



Information UPDATE

Wisconsin Department of Public Instruction/Tony Evers, 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 Preschoolers (age 3-5) with Disabilities

The Individuals with Disabilities Education Act (IDEA) requires young children with disabilities to be educated to the maximum extent appropriate with children who are nondisabled and ensures access to the general curriculum or age-appropriate activities so children with disabilities can meet the educational standards that apply to all children. Each local education agency (LEA) must ensure a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. This bulletin clarifies the provision of free appropriate public education (FAPE) in the least restrictive environment (LRE) for preschoolers (age 3-5) with disabilities.

FEDERAL REGULATIONS

1. Do the federal regulations regarding FAPE and LRE apply to preschoolers (age 3-5) with disabilities?

Yes. FAPE in the LRE provision applies to all children, ages three through twenty-one.

2. What do the federal regulations require of LEAs when determining placement in the LRE for preschoolers (age 3-5) with disabilities?

A continuum of alternative placements must be available to meet the special education and related services needs of preschool children with disabilities and to enable LEAs to make placements in the LRE. In determining the educational placement of a preschool child with a disability, LEAs must ensure the placement decision is made by the individualized education program (IEP) team, is based on the child's IEP, and is as close as possible to the child's home. To the maximum extent appropriate, children with disabilities are educated with children who are nondisabled.

CONTINUUM OF PLACEMENT OPTIONS

3. What must a LEA's continuum of placement options for preschoolers (age 3-5) with disabilities include?

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.

While each LEA must have a continuum of service options, the continuum may look different in each community based on the needs of the children identified through the IEP team process. A continuum of services and settings could include options such as:

- Itinerant services in regular education settings: Special education personnel deliver IEP services or consult with personnel to implement the IEP in regular education settings in the community or school district. For instance, in the community, a child might receive services in the child's home, a state licensed child care center, a Head Start setting, a LEA-sponsored play group, a YMCA program, or a public library program. In a LEA, a child might receive services in a four-year-old kindergarten or Title I preschool program.
- Special education services in regular education settings: Special education personnel deliver IEP services for part of the day, or for the entire program time, in a regular education setting. These services are more intensive than itinerant services as the special education teacher works with the regular education teacher to implement IEP services so the child may benefit from the general curriculum.
- Co-location of special and regular education: The district special education program and special education staff are co-located within a regular education setting. The district self-contained classroom is typically a separate classroom in a community site with opportunities for inclusion in the regular education setting.
- Early childhood self-contained special education: A classroom designed for children for whom the nature and severity of their disability requires this setting in order for the child to receive FAPE.

If the LEA operates an early childhood special education program for students with disabilities, the IEP team may place the child in that program only if the team determines the nature or severity of the child's disability is such that education with children who do not have disabilities, even with the use of supplementary aids and services, cannot be achieved satisfactorily. The LEA must ensure each child with a disability has the supplementary aids and services determined by the child's IEP team to be necessary for the child to participate in the regular education classroom and curriculum. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the environment that he or she would attend if nondisabled.

Additional community examples are described at <http://www.dpi.wi.gov/ec/ecintwha.html>.

4. When a LEA does not operate regular education programs for preschoolers (age 3-5) with disabilities, what is the LEA's obligation to satisfy IDEA's requirements of placement in the LRE?

LEAs that do not have regular education programs for preschool age children are not required to initiate those programs solely to satisfy the requirements of placement in the LRE. 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.

PLACEMENT DETERMINATION

5. Who determines special education placement?

The IEP team determines the special education placement of the preschool child with a disability. The team is made up of:

- Parents of the child or legal guardian(s). Parents or legal guardian(s) are equal participants with the school staff on the IEP team;
- A regular education teacher of the child if the child is or may be participating in the regular education environment;
- A special education teacher (or provider, if appropriate) of the child;
- A LEA representative who is qualified to provide, or supervise, special education; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of the LEA's resources;
- Someone who can explain the instructional implications of assessment results;
- Other people invited by the parent or by the LEA who have knowledge or special expertise regarding the child;
- When a child is suspected or known to need occupational therapy, physical therapy, or speech and language therapy, a therapist in each respective area of service; and
- If a child is attending school through open enrollment or a tuition waiver, at least one person designated by the resident LEA who has knowledge or special expertise about the child.

