Model Local Educational Agency

Special Education

Policies and Procedures

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Jill K. Underly, PhD, State Superintendent
Wisconsin Department of Public Instruction

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Model Local Educational Agency Special Education

Policies and Procedures

Preface

As a condition of funding under the Individuals with Disabilities Education Act (IDEA), local educational agencies are required to establish written policies and procedures for implementing federal special education laws. In addition, Wisconsin law requires local educational agencies to establish written policies and procedures for implementing state and federal special education requirements. *Model Local Educational Agency Special Education Policies and Procedures* has been developed to help local educational agencies meet their obligation to establish and implement special education requirements. A local educational agency may establish special education requirements by adopting the model policies and procedures. The document may also be used as a reference tool and for staff development activities to promote understanding of and compliance with special education requirements.

The state special education statutes, subchapter V, chapter 115, Wis. Stats., incorporate the statutory provisions of Part B of the IDEA. Local educational agencies in Wisconsin must also comply with IDEA's regulations. Therefore, the model policies and procedures are derived primarily from Wisconsin special education statutes and IDEA regulations. A small number of policies and procedures are derived from Wisconsin special education rules, chapter PI 11, Wis. Admin. Code. The underlying law can be found by using the following tools:

1. the table of contents to the IDEA Regulations found at 34 CFR Part 300, Vol. 71 Federal Register, No. 156 (August 14, 2006);

2. the table of contents of the state special education statute, Subchapter V, Chapter 115, Wis. Stats.; and

3. the table of contents for the state special education rules, Chapter PI 11, Wis. Admin. Code.

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Definitions

For the purpose of these policies, the following definitions apply:

- "Assistive technology device" means any item, piece of equipment or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. 34 CFR § 300.5**.**
- "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device, including all of the following:
    - evaluating the needs of the child, including a functional evaluation of the child in the child's customary environment;
    - purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
    - selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
    - coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitative plans and programs;
    - training or technical assistance for a child with a disability or, if appropriate, the child's family; and
    - training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. 34 CFR § 300.6.
- "Business day" means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business day. 34 CFR § 300.11.
- "Charter school" means a school under contract with a school board under Wis. Stat. § 118.40, or with one of the entities under Wis. Stat. § 118.40(2)(2r)(b), or a school established and operated by one of the entities under Wis. Stat. §§ 118.40(2r)(b), 115.001(1).
- "Child" means any person who is at least three years old but not yet 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

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not graduated from high school, and includes a child who is homeless, a child who is a ward of the state, county, or child welfare agency, and a child who is attending a private school. Wis. Stat. § 115.76(3).

- "Child with a disability" means a child who, by reason of any of the following, needs special education and related services:
    - autism;
    - blind and visually impaired;
    - deaf and hard of hearing;
    - deafblind;
    - emotional behavioral disability;
    - intellectual disabilities;
    - orthopedic impairments;
    - other health impairments;
    - significant developmental delay;
    - specific learning disabilities;
    - speech or language impairments; or
    - traumatic brain injury.

  If the local educational agency determines through an appropriate evaluation that a child has one of the impairments listed above but only needs a related service and not special education, the child is not a child with a disability. "Child with a disability" may, at the discretion of the local educational agency and consistent with Department of Public Instruction rules, include a child who, by reason of his or her significant developmental delay, needs special education and related services. 34 CFR § 300.8; Wis. Stat. § 115.76(5).

- "Consent" means:
    - the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
    - the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes

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that activity and lists the records (if any) that will be released and to whom; and

- the parent also understands the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

34 CFR § 300.9.

- "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substance Act, 21 U.S.C. § 812(c). 34 CFR § 300.530(i)(1).

- “Core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civic and government, economics, arts, history, and geography. 34 CFR § 300.10.

- "Day" means calendar day unless otherwise indicated as business day or school day. 34 CFR § 300.11.

- "Destruction," as used in the section on confidentiality in these policies, means physical destruction or removal of personal identifiers from information so the information is no longer personally identifiable. 34 CFR § 300.611(a).

- "Division" means the Division for Learning Support: Equity and Advocacy in the Department of Public Instruction. Wis. Stat. § 115.76(6).

- "Education records" means the type of records covered under the definition of "education records" set forth in the regulations implementing the Family Educational Rights and Privacy Act of 1974. See Appendix; 34 CFR § 300.611(b).

- “Elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. State law defines elementary grades as including K4-8th grade. 34 CFR § 300.13; Wis. Stat. § 115.01(2).

- “Equipment” means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents; and other related materials. 34 CFR § 300.14.

- "Evaluation" means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services the child needs. 34 CFR § 300.15.

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- "Extended school year services" means special education and related services that are provided to a child with a disability and meet the standards of the State of Wisconsin. These services are provided beyond the normal school year of the local educational agency, in accordance with the individualized education program (IEP), and at no cost to the parents of the child. 30 CFR § 300.106(b).

- "Free appropriate public education" means special education and related services that are provided at public expense and under public supervision and direction, and without charge, meet the standards of the Department of Public Instruction, include an appropriate preschool, elementary or secondary school education; and are provided in conformity with an IEP. 30 CFR § 300.17; Wis. Stat. § 115.76(7).

- "General curriculum" means the same curriculum as for nondisabled children. 34 CFR § 300.320(a)(1)(i).

- "Hearing officer" means an independent examiner appointed to conduct due process hearings under Wis. Stat. § 115.80. Wis. Stat. § 115.76(8).

- "Highly Qualified Teacher" means that a person has met the Department of Public Instruction's approved or recognized certification, licensing, registration in which he/she is providing special education or related services, consistent with provision 34 CFR § 300.18.

- "Homeless children" has the meaning given the term *homeless children and youths* in section 725 of the McKinney-Vento Homeless Assistance Act 42 U.S.C. § 11434(a), as amended, 42 U.S.C. § 11431 *et seq.* See Appendix; 34 CFR § 300.19.

- "Illegal drug" means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under federal law. 34 CFR § 300.530(i)(2).

- "Include" means that the items named are not all of the possible items that are covered whether like or unlike the ones named. 34 CFR § 300.20.

- "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. 34 CFR § 300.502.

- "Individualized education program" (IEP) means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Wis. Stat. § 115.787, and 34 CFR §§ 330.320 through 300.324. 34 CFR § 300.22; Wis. Stat. § 115.76(9).

- "IEP Team" means a group of individuals described in Wis. Stat. § 115.78 that is responsible for evaluating the child to determine the child's eligibility or continued

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eligibility for special education and related services and the educational needs of the child; developing, reviewing, or revising an IEP for the child; and determining the special education placement for the child. 34 CFR § 300.23; Wis. Stat. § 115.78.

- “Limited English Proficiency” has the meaning given the term in section 9101 (25) of the Elementary and Secondary Education Act (ESEA).

- "Local educational agency," except as otherwise provided, means:

    - the school district in which the child with a disability resides,

    - when the child attends a nonresident school district under Wis. Stat. §§ 118.51 (open enrollment) or 121.84(1)(a) or (4) (tuition waiver), the district of attendance;

    - the Department of Health and Family Services if the child with a disability resides in an institution or facility operated by the Department of Health and Family Services; or

    - the Department of Corrections if the child with a disability resides in a Type 1 secured correctional facility, as defined in Wis. Stat. § 938.02(19), or a Type 1 prison, as defined in Wis. Stat. § 301.01(5).

  Wis. Stat. § 115.76(10).

- "Native language," for individuals with limited English proficiency, means the language normally used by that individual. For children with limited English proficiency, the term means the language normally used by the parents of the child, except that in all direct contact with a child (including evaluation of the child), the term means the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). 34 CFR § 300.29; Wis. Stat. §. 115.76(11).

- "Nonacademic and extracurricular services and activities" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities and employment by the public agency and assistance in making outside employment available. 34 CFR § 300.107.

- “Parent" means any of the following:

    - a biological parent;

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- a husband who has consented to the artificial insemination of his wife under Wis. Stat. § 891.40;
- a male who is presumed to be the child's father under Wis. Stat. § 891.41;
- a male who has been adjudicated the child's father under subchapter VIII of chapter 48, under subchapter IIX of chapter 767, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state;
- an adoptive parent;
- a legal guardian;
- a person acting as a parent of a child with whom the child lives;
- a person appointed as a sustaining parent under Wis. Stat. § 48.428;
- a person assigned as a surrogate parent under Wis. Stat. § 115.792(1)(a)2; and
- a foster parent, if the right and responsibility of all of the aforementioned individuals to make educational decisions concerning the child has been extinguished by termination of parental rights, by transfer of guardianship or legal custody or by other court order; the foster parent has an ongoing, long-term parental relationship with the child; the foster parent is willing to make educational decisions required of parents under special education law; and the foster parent has no interests that would conflict with the interests of the child.

The biological or adoptive parent, when attempting to act as a parent of the child, must be presumed to be the parent unless that person does not have legal authority to make educational decisions for the child. 34 CFR § 300.30(b).

"Parent" does not include any person whose parental rights have been terminated; the state, county, or a child welfare agency if a child was made a ward of the state, county, or child welfare agency under chapter 54 or 880 or if a child has been placed in the legal custody or guardianship of the state, county, or a child welfare agency under chapter 48 or chapter 767; or an American Indian tribal agency if the child was made a ward of the agency or placed in the legal custody or guardianship of the agency. 34 CFR § 300.30; Wis. Stat. § 115.76(12).

"Person acting as a parent of a child" means a relative of the child or a private individual allowed to act as a parent of a child by the child's biological or adoptive parents or guardian, and includes the child's grandparent, neighbor, friend, or private individual caring for the child with the explicit or tacit approval of the child's biological or adoptive parents or guardian. "Person acting as a parent of a child"

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does not include any person that receives public funds to care for the child if such funds exceed the cost of such care. 34 CFR § 300.30(a)(4); Wis. Stat. § 115.76(13).

- "Participating agency," as used in the section on *Confidentiality of Information* in these policies, means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under the Individuals with Disabilities Education Act. 34 CFR § 300.611(c).

- "Personally identifiable" means information that includes the name of the child, the child's parent or other family member; the address of the child; a personal identifier such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. 34 CFR § 300.32.

- "Parentally-placed private school children with disabilities" are children with disabilities enrolled by their parents in private schools or facilities, including religious schools or facilities that meet the definition of elementary school or secondary school, other than children with disabilities placed or referred to private schools by public agencies. 34 CFR § 300.130.

- "Public Agency" includes the State Educational Agency, Local Educational Agency, Cooperative Educational Service Agency (CESA), charter schools operating under Wis. Stat. § 118.40(2r), county children with disabilities education board, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. 34 CFR § 300.33.

- "Pupil Records" means all records relating to individual pupils maintained by a school but does not include:

    - notes or records maintained for personal use by a teacher or other person to be licensed if such records or notes are not available to others;

    - records necessary for, and available only to persons involved in, the psychological treatment of a pupil; and

    - law enforcement unit records.

  Wis. Stat. § 118.125(1)(d).

- "Record" means any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. Wis. Stat. § 118.125(1)(e).

- "Related services" means transportation and such developmental, corrective and other supportive services (including speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; school

health services; school nursing services designed to enable a child with a disability to receive a free appropriate public education as described in the child's IEP; parent counseling and training; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluative purposes only; and the early identification and assessment of disabilities in children) as may be required to assist a child with a disability to benefit from special education. "Related services" does not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of such a device. Nothing in this definition limits the rights of a child with a surgically implanted device to receive related services as determined by the IEP Team to be necessary, limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly. 34 CFR § 300.34; Wis. Stat. § 115.76(14).

In this definition:

- "Audiology" includes:
  - identification of children with hearing loss;
  - determination of the range, nature, and degree of hearing loss including referral for medical or other professional attention for the habilitation of hearing;
  - provision of habilitative activities such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation and speech conservation;
  - creation and administration of programs for prevention of hearing loss;
  - counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
  - determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.
- "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors or other qualified personnel.
- "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

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- “Interpreting services,” as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, and special interpreting services for children who are deaf-blind.

- "Medical services" means services provided by a licensed physician to determine a child's medically-related disability that results in the child's need for special education and related services.

- "Occupational therapy" means services provided by a qualified occupational therapist, and includes:

    - improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

    - improving ability to perform tasks for independent functioning if functions are impaired or lost; and

    - preventing, through early intervention, initial or further impairment or loss of function.

- "Orientation and mobility services" means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, and includes teaching students the following as appropriate:

    - spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street);

    - to use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

    - to understand and use remaining vision and distance low vision aids, as appropriate; and

    - other concepts, techniques, and tools.

- "Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

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- "Physical therapy" means services provided by a qualified physical therapist.

- "Psychological services" includes:

    - administering psychological and educational tests, and other assessment procedures;

    - interpreting assessment results;

    - obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

    - consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observations, and behavioral evaluations;

    - planning and managing a program of psychological services, including psychological counseling for children and parents; and

    - assisting in developing positive behavioral intervention strategies.

- "Recreation" includes:

    - assessment of leisure function;

    - therapeutic recreation services;

    - recreation programs in schools and community agencies; and

    - leisure education.

- "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

- "School health services" means health services provided by a qualified school nurse or other qualified person that are designed to enable a child with a disability to receive FAPE as described in the child's IEP.

- "School nurse services" mean health services provided by a qualified school nurse, designed to enable a child with a disability to receive FAPE as described in the child's IEP.

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- "Social work services in schools" includes:
    - preparing a social or developmental history on a child with a disability;
    - group and individual counseling with the child and family;
    - working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
    - mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
    - assisting in developing positive behavioral intervention strategies.
- "Speech-language pathology services" include:
    - identification of children with speech or language impairments;
    - diagnosis and appraisal of specific speech or language impairments;
    - referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
    - provision of speech and language services for the habilitation or prevention of communicative impairments; and
    - counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- "Transportation" includes:
    - travel to and from school and between schools;
    - travel in and around school buildings; and
    - specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

34 CFR § 300.34.

- “Residential care center for children and youth” means a facility operated by a child welfare agency licensed under Wis. Stat. § 48.60 for the care and maintenance of children residing in that facility. Wis. Stat. § 115.76(14g).

