



Information UPDATE

Wisconsin Department of Public Instruction/Elizabeth Burmaster, State Superintendent/P.O. Box 7841/ Madison, WI 53707-7841

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

FROM: Carolyn Stanford Taylor, Assistant State Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) for Young Children, Ages Three through Five Years, with Individualized Education Programs (IEPs).

[This replaces question 9 of Bulletin 00.09]

The Special Education Team has received many inquiries about a due process hearing decision, case No. LEA-08-004, related to the payment of tuition for a preschool child with a disability with a special education placement outside the local educational agency (LEA) program. The decision is posted on the department's web site at <http://dpi.wi.gov/sped/due-2008.html>. The following information is in response to the inquiries received.

1. What are the FAPE responsibilities of a local educational agency?

The LEA must provide FAPE in the LRE to children with disabilities ages 3 through 21.

2. What must be considered when determining the special education placement of preschool children (ages three through five years)?

A continuum of alternative special education placements must be available to meet the special education and related services needs of preschool children with disabilities, including:

- regular education: designed for and serving 50% or more children without disabilities (such as Head Start, child care, public or private kindergarten);
- special education: separate class, separate school, residential setting;
- home or service provider location; or
- any combination of the above.

LEAs that do not have a public program that can provide all of the IEP required services and supports for preschool children with disabilities must explore alternative methods to ensure the provision of FAPE in the LRE. LEAs that do not operate programs for nondisabled children are not required to initiate such programs solely to satisfy the requirements regarding special education placement in the LRE.

In each case, the LEA must ensure each child's special education placement is in the LRE in which the unique needs of that child can be met based on the child's IEP.

3. Who determines the special education placement?

In determining the special education placement of a preschool child with a disability, the LEA must ensure the placement decision; (1) is made by an IEP team, including the parents of the child, and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options; (2) is based upon the individual needs of the child; and (3) is the LRE in which FAPE can be delivered. A proper notice of special education placement must state a specific physical location where services will be provided to a student. A district cannot abdicate its responsibility of ensuring an IEP team, not solely the parents, determines the special education placement for a child with a disability.

4. Who is responsible for the cost when an IEP team determines a child with a disability will receive special education and related services outside the LEA program?

Whenever the LEA makes a special education placement outside the LEA program for the child to receive FAPE in the LRE, the placement must be at no cost to the parents. This includes the tuition cost and/or other fees non-LEA programs may charge for the time during which special education and related services are being delivered to the child.

If the child is in a non-LEA program for only the period necessary to deliver special education and related services, it must be at no cost to the parents.

If the parents choose to enroll the child in the non-LEA program for additional time, the parents are responsible for the tuition charged by the non-LEA program for any period of time beyond that which is necessary to deliver special education and related services.

5. Who can provide special education services?

Special education and related services must be provided by a person with the license appropriate to the specific special education or related services being delivered. The amount, frequency and duration of special education and related services to be provided by properly licensed staff must be specified in the IEP.

6. What is the manner in which the payment will be determined and to whom will it be made?

The LEA and the non-LEA program will determine the cost for the portion of time during which IEP services are delivered to the child. The LEA should reimburse the parent accordingly or otherwise ensure the IEP is implemented at no cost to the parent.

If you have questions regarding this information, please call the Special Education Team at (608) 266-1781.

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This information update can also be accessed through the Internet: <http://dpi.wi.gov/sped/bulindex.html>.