, fluency, or language that significantly affects educational performance or social, emotional or vocational development. The IEP team may identify a child as having a speech or language impairment if the child meets the preceding definition and meets any of the following criteria:

- The child's conversational intelligibility is significantly affected and the child displays at least one of the following:
  - The child performs on a norm referenced test of articulation or phonology at least 1.75 standard deviations below the mean for his or her chronological age.
  - Demonstrates consistent errors in speech sound production beyond the time when 90% of typically developing children have acquired the sound.
- One or more of the child's phonological patterns of sound are at least 40% disordered or the child scores in the moderate to profound range of phonological process use in formal testing and the child's conversational intelligibility is significantly affected.
- The child's voice is impaired in the absence of an acute, respiratory virus or infection and not due to temporary physical factors such as allergies, short term vocal abuse or puberty. The child exhibits atypical loudness, pitch, quality or resonance for his or her age and gender.
- The child exhibits behaviors characteristic of a fluency disorder.
- The child's oral communication or, for a child who cannot communicate orally, his or her primary mode of communication, is inadequate, as documented by all of the following:
  - Performance on norm referenced measures that is at least 1.75 standard deviations below the mean for chronological age.
  - Performance in activities is impaired as documented by informal assessment such as language sampling, observations in structured and unstructured settings, interviews, or checklists.
  - The child's receptive or expressive language interferes with oral communication or his or her primary mode of communication. When technically adequate norm referenced language measures are not appropriate as determined by the IEP team to provide evidence of a deficit of

1.75 standard deviations below the mean in the area of oral communication, then two measurement procedures shall be used to document a significant difference from what would be expected given consideration to chronological age, developmental level, and method of communication such as oral, manual, and augmentative. These procedures may include additional language samples, criterion referenced instruments, observations in natural environments and parent reports.

The IEP team may not identify a child who exhibits any of the following as having a speech or language impairment:

- Mild, transitory or developmentally appropriate speech or language difficulties that children experience at various times and to various degrees.
- Speech or language performance that is consistent with developmental levels as documented by formal and informal assessment data unless the child requires speech or language services in order to benefit from his or her educational programs in school, home, and community environments.
- Speech or language difficulties resulting from dialectical differences or from learning English as a second language, unless the child has a language impairment in his or her native language.
- Difficulties with auditory processing without a concomitant documented oral speech or language impairment.
- A tongue thrust which exists in the absence of a concomitant impairment in speech sound production.
- Elective or selective mutism or school phobia without a documented oral speech or language impairment.

The IEP team shall substantiate a speech or language impairment by considering all of the following:

- Formal measures using normative data or informal measures using criterion referenced data.
- Some form of speech or language measures such as developmental checklists, intelligibility ratio, language sample analysis, minimal core competency.
- Information about the child's oral communication in natural environments.
- Information about the child's augmentative or assistive communication needs.

An IEP team shall include a department-licensed speech or language pathologist and information from the most recent assessment to document a speech or language impairment and the need for speech or language services.

**TRAUMATIC BRAIN INJURY.** Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; speech and language; memory; attention; reasoning; abstract thinking; communication; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and executive functions, such as organizing, evaluating and carrying out goal-directed activities. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic

disorders and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other impairments.

The results of standardized and norm-referenced instruments used to evaluate and identify a child as traumatic brain injured may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessment, achievement assessment, observation, work samples, and neuropsychological assessment data are considered to identify a child who exhibits total or partial functional disability or psychosocial impairment in one or more areas listed above. Before a child may be identified as traumatic brain injured, available medical information from a licensed physician shall be considered.

**VISUAL IMPAIRMENT.** Visual impairment means even after correction a child's visual functioning significantly adversely affects his or her educational performance. The IEP team may identify a child as having a visual impairment after all of the following events occur:

- A certified teacher of the visually impaired conducts a functional vision evaluation which includes a review of medical information, formal and informal tests of visual functioning and the determination of the implications of the visual impairment on the educational and curricular needs of the child.
- An ophthalmologist or optometrist finds at least one of the following:
  - Central visual acuity of 20/70 or less in the better eye after conventional correction.
  - Reduced visual field to 50° or less in the better eye.
  - Other ocular pathologies that are permanent and irremediable.
  - Cortical visual impairment.
  - A degenerative condition that is likely to result in a significant loss of vision in the future.

An orientation and mobility specialist, or teacher of the visually impaired in conjunction with an orientation and mobility specialist, evaluates the child to determine if there are related mobility needs in home, school, or community environments.

### **Meetings to Develop, Review or Revise An Individualized Education Program**

**INDIVIDUALIZED EDUCATION PROGRAM IN EFFECT.** At the beginning of each school year the local educational agency has in effect an individualized education program for each child with a disability within its jurisdiction. The local educational agency ensures that a meeting to develop an individualized education plan for the child is conducted within 30 days of a determination that the child needs special education and related services. The local educational agency ensures an individualized education program is in effect before special education and related services are provided to children with disabilities and is implemented as soon as possible following the meetings at which the individualized education program is developed. The local educational agency develops and implements an individualized education program for each child with a disability served by that agency including children placed in or referred to a private school or facility by the local educational agency.

The local educational agency ensures each child's individualized education program is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation. The local educational agency ensures each teacher



and provider responsible for implementing a child's individualized education program is informed of his or her specific responsibilities related to implementing the child's individualized education program and the specific accommodations, modifications and supports that must be provided for the child in accordance with the individualized education program. The local educational agency provides special education and related services to a child with a disability in accordance with the child's individualized education program and makes a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the individualized education program.

### **Individualized Education Program Development**

In developing, reviewing and revising each child's individualized education program, the individualized education program team considers the strengths of the child, the concerns of the child's parents for enhancing the education of their child, and the results of the initial evaluation or most recent reevaluation of the child and, as appropriate, the results of the child's performance on any general state-wide or district-wide assessment programs.

The individualized education program team:

- considers, when appropriate, strategies including positive behavioral interventions and supports to address behavior in the case of a child whose behavior impedes his or her learning or that of others;
- considers the language needs of the child as such needs relate to the child's individualized education program in the case of a child with limited English proficiency;
- provides for instruction in Braille and the use of Braille in the case of a child who is visually impaired unless the individualized education program team determines, after an evaluation of the child's reading and writing skills, needs and appropriate reading and writing media including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;
- considers the communicative needs of the child and, in the case of a child who is hearing impaired, consider the child's language and communicative needs, opportunities for direct communications with peers and professional personnel in the child's language and communicative mode, academic level and full range of needs including opportunities for direct instruction in the child's language and communicative mode; and
- considers whether the child requires assistive technology devices and services.