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- “Responsible Local Educational Agency:” as used in the section on children in residential care centers means the local educational agency that was responsible for providing a free, appropriate public education to the child before the placement of the child in a residential care center for children and youth.

- Except “responsible local educational agency” means the school district in which the residential care center for children and youth is located if before the placement of the child in a residential care center for children and youth, the children resided in an: institute or facility operated by the department of health and family services; a Type 1 juvenile correctional facility; or a Type 1 prison.

Wis. Stat. § 115.81.

- "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including children with and without disabilities. 34 CFR § 300.11.

- “Scientifically-based research” has the meaning given the term in section 9101(37) of the ESEA. See Appendix; 34 CFR § 300.35.

- "Secondary school" means a nonprofit institutional day or residential school including a public secondary charter school that provides secondary education for grades 9-12. 34 CFR § 300.36.

- “Serious bodily injury” has the meaning given the term “serious bodily injury’ under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. See Appendix; 34 CFR § 300.530(i)(3).

- “Services plan” means a written statement that describes the special education and related services the school district will provide to a parentally-placed child with a disability enrolled in a private school located in the district, including the location of the services and any transportation necessary, consistent with 34 CFR §§ 300.132, 300.137-139. 34 CFR § 300.37.

- "Special education" means specially designed instruction, regardless of where the instruction is conducted, that is provided at no cost to the child or the child’s parents, to meet the unique needs of a child with a disability, including:

    - instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings;

    - instruction in physical education;

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- speech-language pathology services, or any other related service, if the service consists of specially designed instruction and is considered special education rather than a related service under Wisconsin standards;
- travel training; and
- vocational education.

The terms in the definition of special education are defined as follows:

- "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
- "Physical education" means the development of:
  - physical and motor fitness;
  - fundamental motor skills and patterns; and
  - skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

  The term includes special physical education, adaptive physical education, movement education, and motor development.
- "Specially-designed instruction" means adapting content, methodology or delivery of instruction:
  - to address the unique needs of an eligible child that result from the child's disability; and
  - to ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the local educational agency that apply to all children.
- "Travel training" means providing instruction, as appropriate, to children with significant intellectual disabilities and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a

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baccalaureate or advanced degree. 34 CFR § 300.39; Wis. Stat. § 115.76(15).

- "Supplementary aids and services" mean aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings to enable a child with a disability to be educated with nondisabled children to the maximum extent appropriate. 34 CFR § 300.42, 115.76(16).

- A "transfer pupil with a disability" means a child with a disability under the Individuals with Disabilities Education Act whose residence has changed from a local educational agency in this state to another local educational agency in this state or from a public agency in another state to a local educational agency in this state. Wis. Admin. Code § PI 11.07.

- "Transition services" means a coordinated set of activities for a child with a disability that:

    - is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including:

        - postsecondary education;
        - vocational education;
        - integrated employment (including supported employment);
        - continuing and adult education;
        - adult services;
        - independent living; or
        - community participation

    - is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:

        - instruction;
        - related services;
        - community experiences;

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- the development of employment and other post-school adult living objectives; and
- if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

34 CFR § 300.43.

- “Universal Design” has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. § 3002. See Appendix; 34 CFR § 300.44.
- "Weapon" has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. See Appendix; 34 CFR § 300.530(i)(4).

Full Educational Opportunity Goal

It is the goal of the local educational agency to provide full educational opportunity to all children with disabilities in the area served by the local educational agency. The local educational agency has available to all of its children with disabilities the variety of educational programs and services available to nondisabled children in the local educational agency, including: art, music, industrial arts, consumer and homemaking education, and vocational education or any program or activity in which nondisabled children participate. The local educational agency provides supplementary aids and services determined appropriate and necessary by the child’s IEP Team, to ensure that children with disabilities have an equal opportunity to participate in nonacademic and extracurricular services and activities. 34 CFR §§ 300.107; 300.109; 300.110; 300.201.

Free Appropriate Public Education

General

All children with disabilities for whom the local educational agency is responsible are provided a free appropriate public education. Special education and related services are provided to these children with disabilities, including, as required by 34 CFR § 300.530(d), children with disabilities who have been suspended or expelled from school. Children with disabilities entitled to a free appropriate public education are children age three, but not yet 21 who have not graduated from high school with a regular high school diploma and, for the duration of a school term, persons who become 21 years old during that school term and who have not graduated from high school with a regular diploma. A regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED). The special education and related services

provided to children addresses all of their special education and related services needs and are provided by personnel qualified as required by 34 CFR §§ 300.156, 300.101(a), 300.102(a)(3)(iv), 300.156; Wis. Stat. § 115.76(3).

The local educational agency provides prior written notice of a change in placement consistent with the requirements in the law when a child with a disability graduates from high school with a regular diploma. Additionally for those students who graduate from high school with a regular diploma as well as students who exceed the age of eligibility, the local educational agency provides a summary of their academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals. 34 CFR §§ 300.102(a)(3)(iii), 300.305(e)(3).

The local educational agency ensures that an IEP is in effect for each eligible child no later than the child's third birthday. If the child's third birthday occurs during the summer, the child's IEP team determines when the IEP services will begin. 34 CFR § 300.101(b).

If a placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, is provided at no cost to the parents of the child. 34 CFR § 300.104.

The local educational agency admits a nonresident child if the program is appropriate for the child's disability. When a resident child is refused admittance to another local educational agency, the resident local educational agency ensures that a free appropriate public education is provided to the child. When board and lodging are not furnished to a nonresident child with a disability, the resident local educational agency provides transportation, except as provided in Wis. Stat. § 115.82(2)(a) and (b). Wis. Stat. § 115.82.

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, for any subsequent removal, the local educational agency provides services, although in another setting, so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP. In such a case, school personnel, in consultation with at least one of the child's teachers, determine the extent of the services. When there is a change of placement, the IEP team determines the appropriate services. 34 CFR § 300.530(d).

Hearing Aids and External Components of Surgically Implanted Medical Devices

The local educational agency ensures that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. The local educational agency ensures that the external components of surgically implanted medical devices are functioning properly, but is not responsible for the post-surgical maintenance, programming, or replacement of the medical devices that has been surgically implanted,

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or of an external component of the surgically implanted medical device. 34 CFR § 300.113.

Physical Education

Physical education services, specially designed if necessary, are made available to every child with a disability unless the LEA does not provide physical education to children without disabilities in the same grades. Each child with a disability is afforded the opportunity to participate in regular physical education programs available to nondisabled children unless the child is enrolled full time in a separate facility, or the child needs specially designed physical education as prescribed in the child's IEP.

If specially designed physical education is prescribed in a child's IEP, the local educational agency provides the services directly or makes arrangements for those services to be provided through other public or private programs. The local educational agency ensures that a child with a disability who is enrolled in a separate facility receives appropriate physical education services in compliance with the law. 34 CFR § 300.108.

Assistive Technology

The local educational agency makes available assistive technology devices or assistive technology services, or both, to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services. If a child's IEP team determines that access to school-purchased assistive technology devices or services in the child's home or in other settings is necessary for the child to receive a free appropriate public education, the devices or services are provided. 34 CFR § 300.105.

Extended School Year

The local educational agency ensures that extended school year services are available to each child with a disability as necessary to provide a free appropriate public education. Extended school year services are provided when a child's IEP team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education to the child. The local educational agency does not limit extended school year services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services. 34 CFR § 300.106.

Participation in Assessments

Children with disabilities attending this local educational agency are included in all state-wide and district-wide assessment programs with appropriate accommodations. Those children who cannot participate in state-wide or district-wide assessments participate in alternate assessments. Needed accommodations or alternate assessments are identified by the IEP team and are specified in the child's IEP. 20 U.S.C. § 1412(a)(16); Wis. Stat. § 115.77(1m)(bg).

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Methods of Ensuring a Free Appropriation Education

If a public agency, other than an educational agency, fails to meet its obligation under federal or state law or under state policy or interagency agreement to provide or pay for any services that are also considered special education and related services that are necessary for ensuring a free appropriate public education to a child, the local educational agency provides or pays for these services to the child in a timely manner. 34 CFR § 300.154(b)(2).

When the local educational agency uses Medicaid or other public insurance benefits programs in which a child participates to provide or pay for special education and related services necessary for the child to receive a free appropriate public education as permitted under the public insurance program, the local educational agency obtains parent consent each time access to public benefits or insurance is sought.

Furthermore, the local educational agency does not:

- require parents to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education under Part B of the Act;
- require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for special education and related services; or
- use a child's benefits under a public insurance program if that use would:
    - decrease available lifetime coverage or any other insured benefit,
    - result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school,
    - increase premiums or lead to the discontinuation of benefits or insurance or
    - risk loss of eligibility for home and community-based waivers based on aggregate health-related expenditures.

Each time the local educational agency proposes to access the proceeds of a parents' private insurance to provide services necessary for the child to receive a free appropriate public education, the local educational agency:

- obtains informed parent consent; and
- informs the parents that their refusal to permit the local educational agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

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34 CFR § 300.154.

The local educational agency timely provides instructional materials in accessible formats to children who are blind, children with print disabilities, or other children with disabilities as required in the child's IEP. 34 CFR § 300.210.

Except for the circumstances provided for in Wis. Stat. §§ 118.51(12)(a) and (b)2 of the Full-Time Open Enrollment law, if a non-resident child with a disability is attending the local educational agency under the Full-Time Open Enrollment law, the local educational agency provides an educational placement for the child. If tuition charges are required by the placement, the local educational agency pays tuition charges instead of the resident school district. Wis. Stat. § 115.79(1)(b).

Public Information

The local educational agency regularly publicizes information about its special education procedures and services. Further, the local educational agency makes available to any person, upon request, all documents relating to the local educational agency's eligibility for state and federal special education funds. 34 CFR § 300.212; Wis. Stat. §§ 115.77(1m)(g) and (h).

If the local educational agency receives a notice from the Department of Public Instruction that it is in noncompliance with respect to state or federal special education law and the Department of Public Instruction is proposing to reduce or withhold any further payments to the local educational agency until the Department of Public Instruction is satisfied that the local educational agency is complying with that requirement, the local educational agency gives public notice of the pending state actions. 34 CFR § 300.222(b).

Child Find

General

The local educational agency identifies, locates, and evaluates all children with disabilities, regardless of the severity of their disability, who are in need of special education and related services, including children attending private schools, children who are made a ward of the state, county, or child welfare agency under chapter 54 or 880, children who are not yet three years of age, highly mobile children such as migrant and homeless children, and children who are suspected of being a child with a disability even though they are advancing from grade to grade. 34 CFR § 300.111; Wis. Stat. § 115.77(1m)(a).

Referral

The local educational agency accepts and processes referrals of children suspected to have a disability. The local educational agency has written procedures for accepting and

processing referrals. Licensed school personnel who reasonably believe a child has a disability are required to make a referral.

Prior to submitting a referral, the people required to make referrals inform the parents of their intent to make a referral. If this local educational agency receives a referral for a child who is attending this local educational agency under the Full-Time Open Enrollment law or a tuition waiver under Wis. Stat. §§ 121.84(1)(a) or (4), the local educational agency provides the name of the child and related information to the local educational agency of residence. Whenever this local educational agency receives a referral for a resident child attending school in another local educational agency under the Full-Time Open Enrollment law or a tuition waiver under Wis. Stat. §§ 121.84(1)(a) or (4), this local educational agency provides the name of the child and related information to the local educational agency of attendance.

The local educational agency accepts written referrals. Each referral includes the name of the child and reasons why the person making the referral believes that the child is a child with a disability. The local educational agency documents and dates the receipt of each referral.

At least annually, the local educational agency informs parents and persons required by law to make referrals about the local educational agency's referral and evaluation procedures.

The local educational agency provides information and in-service opportunities for its licensed staff to familiarize them with the local educational agency’s referral procedures. Wis. Stat. § 115.777.

IEP Team

The local educational agency establishes an IEP team for each child referred to the local educational agency.

Participants

The IEP team for each child consists of all of the following:

- the parents of the child;
- at least one regular education teacher of the child if the child is, or may be, participating in a regular education environment;
- at least one special education teacher who has recent training or experience related to the child's known or suspected area of special education needs or, where appropriate, at least one special education provider of the child;
- a representative of the local educational agency:

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    - who is qualified to provide or supervise the provision of special education,
    - who is knowledgeable about the general education curriculum, and
    - who is knowledgeable about and authorized to commit the available resources of the local educational agency (who may be another member of the IEP team if the criteria are met);

- an individual who can interpret the instructional implications of evaluation results, who may otherwise be a team member;
- an appropriate therapist if the child is suspected to need occupational therapy or physical therapy or both. Wis. Admin. Code § PI 11.24.
- a department-licensed speech or language pathologist when documenting a speech or language impairment and the need for speech or language services. Wis. Admin. Code § PI 11.36(5)(e).
- at the discretion of the parent or local educational agency, other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate. The determination of the individual's knowledge or special expertise is made by the party (parents or public local educational agency) who invited the individual to be a member of the IEP team;
- whenever appropriate, the child;
- at least one person designated by the school board of the child's school district of residence who has knowledge or special expertise about the child when the student is attending a public school in a nonresident school district under Full-Time Open Enrollment Law, or a tuition waiver under Wis. Stat. §§ 121.84(1)(a) or (4).

In addition to the above members, the local educational agency invites the following:

- To the extent appropriate, a representative of any participating agency that is likely to be responsible for providing or paying for transition services, if the parents or the child who has reached the age of majority provides consent; and
- The student, when the purpose of the meeting will be consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. If the student does not attend the IEP Team meeting, the local educational agency takes other steps to ensure consideration of the student's preferences and interests.
- If requested by the parent, at the initial IEP Team meeting for a child previously served under Part C, the Part C service coordinator or other representatives of the Part C System will be invited.

