

# *Information* UPDATE



Wisconsin Department of Public Instruction/John T. Benson, State Superintendent/125 S. Webster St./P.O. Box 7841/ Madison, WI 53707-7841

**BULLETIN NO. 98.09**

**August 1998**

**TO:** District Administrators, CESA Administrators, CCDEB Administrators,  
Directors of Special Education and Pupil Services, and Other Interested Parties

**FROM:** Juanita S. Pawlisch, Ph.D., Assistant Superintendent  
Division for Learning Support: Equity and Advocacy

**SUBJECT:** Preschool Issues Related to the Individuals with Disabilities Education Act (IDEA)

The IDEA Amendments of 1997 and our new state law include some changes related to preschoolers with disabilities and clarify some ongoing issues in the field of early childhood special education. Please note that this information update bulletin is based on federal and state law and does not reference the proposed federal regulations.

**1. Now that IDEA allows states to use the category of developmental delay for three through nine year olds, will Wisconsin alter the eligibility criteria for significant developmental delay (SDD) by extending the age range?**

Wisconsin's current definition for SDD includes children ages three through five, or children below compulsory school attendance age. The wording "or below compulsory school attendance age" was included to ensure that eligible children who are five years old by September 1 would not have to be reevaluated when they turned six during the school year unless they were up for the three year reevaluation requirement. See Information Update Bulletin No. 97.01 for more information on this point of the definition. While it is possible for Wisconsin to extend the age range in the definition up to age nine, we do not have sufficient data on our current use of this category to determine if such an expansion is appropriate. Our child count data from 1996 and 1997 indicates that there has been a decrease in the percentage of preschoolers who are identified as learning disabled, which accounted for many of the children identified under SDD. It is too early to determine whether the use of SDD will have a long-term impact on the total number of young children identified. The Department of Public Instruction (DPI) will continue to study this issue and examine the impact of the use of this alternative category before recommending any changes.

**2. Under Wisconsin’s eligibility criteria for learning disabilities, what constitutes a severe discrepancy in the readiness areas when children have had less than two years of school?**

While there has been controversy over this topic, the individualized education program (IEP) team must determine whether achievement delays constitute a “severe discrepancy” for any child being evaluated, including children ages three through five. The current Wisconsin rule offers a guideline of a “one or more years delay” in the readiness areas to assist the team in determining whether a discrepancy exists in a child with fewer than two years of school. It is possible that a one year delay, particularly with children who have intellectual abilities below the average range, may not constitute a severe discrepancy.

Given the wide variation of normal development, paired with the limited amount of time most children ages three to first grade have had to develop and demonstrate readiness and academic achievement, the team should be prudent about the identification of learning disabilities in this age group. It is reasonable to anticipate that the prevalence of learning disabilities in children with fewer than two years of schooling should remain very low. (See Information Update Bulletin No. 96.04 for more information on the current learning disabilities criteria.)

**3. Are there changes to a local educational agency’s (LEA’s) responsibilities for child find activities for children in the Birth to 3 age range?**

The specific intent and practice, as dictated by federal and state law, have not changed. There continues to be overlapping child find responsibilities for LEAs and county Birth to 3 administrative agencies. LEAs continue to be responsible for maintaining a comprehensive child find system from birth through twenty-one years of age for identifying children and youth with disabilities. The county Birth to 3 administrative agencies continue to be responsible for ensuring that all children eligible for the Birth to 3 program are identified and located. LEAs are encouraged to enter into local agreements with county Birth to 3 administrative agencies to establish the manner in which a collaborative child find system can be maintained for their community. A state level interagency agreement is available to provide a model for these local agreements.

**4. Since school districts are now required to attend the transition planning conference, when invited by the Birth to 3 agency, how should LEAs document their participation and develop transition procedures?**

IDEA and Wisconsin’s state statutes now require both Birth to 3 programs and LEAs to have procedures to ensure a smooth and effective transition of eligible toddlers from early intervention programs under Part C (formerly Part H) to preschool special education programs under Part B. These procedures are designed to ensure that by the child’s third birthday an IEP has been developed and a free appropriate public education (FAPE) is made available for the child.

These preschool transition procedures include, at a minimum:

- Involvement of the child’s family;
- Birth to 3 program notification to the LEA;
- Birth to 3 agency convenes a transition planning conference at least 90 days before the child’s third birthday;
- With parental consent, LEA participation in the transition conference; and
- Establishment of a transition plan.

When a referral is initiated as a result of a transition planning conference, the LEA should document its participation by noting its attendance and the date of the conference on the referral form. A copy of the transition plan, which the Birth to 3 agency is required to develop, may be included in the child's file, or, if appropriate, the information may be used to develop a transition goal in the child's IEP.