If, when considering these special factors, the individualized education program team determines a child needs a particular device or services in order to receive a free appropriate public education, the individualized education program team includes a statement to that effect in the individualized education program.

The child's regular education teacher, as a participant on the individualized education program team, participates in the development of the individualized education program of the child to the extent appropriate. The teacher participates in the determination of appropriate positive behavioral interventions and strategies, supplementary aids and services, program modifications and support for school personnel.

The local educational agency gives a copy of the individualized education program to the child's parents with the notice of placement.

### **Individualized Education Program Review**

The individualized education program team reviews the child's individualized education program periodically, but at least once a year, to determine whether the annual goals for the child are being achieved and revises the individualized education program as appropriate to address:

- any lack of expected progress toward the annual goals and in the general curriculum,
- the results of any reevaluation,
- information about the child provided to or by the parents,
- the child's anticipated needs and
- other matters.

To the extent appropriate, the regular education teacher of the child, as a participant on the individualized education program team, participates in the review and revision of the individualized education program of the child.

If a participating agency, other than the local educational agency, fails to provide transition services, the local educational agency reconvenes the individualized education program team to identify alternative strategies to meet the transition objectives for the child set out in the individualized education program.

### **Individualized Education Program Content**

#### **The individualized education program for each child with a disability includes:**

- a statement of the child's present level of educational performance including how the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children) or, for a preschool child, as appropriate, how the disability affects the child's participation in appropriate activities;
- a statement of measurable annual goals for the child including benchmarks or short-term objectives related to 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 and to meeting each of the child's other educational needs that result from the child's disability;
- 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 to:
  - advance appropriately toward the annual goals;
  - be involved and progress in the general curriculum and participate in extracurricular and other non academic activities; and
  - be educated and participate with other children with disabilities and nondisabled children in the activities described above;

- an explanation of the extent to which the child will not participate with nondisabled children in regular classes in the general curriculum and in extracurricular and other nonacademic activities;
- a statement of any individual modifications in the administration of any state-wide or local educational agency assessment of pupil achievement that are needed for the child to participate in the assessment;
- if the individualized education program team determines a child will not participate in a particular state-wide or local educational agency assessment of pupil achievement or part of such an assessment, a statement indicating why that assessment is not appropriate for the child and how the child will be assessed through alternative means;
- the projected date for the beginning of the services and modifications described in the individualized education program and the anticipated frequency, duration and location of those services and modifications;
- beginning when the child attains the age of 14 and younger, if appropriate, and annually thereafter until the child is no longer eligible for special education and related services, a statement of transition service needs of the student under the applicable components of the individualized education program that focuses on the courses of study needed to prepare the child for a successful transition to his or her goals for life after secondary school such as participation in advanced placement courses or a vocational education program;
- for each student beginning at age 16, or younger if that is determined to be appropriate by the individualized educational program team, and annually thereafter until the child is no longer eligible for special education and related services, a statement of needed transition services for the student including, when appropriate, a statement of the interagency responsibilities or any cooperative arrangements between and among persons;
- a statement that the student has been informed of the parental rights that will transfer to the pupil under special education law on reaching the age of 18, beginning at least one year before the child attains the age of 18, and annually thereafter until the pupil is no longer eligible for special education and related services;
- a statement indicating how the child's progress toward the annual goals will be measured; and
- a statement of how the child's parents will be regularly informed, at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the effective period of the individualized education program.

If a participating agency other than the local educational agency fails to provide the transition services described in the individualized education program, the local educational agency reconvenes the individualized education program team to identify alternative strategies to meet the transition objectives for the child set out in the individualized education program.

### **Placement**

The local educational agency ensures an evaluation is conducted before special education and related services are provided to a child with a disability and an educational placement is provided to implement each child's individualized education program. The individualized education program team makes placement decisions. The placement is based upon and implements the child's individualized education program and is determined at least annually.

**LEAST RESTRICTIVE ENVIRONMENT.** The local educational agency ensures the following:

- Unless the individualized education program requires a different arrangement, the child is educated in the school he or she would attend if not disabled.
- The placement is provided as close as possible to the child's home.
- In selecting the least restrictive environment consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
- To the maximum extent appropriate, a child with a disability, including a child receiving publicly funded special education in a public or private institution or other care facility, is educated with children who are not disabled.
- Special classes, separate schooling or any other removal of a child from the regular educational environment occurs only when the nature or severity of a child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- The local educational agency ensures a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- The local educational agency ensures a continuum of alternative placements is available and will be used that includes regular education, special classes or programs, special schools, home instruction, hospitals and institutions.
- The continuum makes provision for supplementary aids and services that are provided in conjunction with regular classroom instruction such as resource rooms or itinerant instruction.
- The local educational agency provides or arranges for nonacademic and extracurricular services and activities including meals and recess periods so each child with a disability can participate with nondisabled children to the maximum extent appropriate to the needs of that child.

**NOTICE OF PLACEMENT.** Following the development of the individualized education program, a notice of placement is sent to the child's parent(s). The notice includes the way in which the parents may obtain a description of the procedural safeguards.

**CONSENT FOR PLACEMENT.** The local educational agency obtains written parental consent prior to the initial provision of special education and related services to a child with a disability in a program providing special education and related services.

### **Related Service: Physical and Occupational Therapy**

If a child is suspected to need occupational therapy or physical therapy or both, the individualized education program team includes an appropriate therapist employed or contracted by the local educational agency.