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34 CFR § 300.321; Wis. Stat. § 115.78; Wis. Admin. Code § 11.24(2).

IEP Team Attendance

An IEP Team member is not required to attend an IEP Team meeting, in whole, or in part, if the parent of a child with a disability and the local educational agency agree, in writing, the attendance is not necessary because the member's area of curriculum or related services is not being modified or discussed.

An IEP Team member may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if the parent, in writing, and the local educational agency consent to the excusal, and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior the meeting. 34 CFR § 300.321(e); Wis. Stat. § 115.78(5).

Parent Participation in IEP Team Meetings

The local educational agency takes steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

- notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- scheduling the meeting at a mutually agreed on time and place.

The notice required in this policy:

- indicates the purpose, time, and location of the meeting and who will be in attendance; informs the parents of the provisions in these policies relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child; and
- informs the parents that they can request the Part C coordinator or other representatives of the Part C system be at the initial IEP Team meeting for a child previously served under Part C of IDEA.

Beginning no later than in the first IEP that will be in effect when the child is 14, the notice also:

- indicates that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the child;
- indicates that the local educational agency will invite the student; and
- identifies any other agency that will be invited to send a representative.

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If neither parent can attend, the local educational agency uses other methods to ensure parent participation, including individual or conference calls.

The local educational agency may conduct meetings without a parent in attendance if the local educational agency is unable to convince the parents that they should attend. In this case the local educational agency has a record of its attempts to arrange a mutually agreed on time and place, such as:

- detailed records of telephone calls made or attempted and the results of those calls;
- copies of correspondence sent to the parents and any responses received; and
- detailed records of visits made to the parent's home or place of employment and the results of those visits.

The local educational agency takes whatever action is necessary to ensure that the parent understands the proceedings at the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Subject to the timeline requirements contained in this policy, if the parents of the child or the local educational agency staff determine at any meeting during the process of the evaluation, development of the IEP or placement of the child that additional time is needed to permit meaningful parental participation, the local educational agency provides it. Upon request, the local educational agency provides a copy of the most recent evaluation report to the child's parents at any meeting of the IEP team.

The local educational agency gives the parent a copy of the child's IEP at no cost to the parent. 34 CFR § 300.322; Wis. Stat. §§ 115.787(2)(g) and 115.78(3)(d).

IEP Team Duties

The IEP team does all of the following:

- evaluates the child to determine the child's eligibility or continued eligibility for special education and related services, and the educational needs of the child;
- develops an IEP for the child; and
- determines the special education placement for the child.

34 CFR § 300.324(a); Wis. Stat. § 115.78.

Timeline

Within 15 business days of receiving a referral, the local educational agency sends to the child's parents a request for consent to evaluate the child except that if the local educational agency determines that no additional data are necessary, the local

educational agency notifies the child's parent of that determination within 15 business days of receiving the referral. The local educational agency determines if a child is a child with a disability within 60 days after receiving parental consent for the evaluation or provides notice that no additional data are needed. The 60-day period does not apply:

- if the child transfers into this local educational agency before the previous local educational agency has made an eligibility determination, sufficient progress is being made to ensure a prompt completion of the evaluation, and the child's parents agree to a specific time when the evaluation will be completed;

- if the child's parent repeatedly fails or refuses to produce the child for the evaluation; or

- if a child is being evaluated for a specific learning disability and the timeline is extended by mutual written agreement of the child's parents and IEP team.

The local educational agency conducts a meeting to develop an IEP and determine placement within 30 days of a determination that a child is a child with a disability.

If the parents of the child or local educational agency staff determine at any meeting during the process of evaluation, development of the IEP, or determination of placement, that additional time is needed to permit meaningful parent participation, the local educational agency provides it. 34 CFR §§ 300.301, 300.323, 300.309(c); Wis. Stat. §§ 115.777(3)(e), 115.78.

Evaluation

General

As part of an initial evaluation of a child and as part of any reevaluation of a child, the IEP team and other qualified professionals, as determined by the local educational agency:

- reviews existing evaluation data on the child, including evaluations and information provided by the child's parents, previous interventions, and the effects of those interventions, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related services providers; and

- on the basis of that review and information provided by the child's parents, identifies the additional data, if any, that are needed, to determine:

    - whether the child meets the criteria for a particular category of disability and the educational needs of the child or, in case of a reevaluation of a child, whether the child continues to meet the criteria for such a disability and the educational needs of the child;

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- the present levels of academic achievement and related developmental needs of the child;
- whether the child needs specially designed instruction, or in the case of a reevaluation of a child, whether the child continues to need specially designed instruction; and
- whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable, annual goals specified in the child's IEP and to participate, as appropriate, in the general education curriculum.

- The local educational agency administers such assessment and other evaluations as may be needed to produce the additional data.
- The review of existing evaluation data on the child may occur without conducting a meeting.

34 CFR § 300.305; Wis. Stat. § 115.782(2)(b).

The local educational agency does not require parental consent before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, the local educational agency requires consent for all children. 34 CFR § 300.300(d)(1).

Screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services. 34 CFR § 300.302.

The local educational agency provides the parents of the child with proper written notice, of any evaluation procedures the agency proposes to conduct, and the names of the individuals who will conduct the evaluation, if known. 34 CFR § 300.304(a); Wis. Stat. § 115.782(1)(a).

Initial Evaluations

The local educational agency obtains informed consent from the child's parent before administering assessments or other evaluation materials to the child. Parental consent for the evaluation does not constitute consent for placement for receipt of special education and related services. 34 CFR § 300.300(a); Wis. Stat. § 115.782(1)(b).

If the child is a ward of the state and is not residing with the child’s parent, the local educational agency is not required to obtain informed consent from the parent for an initial evaluation if: the local educational agency cannot, after reasonable efforts, locate the parent of the child; the rights of the parents of the child have been terminated in accordance with state law; or, the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial

evaluation has been given by an individual appointed by the judge to represent the child. 34 CFR § 300.300(a)(2).

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation or fails to respond to a request to provide consent, the local educational agency may, but is not required to, pursue the initial evaluation by utilizing mediation or due process. 34 CFR § 300.300(a)(3).

If a parent of a child who is home schooled or parentally placed in a private school does not provide consent, or the parent fails to respond to a request to provide consent, the local educational agency cannot use mediation or due process and is not required to consider the child as eligible for services. 34 CFR § 300.300(d)(4).

The local educational agency does not use a parent's refusal to consent to activities relating to conducting an initial evaluation to deny the parent or child any other service, benefit, or activity of the local educational agency. 34 CFR § 300.300(d)(3).

IEP Team Determination of Eligibility or Continuing Eligibility (Initial and Reevaluation)

Following a review of existing data and administration of assessments and other evaluation materials (if any), the IEP team determines whether the child is or continues to be a child with a disability. For a child who does not otherwise meet the eligibility criteria under state law, the IEP team does not determine that the child is a child with a disability solely because the child has received inappropriate instruction in reading or math or because the child has limited proficiency in English. In interpreting evaluation data for the purpose of determining if a child is a child with a disability, and the educational needs of the child, the local educational agency draws upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The local educational agency ensures that information obtained from all of these sources is documented and carefully considered. 34 CFR § 300.306.

Reevaluation

In conducting reevaluations, the IEP team:

- evaluates a child with a disability in accordance with the law before determining that the child is no longer a child with a disability, and

- reevaluates a child with a disability in accordance with the law if the local educational agency determines that the educational or related services needs of the child, including the child's academic and functional performance, warrant a reevaluation or if the child's parent or teacher requests a reevaluation. The IEP team shall reevaluate a child no more than once a year unless the child's parents and the local educational agency agree otherwise, and at least once every 3 years

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unless the child's parent and local educational agency agree that a reevaluation is unnecessary.

34 CFR §§ 300.303, 300.305(e)(1); Wis. Stat. § 115.782(4).

An evaluation is not required before the termination of a child's eligibility for special education and related services because he or she graduated from secondary school with a regular diploma or because he or she reached the age of 21. Under these circumstances, the local educational agency provides the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting his or her postsecondary goals. 34 CFR §§ 300.305(e)(2) and (3); Wis. Stat. § 115.782(4).

In conducting a reevaluation, the local educational agency obtains informed consent from the child's parent before administering new assessments and other evaluation materials. The local educational agency proceeds without consent only if the local educational agency has taken reasonable measures to obtain the consent and the child's parents have failed to respond. Reasonable measures are the measures required for conducting an IEP meeting without a parent in attendance. If the parent of a child enrolled in public school or seeking to be enrolled in public school refuses to provide consent, the local educational agency is not required to pursue the reevaluation, but may pursue the reevaluation by utilizing mediation or due process.

If a parent of a child who is home schooled or parentally placed in a private school refuses or fails to respond to a request for consent for a reevaluation, the local educational agency cannot use mediation or due process and is not required to consider the child as eligible for services. 34 CFR §§ 300.300(c) and (d); Wis. Stat. § 115.782(4)(b).

If the IEP team and other qualified professionals, as appropriate, finds no additional information is needed to determine whether a child continues to be a child with a disability, and to determine the child's educational needs, the local educational agency notifies the child's parents of that finding and the reasons for it, and that the parent has a right to request an assessment to determine whether the child continues to have a disability, and to determine the child's educational needs. The local educational agency conducts such an assessment if the parent requests it. 34 CFR § 300.305(d); Wis. Stat. § 115.782(4)(c).

Evaluation Report

When the IEP team determines a child's eligibility, the team prepares an evaluation report that includes documentation of the determination of eligibility. The local educational agency gives a copy of the evaluation report and the documentation of determination of eligibility at no cost to the child's parents. 34 CFR § 300.306(a); Wis. Stat. § 115.782(3)(b).

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Evaluation Safeguards

When a local educational agency evaluates a child with a disability, the IEP team:

- does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;

- uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the child's parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum or, for preschool children, to participate in appropriate activities;

- uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

- ensures all of the following:

    - assessments and other evaluation materials used to assess a child are selected and administered so as not to be racially or culturally discriminatory and are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do, academically, developmentally, and functionally, unless it is clearly not feasible to do so;

    - any assessments given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of such assessments or evaluation materials;

    - the child is assessed in all areas of suspected disability; including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; and

    - assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are used.

34 CFR § 300.304; Wis. Stat. §§ 115.782(2) and 3(b).

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The evaluation report includes documentation of determination of eligibility for special education. A copy of the evaluation report, including the documentation of eligibility is given to the child's parents.

In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs whether or not commonly linked to the disability category in which the child has been classified. 34 CFR §§ 300.304 (c)(6)-(7).

The local educational agency ensures assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient. 34 CFR § 300.304(c)(2).

The local educational agency ensures assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the skills the test purports to measure). 34 CFR § 300.304(c)(3).

Additional Requirements for Specific Learning Disabilities

When a school begins to use data from a multi-level system of support to consider if the student meets the Insufficient Progress criterion, the IEP team shall include the following additional members:

- at least one licensed person who is qualified to assess data on individual rate of progress using a psychometrically valid and reliable methodology;
- at least one licensed person who has implemented scientific, research-based or evidence-based, intensive interventions with the referred pupil
- at least one licensed person who is qualified to conduct individual diagnostic evaluations of children; and
- if the child does not have a licensed general education teacher, a general education classroom teacher licensed to teach a child of the same age, or for a child of less than school age, an individual qualified by the Department of Public Instruction to teach a child of his or her age.

Wis. Admin. Code PI § 11.36(6).

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall include:

- whether the child has a specific learning disability;

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- the basis for making that determination, including an assurance that the eligibility determination was based on a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and that the information obtained from all of these sources is documented and carefully considered;

- the relevant behavior, if any, noted during observation of the child and the relationship of that behavior to the child's academic functioning in the area of potential specific learning disability;

- documentation that the intensive intervention was applied in a manner highly consistent with its design, was closely aligned to pupil need, and was culturally appropriate;

- the educationally relevant medical findings, if any;

- whether the child does not achieve adequately for the child's age or to meet state approved grade-level standards and the child does not make sufficient progress to meet age or State-approved grade-level standards; the determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional behavioral disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

- if the child has participated in a process that assesses the child's response to scientific, research-based intervention, documentation that the child's parents were notified about the following:

    - the progress monitoring data collected;

    - strategies for increasing the child's rate of learning including the intensive interventions used, and

    - the parents' right to request an evaluation.

Each IEP team member certifies in writing whether the report reflects his or her conclusion. If the evaluation report does not reflect the IEP team member's conclusions, the member submits a separate statement presenting his or her conclusions. Wis. Admin. Code § PI 11.36(6).

Determination of Eligibility

An evaluation conducted by an IEP team under Wis. Stat. § 115.782, shall focus on the consideration of information and activities that assist the IEP team in determining the educational needs of the child. Specifically, the IEP team shall meet the evaluation criteria specified under Wis. Stat. § 115.782(2)(a), when conducting tests and using other evaluation materials in determining a child's disability. Evaluation means procedures

used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the specially designed instruction, supplementary aids and services, and related services that the child needs. 34 CFR § 300.15.

A child shall be identified as having a disability if the IEP team has determined from a comprehensive evaluation conducted under Wis. Stat. § 115.782, that the child has an impairment under Wis. Admin. Code § PI 11.36 that adversely affects the child's educational performance, and the child requires specially designed instruction. "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 CFR § 300.39(a)(3).

Every special education evaluation must be sufficiently comprehensive to identify the effects of the student's disability and the student's disability-related needs, whether or not commonly linked to the disability category(s) in which the student has been classified. 34 CFR § 300.304(c)(6). The evaluation must yield sufficient information to allow the team to move forward to develop, or review and revise, the student's IEP if the student is found eligible for special education. This means the team must have the information needed to make decisions about how to educate the student so the student can access the general education curriculum and instruction to make progress toward meeting the expectations and standards that apply to all students of the same age or grade. Wis. Admin. Code § PI 11.35.