If the LEA provides regular education preschool or kindergarten services to nondisabled children of the child's age and the child is or may be participating in the regular education environment, the child's regular education teacher must participate in the IEP team meeting. If the LEA does not provide preschool services to nondisabled children of the child's age, the LEA can designate an individual to serve as the regular education teacher on the IEP team. The individual must be licensed to teach nondisabled children of the same age (such as a licensed child care center, Head Start, or non-district employed preschool teacher). If the individual is not an employee of the LEA, the parent must give the district permission to invite this individual to the IEP team meeting.

If the IEP team is considering placement in a community program (Head Start or state licensed child care), a representative of the community program should be included as a member of the IEP team. Parental permission is needed to invite this individual to the IEP team meeting.

The LEA cannot abdicate its responsibility of ensuring the IEP team, not solely the parents, determines the special education placement for a child with a disability.

6. What are the LEA's responsibilities during the IEP meeting regarding LRE?

LEAs are responsible for:

- Explaining to parents what LRE means;
- Consideration of the continuum of placement options;
- Ensuring that parents are involved in determining LRE;
- As an IEP team, discussing whether services can be delivered in the regular classroom or if a more restrictive environment is needed;
- Determining the extent to which the child is involved in the general education curriculum and age-appropriate activities;
- Describing in the IEP how much time the child will be learning in settings with nondisabled children; and
- Obtaining the parent's informed, written consent for the child's placement.

7. What questions should the IEP team consider as they determine the placement setting(s) for the delivery of services to a preschooler (age 3-5) with a disability?

Once the child's IEP is developed, the discussion about placement may begin with these questions:

- Where does the child usually spend time during the day? Do any of the settings include typically developing peers?
- Where are typically developing children this age in this community?
- With the use of supplementary aids and services, can the child's IEP be implemented in the child's current setting(s) and/or other settings with same age peers?
- What settings for service delivery will meet the child's needs?
- What settings have been considered and rejected? Document this consideration in the IEP.

8. May the special education placement be the community setting where a child was enrolled prior to the IEP?

Yes. The IEP team may determine the appropriate placement for a child to receive special education services is in the regulated child care facility and/or the Head Start setting where the child was enrolled prior to the IEP.

9. How is placement documented in the IEP?

A proper notice of special education placement must state a specific physical location where services will be provided to the child. The IEP should identify the school or other facility where the child's IEP will be implemented. If the child's IEP will be implemented in a public school, the name of the public school and the LEA within which it is located should be included. If the child's IEP will be implemented in another facility, the facility and the city in which it is located should be identified. If the LEA does not provide regular education programs for preschool children with disabilities, the LEA should document consideration of the child's current age-appropriate settings for the delivery of special education and related services.

10. What happens if the parent does not agree with the IEP team's determination of placement?

If the IEP team makes a placement offer and the parent does not agree, the parent may reject the placement and the LEA is not required to provide FAPE to the child.

If the parents believe the IEP team did not develop a program which provided their child with FAPE or if they believe the IEP team did not properly determine their child's placement, the parents may request mediation, may file a complaint with the Department of Public Instruction (DPI), or may file a due process hearing complaint. If a hearing officer determines the child should be placed in the regulated child care setting selected by the parents in order for the child to receive FAPE in the LRE, the district must reimburse the parent for the cost of the special education program.

FOUR-YEAR-OLD KINDERGARTEN

11. What opportunities are created for four-year-olds with disabilities when LEAs provide four-year-old kindergarten (4K)?

As LEAs expand the range of regular education settings available to young children with disabilities, four-year-old kindergarten is a placement being considered for many four-year-old children with disabilities. It is important to provide the special education and related services and support so the four-year-old kindergarten program can accommodate the needs of a diverse population of learners. Designing general education programs in a way that allows all children to be successful will promote the inclusion of children with disabilities. Providing developmentally and individually appropriate experiences by qualified staff in environments that are specifically designed for young children are critical elements in designing inclusive programs.

The type and amount of support is dictated by the needs and strengths outlined in the child's IEP. These service decisions are child-driven based upon the IEP, not based upon the disability of the child. Sometimes, more than one setting may be used to provide special education and related services. Regardless of the actual strategy, collaborative communication skills and flexibility are crucial to the success of these services.

12. With 4K becoming a more frequently used general education setting, may the LEA unilaterally place all three-year-olds with disabilities in a 4K program?

No, the LEA cannot have a policy or practice to place all three year-olds with disabilities in a 4K program. Placement is a decision made by an IEP team based on the unique needs of the child.

PARENTALLY PLACED PRIVATE SCHOOL STUDENTS

13. Do the IDEA requirements for parentally placed private school students with disabilities apply to preschoolers (age 3-5) with disabilities enrolled in private schools?