**PHYSICAL THERAPISTS' LICENSURE AND SERVICE REQUIREMENTS.** The local educational agency ensures the following:

- Local educational agency physical therapists are licensed by the Department of Public Instruction.
- Caseloads for physical therapists are consistent with the requirements in state law.
- The local educational agency physical therapist has medical information from a licensed physician regarding a child before the child receives physical therapy.
- The local educational agency physical therapist delegates to a school physical therapist assistant only those portions of a child's physical therapy which are consistent with the local educational agency physical therapist assistant's education, training and experience.
- The local educational agency physical therapist supervises the physical therapy provided by a local educational agency physical therapist assistant. The local educational agency physical therapist develops a written policy and procedure for written and oral communication to the physical therapist assistant. The policy and procedure includes a specific description of the supervisory activities undertaken for the local educational agency physical therapist assistant which includes either of the following levels of supervision:
  - the local educational agency physical therapist has daily, direct contact on the premises with the local educational agency physical therapist assistant or
  - the local educational agency physical therapist has direct, face-to-face contact with the local educational agency physical therapist assistant at least once every 14 calendar days. Between direct contacts the physical therapist is available by tele-communication. The local educational agency physical therapist providing general supervision under this subdivision provides an onsite reevaluation of each child's physical therapy a minimum of one time per calendar month or every tenth day of physical therapy, whichever is sooner, and adjusts the physical therapy as appropriate;
- A full-time local educational agency physical therapist supervises no more than two full-time equivalent physical therapist assistant positions which may include no more than three physical therapist assistants.
- Acts undertaken by a local educational agency physical therapist assistant are considered acts of the supervising physical therapist who has delegated the act.
- A local educational agency physical therapist conducts all physical therapy evaluations and reevaluations of a child, participates in the development of the child's individualized education program, and develops physical therapy treatment plans for the child. A local educational agency physical therapist is not represented by a school physical therapist assistant on an individualized education program team.

**LOCAL EDUCATIONAL AGENCY PHYSICAL THERAPIST ASSISTANTS' QUALIFICATIONS AND SUPER-VISION OF PHYSICAL THERAPY.** The local educational agency ensures the following:

- Local educational agency physical therapist assistants are licensed by the Department of Public Instruction.
- The local educational agency physical therapist assistant providing physical therapy to a child is supervised by an local educational agency physical therapist as specified in these policies.

**OCCUPATIONAL THERAPISTS' LICENSURE AND SERVICE REQUIREMENTS.** The local educational agency ensures the following:

- The local educational agency occupational therapist is licensed by the Department of Public Instruction.
- Caseloads for occupational therapists are consistent with the requirements in state law.
- The local educational agency occupational therapist has medical information before a child is evaluated for occupational therapy.

**DELEGATION AND SUPERVISION OF OCCUPATIONAL THERAPY.** The local educational agency ensures the following:

- The local educational agency occupational therapist may delegate to an local educational agency occupational therapy assistant only those portions of a child's occupational therapy which are consistent with the local educational agency occupational therapy assistant's education, training and experience.
- The local educational agency occupational therapist supervises the occupational therapy provided by an local educational agency occupational therapy assistant. The local educational agency occupational therapist develops a written policy and procedure for written and oral communication to the occupational therapist assistant. The policy and procedure includes a specific description of the supervisory activities undertaken for the local educational agency occupational therapist assistant which includes either of the following levels of supervision:
  - the local educational agency occupational therapist has daily, direct contact on the premises with the local educational agency occupational therapy assistant or
  - the local educational agency occupational therapist has direct, face-to-face contact with the local educational agency occupational therapy assistant at least once every 14 calendar days. Between direct contacts the occupational therapist is available by telecommunication.
- The local educational agency occupational therapist providing general supervision provides an onsite reevaluation of each child's occupational therapy a minimum of one time per calendar month or every tenth day of occupational therapy, whichever is sooner, and adjust the occupational therapy as appropriate.
- A full-time local educational agency occupational therapist supervises no more than two full-time equivalent occupational therapy assistant positions which includes no more than three occupational therapy assistants;
- An act undertaken by a local educational agency occupational therapy assistant is considered the act of the supervising occupational therapist who has delegated the act.

**RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY OCCUPATIONAL THERAPIST.** The local educational agency ensures the following:

- A local educational agency occupational therapist conducts all occupational therapy evaluations and reevaluations of a child, participates in the development of the child's individualized education program and develops occupational therapy treatment plans for the child.
- A local educational agency occupational therapist may not be represented by a local educational agency occupational therapy assistant on an individualized education program team.

**LOCAL EDUCATIONAL AGENCY OCCUPATIONAL THERAPY ASSISTANTS' QUALIFICATIONS AND SUPERVISION.** The local educational agency ensures the following:

- Local educational agency occupational therapy assistants are licensed by the Department of Public Instruction.
- The local educational agency occupational therapy assistant providing occupational therapy to a child is supervised by a local educational agency occupational therapist as specified in these policies.

#### Transition from Birth to Three Programs

The local educational agency participates with the provider of birth to three programs to ensure a smooth and effective transition of children with disabilities from the birth to three program for infants and toddlers with disabilities to preschool programs in the local educational agency. The local educational agency participates in transition planning conferences arranged by the birth to three program.

For children participating in early intervention programs who will participate in special education preschool programs in the local educational agency, the local educational agency develops and implements an individualized education program by the child's third birthday.

#### Transfer Pupils

A "transfer pupil with a disability" means a child with a disability under the Individuals with Disabilities Education Act whose residence has changed from a local educational agency in this state to another local educational agency in this state or from a public agency in another state to a local educational agency in this state.

The local educational agency ensures there is no interruption of special education and related services when a child with a disability transfers from another Wisconsin local educational agency. When the local educational agency receives a transfer pupil with a disability, the local educational agency implements the individualized education program from the sending Wisconsin local educational agency until the local educational agency adopts the sending local educational agency's individualized education program or develops its own individualized education program. To the extent that the local educational agency is not able to implement the sending local educational agency's individualized

education program, the local educational agency provides services that approximate, as closely as possible, the sending local educational agency's individualized education program.

The local educational agency adopts the evaluation and the eligibility determination of the sending local educational agency or conducts an evaluation and eligibility determination of the transfer pupil. The local educational agency adopts the individualized education program of the sending local educational agency or develops a new individualized education program. The local educational agency does not adopt the evaluation and eligibility determination or the individualized education program of the sending local educational agency if the evaluation and eligibility determination or the individualized education program do not meet state and federal requirements.

When the local educational agency receives a transfer pupil with a disability and does not receive the pupil's records from the sending local educational agency, the local educational agency requests in writing the pupil's records from the sending local educational agency. When the local educational agency receives such a request for a transfer pupil, the local educational agency transfers the pupil's records to another local educational agency within five working days of receipt of the written notice as required under s. 118.125(4), Wis. Stats.

When the local educational agency receives a transfer pupil with a disability from a public agency in another state, the local educational agency may provide special education and related services in accordance with the most recent individualized education program developed by the sending public agency until the local educational agency develops its own individualized education program or adopts the sending public agency's individualized education program. The local educational agency adopts the evaluation and the eligibility determination of the sending public agency or conducts a new evaluation and eligibility determination of the transfer pupil. If the local educational agency decides not to adopt the evaluation and eligibility determination of the sending public agency, the local educational agency initiates a special education referral of the child. The local educational agency completes the evaluation and develops an individualized education program and the placement in accordance with the requirements of subch. V of ch. 115, Wis. Stats., within 90 days of the date the child enrolled in the local educational agency. The local educational agency adopts the individualized education program of the sending public agency or develops a new individualized education program. The local educational agency does not adopt the evaluation and eligibility determination or the individualized education program of the sending public agency if the evaluation and eligibility determination or the individualized education program do not meet state and federal requirements.