A child will not be determined to be a child with a disability if:

- The determinant factor for that determination is
    - Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in 20 U.S.C. § 6368(3); or
    - Lack of appropriate instruction in math; or
    - Limited English proficiency;
- The child does not otherwise meet the eligibility criteria; and,
- The child does not require specially designed instruction.

34 CFR § 300.306(b); Wis. Stat. § 115.782(3)(a).

Disability Categories

All provisions in these policies shall be construed consistent with 20 U.S.C. § 1400 et. seq. and the regulations promulgated thereunder. Wis. Admin. Code § PI 11.36.

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Autism

Autism means a developmental disability significantly affecting a child's social interaction and verbal and nonverbal communication, generally evident before age 3 that adversely affects learning and educational performance. Wis. Admin. Code § PI 11.36(8). Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional behavioral disability as defined in Wis. Admin. Code § PI 11.36(7).

The results of standardized or norm-referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessments, achievement assessments, observation and work samples shall be considered to identify a child under this paragraph. Augmentative communication strategies, such as facilitated communication, picture boards or signing shall be considered when evaluating a child under this paragraph. To identify a child as a child with autism, the criteria under 1. and 2. and one or more criteria under 3. through 6. shall be met.

1. The child displays difficulties or differences or both in interacting with people and events. The child may be unable to establish and maintain reciprocal relationships with people. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.

2. The child displays problems which extend beyond speech and language to other aspects of social communication, both receptively and expressively. The child's verbal language may be absent or, if present, lacks the usual communicative form which may involve deviance or delay or both. The child may have a speech or language disorder or both in addition to communication difficulties associated with autism.

3. The child exhibits delays, arrests, or regressions in motor, sensory, social, or learning skills. The child may exhibit precocious or advanced skill development, while other skills may develop at normal or extremely depressed rates. The child may not follow normal developmental patterns in the acquisition of skills.

4. The child exhibits abnormalities in the thinking process and in generalizing. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness, and judgment. Perseverant thinking and impaired ability to process symbolic information may be present.

5. The child exhibits unusual, inconsistent, repetitive, or unconventional responses to sounds, sights, smells, tastes, touch, or movement. The child may have a visual or hearing impairment or both in addition to sensory processing difficulties associated with autism.

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6. The child displays marked distress over changes, insistence on following routines and a persistent preoccupation with or attachment to objects. The child's capacity to use objects in an age-appropriate or functional manner may be absent, arrested or delayed. The child may have difficulty displaying a range of interests or imaginative activities or both. The child may exhibit stereotyped body movements.

Blind and Visually Impaired

Blind and visually impaired means even after correction a child's visual functioning adversely affects educational performance. Wis. Admin. Code § PI 11.36(3).

The IEP team may identify a child as blind and visually impaired after all of the following events occur:

1. A teacher of the blind and visually impaired licensed under Wis. Admin. Code § PI 34.051 conducts a functional vision evaluation which includes a review of medical information from an ophthalmologist or optometrist, formal and informal tests of visual functioning, and a determination of the implications of the blindness or visual impairment on the educational and curricular needs of the child.

2. An orientation and mobility specialist licensed under Wis. Admin. Code § PI 34.089 evaluates the child to determine if there are related orientation and mobility needs in home, school, or community environments. A child may meet this criteria even if they do not have orientation and mobility needs.

Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under Wis. Admin. Code § PI 11.35, including specially designed instruction, is a child with a disability under this section.

Deaf and Hard of Hearing

Deaf and hard of hearing means a decreased ability to detect sound in one or both ears with or without amplification, whether permanent or chronically fluctuating, which adversely affects a child’s educational performance. Wis. Admin. Code § PI 11.36(4). This includes academic performance, speech perception, speech production, or communication including language acquisition or expression.

A current evaluation by an audiologist licensed under chapter 459, Stats., shall be one of the components for an initial evaluation of a child with suspected hearing loss. A teacher of the deaf or hard of hearing licensed under Wis. Admin. Code § PI 34.050 must be a member of the IEP team when determining eligibility.

Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under Wis. Admin. Code § PI 11.35, including specially designed instruction, is a child with a disability under this section.

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Deafblind

Deafblind means concomitantly deaf or hard of hearing and blind or visually impaired, the combination of which causes severe communication and other developmental and educational needs such that the individual disability-related needs of the student extend beyond the instruction and supports required for a student who is solely deaf or hard of hearing or blind or visually impaired. Wis. Admin. Code § PI 11.36(4m). Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under Wis. Admin. Code § PI 11.35, including specially designed instruction, is a child with a disability under this section.

Emotional Behavioral Disability

Emotional behavioral disability, pursuant to Wis. Stat. § 115.76(5)(a)5, means a condition in which a child demonstrates frequent and intense observable behaviors, either over a long period of time or of sudden onset due to an emerging mental health condition which includes a diagnosis by a licensed mental health professional, which adversely affects the child's educational performance. Wis. Admin. Code § PI 11.36(7). The behaviors shall occur in an academic setting in school, in a non-academic setting in school and in the child's home or community.

The IEP team may identify a child as having an emotional behavioral disability if the child exhibits at least one of the following:

1. Behaviors that interfere with the development and maintenance of age and grade appropriate interpersonal relationships.

2. Observable affective or behavioral responses during routine daily activities inconsistent with the norms of the child or the child's community.

3. Pervasive unhappiness, depression or anxiety.

4. Physical symptoms or fears associated with personal or school problems.

5. Insufficient progress toward meeting age or grade level academic standards that cannot be explained by intellectual, sensory, or health factors.

6. Isolation from peers or avoidance of social interactions impacting the child's access and engagement in instructional activities.

7. Patterns of behaviors across settings and individuals presenting risks to the physical safety of the child or others.

The IEP team shall conduct a comprehensive evaluation and shall consider current data from all of the following:

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1. The results of evidence-based positive behavioral interventions implemented within general education settings.

2. Systematic observations of the child in both academic and non-academic settings documenting intensity, frequency, rate or duration of observable target behaviors, as well as other ecological factors that may be impacting the child's behavior.

3. Interviews of the child and parent or family that include gathering information regarding the child and family's norms and values, as well as other ecological factors that may impact the child's behavior.

4. Interviews of the child's teachers that include gathering information regarding the child's strengths and ecological factors that may impact the child's behavior.

5. Interview of an LEA staff member, identified by the child when possible, as having the most positive or a positive relationship with the child, that includes gathering information regarding the child's strengths and ecological factors that may impact the child's behavior, unless the LEA staff member has already been interviewed.

6. Review of educational information maintained by the LEA, including health, academic and disciplinary records.

7. Results of standardized behavior rating scales, which are normed using nationally representative samples, from a minimum of 2 sources from school and one source from the home or community. If only one source from the school is familiar enough with the student to obtain valid rating scale results, as defined by publisher recommendations for the individual rating scale, then that shall be documented in the evaluation report. Nationally normed behavior rating scales shall include, when available, normative data that reflects the child's background. If the child's background is not included in the normative data of a standardized rating scale used, the evaluation report shall include an explanation.

The IEP team shall consider the effects of any known history of trauma or mental health disorder on the child's functioning. The IEP team may not identify or refuse to identify a child as a child with an emotional behavioral disability based solely on a known history of trauma or mental health disorder. The IEP team shall discuss and determine, based on information and data collected whether behaviors are a result of a difference between the norms of the child's family and community or an emotional behavioral disability. The IEP team may not identify a child as a child with an emotional behavioral disability when there is evidence that the difference is the primary causal factor of the behaviors. The IEP team for a child being evaluated for emotional behavioral disabilities may include the LEA staff member, identified by the child when possible, as having a positive or the most positive relationship with the child.

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Intellectual Disability

Intellectual disability means significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills and manifested during the developmental period that adversely affects the child's educational performance. Wis. Admin. Code § PI 11.36(1). The IEP team may identify a child as having an intellectual disability if the child meets the following criteria:

1. The child has a standard score of 2 or more standard deviations below the mean on an individually administered intelligence test which takes into account the child's mode of communication and is developed to assess intellectual functioning using this mode. More than one intelligence test may be used to produce a comprehensive result.

2. The child has significant limitations in adaptive behavior that are demonstrated by a standards score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments that include interviews of the parents, tests, and observations of the child in adaptive behavior which are relevant to the child's age, including at least one of the following:

    a. Conceptual skills;

    b. Social adaptive skills;

    c. Practical adaptive skills; or

    d. An overall composite score on a standardized measure of conceptual, social, and practical skills.

3. a. The child is age 3 through 5 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in the following areas: language development and communication, cognition, and general knowledge.

    b. The child is age 6 through 21 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in general information and at least 2 of the following areas: written language, reading, and mathematics.

When it is determined that reliable and valid assessment results are not possible due to the child's functioning level or age, a standardized developmental scale or a body of evidence including informal measures shall be used to assess the child.

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Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under s. PI 11.35, including specially designed instruction, is a child with a disability under this section.

NOTE: Intellectual disabilities typically manifest before age 18. An etiology should be determined when possible, so the IEP team can use this information for program planning.

Orthopedic Impairment

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. Wis. Admin. Code § PI 11.36(2). The term includes but is not limited to impairments caused by congenital anomaly such as clubfoot or absence of some member; impairments caused by disease such as poliomyelitis or bone tuberculosis; and impairments from other causes such as cerebral palsy, amputations, and fractures or burns that cause contractures.

Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under Wis. Admin. Code § PI 11.35, including specially designed instruction, is a child with a disability under this section.

Other Health Impairment

Other health impairment means having limited strength, vitality, or alertness due to chronic or acute health problems. 34 CFR § 300.8; Wis. Admin. Code § PI 11.36(10). The term includes but is not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, Tourette syndrome, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or acquired injuries to the brain caused by internal occurrences or degenerative conditions, which adversely affects a child's educational performance.

Significant Developmental Delay

Significant developmental delay means children, age 3 through 9 years of age, who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional or adaptive development. Wis. Admin. Code § PI 11.36(11).

All other suspected impairments are considered before identifying a child’s primary impairment as significant developmental delay.

A child may be identified as having significant developmental delay when delays in development significantly challenge the child in two or more of the following five major life activities:

- Physical activity in gross motor skills such as the ability to move around and interact with the environment with appropriate coordination, balance, and strength;

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or fine motor skills, such as manually controlling and manipulating objects such as toys, drawing utensils and other useful objects in the environment.

- Intellectual activity such as the ability to acquire, use and retrieve information as demonstrated by the level of imitation, discrimination, representation, classification, sequencing, and problem-solving skills often observed in a child's play.

- Communication activity in expressive language such as the production of age-appropriate content, form and use of language; or receptive language, such as listening, receiving, and understanding language.

- Emotional activity such as the ability to feel and express emotions and develop a positive sense of oneself; or social activity, such as interacting with people, developing friendships with peers, and sustaining bonds with family members and other significant adults.

- Adaptive activity, such as caring for his or her own needs and acquiring independence in age-appropriate eating, toileting, dressing, and hygiene tasks.

Documentation of significant developmental delays and their detrimental effect upon the child's daily life shall be based upon qualitative and quantitative measures including all of the following:

- A developmental and basic health history including results from vision and hearing screenings and other pertinent information from parents and, if applicable, other caregivers or service providers.

- Observation of the child in his or her daily living environment such as the child's home with a parent or caregiver or an early education or care setting which includes peers who are typically developing. If observation in these settings is not possible, observation in an alternative setting is permitted.

- Results from norm-referenced instruments are used to document significant delays of at least one and one-half standard deviations below the mean in two or more of the developmental areas which correspond to the major life activities. If it is clearly not appropriate to use norm-referenced instruments, other instruments such as criterion-referenced measures are used to document the significant delays.

Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under Wis. Admin. Code § PI 11.35, including specially designed instruction, is a child with a disability under this section. In conducting the reevaluation, the IEP team must consider all other suspected impairments before continuing to identify the child's primary impairment as significant developmental delay.

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Specific Learning Disability

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken, or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Wis. Admin. Code § PI 11.36(6). The term does not include learning problems that are primarily the result of visual, hearing, motor disabilities, intellectual disabilities, emotional disturbance, cultural factors, environmental, or economic disadvantage.

The IEP team may identify a child as having a specific learning disability if both of the following apply:

1. Inadequate Classroom Achievement

    Upon initial identification, the child does not achieve adequately for his or her age or meet state-approved grade-level standards in one or more of the following eight areas of potential specific learning disabilities when provided with learning experiences and instruction appropriate for the child's age: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving.

    A child's achievement is inadequate when the child's score, after intensive intervention, on one or more assessments of achievement is equal to or more than 1.25 standard deviations below the mean in one or more of the eight areas of potential specific learning disabilities. Assessments shall be individually administered, norm-referenced, valid, reliable, and diagnostic of impairment in the area of potential specific learning disabilities.

    The 1.25 standard deviation requirement may not be used if the IEP team determines that the child cannot attain valid and reliable standard scores for academic achievement because of the child's test behavior, the child's language proficiency, an impairment of the child that interferes with the attainment of valid and reliable scores, or the absence of individually administered, norm-referenced, standardized, valid, and reliable diagnostic assessments of achievement appropriate for the child's age. If the IEP team makes such a determination, it shall document the reasons why it was not appropriate to consider standardized achievement testing and shall document that inadequate classroom achievement exists in at least one of the eight areas of potential specific learning disabilities using other empirical evidence.

    The IEP team may consider scores within 1 standard error of the measurement of the 1.25 standard deviation criterion above to meet the inadequate classroom achievement criteria if the IEP team determines the child meets all other criteria.

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2. **Insufficient Progress**. Upon evaluation, the child has made insufficient progress in one of the following areas:

    a. *Insufficient response to intensive, scientific, research-based or evidence-based intervention*. The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the eight areas of potential specific learning disabilities when using a process based on the child's response to intensive, scientific, research-based or evidence-based interventions.