Wisconsin Statutes section 115.01(2) defines the elementary grades to include four- and five-year-old kindergarten. Therefore, the IDEA requirements for parentally placed private school students with disabilities apply to students enrolled in 4K or 5K programs in private schools. The child's 4K or 5K program must be part of a sequential curriculum that progresses through the grades. The private school institution must meet the definition of a private school in Wisconsin Statutes section 118.165. If a child with a disability, age three through five, is enrolled by their parents in a private school 4K or 5K program, the LEA where the private school is located is responsible for child find, including evaluation, and equitable participation. If the LEA determines that the student will receive services, the district must develop a Services Plan. See Question 15 for information about Services Plans.

If the student is not parentally placed in a 4K or 5K private elementary school program, the child continues to have an individual entitlement to FAPE from their school district of residence.

14. Do the IDEA requirements for parentally placed private school students with disabilities apply to children because they attend child care, preschools, or Head Start programs?

The IDEA requirements for parentally placed private school students only apply to children attending private schools. Section 118.165(1), Wis. Stats., provides the definition of a private school in Wisconsin <http://dpi.wi.gov/sms/doc/plain118.doc>. A private school program must meet all the criteria in the statute. Generally, child care facilities, preschools, and Head Start programs do not meet all the criteria. Consequently, IDEA requirements for parentally placed private school students do not apply to them.

15. When should the LEA develop a “Services Plan,” rather than an IEP, for a young child with a disability who is parentally placed in a private school?

After evaluating a child and determining the child is eligible for special education, the LEA where the private school is located should explain to the parents what services are available if the student attends the private school. If the child remains in the private school and is designated by the LEA to receive services, the district must develop a Services Plan for the student. Also, the LEA must inform the parents that the child’s LEA of residence is responsible to provide the child FAPE if the student leaves the private school.

A Services Plan must be in place before a parentally placed private school student with a disability receives services. The plan describes the specific special education and/or related services the student will receive from the LEA in light of the services the LEA has determined it will make available to children with disabilities attending private schools located in the LEA.

To the extent appropriate, a Services Plan includes IEP elements at section 34 CFR 300.320. Other IEP elements may be included, depending on the services the LEA will provide to the student. The LEA must follow the requirements for IEPs at sections 34 CFR 300.321-324 when developing, reviewing, and revising a services plan. For more information, see Questions 34-37 in Information Update Bulletin 06.03, “Parentally Placed Private School Children with Disabilities.” <http://dpi.wi.gov/sped/bul06-03.html#q34>

FAPE AND FUNDING

16. Who is responsible for the cost of child care when an IEP team determines a child with a disability (age 3-5) will receive special education and related services in non-district program?

Whenever the IEP team makes a special education placement outside the LEA for the child to receive FAPE in the LRE, the placement must be at no cost to the parents. This includes the cost of child care non-district 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-district 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-district program for additional time, the parents are responsible for the cost of child care charged by the non-district program for any period of time beyond that which is necessary to deliver special education and related services.

17. When it is determined a preschooler (age 3-5) with a disability will receive special education and related services in a non-district program, what is the manner in which the payment will be determined and to whom it will be paid?

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

LEAs should make arrangements for reimbursement of the cost of child care with the non-district program. In making this decision, LEAs should consider administrative structures when more than one child is served in the program (i.e., sibling discount), administrative structures that verify the child's enrollment status (i.e., tuition rate for full-time or part-time), and if the reimbursement would be considered "income" for non-district programs that are receiving reimbursement from other government programs such as Wisconsin Shares Child Care Subsidy.

18. How is reimbursement for the cost of care defined when a child is enrolled in the Wisconsin Shares Child Care Subsidy Program (WI Shares)?

The WI Shares program authorizes reimbursement of the cost of child care based on family income and hours of care authorized. Families have a responsibility to pay costs that exceed the WI Shares reimbursement amount. Reimbursement for FAPE by the LEA would be applied to the family's portion of the cost of care only. The LEA and non-district program will determine the family's portion of the cost of care based on the family's WI Shares child care authorization. Payment by the LEA for the cost of care must be made to the non-district program.

19. Is it ever appropriate for the LEA to provide special education services to a preschooler (age 3-5) at a regulated child care program, but not be responsible for the cost of child care?

Yes. There may be circumstances when an IEP team determines a specific service needed by a child could be provided in a variety of settings and would not require interaction with nondisabled peers, assuming all other Part B requirements of IDEA are met.