## **Charter Schools**

Children with disabilities who attend the local educational agency's charter schools and their parents retain all rights under federal special education laws. The local educational agency ensures that the requirements of federal special education law are met.

Children with disabilities who attend Charter Schools under contract with the local educational agency, are served in the same manner as other children with disabilities in the local educational agency. Funds received under part B of the Individuals with Disabilities Education Act are provided to charter schools in the same manner as they are provided to other schools in the local educational agency.



## Due Process Procedures

**OPPORTUNITY TO EXAMINE RECORDS AND PARENT PARTICIPATION IN MEETINGS.** The parents of a child with a disability are afforded, in accordance with the policies in the "Confidentiality" section of this document, an opportunity to:

- inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child; and
- participate in meetings with respect to the identification, evaluation and educational placement of the child and the provision of a free appropriate public education to the child.

The local educational agency provides notice consistent with the notice policies in the "Parent Participation in Individualized Education Program Team Meetings" section of these policies to ensure that parents of children with disabilities have the opportunity to participate in meetings described above. The term "meeting" in this policy does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's individualized education program. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The local educational agency ensures the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. In implementing this policy, the local educational agency uses procedures consistent with the policies described above. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency uses other methods to ensure their participation including individual or conference telephone calls, or video conferencing.

A placement decision may be made by a group without the involvement of the parents if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement including information that is consistent with the policies in this section.

The local educational agency makes reasonable efforts to ensure the parents understand and are able to participate in any group discussions relating to the educational placement of their child including arranging for an interpreter for parents with deafness, or whose native language is other than English.

**NOTICE.** The local educational agency ensures a child's parents, including parents of non-resident children attending the district under the Full-Time Open Enrollment law, are provided prior written notice a reasonable time before the local educational agency proposes to initiate or change or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child. The notice contains:

- a description of the action proposed or refused and why;

- a statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- a description of any other options considered and the reason(s) they were rejected;
- a description of each evaluation procedure, test, record or report used as a basis for the proposed or refused action;
- a description of any other factors relevant to the proposal or refusal;
- sources for parents to contact to obtain assistance in understanding special education law; and
- the right to ask for additional time and their right to a copy of the evaluation report at the beginning of any meeting to address the evaluation, individualized education program or placement of the child.

Each prior written notice is written in language understandable to the general public, in the parent's native language or other means of communication unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the local educational agency takes steps to ensure the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; the parent understands the content of the notice; and there is written evidence parents understand the notice if their language is not written.

**PROCEDURAL SAFEGUARDS NOTICE.** Upon the child's initial referral for evaluation, upon each notification of an individualized education program meeting and upon reevaluation of the child, the local educational agency gives the parents, including the parents of a non-resident child attending the district under the Full-Time Open Enrollment law, a full explanation of the procedural safeguards available under special education law written so as to be easily understood by the general public relating to:

- independent educational evaluation;
- prior written notice;
- parental consent;
- access to educational records;
- opportunity to present complaints to initiate due process hearings;
- the child's placement during pendency of due process proceedings;
- procedures for pupils who are subject to placement in interim alternative educational settings under 20 USC § 1415(k);
- requirements for the unilateral placement by parents of pupils in private schools at public expense;
- mediation;
- due process hearings including requirements for disclosure of evaluation results and recommendations;
- civil actions;
- attorney fees; and
- a statement informing the parents about the state Individuals with Disabilities Education Act complaint procedures including a description of how to file a complaint and the timelines under those procedures.

**LIMITATIONS ON REQUIRING CONSENT.** The local educational agency does not use a parent's refusal to consent to an initial evaluation or reevaluation or the initial provision of special education and related

services to a child with a disability to deny the parent or child any other service, benefit or activity of the local educational agency.

**INDEPENDENT EDUCATIONAL EVALUATIONS.** A parent may obtain an independent educational evaluation of his or her child. If a parent requests information from the local educational agency about an independent evaluation, the local educational agency provides the parent with information about where an independent evaluation may be obtained and the agency criteria applicable for independent educational evaluations. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local educational agency. "Public expense" means the local educational agency either pays for the full cost of the evaluation or ensures the evaluation is otherwise provided at no cost to the parent.

If a parent requests an independent educational evaluation at public expense, the local educational agency, without unnecessary delay, either initiates a due process hearing to show its evaluation is appropriate or insures an independent educational evaluation is provided at public expense unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent did not meet local educational agency criteria.

If a parent requests an independent educational evaluation, the local educational agency may ask for the parent's reason why he or she objects to the public evaluation. However, the local educational agency does not require the explanation and the local educational agency does not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

If the local educational agency initiates a hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation but not at public expense. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the local educational agency, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education to the child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. When an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, is the same as the criteria that the local educational agency uses when it initiates an evaluation to the extent that those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described above, the local educational agency may not impose conditions or timelines related to obtaining and independent educational evaluation at public expense.

**SURROGATE PARENTS.** The local educational agency ensures the rights of a child are protected if no parent can be identified; the local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent; or the child is a ward of the state. In such instances, the local educational agency assigns an individual to act as a surrogate for the parents. The local educational agency has a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

The local educational agency ensures a person selected as a surrogate parent is not an employee of the Department of Public Instruction, the local educational agency, or any other agency that is

involved in the education or care of the child; has no interest that conflicts with the interest of the child he or she represents; and has knowledge and skills that ensure adequate representation of the child. If the local educational agency selects as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child, the local educational agency ensures that person has no interest that conflicts with the interest of the child and has knowledge and skills to ensure adequate representation of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

The surrogate parent may represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of FAPE to the child.

**MEDIATION.** When a local educational agency participates in a mediation under the Wisconsin Special Education Mediation System, the local educational agency:

- keeps discussion that occurs during mediation confidential;
- does not use discussion that occurs during mediation as evidence in any subsequent hearing or civil proceeding;
- is legally bound by a signed written mediation agreement concerning resolutions to the dispute or agreements about other procedures to resolve the dispute;
- does not record a mediation session unless both parties and the mediator agree;
- assumes responsibility with the parents for additional compensation if the parties agree that the amount of the mediator's compensation should be greater than the Wisconsin Special Education Mediation System schedule allows; and
- assumes responsibility with the parents for the compensation of a mediator who is not on the mediation system roster.

