

Local Education Agency Responsibilities for School Age Children with Disabilities in Jail, Detention, Hospitals,
Nursing Homes or other Children's Homes
Updated August 2016

The following procedures apply to students with disabilities who are incarcerated, hospitalized, or residing in another setting considered to be a “children's home” under Wis. Stat. §121.79(1)(a). These procedures also apply to facilities considered “orthopedic hospitals” under Wis. Stat. §115.88(4) and nursing homes as defined under Wis. Stat. §50.01(3). They do not apply to students placed by counties or the state in residential care centers (RCCs). This document addresses only the requirement to provide a free appropriate public education (FAPE) to students, not the fiscal implications of implementing this requirement. For additional information regarding compulsory attendance requirements and fiscal implications, see [Clarification Regarding Residency](#).

The school district in which the “children’s home” or “orthopedic hospital” is located is the student's local educational agency (LEA) responsible for FAPE from the first day the student lives in the facility, unless the student is excused from attendance by the original school district upon the parents’ request, consistent with compulsory attendance requirements. If the student is excused, the original school district retains FAPE responsibility. If the student is excused due to illnesses or injury and he or she has not been identified as a child with a disability, a referral and evaluation for special education services may be required. For students with an individualized education program (IEP), if an extended or recurring excused absence is anticipated, an IEP meeting should be held to address how and what services should be provided during or following the absences. For a student with an IEP, the department recommends an IEP team meeting be held prior to the 11th consecutive date of absence.

When the school district where the facility is located becomes responsible for FAPE, the new LEA, in consultation with the child’s parents, must provide FAPE to the student, including services comparable to those described in the student’s IEP from the previous LEA, until the new LEA either:

- Adopts the student’s IEP from the previous LEA or
- Develops, adopts, and implements a new IEP [34 CFR 300.323 (e)].

To facilitate the transition of a student who transfers, the new LEA must take reasonable steps to promptly obtain the student’s records, including the IEP, supporting documents and any other records relating to the provision of special education and related services, from the previous LEA consistent with 34 CFR 300.323(g).

The following steps are provided as a model for implementing the requirements. The school district where the facility is located:

1. Establishes a system to ensure staff of the facility report to the school district, the entry of a student with a disability.
2. Ensures staff of the facility are aware of their responsibility to refer a student with a suspected disability to the LEA responsible for FAPE.
3. Contacts the parent to obtain information about the student’s attendance status.
4. Communicates with the original LEA to determine whether the school district where the facility is located has become the student’s new LEA responsible for FAPE. If the original LEA remains the responsible LEA, it should continue to make FAPE available consistent with the student’s needs.

When the school district where the facility is located becomes the student’s new LEA responsible for FAPE, the new LEA:

1. Informs the parent of the new LEA’s FAPE responsibility.
2. Requests the student’s records from the original LEA, including the IEP and placement notice. The original LEA must transfer the records within five working days of receiving the request. Parental consent is not required.
3. Reviews the student’s IEP and placement notice and determines if the IEP can be implemented as written. If it can be implemented as written, the new LEA implements the IEP.
4. If the IEP cannot be implemented as written, provides services comparable to those in the original LEA’s IEP and revises the IEP as soon as practicable. The department recommends the new LEA revise the IEP prior to the 11th day of becoming the child’s new LEA.