    Intensive interventions may be implemented prior to referral, or as part of an evaluation, for specific learning disability. The IEP team shall consider progress monitoring data from at least two intensive, scientific, research-based or evidence-based interventions, implemented with adequate fidelity and closely aligned to individual student learning needs. The median score of three probes is required to establish a stable baseline data point for progress monitoring. IEP teams shall use weekly or more frequent progress monitoring to evaluate rate of progress during intensive, scientific, research-based or evidence-based interventions.

    Rate of progress during intensive interventions is insufficient when any of the following areas are true: the rate of progress of the referred child is the same or less than that of his or her same-age peers; the referred child's rate of progress is greater than that of his or her same-age peers but will not result in the referred child reaching the average range of his or her same-age peers' achievement for that area of potential disability in a reasonable period of time; or the referred child's rate of progress is greater than that of his or her same-age peers, but the intensity of the resources necessary to obtain this rate of progress cannot be maintained in general education.

    If the LEA decides to use insufficient response to intensive, scientific, research-based or evidence-based intervention for any child being evaluated for specific learning disabilities enrolled in a school, the LEA shall use insufficient response to intensive, scientific, research-based or evidence-based interventions for all such evaluations of children enrolled in that school. At least ten days in advance of beginning to use insufficient response to intensive, scientific, research-based or evidence-based intervention in a school, the LEA will notify parents of all children enrolled in that school of the intent to use insufficient response to intensive, scientific, research-based or evidence-based intervention.

    b. *Significant discrepancy or insufficient progress in achievement as compared to measured ability*. This method may be used only to evaluate a child attending a private school or participating in a home-based private educational program. This method shall not be used to evaluate a child attending a public school, including a public charter school.

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A parent of a child attending a private school or participating in a home-based private educational program may request the IEP team to evaluate the child using significant discrepancy. Upon such request, the IEP team shall consider whether use of this method to evaluate the child is feasible. If the IEP team determines that it is not feasible to use this method, the reason for that determination shall be provided to the parent in writing.

Upon initial evaluation, the child exhibits a significant discrepancy between the child's academic achievement in any of the eight areas of potential specific learning disabilities and intellectual ability as documented by the child's composite score on a multiple score instrument or the child's score on a single score instrument.

The IEP team may base a determination of significant discrepancy only upon the results of individually administered, norm-referenced, valid, and reliable diagnostic assessment of achievement. A significant discrepancy means a difference between standard scores for ability and achievement equal to or greater than 1.75 standard errors of the estimate below expected achievement, using a standard regression procedure that accounts for the correlation between ability and achievement measures.

This regression procedure shall be used except when the IEP team determines that the child cannot attain valid and reliable standard scores for intellectual ability or achievement because of the child's test behavior, the child's language, another impairment of the child that interferes with the attainment of valid and reliable scores, or the absence of valid and reliable standardized, diagnostic tests appropriate for the child's age. If the IEP team makes such a determination, it shall document the reasons why it was not appropriate to use the regression procedure and shall document that a significant discrepancy exists, including documentation of a variable pattern of achievement or ability, in at least one of the eight areas of potential specific learning disabilities using other empirical evidence.

If the discrepancy between the child's ability and achievement approaches but does not reach the 1.75 standard error of the estimate cut-off for this subdivision paragraph, the child's performance in any of the eight areas of potential specific learning disabilities is variable, and the IEP team determines that the child meets all other criteria, the IEP team may consider that a significant discrepancy exists.

The IEP team may not identify a child as having a specific learning disability if the team's findings of inadequate classroom achievement or insufficient progress are primarily due to one of the following exclusionary factors:

- environmental, economic disadvantage or cultural factors;

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- lack of appropriate instruction in reading, including in the essential components of reading instruction;
- lack of instruction in math;
- limited proficiency in English;
- any of the other impairments; and
- lack of appropriate instruction in the area(s) of potential specific learning disability under consideration.

The child must be systematically observed in the child's learning environment, including the general classroom setting when possible, to document the child's academic performance and behavior in any of the eight areas of potential specific learning disabilities.

The systematic observation of routine classroom instruction and monitoring of the child's performance in at least one of the eight areas of potential specific learning disabilities may be conducted before the child was referred for evaluation, or the systematic observation of the child's academic performance in at least one of the eight areas of potential specific learning disabilities shall be conducted after the child has been referred for an evaluation and parental consent is obtained. If the child is less than school age or out of school, at least one member of the IEP team will conduct a systematic observation of the child in an environment appropriate for a child of that age.

If the child has participated in a process that assesses the child's response to intensive, scientific, research-based or evidence-based interventions, the IEP team will use information from a systematic observation of pupil behavior and performance in the area or areas of potential specific learning disability during intensive intervention for that area, conducted by an individual who is not responsible for implementing the interventions with the referred pupil.

In addition to all other determinations, the IEP team shall base its decision of whether a child has a specific learning disability on a comprehensive evaluation using formal and informal assessment data regarding academic achievement and learning behavior from sources such as standardized tests, error analysis, criterion referenced measures, curriculum-based assessments, pupil work samples, interviews, systematic observations, analysis of the child's response to previous interventions, and analysis of classroom expectations and curriculum.

Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education, including specially designed instruction, is a child with a disability under this section, unless the exclusionary factors now apply. If a child with a specific learning disability performs to generally accepted expectations in the general education classroom without specially designed instruction, the IEP team shall determine whether the child is no longer a child with a disability.

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Speech and Language Impairment

Definitions. Wis. Admin. Code § PI 11.36(5). In this subsection:

1. "Home languages" mean the languages used by the child or the parent of the child in their natural environment, or the modes of communication that are used by the child or the parent of the child in their natural environment, and may include languages other than English, sign language, braille, or augmentative and alternative communication.

2. "Natural environment" means settings that are natural or typical for a same-aged child without a disability and may include school, home, or community.

3. "Significant discrepancy" means performance on a norm-referenced assessment that meets the cutoff score for a speech or language disorder and is significantly below age- or grade-level expectations relative to a normative sample, often reported as a percentile or standard score.

4. "Speech or language impairment" means an impairment of speech or sound production, voice, fluency, or language that adversely affects educational performance or social, emotional, or vocational development.

Assessments and other evaluation materials used to conduct a comprehensive evaluation of a child's speech and language development shall be provided and administered in the child's home languages. Assessments and other evaluation materials shall be in the form most likely to yield accurate information unless it is not feasible to do so and shall describe the child's speech and language abilities and how those abilities impact the child's progress in the general education environment relative to the speech and language demands of the classroom and curriculum. Interpretation of assessments shall be based on the representativeness of the normative sample and the psychometric properties of the assessment.

Speech Sound Disorder

Following consideration of the child's age, culture, language background, and dialect, the child meets all of the following conditions for a speech sound disorder:

a. The child's speech sound production is documented to be delayed, as evidenced through at least one observation in a natural environment.

b. The child's speech sound production is documented to be delayed, as measured by a criterion-referenced assessment, such as a developmental scale or a phonetic inventory, or significant discrepancy in performance from typical on a norm-referenced assessment.

c. The child's intelligibility is below the expected range and not due to influences of home languages or dialect. Intelligibility ratings as documented by school staff or caregivers indicate an impact across environments.

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d. Speech sound production is less than 30% stimulable for incorrect sounds.

Phonological Disorder

Following consideration of the child's age, culture, language background, or dialect, the child demonstrates the characteristics of a phonological disorder, which include both of the following:

a. The child's intelligibility is below the expected range and not due to influences of home languages or dialect. Intelligibility ratings as documented by school staff or caregivers indicate an impact across environments.

b. The child's phonological process use is documented to be non-developmental or outside of the expected developmental range, as evidenced through at least one observation in a natural environment, and by measurement of either the presence of one or more phonological processes occurring at least 40%, significant discrepancy in performance from typical on a norm-referenced assessment, or both.

Voice Impairment

The child's voice is impaired in the absence of an acute, respiratory virus or infection and not due to temporary physical factors such as allergies, short term vocal abuse, or puberty. Following consideration of the child's age, culture, language background, or dialect, the child demonstrates characteristics of a voice impairment, which include any of the following:

a. The child's vocal volume, including loudness.

b. The child's vocal pitch, including range, inflection, or appropriateness.

c. The child's vocal quality, including breathiness, hoarseness, or harshness.

d. The child's vocal resonance, including hypernasality.

Fluency Disorder

The child exhibits characteristics of a fluency disorder, following consideration of the child's age, language background, culture, and dialect. The evaluation shall include a variety of measures, including case history, observation in natural environment, norm-referenced assessment or disfluency analysis, and result in evidence of atypical fluency. The presence of one or more of the following characteristics shall indicate a fluency disorder:

a. Speech disfluencies associated with stuttering or atypical disfluency, which include repetitions of phrases, words, syllables, and sounds or dysrhythmic phonations such as prolongations of sounds or blockages of airflow typically in excess of 2%

of total syllables, one second of duration, and two or more iterations in a repetition. Non-verbal physical movements, such as eye blinking or head jerking, may accompany the stuttering. Negative feelings about oral communication may be significant enough to result in avoidance behaviors in an attempt to hide or diminish stuttering.

b. A speech rate that is documented to be rapid, irregular, or both and may be accompanied by sound or syllable omissions, sequencing errors, or a high number of non-stuttering speech disfluencies such as interjections, phrase and whole word repetitions, and revisions. The resulting speech fluency pattern is considered to be significantly disruptive to efficient communication. Negative feelings and attitudes about oral communication may or may not be present under this disfluency profile.

Language Impairment

Following consideration of the child's age, culture, language background, or dialect, the child demonstrates a language impairment in the area of language form, content or use, as evidenced through an observation in a natural environment and by measurement of at least two of the following:

a. Language sample analysis.

b. Dynamic assessment.

c. Developmental scales or another criterion-referenced assessment.

d. Significant discrepancy from typical language skills on a norm-referenced assessment of comprehensive language.

Exclusionary Factors

The IEP team may not identify a child as a child with speech or language impairment when differences in speech or language are based on home languages, culture, or dialect unless the child has a speech or language impairment within the child's home languages, culture, or dialect. In determining whether the child has a speech or language impairment, the IEP team shall consider all of the following:

1. The child's background knowledge, stage of language acquisition, experience with narratives, and exposure to vocabulary to discern speech or language ability from speech or language difference, such as differences due to lack of exposure, stage of language acquisition, cultural or behavioral expectations.

2. Based on information and data collected, the IEP team must determine whether the child's speech or language skills are a result of a speech or language impairment or a difference due to culture, language background, or dialect.

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In addition to the evaluations under pars. (am) to (c), the IEP team shall evaluate a child's language by assessing the child's augmentative and alternative communication skills, when appropriate to determine the child's needs.

IEP Team Members. An IEP team shall include the following:

1. A speech-language pathologist licensed under chapter PI 34 who shall incorporate information from the most recent assessment to assist the IEP team in documenting whether the child meets the criteria for a speech or language impairment as well as identifying the child's speech or language needs.

2. An educator with foundational knowledge in first and second language instruction and second language acquisition if the child is identified as an English Learner under 20 U.S.C. § 7801(20).

Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under Wis. Admin. Code § PI 11.35, including specially designed instruction, is a child with a disability under this section.

Traumatic Brain Injury

Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Wis. Admin. Code § PI 11.36(9). The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; speech and language; memory; attention; reasoning; abstract thinking; communication; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and executive functions, such as organizing, evaluating, and carrying out goal-directed activities. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other impairments.

The results of standardized and norm-referenced instruments used to evaluate and identify a child as traumatic brain injured may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessment, achievement assessment, observation, work samples, and neuropsychological assessment data are considered to identify a child who exhibits total or partial functional disability or psychosocial impairment in one or more areas listed above. Before a child may be identified as traumatic brain injured, available medical information from a licensed physician is considered.

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Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under Wis. Admin. Code § PI 11.35, including specially designed instruction, is a child with a disability under this section.

Developing, Reviewing and Revising IEPs

IEP in Effect

At the beginning of each school year the local educational agency has in effect an IEP for each child with a disability within its jurisdiction. The local educational agency ensures that a meeting to develop an IEP and determine placement is conducted within 30 days of determination that the child is a child with a disability. The local educational agency ensures an IEP is in effect before special education and related services are provided to children with disabilities and is implemented as soon as possible following the meetings at which the IEP is developed. The local educational agency develops and implements an IEP for each child with a disability served by that agency including children placed in or referred to a private school or facility by the local educational agency.

The local educational agency ensures each child's IEP is accessible to each regular education teacher, special education teacher, related service provider and any other service provider who is responsible for its implementation. The local educational agency ensures each teacher and provider responsible for implementing a child's IEP is informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for the child in accordance with the IEP. The local educational agency provides special education and related services to a child with a disability in accordance with the child's IEP and makes a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. 34 CFR §§ 300.323(a),(c)-(d); Wis. Stat. §§ 115.787(1), 115.78(3)(c).

IEP Development

In developing each child’s IEP, the IEP team considers the strengths of the child, the concerns of the child’s parents for enhancing the education of their child, and the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

The IEP team considers the following special factors:

- the use of positive behavioral interventions and supports, and other strategies, to address that behavior in the case of a child whose behavior impedes the child’s learning or that of others;
- the language needs of the child as such needs relate to the child’s IEP in the case of a child with limited English proficiency;

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- instruction in Braille and the use of Braille in the case of a child who is visually impaired unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;

- the communication needs of the child and, in the case of a child who is hearing impaired, the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level and full range of needs including opportunities for direct instruction in the child's language and communication mode; and

- whether the child requires assistive technology devices and services.

If, when considering these special factors, the IEP team determines a child needs a particular device or service in order to receive a free appropriate public education, the IEP team includes a statement to that effect in the IEP.

The child's regular education teacher, as a member on the IEP team, participates in the development of the IEP of the child to the extent appropriate. The teacher participates in the determination of appropriate positive behavioral interventions and supports and other strategies, supplementary aids and services, program modifications and supports for school personnel.

