



Information UPDATE

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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

SUBJECT: Transfer Students

Under the Individuals with Disabilities Education Act (IDEA) and Wisconsin Statutes Chapter 115 and 118, a student with a disability who experiences a change of placement between Wisconsin local educational agencies (LEAs) or from a LEA in another state, is considered a transfer student. In Wisconsin, placement for students with disabilities is determined by a student's individualized education program (IEP) team at an IEP team meeting. The receiving LEA must ensure there is no undue interruption in the student's special education and related services and may not deny special education and related services to the student pending the development of a new IEP.

This bulletin does not apply to a student's change of placement due to a change in the continuum of placement options (environment) within the same school building or a disciplinary change of placement. Students who transfer into a Wisconsin LEA from another country are addressed in question 6, and students who change schools within the same LEA for reasons unrelated to their disability are addressed in question 11.

1. When must a LEA transfer a student's records?

Consistent with the Federal Education Rights and Privacy Act (FERPA) and IDEA, the receiving LEA must take reasonable steps to promptly obtain the student's records from the sending LEA, including the child's IEP and supporting documents and any other records relating to the provision of special education or related services to the child. The sending LEA must take reasonable steps to promptly respond to the request from the receiving LEA. Wisconsin law requires a LEA to transfer all pupil records related to a specific student within five working days if the LEA has received written notice from:

- the parent that the student intends to enroll in another LEA, tribal school, or private school;
- the other LEA, tribal school, or private school that the student has enrolled; **or**
- a court that the student has been placed in a secured correctional facility, child caring institution, or group home. Wis. Stat. §118.125(4). 34 CFR §300.323(g).

Public schools may not withhold pupil records for failure to pay fees or fines. Upon request, parents must be provided a copy of the records.

2. How long must a LEA maintain IEP records of a student who has transferred from the LEA?

Under federal law, recipients of federal funds must maintain certain records for financial or program audit purposes. These records include a student's special education evaluation reports, IEPs, and special education

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placement notices, which are considered behavioral records under Wisconsin law. The records must be kept for the current fiscal year plus four more years. DPI advises that when a student graduates or otherwise ceases to be enrolled, the LEA should obtain the permission of the parent or adult pupil to maintain these records for the current fiscal year plus four more years for audit purposes. If the parent requests destruction of the records or will not grant permission to maintain the records, then the Office of Special Education Programs (OSEP), U.S. Department of Education, recommends removing the personal identifiers from the records. Once personal identifiers are removed, the records are not pupil records and may be maintained until they are no longer needed to satisfy the federal record maintenance requirement.

3. What if a student transfers during a special education evaluation?

The receiving LEA must ensure that if a student transfers from one LEA to another in the same school year, the evaluation is coordinated between the sending and receiving LEAs as expeditiously as possible to ensure prompt completion of a full evaluation. Wis. Stat. §115.782(2)(f).

IDEA and Wisconsin law allow for an exception to the 60-day eligibility determination timeline when a student transfers from one LEA to another during a special education evaluation. In these limited situations, if parental consent for evaluation has been received but an eligibility determination has not yet been made, the 60-day timeline may be extended if the receiving LEA is making sufficient progress to ensure prompt completion and the parent and receiving LEA agree to a specific time in which the evaluation will be completed. Wis. Stat. §115.78(3)(b)(1.) and 34 C.F.R. §300.301(d)(2) and (e).

4. What is a LEA's responsibility when a student transfers between Wisconsin LEAs (intrastate transfers)?

When a student transfers between Wisconsin LEAs, the receiving LEA, in consultation with the parent, must provide a free appropriate public education (FAPE) without delay, including special education and related services comparable to those described in the most recent IEP developed by the sending LEA until:

- The receiving LEA adopts the child's IEP (including the evaluation and eligibility determination) from the previous LEA and provides the parents with an updated placement notice; **or**
- The receiving LEA develops, adopts, and implements a new IEP. The receiving LEA may pursue a reevaluation without informed consent if the receiving LEA has documented three reasonable attempts to obtain consent for evaluation and the parent fails to respond. Wis. Stat. §115.782(4)(b). The receiving LEA may implement the special education and related services in the new IEP after providing proper notice to the parent.

If the receiving LEA cannot implement all of the sending LEA's IEP, it must provide services comparable to those described in the child's IEP from the sending LEA and hold an IEP meeting to create its own IEP as soon as possible after the student enrolls. 34 CFR §300.323(e)

5. What is a LEA's responsibility when a student transfers from another state (interstate transfers)?

The federal regulations define state as each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas including the Territories of American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands, and the United States Virgin Islands.

