

*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. 00.03**

**May, 2000**

**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:** Age of Eligibility for Special Education

Over the past months, the Department as well as the Wisconsin Council of Administrators of Special Services has been sharing information with you about a potential change in the maximum age of eligibility for special education. **This is to inform you that the Governor has now signed that change into law.** Attached is a copy of the legislation that **restores** the maximum age of eligibility for special education to the standard in place before May 6, 1998. Under this legislation, a local education agency (LEA) must make available a free appropriate public education (FAPE) to children with disabilities who are at least 3 years old but not yet 21 years old and who have 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.

In other words, the right to FAPE for a child with a disability who has not yet graduated continues until the 21<sup>st</sup> birthday unless the child turns 21 during a school term. If the child turns 21 during a school term, the right to FAPE continues through the end of that school term. This is the same standard that Wisconsin traditionally used before the law was changed in May '98. **Note that "school term" is defined as the time beginning with the first school day and ending with the last school day that the LEA's schools are in operation for the attendance of pupils during the school year, other than for the operation of summer classes.** The new legislation first applies to pupils who become 21 years old on or after July 1, 2000.

*For the 2000-2001 school term, this means:*

- Students who turn 21 prior to July 1, 2000, have a right to FAPE until they reach age 22. For example, a student who turns 21 on May 15, 2000 will be entitled to receive FAPE until their 22<sup>nd</sup> birthday, May 15, 2001.
- Students who turn 21 on or after July 1, 2000, and prior to the start of the 2000-2001 school term become ineligible for special education on their 21<sup>st</sup> birthdays. For example, a student who turns 21 on July 28, 2000 will not be entitled to FAPE for the 2000-2001 school term.
- Students who turn 21 after July 1, 2000, and during the school term have a right to FAPE through the end on the school term in which they turn 21. For example a student who turns 21 on October 1, 2000 has a right to FAPE through the end of the 2000-2001 school term.

*For subsequent school terms:*

- Students who turn 21 during the period between the end of one school term and beginning of a new school term are not entitled to FAPE for the new school term.
- Students who turn 21 during a school term will have the right to FAPE through the end of the school term that they turn 21.

The Department has identified students who will be turning 21 this summer between July 1 and early September. Eligibility for special education services will end for those students on their 21<sup>st</sup> birthday this summer. We have contacted the local education agencies of residence to confirm that educational services for those students will not be terminated in an abrupt or unplanned manner as a result of this new legislation. Our communications with those LEAs confirm that the field has been aware of this potential law change and has been planning accordingly to address the needs of these students.

Questions regarding this Information Update Bulletin may be addressed to the Wisconsin Department of Public Instruction, Division for Learning Support: Equity and Advocacy, at 125 South Webster Street, P.O. Box 7841, Madison, Wisconsin 53707-7841, or by calling (608) 266-1781.

This information update can also be accessed through the Internet:

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

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1999 Assembly Bill 394

Date of enactment:  
Date of publication\*:

# 1999 WISCONSIN ACT

**AN ACT** to amend 115.76 (3) and 115.762 (4) of the statutes; relating to: the eligible ages for special education.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 115.76 (3) of the statutes is amended to read:

115.76 (3) "Child" means any person who is at least 3 years old but not yet ~~22~~ 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.

**SECTION 2.** 115.762 (4) of the statutes is amended to read:

115.762 (4) **LIMITATION.** Nothing in this subchapter requires that special education and related services be provided to a child with a disability who is at least 18 years old ~~but not yet 22 years old~~ and who, in the child's educational placement before his or her incarceration in a state prison, was not identified as a child with a disability or for whom an individualized education program was not developed.

**SECTION 3. Initial applicability.**

(1) This act first applies to pupils who become 21 years old on July 1 following the effective date of this subsection.

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\* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].