The local educational agency gives a copy of the IEP to the child's parents with the notice of placement. 34 CFR § 300.324(a); Wis. Stat. § 115.787(3).

IEP Review and Revision

The IEP team reviews the child's IEP periodically, but at least once a year, to determine whether the annual goals for the child are being achieved and revises the IEP as appropriate to address:

- any lack of expected progress toward the annual goals and in the general education curriculum;

- the results of any reevaluation;

- information about the child provided to or by the parents;

- the child's anticipated needs; or

- other matters.

In conducting a review of the child's IEP, the IEP team considers the special factors listed above under the development of the IEP section.

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To the extent appropriate, the regular education teacher of the child, as a member of the IEP team, participates in the review and revision of the IEP of the child.

If a participating agency, other than the local educational agency, fails to provide transition services described in the IEP, the local educational agency reconvenes the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP. 34 CFR §§ 300.324(b) and (c); Wis. Stat. § 115.787(4).

Amendments to the IEP

In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child's current IEP. If changes are made without a meeting, the local educational agency informs the child's IEP team of those changes.

Changes to the IEP may be made by either the entire IEP Team at an IEP team meeting or as described above by amending the IEP rather than redrafting the entire IEP. The local educational agency gives the child's parent a copy of the revised IEP with the amendments incorporated. 34 CFR §§ 300.324(a)(4)-(6); Wis. Stat. § 115.787(4)(c).

IEP Content

The IEP for each child with a disability includes:

- a statement of the child's present levels of academic achievement and functional performance including how the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children) or, for a preschool child, as appropriate, how the disability affects the child's participation in appropriate activities;

- a statement of measurable annual goals for the child, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general education curriculum and to meet each of the child's other educational needs that result from the child's disability;

- for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

- a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided to enable the child to:

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    - advance appropriately toward attaining the annual goals;
    - be involved in and make progress in the general education curriculum and to participate in extracurricular and other non-academic activities; and
    - be educated and participate with other children with disabilities and nondisabled children in the activities described above;

- an explanation of the extent to which the child will not participate with nondisabled children in regular classes in the general education curriculum and in extracurricular and other nonacademic activities;
- a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance on state or district-wide assessments;
- if the IEP team determines a child must take an alternate assessment instead of participating in a particular regular state-wide or local educational agency-wide assessment of student achievement, a statement indicating why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;
- the projected date for the beginning of the services and modifications described in the IEP and the anticipated frequency, duration and location of those services and modifications;
- beginning not later than in the first IEP that will be in effect when the child is 14 and updated annually thereafter until the child is no longer eligible for special education and related services, a statement of appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and a description of the transition services, including courses of study, needed to assist the child in reaching those goals;
- a statement that the student has been informed of the parental rights that will transfer to the pupil under special education law on reaching the age of 18, beginning at least one year before the child attains the age of 18, and annually thereafter until the pupil is no longer eligible for special education and related services;
- a description of how the child's progress toward attaining the annual goals will be measured; and
- a description of when periodic reports, such as quarterly reports or other periodic reports issued concurrent with report cards, on the child's progress toward attaining the annual goals will be provided to the parents.

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34 CFR § 300.320; Wis. Stat. § 115.787.

Placement

The local educational agency ensures an evaluation is conducted before special education and related services are provided to a child with a disability and an educational placement is provided to implement each child's IEP. The IEP team makes placement decisions. The placement is based upon and implements the child's IEP, is determined at least annually, and in uniformity with the least restrictive environment provisions described below. 34 CFR §§ 300.301(a), 300.116(b); Wis. Stat. §§ 115.78(2), 115.79(1)(a) and (b).

Least Restrictive Environment

The local educational agency ensures the following:

- Unless the IEP requires a different arrangement, the child is educated in the school he or she would attend if not disabled.
- The placement is provided as close as possible to the child's home.
- In selecting the least restrictive environment consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.
- To the maximum extent appropriate, a child with a disability, including a child receiving publicly funded special education in a public or private institution or other care facility, is educated with children who are not disabled.
- Special classes, separate schooling, or any other removal of a child from the regular educational environment occurs only when the nature or severity of a child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- The local educational agency ensures a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- The local educational agency ensures a continuum of alternative placements is available and will be used that includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.

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- The continuum makes provision for supplementary services (such as resource room or itinerant instruction) that are provided in conjunction with regular class placement.

- The local educational agency provides or arranges for nonacademic and extracurricular services and activities including meals and recess periods so each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The local educational agency ensures that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

34 CFR §§ 300.114-117.

Notice of Placement

Following the development of the IEP, a notice of placement and a copy of the child's IEP is given to the child's parent(s). 34 CFR § 300.503(b)(4); Wis. Stat. § 115.787(3)(e).

Consent for Placement

The local educational agency obtains informed and written parental consent prior to the initial provision of special education and related services to a child with a disability in a program providing special education and related services.

The local educational agency makes reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. If the parent of a child fails to respond or refuses to consent to services, the local educational agency cannot provide special education or related services and cannot use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child.

If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the local educational agency will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the local educational agency requests consent; and is not required to convene an IEP Team meeting or develop an IEP for the child for the special education and related services for which the local educational agency requests such consent. 34 CFR § 300.300(b); Wis. Stat. § 115.79(2).

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Parent Revocation of Consent:

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district:

- Will stop providing special education and related services to the child, but before doing so, will provide prior written notice in accordance with 34 CFR § 300.503;
- Will not use special education dispute resolution procedures, including mediation and due process, in order to obtain agreement or a ruling that the services may be provided to the child;
- Is not considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services;
- Is not required to amend the child's education records to remove any reference to the child's receipt of special education and related services because of the revocation of consent.

34 CFR § 300.300.

Related Services: Physical and Occupational Therapy

If a child is suspected to need occupational therapy or physical therapy or both, the IEP team includes an appropriate therapist. Wis. Admin. Code § PI 11.24(2).

Physical Therapists' Licensure and Service Requirements

The local educational agency ensures the following:

- Physical therapists are licensed by the Department of Public Instruction as school physical therapists.
- Caseloads for full-time physical therapists employed for a full day, 5 days a week, is a minimum of 15 children and a maximum of 30 children, or maximum of 45 children with one or more school physical therapist assistants. A caseload may be varied subject to DPI's approval. The caseload for a part-time school physical therapist may be prorated.
- The school physical therapist has medical information from a licensed physician regarding a child before the child receives physical therapy.

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- The school physical therapist delegates to a school physical therapist assistant only those portions of a child's physical therapy which are consistent with the school physical therapist assistant's education, training, and experience.

- The school physical therapist supervises the physical therapy provided by a school physical therapist assistant. The school physical therapist develops a written policy and procedure for written and oral communication to the physical therapist assistant. The policy and procedure includes a specific description of the supervisory activities undertaken for the school physical therapist assistant which includes either of the following levels of supervision:

    - the school physical therapist has daily, direct contact on the premises with the school physical therapist assistant; or

    - the school physical therapist has direct, face-to-face contact with the school physical therapist assistant at least once every 14 calendar days. Between direct contacts the physical therapist is available by telecommunication. The school physical therapist providing general supervision provides an onsite reevaluation of each child's physical therapy a minimum of one time per calendar month or every tenth day of physical therapy, whichever is sooner, and adjusts the physical therapy as appropriate.

- A full-time school physical therapist supervises no more than two full-time equivalent physical therapist assistant positions which may include no more than three physical therapist assistants.

- Acts undertaken by a school physical therapist assistant are considered acts of the supervising physical therapist who has delegated the act.

- A school physical therapist conducts all physical therapy evaluations and reevaluations of a child, participates in the development of the child's IEP, and develops physical therapy treatment plans for the child. A school physical therapist is not represented by a school physical therapist assistant on an IEP team.

Wis. Admin. Code § PI 11.24(7).

School Physical Therapist Assistants' Qualifications and Supervision of Physical Therapy

The local educational agency ensures the following:

- Physical therapist assistants are licensed by the Department of Public Instruction as school physical therapists.

- The school physical therapist assistant providing physical therapy to a child is supervised by a school physical therapist as specified in these policies.

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Wis. Admin. Code § PI 11.24(8).

Occupational Therapists' Licensure and Service Requirements

The local educational agency ensures the following:

- Occupational therapists are licensed by the Department of Public Instruction as school occupational therapists.
- Caseloads for full-time school occupational therapists employed for a full day, 5 days a week, is a minimum of 15 children and a maximum of 30 children, or maximum of 45 children with one or more school occupational therapist assistants. A caseload may be varied subject to DPI's approval. The caseload for a part-time school physical therapist may be prorated.
- The school occupational therapist has medical information before a child is evaluated for occupational therapy.

Wis. Admin. Code § PI 11.24(9).

The Delegation and Supervision of Occupational Therapy

The local educational agency ensures the following:

- The school occupational therapist may delegate to a school occupational therapy assistant only those portions of a child's occupational therapy which are consistent with the school occupational therapy assistant's education, training, and experience.
- The school occupational therapist supervises the occupational therapy provided by a school occupational therapy assistant. The school occupational therapist develops a written policy and procedure for written and oral communication to the occupational therapist assistant. The policy and procedure includes a specific description of the supervisory activities undertaken for the school occupational therapist assistant which includes either of the following levels of supervision:
    - the school occupational therapist has daily, direct contact on the premises with the school occupational therapy assistant; or
    - the school occupational therapist has direct, face-to-face contact with the school occupational therapy assistant at least once every 14 calendar days. Between direct contacts the occupational therapist is available by telecommunication. The school occupational therapist providing general supervision provides an onsite reevaluation of each child's occupational therapy a minimum of every two weeks and adjusts the occupational therapy as appropriate.

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- A full-time school occupational therapist supervises no more than two full-time equivalent occupational therapy assistant positions which includes no more than three occupational therapy assistants;

- An act undertaken by a school occupational therapy assistant is considered the act of the supervising occupational therapist who has delegated the act.

Wis. Admin. Code § PI 11.24(9).

The Responsibility of a School Occupational Therapist

The local educational agency ensures the following:

- A school occupational therapist conducts all occupational therapy evaluations and reevaluations of a child, participates in the development of the child's IEP, and develops occupational therapy treatment plans for the child.

- A school occupational therapist may not be represented by a school occupational therapy assistant on an IEP team.

Wis. Admin. Code § PI 11.24(9).

School Occupational Therapy Assistants' Qualifications and Supervision

The local educational agency ensures the following:

- Occupational therapy assistants are licensed by the Department of Public Instruction as school occupational therapy assistants.

- The school occupational therapy assistant providing occupational therapy to a child is supervised by a school occupational therapist as specified in these policies.

Wis. Admin. Code § PI 11.24(10).

Transition from Birth to Three Programs

The local educational agency participates with birth to three programs to ensure a smooth and effective transition of children with disabilities from the birth to three program for infants and toddlers with disabilities to preschool programs in the local educational agency. The local educational agency participates in transition planning conferences arranged by birth to three programs.

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For children participating in birth to three programs who will participate in special education preschool programs in the local educational agency, the local educational agency has an IEP in effect by the child's third birthday.

If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP will begin. 34 CFR §§ 300.124, 300.101(b).

Transfer Pupils

In-State-Transfer Students

When a child with a disability (who had an IEP that was in effect in a previous Wisconsin local educational agency) transfers to this local educational agency and enrolls in a new school within the same school year, this local educational agency (in consultation with the parents) provides FAPE to the child, including services comparable to those described in the child's IEP from the previous agency, until this local educational agency either:

- Adopts the child's IEP from the previous public agency; or
- Develops, adopts, and implements a new IEP.

The local educational agency adopts the evaluation and the eligibility determination of the sending local educational agency or conducts an evaluation and eligibility determination of the transfer pupil. The local educational agency does not adopt the evaluation and eligibility determination or the IEP of the sending local educational agency if the evaluation and eligibility determination or the IEP do not meet state and federal requirements. 34 CFR § 300.323(e).

Out-of-State Transfer Students

When a child with a disability (who had an IEP that was in effect in a previous agency in another State) transfers to this local educational agency, and enrolls in a new school within the same school year, this local educational agency, in consultation with the parents, provides the child with FAPE, including services comparable to those described in the child's IEP from the out-of-state agency, until this local educational agency:

- Conducts an evaluation and determines eligibility if determined to be necessary by this local educational agency; and
- Develops, adopts, and implements a new IEP, if appropriate.

34 CFR § 300.323(f).

Transmittal of Records

When the local educational agency receives a transfer pupil with a disability and does not receive the pupil's records from the sending local educational agency, the local

educational agency takes reasonable steps, including a written request, to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child from the previous public agency in which the child was enrolled. When this local educational agency receives such a written request for a transfer pupil, this local educational agency transfers the pupil's records to the requesting local educational agency no later than the next working day from receipt of the written notice as required under Wis. Stat. § 118.125(4). 34 CFR § 300.323(g); Wis. Stat. § 118.125(4).

Charter Schools

Children with disabilities who attend the local educational agency's charter schools and their parents retain all rights under federal special education laws. The local educational agency ensures that the requirements of federal special education law are met.

Children with disabilities who attend Charter Schools under contract with the local educational agency, are served in the same manner as other children with disabilities in the local educational agency. This includes providing supplementary and related services on site at the charter school to the same extent to which the local educational agency provides such services on the site to its other public schools. Funds received under part B of the Individuals with Disabilities Education Act are provided to charter schools in the same manner as they are provided to other schools in the local educational agency, including proportional distribution based on relative enrollment of children with disabilities and at the same time as the local educational agency distributes other Federal funds to the local educational agency's other public schools. 34 CFR §§ 300.209(a) and (b); Wis. Stat. § 115.77(8).

Due Process Procedures

Opportunity to Examine Records and Parent Participation in Meetings

The parents of a child with a disability are afforded, in accordance with the policies in the "Confidentiality" section of this document, an opportunity to:

- inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child; and

- participate in meetings with respect to the identification, evaluation and educational placement of the child and the provision of a free appropriate public education to the child.