When a Wisconsin LEA receives a transfer student from another state, the receiving LEA, in consultation with the parent, must provide FAPE without delay, including special education and related services comparable to services described in the child's IEP from the sending LEA until:

- The receiving LEA adopts the child's IEP (including the evaluation and eligibility determination) from the previous LEA and provides the parents with an updated placement notice; **or**
- The receiving LEA conducts an evaluation and develops, adopts, and implements a new IEP. When a student transfers from another state, the evaluation is considered an initial evaluation. The parent

must provide informed consent. The receiving LEA must make an eligibility determination and develop its own IEP as soon as possible after the student enrolls. The receiving LEA may implement the special education and related services in the new IEP after providing proper notice to the parent and obtaining the parent's consent for the initial provision of special education in Wisconsin. If the parent will not provide consent for the initial evaluation, the LEA may pursue the evaluation through mediation or a due process hearing. 34 CFR §§300.300(a), 300.506, 300.507-300.516.

6. What is a LEA's responsibility when a student transfers to a Wisconsin LEA from another country?

If a student transfers to a Wisconsin LEA from outside the United States or United States Territories, and LEA staff has reason to believe that a student is a student with a disability, staff shall refer the student for an evaluation to determine eligibility under the IDEA.

If a parent believes the student is a student with a disability, the receiving LEA must describe their referral process to the parent and assist the parent to make a written referral for evaluation under the IDEA. All applicable timelines apply to the evaluation, eligibility determination, IEP development, and placement determination.

7. What is a LEA's responsibility when it receives a foreign exchange student?

Foreign exchange students may attend school in a Wisconsin LEA without payment of tuition. If LEA staff has reason to believe that a student is a student with a disability, staff shall refer the student for an evaluation to determine eligibility under the IDEA. In addition, any other person may refer the child for evaluation under IDEA. All applicable timelines apply to the evaluation, eligibility determination, IEP development, and placement determination.

8. What is a LEA's responsibility for a student who has an expired IEP and is now enrolling or reenrolling?

A student with a disability may exit the public school system for a period of time for a variety of reasons including, but not limited to, private school attendance, homeschooling, or the student is not of compulsory school attendance age (children under age 6). LEAs should treat these students as either intrastate transfers if the child previously had a Wisconsin IEP, or interstate transfers if the child had an IEP from one of the 50 states or outlying territories. The LEAs must, in consultation with the parent, provide the student with FAPE, including special education and related services comparable to services described in the most recent IEP developed by the sending LEA. Depending on the amount of time that has passed, whether the student was found eligible for special education under Wisconsin law, and the circumstances that have occurred since the student's previous evaluation, the receiving LEA may choose to conduct its own updated evaluation and eligibility determination, and develop a new IEP. If the student had a previous IEP from a Wisconsin LEA, the evaluation is a reevaluation; if the previous IEP was from another state, it is an initial evaluation.

9. What are the procedures for adopting the sending LEA's evaluation or IEP?

The law does not prescribe a timeline or the process for adopting the evaluation, eligibility determination, or IEP of a transfer student. However, the receiving LEA must take these steps within a reasonable period of time to avoid any undue interruption in the provision of special education and related services. The method of adoption is left to local policy. The LEA must ensure any evaluation, eligibility determination, or IEP it adopts meets the requirements of state and federal law.

The IEP may be implemented the same day as the receiving LEA adopts the sending LEA's IEP as long as the parent is provided with the finalized IEP, eligibility determination, and placement decision after the IEP team meeting and decision to adopt the IEP.

10. What are the procedures if the sending LEA's evaluation or IEP is not going to be adopted?

If the receiving LEA decides not to adopt the evaluation and eligibility determination, it must, in consultation with the child's parents, continue to provide special education and related services comparable to the sending LEA's IEP until the receiving LEA conducts its own evaluation and eligibility determination and develops and implements its own IEP. If the student was previously evaluated for special education outside of Wisconsin, the evaluation is treated as an initial evaluation. If the student was previously evaluated by a Wisconsin LEA, the evaluation is a reevaluation; if the previous evaluation was from another state, it is an initial evaluation. While the typical evaluation, IEP, and placement timelines apply to these evaluations, DPI urges the receiving LEA to complete the process as soon as possible.

11. What is a LEA's responsibility when a student is changing schools within the same LEA for reasons unrelated to disability?

If the student changes schools because his or her residence changes to another attendance area within the LEA or if the student's program or school building closes, an IEP team meeting is not required if:

- The student's new school building is the building he or she would otherwise attend if not disabled; **and**
- The student's IEP can be implemented as written in the new school building.

The LEA must notify the parents of its decision to implement the current IEP in the new school building. The LEA may meet this obligation when a student changes schools by providing the parent a copy of the student's IEP and a notice of placement that meets the requirements of Wis. Stat. § 115.792(2).

12. How do the procedures for tracking a disciplinary change of placement apply to students who transfer during the school year?

Under IDEA, a LEA counts a disciplinary change of placement as an event occurring during a certain school year. Therefore, when a student transfers from one LEA to another within the same school year, the disciplinary requirements under IDEA do not restart. The receiving LEA must, to the best of its ability, analyze the student's attendance in the previous LEA and determine if and how many days of disciplinary change of placement have occurred. The number of subsequent disciplinary changes of placement in the new LEA must be added to the previous LEA's count to determine if the student has been removed for more than 10 days.

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This information update can also be accessed through the Internet:

http://sped.dpi.wi.gov/sped_bulindex