



Bulletin 22.01

SPECIAL EDUCATION INFORMATIONAL BULLETIN

February 2022

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

FROM: Paul Manriquez, Assistant State Superintendent
Division for Learning Support

SUBJECT: Out of District Private Placement

In most circumstances, students with disabilities attend their neighborhood schools alongside their peers without disabilities. However, on occasion, a student's individualized education program (IEP) team will determine that the student requires a placement in a more restrictive setting based on a student's unique disability-related needs. In rare circumstances, this may mean a setting outside of the school district, including schools or facilities that are privately owned and operated. The purpose of this document is to explain the application of Wisconsin's state law on the use of seclusion and restraint to private placements, outline applicable requirements under state and federal special education law, and to provide guidance for local educational agencies (LEAs) to consider when making out-of-district private placements so that they can continue to meet their obligation to provide each student a free, appropriate public education (FAPE).

The Individuals with Disabilities Education Act (IDEA) requires LEAs to ensure every student who is eligible for special education receives a FAPE, in part by developing and implementing an IEP for each student that is reasonably calculated to enable the student to make progress appropriate in light of the student's unique circumstances. Further, the IDEA requires LEAs to ensure students with disabilities have access and the opportunity to make progress in the general curriculum and participate in other age-appropriate activities. LEAs must make a continuum of placement options available to meet the needs of students with disabilities. This continuum must include regular education schools and classrooms, separate classes, separate schools, residential settings, homebound placements, and hospitals.

In Wisconsin, IEP teams determine each student's placement. The placement must be in the least restrictive environment (LRE) based on the student's IEP and as close as possible to the student's home. To the maximum extent appropriate, students with disabilities must be educated with their peers who do not have disabilities. Removal from the regular educational environment may occur only if the nature or severity of a student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Out-of-district private placements may significantly restrict students' access to their peers without disabilities. The IEP teams must determine that such a placement is appropriate and is the least restrictive option to meet

Wisconsin Department of Public Instruction
Jill K. Underly, PhD, State Superintendent
125 S. Webster Street, P.O. Box 7841
Madison, WI 53707-7841

Special Education Team
(608) 266-1781
dpisped@dpi.wi.gov
<https://dpi.wi.gov/sped>

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the student's needs. Such placements also often reduce students' opportunities to participate in extracurricular and non-curricular activities.

Ensuring each student receives a FAPE can be challenging for LEAs when students are in out-of-district private placements. LEAs must ensure students continue to be provided all of the instruction and services they require as it is inappropriate to restrict their access to FAPE as a result of an offsite location. A student's school day cannot be shortened through private placement unless it is required due to the student's unique disability-related needs. Offsite locations often lead to increased transportation expenses. If instruction will be provided by non-district staff, LEAs must ensure non-district staff possesses the expertise and training to implement all aspects of the student's IEP. Ongoing, consistent communication between the district and out-of-district placement staff should be maintained to ensure the student continues to access and make progress in the general curriculum and toward their IEP goals. Out-of-district private placements must comply with state law regulating the use of seclusion and physical restraint, and staff must continue to provide positive behavioral interventions and supports to address the student's behavioral needs. If the LEA determines these requirements are not being met, including the requirement to provide FAPE, the LEA must determine whether the private placement can make changes to meet these requirements and if not, the LEA must conduct an IEP team meeting to determine another placement. Below are some things to consider prior to and during these types of placements.

Staff Contact Information- Prior to placing the student in a private placement, staff responsibilities should be determined, and it should be clearly identified as to who will be providing the progress updates and class information, reporting incidents of seclusion and restraint, and notifying the LEA about scheduling IEP team meetings. This information should also be shared with the parent.