The local educational agency notifies parents consistent with the policies in the "Parent Participation in IEP Team Meetings" section of these policies to ensure that parents of children with disabilities have the opportunity to participate in meetings described above. The term "meeting" in this policy does not include informal or unscheduled conversations

involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The IEP team, which includes the parent, makes decisions on the educational placement of the child. In implementing this policy, the local educational agency uses procedures consistent with the policies described above. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency uses other methods to ensure their participation including individual or conference telephone calls, or video conferencing. A placement decision may be made by the IEP team without the involvement of the parent if the local educational agency is unable to obtain the parent's participation in the decision. In this case, the local educational agency must have a record of its attempt to ensure parent involvement. 34 CFR §§ 300.501, 300.322(e).

Notice

The local educational agency ensures a child's parents are provided prior written notice a reasonable time before the local educational agency proposes to initiate or change or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child. The notice contains:

- a description of the action proposed or refused;
- an explanation of why the local educational agency proposed or refused to take action;
- a statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- a description of any other options considered and the reason(s) they were rejected;
- a description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action;
- the names of the evaluators, if known, if the notices propose to evaluate or reevaluate the child;
- a description of any other factors relevant to the proposal or refusal; and
- sources for parents to contact to obtain assistance in understanding special education law.

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Each prior written notice is written in language understandable to the general public, in the parent's native language or other means of communication unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the local educational agency takes steps to ensure the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; the parent understands the content of the notice; and there is written evidence that these requirements have been met. 34 CFR § 300.503; Wis. Stat. § 115.792(2).

Procedural Safeguards Notice

A copy of the procedural safeguards available to the parents of a child with a disability is given to the parents one time a school year, except that a copy is given to the parents:

- upon initial referral or parent request for evaluation;
- upon receipt of the first IDEA State complaint and the first due process complaint;
- on the date on which the decision is made to make a disciplinary removal that constitutes a change of placement;
- upon request by a parent.

The procedural safeguards notice includes a full explanation of the procedural safeguards available under special education law written so as to be easily understood by the general public and in the native language of the child's parents unless it is clearly not feasible to do so, relating to:

- independent educational evaluation;
- prior written notice;
- parental consent;
- access to educational records;
- opportunity to present and resolve complaints through the due process complaint and State IDEA complaint procedures, including:
    - the time period in which to file a complaint;
    - the opportunity for the agency to resolve the complaint; and
    - the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.
- the child's placement during pendency of due process proceedings;

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- procedures for pupils who are subject to placement in interim alternative educational settings under 20 U.S.C. § 1415(k);
- requirements for the unilateral placement by parents of pupils in private schools at public expense;
- availability of mediation;
- due process hearings including requirements for disclosure of evaluation results and recommendations;
- civil actions, including the time period in which to file those actions; and
- attorney fees.

34 CFR § 300.504.

Independent Educational Evaluations

A parent may obtain an independent educational evaluation of his or her child. If a parent requests information from the local educational agency about an independent evaluation, the local educational agency provides the parent with information about where an independent evaluation may be obtained and the agency criteria applicable for independent educational evaluations. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local educational agency. "Public expense" means the local educational agency either pays for the full cost of the evaluation or ensures the evaluation is otherwise provided at no cost to the parent.

If a parent requests an independent educational evaluation at public expense, the local educational agency, without unnecessary delay, either initiates a due process hearing to show its evaluation is appropriate or ensures an independent educational evaluation is provided at public expense unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent did not meet local educational agency criteria.

If a parent requests an independent educational evaluation, the local educational agency may ask for the parent's reason why he or she objects to the public evaluation. However, the local educational agency does not require the explanation and the local educational agency does not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation. A parent is entitled to only one independent educational evaluation at public expense each time the local educational agency conducts an evaluation with which the parent disagrees.

If the local educational agency initiates a hearing and the final decision is that the local educational agency’s evaluation is appropriate, the parent still has the right to an independent educational evaluation but not at public expense. If the parent obtains an

independent educational evaluation at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation must be considered by the local educational agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. When an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, is the same as the criteria that the local educational agency uses when it initiates an evaluation to the extent that those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described above, the local educational agency does not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. 34 CFR § 300.502.

Surrogate Parent

The local educational agency ensures the rights of a child are protected if no parent can be identified; the local educational agency, after reasonable efforts, cannot locate a parent; the child is a ward of the state; or the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act. In such instances, the local educational agency assigns an individual to act as a surrogate for the parents. The local educational agency has a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child’s case.

The local educational agency ensures that a person selected as a surrogate parent is not an employee of the Department of Public Instruction, the local educational agency, or any other agency that is involved in the education or care of the child; has no personal or professional interest that conflicts with the interest of the child he or she represents; and has knowledge and skills that ensure adequate representation of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

For an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate parent can be appointed that meets all of the requirements for selection of surrogate parents.

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

The local educational agency makes reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after it determines that one is needed. 34 CFR § 300.519; Wis. Stat. § 115.792(1)(a)2.

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Mediation

When a local educational agency participates in a mediation under Wis. Stat. § 115, the local educational agency:

- keeps discussion that occurs during mediation confidential;
- does not use discussion that occurs during mediation as evidence in any subsequent hearing or civil proceeding;
- does not record a mediation session unless both parties and the mediator agree;
- may be represented by two individuals, unless the parties agree to additional representatives;
- may withdraw from mediation at any time;
- may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator;
- assumes responsibility with the parents for additional compensation if the parties agree that the amount of the mediator's compensation should be greater than the Wisconsin Special Education Mediation System schedule allows; and
- assumes responsibility with the parents for the compensation of a mediator who is not on the mediation system roster.

If the parties resolve the dispute or a portion of the dispute through the mediation process, the parties must execute a legally binding agreement. The agreement is reduced to writing, signed by the parties and a copy is given to each party. The agreement states that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The agreement is legally binding upon the parties and is enforceable in circuit court. The agreement is signed by a representative of the local educational agency who has the authority to bind the local educational agency.

The Wisconsin Mediation System is voluntary on the part of the parties and the local educational agency does not use it to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under special education law. 34 CFR § 300.506; Wis. Stat. § 115.797.

Due Process Hearings

When the local educational agency files a request for a due process hearing, it will provide a copy of the hearing request to the other party, a copy to the DPI and will keep the hearing request confidential.

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If the parent or the child's attorney files a written request for a due process hearing, the local educational agency will:

- inform the parent of any free or low cost legal and other relevant services available in the area;

- (unless it has previously sent a written notice to the parent regarding the item in dispute) within 10 days of receiving the hearing request, provide a written response that includes an explanation of why the agency proposed or refused to take the action raised in the hearing request; a description of other options that the IEP team considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and, a description of the other factors that are relevant to the agency's proposed or refused action;

- within 10 days of receiving the request, send a written response that addresses the issues raised in the hearing request; and

- (except when the parents and local educational agency agree in writing to waive a meeting or use mediation) within 15 days of receiving the request and before the hearing is conducted, convene a meeting with the child's parents, a representative of the local educational agency who is authorized to make decisions on behalf of the agency, and the relevant members of the IEP team who have specific knowledge of the facts identified in the hearing request. If the meeting resolves any subject matter of the hearing request, the parents and the local educational agency will execute and sign a legally binding agreement.

When the local educational agency is a party to a due process hearing under Wis. Stat. § 115.80, the local educational agency:

- pays for the cost of the hearing;

- pays for the cost of an independent educational evaluation ordered by the hearing officer;

- discloses to all other parties, at least five business days before a hearing is conducted (other than an expedited hearing under the provisions of the Individuals with Disabilities Education Act), all evaluations completed by that date and recommendations based upon the local educational agency's evaluations that the local educational agency intends to use at the hearing; and

- except as provided in the "discipline" section of the local educational agency's policies, the local educational agency does not change the educational placement of a child during the pendency of a hearing or judicial proceedings unless the child's parents agree to the change. If the child is applying for initial admission to a public school, the child, with the consent of the parents, is placed in the public school program until all due process proceedings have been completed.

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Before filing a civil action under any federal law seeking relief that is also available under state special education law, the local educational agency exhausts the due process hearing procedures to the same extent as would be required had the action been brought under special education law. 34 CFR §§ 300.507, 300.508, 300.510; Wis. Stat. § 115.80.

Transfer of Rights at Age of Majority

When a child with a disability reaches the age of 18, unless he or she has been determined to be incompetent as defined by state law, the local educational agency transfers the rights of parents under the Individuals with Disabilities Education Act and Chapter 115, Wis. Stats., to the individual pupil. The local educational agency provides any required notices to both the parents and the adult pupil. The local educational agency notifies both the parents and the individual pupil of the transfer of rights. 34 CFR § 300.520; Wis. Stat. § 115.807.

Discipline Procedures

Authority of School Personnel

School personnel consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the discipline procedures of Individuals with Disabilities Education Act, is appropriate for a child with a disability who violates a code of school conduct.

School personnel are authorized to remove a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting (IEAS), another setting, or suspension for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities) consistent with state requirements relating to the suspension of pupils.

State law permits suspensions from school for up to five consecutive school days and for up to 15 consecutive school days when a notice of expulsion hearing has been sent. A child with a disability may be suspended for more than ten consecutive school days only if the conduct is not a manifestation of the child’s disability and the requirements provided below are followed.

School personnel are authorized to remove a child with a disability for additional removals of not more than ten consecutive school days, consistent with state requirements, in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

If a child with a disability has been removed from his or her placement for 10 school days or less, the local educational agency provides services to the child if the local educational

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agency also provides services to children without disabilities who have been similarly removed.

For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if the removal is for more than ten consecutive school days or the child is subjected to a series of removals that constitute a pattern because

- the series of removals total more than ten school days in a school year;
- the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- such additional factors as the length of each removal, the total amount of time the child is removed and the proximity of the removals to one another.

The local educational agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

After a child with a disability has been removed from the current placement for ten school days in the same school year during any subsequent days of removal the local educational agency must provide services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the appropriate services.

The local educational agency applies the relevant disciplinary procedures for children without disabilities to the child only if, as a result of the manifestation determination review, the local educational agency determines the behavior of the child with a disability was not a manifestation of the child’s disability. The local educational agency applies the relevant disciplinary procedures in the same manner in which they would be applied to children without disabilities.

A child with a disability whose behavior is determined not to be a manifestation of the child’s disability continues to be provided education services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP. 34 CFR § 300.530; 300.536.

Placement in Interim Alternative Educational Settings

School personnel are authorized to remove a child with a disability to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability if:

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- the child carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the state or a local educational agency;

- the child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the state or a local educational agency; or

- the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or a local educational agency.

34 CFR § 300.530(g).

The IEP team determines the interim alternative educational setting and the appropriate services to be provided. A child placed in an interim alternative educational setting:

- continues to receive educational services to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

- if the behavior is not a manifestation of the child's disability, receives, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur;

- if the behavior is a manifestation of the child's disability, receives either:

    - a functional behavior assessment, unless the local educational agency had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implemented a behavioral intervention plan, or

    - if a behavioral intervention plan already has been developed, a review of the behavioral intervention plan, and modifications to it, as necessary, to address the behavior.

34 CFR §§ 300.530, 300.531.

On the date on which the decision is made to place the child in an interim alternative educational setting or to make a removal that constitutes a change of placement for violating a code of conduct, the local educational agency notifies the parents of that decision and provides the parents a procedural safeguards notice. 34 CFR § 300.530(h).

When the local educational agency determines that maintaining the current placement of a child with a disability is substantially likely to result in injury to the child or others, the agency may request an expedited due process hearing to change the child's placement to an appropriate interim alternative educational setting for not more than 45 school days.

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The request for a due process hearing may be repeated if the local educational agency believes that returning the child to the original placement is substantially likely to result in injury to the child or others. 34 CFR § 300.532.

Manifestation Determination Reviews

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the child's IEP team (as determined by the parent and the local educational agency):

- review all relevant information in the student's file, including the child's IEP;
- any teacher observations; and
- any relevant information provided by the parents.

The conduct is determined to be a manifestation of the child's disability if the local educational agency, the parent, and relevant members of the child's IEP team determine that either:

- the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

If the local educational agency, the parent, and relevant members of the child's IEP team determine the conduct in question was the direct result of the local educational agency's failure to implement the IEP, the local educational agency takes immediate steps to remedy those deficiencies.

If the conduct was a manifestation of the child's disability, the IEP team returns the child to the placement from which the child was removed, unless the child has been placed in an interim alternative educational setting or the parent and local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan, and either:

- conducts a functional behavioral assessment, unless the local educational agency had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implements a behavioral intervention plan for the child; or
- if a behavioral intervention plan has already been developed, the IEP team reviews the behavioral intervention plan, and modifies it, as necessary, to address the behavior.

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- If the conduct was not a manifestation of the child's disability, the child receives, as appropriate:

- a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur; and

- educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

34 CFR §§ 300.530(d), (e), and (f).

Placement During Appeals

The parent of a child with a disability who disagrees with any decision regarding a disciplinary change in placement or a manifestation determination, or the local educational agency believes that maintaining the current placement is substantially likely to result in injury to the child or others may appeal the decision by requesting a hearing. During such appeal, the child will remain in the placement to which the child was removed pending the decision of the hearing officer or until the expiration of the disciplinary placement, whichever occurs first. The parent and the local educational agency may agree to a different placement during the appeal.

Unless the local educational agency and the parents agree in writing to waive the resolution meeting or agree to use the mediation process, the local educational agency conducts a resolution meeting within seven days of receiving notice of the parent's due process complaint. 34 CFR §§ 300.532; 300.533.

Protections for Children Not Yet Eligible for Special Education & Related Services

The local educational agency provides the protections asserted for a child under the Individuals with Disabilities Education Act-Part B to a child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of conduct of the local educational agency if the local educational agency had knowledge (as determined in accordance with the provisions below) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

The local educational agency has knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- the parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

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- the parent of the child requested an IEP team evaluation of the child; or
- the teacher of the child, or other personnel of the local educational agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

The local educational agency does not have knowledge that a child is a child with a disability if:

- the parent of the child has not allowed an IEP team evaluation of the child or has refused special education services; or
- the local educational agency conducted an IEP team evaluation and determined that the child was not a child with a disability.