**DUE PROCESS HEARINGS.** When the local educational agency is a party to a due process hearing under § 115.80, Wis. Stats., the local educational agency:

- pays for the cost of the hearing;
- pays for the cost of an independent educational evaluation ordered by the hearing officer;
- discloses to all other parties at least five business days before a hearing is conducted (other than an expedited hearing under the provisions of the Individuals with Disabilities Education Act), all evaluations completed by that date and recommendations based upon the local educational agency's evaluations that the local educational agency intends to use at the hearing; and
- except as provided in the "discipline" section of the local educational agency's policies, the local educational agency does not change the educational placement of a child during the pendency of a hearing or judicial proceedings unless the child's parents agree to the change and places the child applying for initial admission with the consent of his or her parents in the public school program until all due process proceedings have been completed. These policies apply equally to non-resident children attending the district under the Full-Time Open Enrollment law.

Before filing a civil action under any federal law seeking relief that is also available under state special education law, the local educational agency exhausts the due process hearing procedures to the same extent as would be required had the action been brought under special education law.



**TRANSFER OF RIGHTS AT AGE OF MAJORITY.** When a child with a disability reaches the age of 18, unless he or she has been determined to be incompetent as defined by state law, the local educational agency transfers the rights of parents under the Individuals with Disabilities Education Act and Chapter 115, Wis. Stats., to the individual pupil. The local educational agency provides any required notices to both the parents and the adult pupil. The local educational agency notifies both the parents and the individual pupil of the transfer of rights.

## Discipline Procedures

**AUTHORITY OF SCHOOL PERSONNEL.** To the extent removal would be applied to children without disabilities, school personnel are authorized to remove a child with a disability from the child's current placement for not more than ten consecutive school days for any violation of school rules, consistent with state requirements relating to the suspension of pupils. School personnel are authorized to order additional removals of not more than ten consecutive school days, consistent with state requirements, in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if:

- the removal is for more than ten consecutive school days or
- the child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed and the proximity of the removals to one another.

After a child with a disability has been removed from the current placement for more than ten school days in the same school year, during any subsequent days of removal the district provides services necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving individualized education program goals. These services are provided when school personnel remove a child for not more than ten consecutive school days, as long as that removal does not constitute a change of placement. In such a case, school personnel, in consultation with the child's special education teacher, determine the extent of the services.

**FUNCTIONAL BEHAVIOR ASSESSMENT AND BEHAVIOR INTERVENTION PLAN.** Either before or not later than ten business days after either first removing the child for more than ten school days in a school year or beginning a removal that constitutes a change of placement, including placing the child in an interim alternative educational setting:

- if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described above, the local educational agency convenes an individualized education program meeting to develop an assessment plan;
- if the child already has a behavioral intervention plan, the individualized education program team meets to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

As soon as practicable after developing the assessment and completing the assessments required by the assessment plan, the local educational agency convenes an individualized education program meeting to develop appropriate behavioral interventions to address that behavior and implements those interventions.

If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the individualized education program team members review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are

needed, the team meets to modify the plan and its implementation, to the extent the team determines necessary.

**PLACEMENT IN INTERIM ALTERNATIVE EDUCATIONAL SETTINGS.** School personnel are authorized to order a change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline but for not more than 45 days if:

- the child carries or possesses a weapon to or at school or to a school function under the jurisdiction of the state or a local educational agency; or
- the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the state or a local educational agency.

The individualized education program team determines the interim alternative educational setting. Any interim alternative educational setting in which a child is placed:

- is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications including those described in the child's current individualized education program, that will enable the child to meet the goals set out in that individualized education program; and
- includes services and modifications that are designed to prevent the behavior that resulted in the child's placement in an interim alternative educational setting behavior from recurring.

If the local educational agency contemplates placing the child in an interim alternative educational setting or initiating a removal that constitutes a change of placement for violating any local educational agency rule or code of conduct that applies to all children, the local educational agency:

- notifies the parents of that decision and provides the parents a procedural safeguards notice not later than the date on which the decision to take that action is made; and
- immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, reviews the relationship between the child's disability and the behavior subject to the disciplinary action.

When the local educational agency determines that maintaining the current placement of a child with a disability is substantially likely to result in injury to the child or others, the agency may request an expedited due process hearing to change the child's placement to an appropriate interim alternative educational setting for not more than 45 days. At the hearing the local educational agency demonstrates:

- by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
- the inappropriateness of the child's current placement;
- reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;

- school personnel have consulted with the child's special education teacher about the proposed interim alternative educational setting;
- the proposed interim alternative education setting was selected to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those in the child's current IEP, that will enable the child to meet the goals in that IEP; and
- the interim alternative educational setting includes services and modifications that are designed to prevent the dangerous behavior from recurring.

**MANIFESTATION DETERMINATION REVIEWS.** A manifestation determination review is conducted by the individualized education program team and other qualified personnel in a meeting. In carrying out the review, the individualized education program team and other qualified personnel determine that the behavior of the child was not a manifestation of the child's disability only after first considering, in terms of the behavior subject to disciplinary action, all relevant information, including:

- evaluation and diagnostic results including the results or other relevant information supplied by the parents of the child;
- observations of the child; and
- the child's individualized education program and placement.

If the individualized education program team and other qualified personnel determine that any of the standards below were not met, the behavior is considered a manifestation of the child's disability. These standards are as follows:

- In relationship to the behavior subject to disciplinary action, the child's individualized education program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's individualized education program and placement.
- The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action.
- The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

If, in the manifestation determination review, the local educational agency identifies deficiencies in the child's individualized education program or placement or in their implementation, it takes immediate steps to remedy those deficiencies.

The local educational agency applies the relevant disciplinary procedures for children without disabilities to the child only if, as a result of the manifestation determination review, the local educational agency determines the behavior of the child with a disability was not a manifestation of the child's disability. The local educational agency applies the relevant disciplinary procedures in the same manner in which they would be applied to children without disabilities.

When the local educational agency conducts a manifestation determination and determines that the behavior at issue is not a manifestation of the child's disability, the local educational agency provides services necessary to enable a child to appropriately progress in the general curriculum and appropriately advance toward achieving the individualized education program goals during a period of removal. In such a case, the child's individualized education program team determines the extent of the services.