In those instances where the IEP team has determined provision of that service is all that is required to provide FAPE to the child, the public agency is only responsible for providing the required service and that service could be provided in a variety of settings, including at the child's regulated child care program. In these cases, the LEA would not be responsible for the cost of child care, but they may need to contract with the program for use of rooms used for "pull-out programs."

However, if the team determines, based on the child's IEP, that in addition to what you define as stand-alone services, the child needs interaction with nondisabled peers, the LEA is responsible for making available an appropriate program in the least restrictive environment, and ensuring that tuition costs associated with that placement for the period of time necessary to implement the IEP are at no cost to parents.

20. Who is responsible for the cost of child care when a preschooler (age 3-5) with a disability will receive services in a private school?

There are several considerations for the payment for special education services in private schools. These are defined in the Private School Bulletin (06.03) which can be found at <http://dpi.wi.gov/sped/bulindex.html>.

21. If a child is enrolled in 4K and receives special education, does the LEA receive funding for both?

Yes, when a child is enrolled in 4K and receives special education services, the LEA receives funding from two different funding sources. The child is claimed as a 4K student for equalization aid and revenue limit purposes. In addition, the child is also reported as a student who receives special education services under the IDEA October 1 child count.

IEP SERVICES

22. 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.

23. What if the child needs transportation to access the IEP services?

Transportation must be included in the IEP as a related service and must be provided at no cost to the parent if the IEP team determines that transportation is necessary for the child to benefit from special education services. These are defined in the Transportation Bulletin (09.02) that can be found at <http://dpi.wi.gov/sped/bulindex.html>.

EDUCATIONAL ENVIRONMENT DATA

24. What educational environment data is collected by the DPI?

Educational environment data, required by the federal Office of Special Education Programs, is collected electronically via the Individual Student Enrollment System (ISES) by the Department of Public Instruction (DPI) as part of the annual October 1 Child Count. Each LEA reports whether a preschooler (age 3-5) is attending a regular early childhood program, receiving the majority of special education and related services in the regular early childhood program, or is attending a separate special education class, separate school, or residential facility. This data is reported by DPI to the Office of Special Education Programs and is posted on the DPI website at <http://dpi.wi.gov/sped/lpp-profile.html>.

STRATEGIES FOR CHILDREN IN REGULAR EDUCATION SETTINGS

25. What types of strategies can be used by early childhood special education teachers to provide services to preschoolers (age 3-5) with disabilities in early childhood regular education settings?

LEAs may provide services, including supplementary aids and services or program modifications or supports, in early childhood regular education settings in a variety of ways.

Professional development that addresses collaborative consultation and teaching as a team is critical to developing the necessary framework for inclusive practices and the implementation of curricular strategies that respond to diversity in the classroom. Agreement on teaching approaches such as cooperative learning, developmentally appropriate practices, and individualized or differentiated instruction are important to the

success of the collaboration. Many LEAs organize and support inclusive practices and diversity in the classroom through the LEA's plan for a comprehensive system of personnel development.

A summary of strategies that can be used by early childhood special education teachers to provide services to young children with disabilities in early childhood regular education settings is provided below. More suggestions are available at www.preschooleoptions.org.

Observation and Feedback

- Identify strategies for ongoing assessment/evaluation of child's progress.
- Assess the environment and routine for potential modifications.
- Provide feedback regarding program modifications and expectations.
- Demonstrate task analysis.

Direct Classroom Instruction

- Target children for instruction in small groups.
- One-to-one instruction for individual children.
- Assist children in generalizing skills to new or different situations and settings.
- Acquire and adapt materials or specialized equipment.

Consultation

- Assist in organizing learning environments that promote the child's acquisition of skills.
- Provide information regarding the child's disability.
- Help teachers or caregivers identify daily routines in which targeted skills can be acquired.
- Share effective communication skills.
- Share effective teaching strategies.

Coordination

- Assist in accessing other resources or other services for parents or providers.
- Organize formal training for child care providers, preschool/kindergarten teachers, and parents.
- Coordinate a resource loan library of informational videos, parent materials, and other types of current literature.
- Design or facilitate parent support/networking/involvement systems.
- Transition children to school-based programs (i.e., kindergarten) as appropriate.
- Facilitate communication between school personnel and community-based staff.

If you have questions about the information in this bulletin, contact the Early Childhood Special Education Consultant, Erin Arango-Escalante at 608-267-9172 or erin.arango-escalante@dpi.wi.gov.

This information update can also be accessed through the Internet:

<http://dpi.wi.gov/sped/bulindex.html>