**5. Are special education referrals always initiated as a result of a transition planning conference?**

No. The transition planning conference will not always result in a referral to the LEAs. The transition planning conference may be an opportunity to:

- share eligibility criteria and program options, and provide an explanation of the IEP team process.
- discuss the appropriateness of a referral, and, if uncertain, consider a developmental screening.
- discuss and plan the time frame for the submission of the written referral.
- complete a written referral, thereby initiating the 90 day timeline.
- obtain consent to evaluate and begin the IEP team review of existing data.

The new requirement for LEA participation in the transition planning conference brings renewed focus on the need for interagency agreements related to transition. These agreements can provide guidance for the agencies regarding the planning conferences and referrals. However, parents should be informed of their right to refer as well, and be aware of the Birth to 3 agency's role in this process. The Birth to 3 agency must refer the child for an evaluation, with parental consent, at least 90 days prior to the child's third birthday if it believes the child may have a disability as defined under Wisconsin law.

LEAs need to be aware that, if as a result of attending a transition planning conference, they have reason to suspect that a child is a child with a disability, they must ensure that a referral is initiated. When parents or service providers are not sure of the appropriateness of a referral, they may request a developmental screening from the LEA before moving ahead with a referral for an evaluation.

**6. When a three year old child is transitioning from a Birth to 3 agency, can a LEA develop an individualized family service plan (IFSP) instead of an IEP in Wisconsin?**

No. IDEA leaves this matter to each state to decide and Wisconsin law does not include the use of IFSPs in lieu of IEPs for three year olds. The IEP requirements apply to children ages three through twenty-one in this state.

With the reauthorization of IDEA and passage of Wisconsin's new statutes, many of the desirable concepts in the IFSP process will now be part of the IEP process. Our statute requires parent participation throughout the process and a more functional approach using measurable goals with objectives or benchmarks. Additionally, with parental permission, LEAs may expand the IEP to include content that parents coming from Birth to 3 programs may be familiar, such as:

- A statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's child with a disability.
- The identification of a service coordinator who will coordinate with other agencies and individuals.
- If appropriate, other community services that the child needs that are not required under the special education program, and the steps that will be taken to secure those services from other public or private sources.

**7. Can a LEA still elect to serve children with disabilities under three years of age, and, if so, what are the LEA requirements for providing services to these children?**

Yes. Some LEAs have traditionally served children with low incidence disabilities, such as hearing or vision impairments, under the age of three in a permissive manner with school board approval. Since the implementation of Part C, the county Birth to 3 administrative agencies have taken on the legislated responsibility for services to this population. Therefore, if a LEA decides to provide special education services to a child under the age of three, the LEA must collaborate with the county Birth to 3 administrative agency regarding the type of services to be provided. A LEA's decision to provide these services will be based on an interagency agreement with the county Birth to 3 administrative agency and/or an individual transition plan. Naturally, parental consent would also be required.

When a LEA elects to serve children under the age of three, the state special education categorical aid reimbursement would continue to be available for the salaries of the appropriately certified special education staff who serve this population. While these young students are not counted for state membership aid until they attain the age of three, the district may use its federal preschool grant dollars to serve two year old children with disabilities who will turn three during the school year.

**8. What are the LEA's responsibilities regarding the provision of special education for eligible children transitioning from Birth to 3 programs when they attain the age of three?**

The LEA must have an IEP in effect by the child's third birthday. LEAs and county Birth to 3 programs have found it helpful to enter into agreements which include timely referral procedures to ensure that the LEA has sufficient time to complete the IEP process prior to the child's third birthday. (Please see the response to question #4 for more information on the requirement related to transition planning.) For children with summer birthdays, the LEA must begin to implement the IEP during the summer if extended school year services are required. If the child does not require extended school year services, the beginning date of the IEP would be identified as the first day of school in the fall. If the child does not require extended school year services, and the child has a completed IEP with services designated for the beginning of school in the fall, the Birth to 3 program may decide to continue IFSP services until the start of the IEP.

**9. What if the child does not require extended school year services but would benefit from continued stimulation during the summer months?**

When one considers the recent research on brain development, parents and professionals should not overlook the window of opportunity the early years afford in preventing learning problems from emerging. Therefore, community resources that will assist in addressing the needs of all young children should be discussed with parents so they can be accessed not just during the summer but all year round. Many communities have library story hour and YMCA play groups or park and recreation swimming lessons and other activities for young children. Family members may also appreciate assistance in accessing toys and books and receiving suggestions for appropriate activities for the child.

**10. How will the requirements for reviewing existing evaluation data apply to children who are referred from other agencies, such as Birth to 3, Head Start, or child care?**

With parental consent, relevant information from agencies, such as Birth to 3, Head Start, or child care, is to be reviewed as part of a preschooler's initial evaluation. An IEP team will utilize this data, 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, to determine:

- whether the child has a particular category of disability;
- the present levels of performance and educational needs of the child;
- whether the child needs special education and related services;
- 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 IEP and to participate, as appropriate, in the general curriculum.