If the local educational agency initiates disciplinary procedures applicable to all children, the local educational agency ensures the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

**PLACEMENT DURING APPEALS.** If a parent requests a hearing or an appeal to challenge an interim alternative educational setting or a manifestation determination for a child who is in an interim alternative educational setting, the local educational agency maintains the child in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period of the interim alternative educational setting, whichever occurs first, unless the parent and the local educational agency agree otherwise.

If a child is placed in an interim alternative educational setting and local educational agency personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of due process proceedings to challenge the proposed change in placement the local educational agency ensures the child remains in the current placement (the child's placement prior to the interim alternative educational setting). The local educational agency changes the current placement only if a due process hearing officer determines that the child may be placed in the alternative educational setting or in another appropriate placement.

If school personnel maintain it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting) during due process proceedings, the local educational agency may request an expedited due process hearing to request placement in an alternative educational setting or another appropriate placement for up to 45 days. The local educational agency may repeat the request as necessary.

**PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.** The local educational agency provides the protections under the Individuals with Disabilities Education Act-Part B to a child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the local educational agency if the local educational agency had knowledge (as determined in accordance with the provisions below) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. The local educational agency also applies this provision to a child who carries or possesses a weapon to or at school or to a school function; to a child who knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; and to a child who exhibits behavior that is substantially likely to result in injury to the child or others.

The local educational agency has knowledge that a child is a child with a disability if:

- the parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;
- the behavior or performance of the child demonstrates the need for these services in accordance with the eligibility criteria in state law;
- the parent of the child has requested an individualized education program team evaluation of the child; or

- the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

The local educational agency does not have knowledge that a child is a child with a disability if the local educational agency conducted an individualized education program team evaluation and determined that the child was not a child with a disability. If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the local educational agency may subject the child to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation is conducted in an expedited manner. Until the evaluation is completed, the local educational agency maintains the child in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the local educational agency's evaluation and information provided by the parents, the local educational agency provides special education and related services in accordance with legal requirements relating to discipline and the provision of a free appropriate public education to children with disabilities.

When the local educational agency reports a crime committed by a child with a disability, it ensures copies of the child's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom it reports the crime. The local educational agency transmits copies of the child's special education and disciplinary records only to the extent that the Family Educational Rights and Privacy Act permits transmission.

## Confidentiality of Information

**NOTICE TO PARENTS.** The local educational agency notifies parents before any major child identification, location or evaluation activity. The notice is published or announced in newspapers or other media, or both, with circulation adequate to notify parents of children attending the local educational agency of the activity.

The local educational agency gives notice that is adequate to fully inform parents about the confidentiality of personally-identifiable information requirements in the law, including:

- a description of the extent that the notice is given in the native languages of the various population groups in the local educational agency;
- a description of the children on whom personally-identifiable information is maintained, the types of information sought, the methods the local educational agency intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally-identifiable information; and
- a description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and the implementing regulations.

**ACCESS RIGHTS.** The local educational agency permits parents to inspect and review any education records relating to their children that are collected, maintained or used by the agency under this part. The agency complies with a request without unnecessary delay and before any meeting regarding an individualized education program, or any due process hearing, and in no case more than 45 days after the request has been made. The right to inspect and review education records includes:

- the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- the right to have copies of the records upon request; and
- the right to have a representative of the parent inspect and review the records.

The local educational agency keeps a record of parties obtaining access to education records collected, maintained or used under the Individuals with Disabilities Education Act (except access by parents and authorized employees of the local educational agency), including the name of the party, the date access was given and the purpose for which the party is authorized to use the records.

The local educational agency provides parents on request a list of the types and locations of education records collected, maintained or used by the agency. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

The local educational agency does not charge a fee for copies of records that are made for parents if the fee effectively prevents the parents from exercising their right to inspect and review those

records. The local educational agency does not charge a fee to search for or to retrieve information in educational records.

**AMENDMENT OF RECORDS AT PARENT'S REQUEST.** A parent who believes information in the education records collected, maintained or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency to amend the information. The local educational agency decides whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the local educational agency decides to refuse to amend the information in accordance with the request, it informs the parent of the refusal and advises the parent of the right to a educational records hearing pursuant to the local educational agency's policies.

The local educational agency, on request, provides an opportunity for a hearing to challenge information in education records to ensure it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child. The hearing is conducted according to the procedures described in the Family Educational Rights and Privacy Act implementing regulations. If, as a result of the hearing, the local educational agency decides the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and so informs the parent in writing. If, as a result of the hearing, the local educational agency decides the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it informs the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the local educational agency.

Any explanation placed in the records of the child under this section is maintained as part of the records of the child as long as the record or contested portion is maintained. If the records of the child or the contested portion is disclosed to any party, the explanation is also disclosed to the party.

**CONSENT.** Except as to disclosures addressed in the law for which parental consent is not required by the Family Educational Rights and Privacy Act, parental consent is obtained before personally-identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under the Individuals with Disabilities Education Act or used for any purpose other than meeting a requirement of the act. The local educational agency does not release information from education records to participating agencies without parental consent unless authorized to do so under the Family Educational Rights and Privacy Act.

**SAFEGUARDS.** The local educational agency protects the confidentiality of personally-identifiable information at collection, storage, disclosure and destruction stages. One official at the local educational agency assumes responsibility for ensuring the confidentiality of any personally-identifiable information. All persons collecting or using personally-identifiable information receive training or instruction regarding the state's policies and procedures described in the regulations implementing the Individuals with Disabilities Education Act and the Family Educational Rights and Privacy Act. The local educational agency maintains, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally-identifiable information.

The local educational agency informs parents when personally-identifiable information collected, maintained or used under the Individuals with Disabilities Education Act is no longer needed to provide educational services to the child. The information is destroyed at the request of the parents.

**TRANSFER OF CONFIDENTIALITY RIGHTS AT AGE OF MAJORITY.** Under the regulations for the Family Educational Rights and Privacy Act , the rights of parents regarding education records are transferred to the student at age 18. When the rights accorded to parents under the Individuals with Disabilities Education Act are transferred to a student who reaches the age of majority, the rights regarding educational records in the Individuals with Disabilities Education Act also transfer to the student. However, the local educational agency provides any notice required under the Individuals with Disabilities Education Act to the student and the parents.