Expected Communications - When a school district's IEP team places a student in an out-of-district private placement, the LEA should have planned protocols to maintain regular communication with the out-of-district placement to ensure that the student's IEP is being implemented and that the student is continuing to make progress both toward their IEP goals and in the general education curriculum. This should include requiring regular updates on progress and making both planned and spontaneous on-site visits. Prior to placement, the LEA should inform the out-of-district private placement of the expected communication protocols. Some examples of what might be required include:

- **At Least Monthly Progress Updates to LEA:** Updates on each of the student's IEP goals as well as progress in the general education curriculum.
 - The progress reported on goals should match the measurements used in both the goal's baseline and level of attainment, so it is clear how much progress the student has made toward the annual goal.
 - If the student is not making expected progress, the LEA should conduct an IEP team meeting to address the lack of progress and determine if revisions are required so that the student can continue to make progress.
- **Student Schedule and course/class syllabus provided to LEA:** Provides information as to whether the student is being instructed in the general education curriculum and on track to earn the credits necessary for a regular high school diploma.
- **On-site visits/drop-in by LEA Special Education staff:** Ensures that services are being provided as specified by the student's IEP. Services include specially designed instruction, related services, and supplementary aids and supports.

Seclusion and Restraint Requirements - [Wisconsin's state law](#) on the use of seclusion and restraint applies to private placements when a student is placed by an LEA. Under this law, seclusion and restraint may only be used when the student's behavior presents a clear, present, and imminent risk to the physical safety of the student or others, and seclusion or restraint is the least restrictive intervention feasible. The placing LEA should ensure that the private placement is knowledgeable about this law and has procedures in place to meet the statutory requirements. The LEA should make it clear that it expects these requirements to be followed.

- **Procedures and Practices:** Prior to placement, the LEA should receive a copy of the procedures and practices regarding the use of seclusion and restraint. The LEA should review to determine they conform with state law.
- **Notification of Parent and Placing LEA:** The private placement is required to notify the parent and the placing LEA when there is an incident involving the use of seclusion and/or restraint as soon as possible but not later than one business day after the incident.
- **Written Report Provided to Parent and Placing LEA:** Within two business days after the incident, the administrator of a private placement or a designee must develop a written report.
 - The written report must describe the incident, including a description of the student's actions before, during, and after the incident.
 - The written report must also contain the name of the student, the date, time, and duration of the use of seclusion or physical restraint, and the names and titles of staff and any law enforcement officers present during the incident.
 - The LEA should review the private placement's written report to make sure it contains this required information.
 - The written report must be provided to the parent and the placing LEA within three business days after the incident through first-class mail, electronic transmission, or hand delivery.
 - The LEA should ensure that there are procedures in place so that the notification and written report requirements are met.
- **Annual Report:** The placing LEA should ensure that each year, by October 1, the private placement provides the LEA with the required data specified under section 118.305(4)(c) of the Wisconsin Statutes. This data must be reported annually to the Wisconsin Department of Public Instruction by December 1.
- **IEP Team Meeting Required after Second Incident.** Wisconsin state law requires that the second time seclusion or physical restraint is used on a student with a disability within the same school year, the student's IEP team must meet as soon as practicable and no later than 10 days after the incident. The IEP team must review the student's IEP and revise it as necessary to ensure that the IEP includes appropriate positive behavioral interventions and supports and other strategies to address the concerning behavior and that the interventions, supports, and strategies included are based on a functional behavioral assessment of the behavior.
 - The LEA should make it clear in its expectations that the LEA must be promptly notified so that an IEP team meeting can be conducted within 10 days of the incident and all required participants, including parents and district staff, are able to attend. The LEA should ensure that there are procedures in place to meet this meeting requirement.

Transportation- As the agency responsible for providing FAPE, the placing LEA must ensure that transportation is provided as specified in the student's IEP.

- Prior to placement, the LEA and the private placement should agree on how transportation will be provided.
- The LEA may agree to provide the transportation, or the LEA may enter into a transportation agreement with the private placement. This should be clearly specified and agreed upon prior to placement.
- The transportation must be provided at no cost to the student's parents.

Transitioning back to the LEA- Prior to placing the student in a private placement, the IEP team should determine a plan for transitioning the student back to the LEA. This might include more frequent IEP team meetings, frequent progress monitoring, and an understanding of the conditions for return. Under most circumstances, the goal should be for the student to return to a less restrictive placement as soon as possible given the student's unique needs, and generally, out-of-district private placements should be in place for a limited amount of time.

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<https://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins>

For questions about this information, contact [DPI Special Education Team](#) (608) 266-1781.