If the existing data are not sufficient to make these determinations, the team will determine what additional data are necessary. The question of whether or not the team should complete additional tests or other evaluation materials will depend on the team's professional judgment and a determination of whether or not the evaluation materials utilized by the referring agency meet the criteria of state statute.

The law requires that a "full and individual initial evaluation" be conducted before the initial provision of special education and related services to a child with a disability. It is critical to cover all areas related to the suspected disability, including vision and hearing, as appropriate. While existing data may be sufficient, if the team feels there are "missing pieces," it will need to address those and gather the necessary information to determine not only whether the child is a child with a disability but to include information related to enabling the preschool child to participate in appropriate activities. This will further assist the team in developing the IEP.

**11. Can Birth to 3, Head Start, or child care providers participate on the IEP team?**

Yes. Specifically, the new Wisconsin statutes eliminate the multidisciplinary team (M-team) construct and do not limit IEP team participation to school board employees. Several requirements in the statutes reinforce the involvement of these referring agencies in the IEP process.

- Participants on the IEP team include, at the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
- One activity of the IEP team evaluation process is a review of existing evaluation data which includes previous interventions and the effects of those interventions and current classroom-based assessments and observations by teachers and related services providers.
- A variety of assessment tools and strategies are to be used to gather relevant functional and developmental information; information related to enabling the child to participate in appropriate activities.

**12. Is it possible for more than one agency to deliver IEP services, e.g., Head Start and the public school?**

Yes. When children three to five years of age are receiving services from both Head Start and public school special education programs, both agencies can work together to develop and implement an IEP that is consistent with policies for Head Start and the LEA. Local interagency agreements can provide a framework for this type of collaboration. The LEA remains responsible for ensuring that FAPE is available for the child.

For children with disabilities under the age of three, LEAs, in collaboration with the Birth to 3 agency, may develop joint IEP/IFSPs as defined in local interagency agreements and consistent with state policies. In both cases, joint plans should specify those services that are necessary to ensure FAPE. Additionally, parental permission would be required to consolidate plans.

**13. Are LEAs required to include regular education teachers on IEP teams for three through five year olds when they operate programs for nondisabled children of the same age?**

If the child is kindergarten eligible, that is five by September 1, a kindergarten teacher must be a participant on the child's IEP team if the child is, or may be, participating in kindergarten. If the child is three or four years of age, and the LEA operates a preschool program for children of the same age, e.g., four year old kindergarten, Title I or LEA funded preschool program, the LEA must include a general early childhood\* teacher if the child is, or may be, participating in such a program.

\*The general early childhood license is also referred to as a PK-3 license. Prior to 1992, the nursery-kindergarten or kindergarten license was also available, and teachers holding one of those licenses would also meet this requirement.

**14. When the LEA does not operate any programs for nondisabled three and four year olds, who can address the requirement related to how the child's disability affects the child's involvement and progress in the general curriculum, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities?**

At least one of the team participants should have knowledge and expertise in recognizing developmental milestones, implementing developmentally appropriate practices and understanding the expectations of community preschool programs and the curricula of those settings. Both general early childhood and early childhood special education teachers could provide this information as the scope and sequence of normal early childhood development and knowledge of general early childhood curricula are included in their training.

At the discretion of the parent or the LEA, individuals from other settings who have knowledge or special expertise about the child, such as Head Start, preschool or daycare staff, could also address the child's involvement in the general curriculum when developing a preschooler's IEP. Also, it may be helpful to note that many LEAs have utilized preschool grant funds to identify and maintain ongoing linkages with programs available to all young children in their community through representation on early childhood councils or other community networks.

**15. Are LEAs required to develop general education programs for non-disabled three and four year olds to ensure that preschoolers with disabilities are educated with nondisabled peers?**

No. LEAs that do not operate programs for non-disabled preschool children are not required to initiate those programs solely to satisfy the requirements of placement in the least restrictive environment. However, districts are required to consider alternative methods to ensure that preschoolers with disabilities receive their educational programming in the least restrictive environment. Developing options which provide opportunities for interaction between preschoolers with disabilities and their nondisabled peers, even part-time, will assist LEAs in addressing this requirement for three and four year olds. For example, some districts are able to maintain preschoolers in community settings by supporting them with itinerant special education staff; others promote team teaching by co-locating early childhood special education classes with Head Start or other community preschools. In each case, the LEA must ensure that each child's placement is in the least restrictive environment in which the unique needs of that child can be met, based upon the child's IEP.

Questions related to the content of this bulletin may be directed to Jenny Lange, Early Childhood Special Education Consultant, at (608) 267-9172 or Jill Haglund, Early Intervention Consultant, at (608) 267-9625.

This information update can also be accessed through the Internet:

**<http://www.dpi.state.wi.us/dpi/dlsea/een/bulindex.html>**