### **Children With Disabilities Enrolled in Private Schools by Their Parents**

**GENERAL.** To the extent consistent with the number and location of children with disabilities residing in the local educational agency who are enrolled by their parents in private elementary and secondary schools, the local educational agency ensures those children have an opportunity to participate in special education and related services and the amount spent to provide those services by the local educational agency is equal to a proportionate amount of federal funds made available under the Individuals with Disabilities Education Act.

If a child with a disability is enrolled in a religiously-affiliated or other private school and receives special education or related services from the local educational agency, the local educational agency initiates and conducts meetings to develop, review and revise a services plan for the child. The local educational agency ensures a representative of the religiously-affiliated or other private school attends each meeting. If the representative cannot attend, the agency uses other methods to ensure participation by the private school including individual or conference telephone calls.

**EXPENDITURES.** In providing special education and related services to children with disabilities enrolled by their parents in private schools, the local educational agency spends, for children aged 3 through 21, an amount that is the same proportion of the local educational agency's total Individuals with Disabilities Education Act flow-through funds as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21. For children aged 3 through 5, the local educational agency spends an amount that is the same proportion of the local educational agency's total preschool entitlement funds as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5. The local educational agency may provide services to private school children in excess of those required, consistent with the law and local educational agency policy.

The local educational agency consults with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities. It ensures the count is conducted on December 1 of each year. The child count is used to determine the amount the local educational agency must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

Expenditures for child find activities including locating, identifying and evaluating private school children with disabilities, including religious-school children residing in the jurisdiction of the local educational agency, are not considered in determining whether the local educational agency has met their spending requirements for parentally placed private school children with disabilities.

**SERVICES DETERMINED.** The local educational agency consults in a timely and meaningful way with appropriate representatives of private school children with disabilities, in light of the funding available under the Individuals with Disabilities Education Act, the number of private school children with disabilities, the needs of private school children with disabilities and their location to determine:

- which children will receive services;
- what services will be provided;
- how and where the services will be provided; and
- how the services provided will be evaluated.

The consultation includes a genuine opportunity for representatives of private schools to express their views regarding each of the above matters. The consultation occurs before the local educational agency makes any decision that affects the opportunities of private school children with disabilities to participate in services. The local educational agency includes children placed in private schools by their parents when a free appropriate public education is at issue in the population whose needs are addressed. The final decisions regarding services to be provided to eligible private school children are made by the local educational agency. The individualized education program for each private school child with a disability includes the services that the local educational agency will provide the child in light of the services the local educational agency has decided to provide private school children through the process describe above.

**SERVICES PLAN.** No private school child with a disability has an individual right to receive some or all of the special education and related services the child would receive if enrolled in the public school. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from the local educational agency, the local educational agency initiates and conducts meetings to develop, review and revise a services plan for the child in accordance with the law. The local educational agency ensures a representative of the religious or other private school attends each meeting. If the representative cannot attend, the local educational agency uses other methods to ensure participation by the private school, including individual or conference telephone calls.

**SERVICES PROVIDED.** The services provided to private school children with disabilities by the local educational agency are provided by personnel meeting the same standards as personnel providing services in the local educational agency.

Each private school child with a disability who has been designated to receive services from the local educational agency has a services plan that describes the specific special education and related services the local educational agency will provide to the child in light of the services the local educational agency has determined (after consultation with representatives of private school children with disabilities) it will make available to private school children with disabilities. The services plan, to the extent appropriate, meets the individualized education plan requirements with respect to the services provided. The services plan is developed, reviewed and revised consistent with the provisions in the law concerning when individualized education programs must be in effect, individualized education program meetings, individualized education program team composition, parent participation in individualized education program team meetings, and development, review and revision of individualized education programs.

If the local educational agency provides services to private school children with disabilities at the child's private school, including a religiously affiliated private school, it will do so consistent with state and federal law. If necessary for the child to benefit from or participate in the services provided, the local educational agency transports private school children with disabilities from the child's school or home to a site other than the child's private school and from the service site to the private school or the child's home, depending on the timing of the services.

**CHILDREN WITH DISABILITIES PLACED IN PRIVATE SCHOOLS BY THE LOCAL EDUCATIONAL AGENCY.** Before the local educational agency places a child with a disability in a private school or facility, the local educational agency initiates and conducts a meeting to develop an individualized education program for the child. The local educational agency ensures a representative of the private school or facility attends the meeting. If the representative cannot attend, the local educational agency uses other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

If the local educational agency permits a private school or facility to conduct meetings to review and revise individualized education programs, the local educational agency ensures the parents and a local educational agency representative are involved in any decisions about the individualized education program and agree to any proposed changes in the program before they are implemented. The local educational agency retains responsibility for compliance with the requirements of special education law.

When the local educational agency places a child, including a non-resident child attending the district under the Full-Time Open Enrollment law, in a private school as a means of providing special education and related services, the local educational agency ensures an individualized education program is developed and implemented for each child with a disability and the special education and related services are provided in conformance with an individualized education program and at no cost to the parents.

**ADMINISTRATION OF FUNDS.** The local educational agency does not use Individuals with Disabilities Education Act funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and include both students enrolled in public schools and students enrolled in private schools. Individuals with Disabilities Education Act funds are not used to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local educational agency uses Individuals with Disabilities Education Act funds to meet the specific needs of students with disabilities enrolled in private schools rather than the needs of a private school or the general needs of the students enrolled in a private school.

When Individuals with Disabilities Education Act funds are used to make public personnel available in other than public facilities, such funds are used, to the extent necessary, to provide services for students enrolled in private schools and if those services are not normally provided by the private school. If the local educational agency uses Individuals with Disabilities Education Act funds to pay for the services of an employee of a private school, it does so only if the employee performs the services outside of his/her regular hours of duty and under public supervision and control.

The local educational agency maintains title to, and administrative control of, all equipment and supplies acquired with Individuals with Disabilities Education Act funds for the benefit of private school children with disabilities. The local educational agency ensures any equipment or supplies placed in a private school are used only for purposes of educating children with disabilities and can be removed from the private school without remodeling the private school facilities. The local educational agency

removes equipment or supplies from a private school when the equipment or supplies are no longer needed for purposes of educating children with disabilities or to avoid use of the equipment/ supplies for purposes other than educating children with disabilities. The local educational agency ensures Individuals with Disabilities Education Act funds are not used for repairs, minor remodeling or construction of private school facilities.

### **Children in Residential Care Centers**

When a local educational agency receives a notice from a county or a state agency that a child will be placed in a residential care center, the local educational agency does all of the following:

- if the child is a child with a disability, as soon as reasonably possible and after consulting with the county or state agency, the local educational agency appoints an individualized education program team to review and revise, if necessary, the child's individualized education program and develop an educational placement offer;
- if the child has not been identified as a child with a disability, the local educational agency:
  - appoints staff to review the child's education records and develop a status report;
  - sends a copy of the status report to the county or state agency within 30 days after receiving the notice that the child will be placed in a residential care center;
  - appoints an individualized education program team to conduct an evaluation of the child if they have reasonable cause to believe the child is a child with a disability;
  - ensures the individualized education program team conducts the evaluation; and
  - ensures the individualized education program team develops an individualized education program and an educational placement offer, in consultation with the county or state agency if the individualized education program team determines the child is a child with a disability.

When the local educational agency is responsible for the educational placement of the child in a residential care center, the local educational agency:

- ensures the child receives a free appropriate public education;
- ensures the child's treatment and security needs are considered when determining the least restrictive environment for the child;
- appoints an individualized education program team to reevaluate the child, as required by state law, while the child resides at the residential care center;
- while the child resides at the residential care center, the local educational agency refers the child to another local educational agency after consulting the residential care center and a county department or state agency, if the responsible local educational agency determines that the child's special education needs may be appropriately served in a less restrictive setting in the other local educational agency; and
- assigns staff or an individualized education program team to develop a reintegration plan for a child leaving the child caring institution, in cooperation with a county and residential care center staff.

When the local educational agency receives a referral from another local educational agency for a child who resides in a residential care center because the referring district believes the child's special





education needs could be met in a less restrictive setting, the local educational agency assigns staff to determine whether the child can appropriately receive special education and related services from the local educational agency. If the assigned staff determines the child can appropriately receive special education and related services, the local educational agency provides such services. If the assigned staff determines the child cannot appropriately receive special education and related services in the local educational agency, the local educational agency keeps a written record of the reasons.

### **Local Educational Agency Reporting to County Departments**

Annually, on or before August 15, the local educational agency reports to the county departments under §§ 51.42 & 51.437, Wis. Stats., the names of resident children who are at least 16, are not expected to be enrolled in an educational program two years from the date of the report and may require services from the county department.

## **Local Educational Agency Reporting to State**

The local educational agency has established and implemented policies, procedures and programs that are consistent with state policies and procedures. These policies and procedures that satisfy all state and federal special education requirements are submitted by the local educational agency to the Department of Public Instruction and remain in effect until the Department of Public Instruction approves modifications submitted by the local educational agency. These modifications must, however, continue to satisfy all legal requirements. The local educational agency will modify its policies and procedures to the extent necessary to ensure compliance with the law if the provisions of federal or state laws or regulations are amended, if there is a new interpretation of the Act by federal or state courts or if there is an official finding of noncompliance with federal or state law or regulations.

The local educational agency files with the Department of Public Instruction information to demonstrate all personnel necessary to carry out the requirements of state and federal special education law are appropriately and adequately prepared. To the extent the local educational agency determines appropriate, it contributes to and uses the comprehensive system of personnel development of the state.

The local educational agency provides to the Department of Public Instruction information that is needed for the Department of Public Instruction to meet its responsibilities under state and federal special education laws, including information related to the performance of children with disabilities participating in local educational agency special education programs. The local educational agency reports its plan for providing special education and related services to children with disabilities to the Department of Public Instruction on a schedule and using instructions provided by the Department of Public Instruction. The plan includes a program narrative. The report includes:

- the extent to which special education and related services is or is not organized around particular disabilities;
- the licensure and other preparation or experience of special education staff;
- the age ranges of pupils who are children with disabilities;
- the range of severity of disability among children with disabilities;
- the ratio of pupils to full-time equivalent staff including both the ratio of pupils assigned to special education instructional and related services staff and to total special education instructional, support and administrative staff;
- the way parents participate in the development and review of the plan;
- the extent to which children with disabilities receive special education or related services beyond the school term;
- the way the local educational agency provides for a continuum of alternative placements that addresses the unique needs of children with disabilities and ensures that such children receive their educational programming in the least restrictive environment, including the local educational agency's use of placements out of the local educational agency and out of state and private placements;

- the local educational agency's plan for employing qualified special education and related services staff, evaluating its staff's special education inservice needs and the plan for meeting those needs;
- the local educational agency's plan for evaluating its system for the design and delivery of special education and related services and for addressing any needs that are identified by the evaluation including all of the following:
  - the local educational agency's graduation rate for children with disabilities and how the rate compares to the local educational agency's graduation rate for nondisabled children;
  - the local educational agency's rate of suspension and expulsion of children with disabilities and how the rate compares to the local educational agency's rate of suspension and expulsion of nondisabled children;
  - the local educational agency's overall incidence rate of children with disabilities and the local educational agency's incidence rates of particular disabilities;
  - the rate of participation of the local educational agency's children with disabilities in state-wide and district-wide assessments and the results of those assessments;
  - the rate of participation of the local educational agency's children with disabilities in alternative assessments and the results of those assessments;
  - the number of referrals and the percentage of those referrals resulting in the provision of special education and related services;
  - the number of children with disabilities placed in appropriate, interim alternative educational settings;
  - general information about the satisfaction of parents of children with disabilities and adult pupils who are receiving special education and related services with special education and related services;
  - general information about persons who no longer attend high school and who received special education and related services provided by the local educational agency such as whether they are employed, are living independently or are enrolled in post-secondary education;
  - the number of children with disabilities who attend the local educational agency under the Full-Time Open Enrollment law, the disability of each such child and the special education or related services received by each such child;
- a roster of all of the agency's special education and related services staff, their function, their social security numbers and their special education licensure;
- statements of assurance as required by applicable federal law; and
- information relating to access of private school pupils to the local educational agency's special education and related services.



When the local educational agency participates in a county children with disabilities education board program, annually by October 1, the local educational agency and the county children with disabilities education board submit a report to the state superintendent. The report includes the portion of each school day that each pupil enrolled in the county program, who is also enrolled in the local educational agency, spent in county program classes in the previous school year, and the portion of the school day that the pupil spent in the local educational agency classes in the previous school year and any other information the division requires to permit its review and approval of the plan.

Annually, the local educational agency provides a special education performance report to all parents of children enrolled in the local educational agency and to the Department of Public Instruction that includes the local educational agency's performance with regard to the factors included in its evaluation of its special education plan, as well as the state-wide average with regard to graduation, suspension and expulsion, incidence, state-wide and district-wide assessment participation rates and results and alternative assessment participation and results.