If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the local educational agency may subject the child to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors. 34 CFR § 300.534.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation is conducted in an expedited manner. Until the evaluation is completed, the local educational agency maintains the child in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the local educational agency's evaluation and information provided by the parents, the local educational agency provides special education and related services in accordance with the Individuals with Disabilities Education Act-Part B and state law, including legal requirements relating to discipline and the provision of a free appropriate public education to children with disabilities. 34 CFR § 300.534.

When the local educational agency reports a crime committed by a child with a disability, it ensures copies of the child's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom it reports the crime. The local educational agency transmits copies of the child's special education and disciplinary records only to the extent that the Family Educational Rights and Privacy Act permits transmission. 34 CFR § 300.535.

Seclusion and Physical Restraint

The local educational agency must meet the requirements of state law regarding the use of seclusion and physical restraint. Wis. Stat. § 118.305.

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“Physical restraint" means a restriction that immobilizes or reduces the ability of a pupil to freely move his or her torso, arms, legs, or head.

“Seclusion” means the involuntary confinement of a pupil, apart from other pupils, in a room or area from which the pupil is physically prevented from leaving.

IEP Team Meeting Requirement. The second time seclusion or restraint is used on a child with a disability in the same school year, the IEP team must meet as soon as possible and no later than 10 school days after the incident. The IEP team must review and revise the IEP to include appropriate positive behavioral interventions and other strategies to address behaviors of concern, which are based on a functional behavioral assessment.

Confidentiality of Information

The Notice to Parents

The local educational agency notifies parents before any major child identification, location, or evaluation activity. The notice is published or announced in newspapers or other media, or both, with circulation adequate to notify parents of children attending the local educational agency of the activity. 34 CFR § 300.612(b).

The local educational agency gives notice that is adequate to fully inform parents about the confidentiality of personally identifiable information requirements in the law, including:

- a description of the extent that the notice is given in the native languages of the various population groups in the local educational agency;
- a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the local educational agency intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- a description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and the implementing regulations.

34 CFR § 300.612.

Access Rights

The local educational agency permits parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency

under the Individuals with Disabilities Education Act-Part B. The agency complies with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing or resolution session, and in no case more than 45 days after the request has been made.

The right to inspect and review education records includes:

- the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- the right to have copies of the records upon request; and
- the right to have a representative of the parent inspect and review the records.

The local educational agency presumes that the parent has authority to inspect and review records relating to his or her child unless the local educational agency has been advised that the parent does not have authority under state law. 34 CFR § 300.613.

The local educational agency keeps a record of parties obtaining access to education records collected, maintained, or used under the Individuals with Disabilities Education Act (except access by parents and authorized employees of the local educational agency), including the name of the party, the date access was given and the purpose for which the party is authorized to use the records. 34 CFR § 300.614.

The local educational agency provides parents on request a list of the types and locations of education records collected, maintained, or used by the agency. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information. 34 CFR §§ 300.615, 300.616.

The local educational agency does not charge a fee for copies of records that are made for parents if the fee effectively prevents the parents from exercising their right to inspect and review those records. The local educational agency does not charge a fee to search for or to retrieve information in educational records. 34 CFR § 300.617.

Amendment of Records at Parent's Request

A parent who believes information in the education records collected, maintained, or used under the Individuals with Disabilities Education Act is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency to amend the information. The local educational agency decides whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the local educational agency decides to refuse to amend the information in accordance with the request, it informs the parent of the refusal and advises the parent of the right to an educational records hearing pursuant to the local educational agency's policies. 34 CFR § 300.618.

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The local educational agency, on request, provides an opportunity for a hearing to challenge information in education records to ensure it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. 34 CFR § 300.619.

The hearing is conducted according to the procedures described in the Family Educational Rights and Privacy Act implementing regulations. If, as a result of the hearing, the local educational agency decides the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and so informs the parent in writing. If, as a result of the hearing, the local educational agency decides the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it informs the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the local educational agency. 34 CFR §§ 300.619-621.

Any explanation placed in the records of the child under this section is maintained as part of the records of the child as long as the record or contested portion is maintained. If the records of the child or the contested portion are disclosed to any party, the explanation is also disclosed to the party. 34 CFR § 300.620(c)(2).

Consent

Parental consent is obtained before personally identifiable information is disclosed, unless the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act and Wis. Stat. § 118.125. Parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the Individuals with Disabilities Education Act with the following exceptions:

- Parental consent or the consent of an eligible child who has reached the age of majority under state law, is obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

- If a child is enrolled or is going to enroll in a private school that is not located in the local educational agency of the parent's residence, parental consent is obtained before any personally identifiable information about the child is released between school officials in the local educational agency where the private school is located and officials in the local educational agency of the parent's residence.

34 CFR § 300.622.

Safeguards

The local educational agency protects the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the local educational agency assumes responsibility for ensuring the confidentiality of any

personally identifiable information. All persons collecting or using personally identifiable information receive training or instruction regarding the state's policies and procedures described in the regulations implementing the Individuals with Disabilities Education Act and the Family Educational Rights and Privacy Act. The local educational agency maintains, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. 34 CFR § 300.623.

Destruction of Information

The local educational agency informs parents when personally identifiable information collected, maintained, or used under the Individuals with Disabilities Education Act is no longer needed to provide educational services to the child. The information is destroyed at the request of the parents. However, a permanent record of the student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. 34 CFR § 300.624.

Transfer of Confidentiality Rights at Age of Majority

Under the regulations for the Family Educational Rights and Privacy Act, the rights of parents regarding education records are transferred to the student at age 18. When the rights accorded to parents under the Individuals with Disabilities Education Act are transferred to a student who reaches the age of majority, the rights regarding educational records in the Individuals with Disabilities Education Act also transfer to the student. However, the local educational agency provides any notice required under the Individuals with Disabilities Education Act to the student and the parents. 34 CFR §§ 300.625(b) and (c).

Children With Disabilities Enrolled in Private Schools by Their Parents

Child Find

This school district locates, identifies, and evaluates all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district. The child find process is designed to ensure the equitable participation of parentally-placed private school children and an accurate count of those children. This school district undertakes child find activities similar to the activities undertaken for the agency's public school children. The child find process is completed in a time period comparable to that for students attending public schools in this school district. In carrying out the child find requirements for parentally-placed private school students, this school district includes parentally-placed private school children who reside in another state. 34 CFR § 300.131.

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Any due process complaint regarding child find requirements must be filed with the school district in which the private school is located, and a copy must be forwarded to the Department of Public Instruction. 34 CFR § 300.140(b)(2).

Provision of Services

To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary, and secondary schools located in this school district, this school district provides for the participation of those children by providing them with special education and related services, including direct services determined in accordance with the provision under the "Equitable Services Determined" section of this policy.

A services plan is developed and implemented for each private school child with a disability designated by this school district to receive special education and related services under the Individuals with Disabilities Education Act. This school district maintains in its records, and provides to the Wisconsin Department of Public Instruction, the following information related to parentally-placed private school children: (1) the number of children evaluated; (2) the number of children determined to be children with disabilities; and (3) the number of children served. 34 CFR § 300.132.

Expenditures

In providing special education and related services, including direct services, to children with disabilities enrolled by their parents in private schools, this school district spends, for children aged 3 through 21, an amount that is the same proportion of the school district's total Individuals with Disabilities Education Act flow-through grant as is the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in this school district, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

For parentally placed private school children aged 3 through 5, this school district spends an amount that is the same proportion of this school district's total preschool entitlement funds as the number of parentally placed private school children with disabilities aged 3 through 5 is to the total number of children with disabilities in its jurisdiction aged 3 through 5. This school district may provide services to private school children in excess of those required, consistent with the law and local educational agency policy.

In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, this school district, after timely and meaningful consultation with representatives of private schools, conducts a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in this school district.

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After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, this school district determines the number of parentally-placed private school children with disabilities attending private schools located in this school district; and ensures the count is conducted on October 1 of each year. The child count is used to determine the amount this school district must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year. 34 CFR § 300.133(c)(2).

State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under the Individuals with Disabilities Education Act. 34 CFR § 300.133(d).

The cost of carrying out child find requirements, including individual evaluations, is not considered in determining if this school district has met its obligation to expend a proportionate amount of Individuals with Disabilities Education Act funds to provide equitable services. 34 CFR § 300.131(d).

If this school district has not expended for equitable services all of the funds required by the end of the fiscal year for which Congress appropriated the funds, the district obligates the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year. 34 CFR § 300.133(a)(3).

Consultation

To ensure timely and meaningful consultation, this school district consults with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- the child find process, including how parentally-placed private school children suspected of having a disability can participate equitably, and how parents, teachers, and private school officials will be informed of the process;

- the determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities including the determination of how the proportionate share of those funds was calculated;

- the consultation process among this school district, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

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- how, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of the types of services, including direct services and alternate service delivery mechanisms, and how special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children, and how and when those decisions will be made; and

- how, if this school district disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

When timely and meaningful consultation has occurred, this school district must obtain a written affirmation signed by the representatives of participating schools. If the representatives do not provide the affirmation within a reasonable period of time, this school district forwards the documentation of the consultation process to the Wisconsin Department of Public Instruction.

If a private school representative files a complaint under 34 CFR § 300.136 to the Wisconsin Department of Public Instruction, this school district will forward appropriate documentation to the department. 34 CFR §§ 300.134, 300.135, and 300.136.

Equitable Services Determined

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services the child would receive if enrolled in the public school. Decisions about the services that will be provided to parentally-placed private school children with disabilities are made in accordance with services plans and consultation processes contained in these policies.

The final decisions regarding services to be provided to eligible private school children are made by this school district. 34 CFR § 300.137.

If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from this school district, the district initiates and conducts meetings to develop, review and revise a services plan for the child in accordance with the law. This school district ensures a representative of the religious or other private school attends each meeting. If the representative cannot attend, this school district uses other methods to ensure participation by the private school, including individual or conference telephone calls. 34 CFR § 300.137(c)(2).

Equitable Services Provided

The services provided to parentally-placed private school children with disabilities by this school district are provided by personnel meeting the same standards as personnel providing services in this school district, except that private elementary school and

secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements. Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. 34 CFR § 300.138(a)(2).

Each private school child with a disability who has been designated to receive services from this school district has a services plan that describes the specific special education and related services this school district will provide to the child in light of the services the district has determined (after consultation with representatives of private school children with disabilities) it will make available to parentally-placed private school children with disabilities. The services plan, to the extent appropriate, meets the IEP requirements with respect to the services provided. The services plan is developed, reviewed, and revised consistent with the provisions in the law concerning IEP teams, when IEPs must be in effect, parent participation in IEP team meetings, and development, review, and revision of IEPs. 34 CFR § 300.138(b)(2).

Services to parentally-placed private school children with disabilities are provided by employees of this school district or through contract by the district with an individual, association, agency, organization, or other entity. The services, including materials and equipment, are secular, neutral, and non-ideological. 34 CFR § 300.138(c).

Location of Services and Transportation

If this school district provides services to private school children with disabilities at the child's private school, including a religiously affiliated private school, it will do so to the extent consistent with state and federal law. If necessary for the child to benefit from or participate in the services provided, this school district transports private school children with disabilities from the child's school or home to a site other than the child's private school and from the service site to the private school or the child's home, depending on the timing of the services. This school district may include the cost of such transportation in calculating whether it has met the requirement to expend a proportionate amount of Individuals with Disabilities Education Act funds on services to parentally-placed private school children with disabilities. 34 CFR § 300.139(b)(2).

Requirement that Funds Not Benefit a Private School

This school district does not use Individuals with Disabilities Education Act funds to finance the existing level of instruction in a private school or to otherwise benefit the private school**.** The funds are used to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting the needs of a private school or the general needs of the students enrolled in the private school. 34 CFR § 300.141.

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Use of Personnel

Individuals with Disabilities Education Act funds are used to make public school personnel available in other than public facilities to the extent necessary to provide equitable services for parentally-placed private school children with disabilities and if those services are not normally provided by the private school. If this school district pays for the services of an employee of a private school employee, the employee performs the services outside of his or her regular hours of duty and under public supervision and control. 34 CFR § 300.142.

Separate Classes Prohibited

This school district does not use Individuals with Disabilities Education Act funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and include both students enrolled in public schools and students enrolled in private schools. 34 CFR § 300.143.

Property, Equipment, and Supplies

This school district controls and administers Individuals with Disabilities Education Act funds used to provide special education and related services to parentally-placed private school children with disabilities and holds title to and administer materials, equipment, and property purchased with those funds**.** Equipment and supplies are placed in a private school for the period of time needed for the Individuals with Disabilities Education Act program. Equipment and supplies placed in a private school are used only for Individuals with Disabilities Education Act purposes and can be removed from the private school without remodeling the private school facility. Equipment and supplies are removed from a private school if the equipment and supplies are no longer needed for Individuals with Disabilities Education Act purposes; or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Individuals with Disabilities Education Act purposes. Individuals with Disabilities Education Act funds are not used for repairs, minor remodeling, or construction of private school facilities. 34 CFR § 300.144.

Parentally Placed Children in Private Schools When FAPE is at Issue

The local educational agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local educational agency made FAPE available to the child and the parents elected to place the child in a private school or facility. The child is considered a parentally placed private school child with a disability. 34 CFR § 300.148.

Children With Disabilities in Private Schools Placed or Referred by the Local Educational Agency

When, pursuant to an IEP, a child with a disability is or has been placed in or referred to a private school or facility by the local educational agency as a means of providing

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special education and related services, the local educational agency ensures that the child:

- is provided special education and related services in conformance with an IEP that meets the requirements of the law and at no cost to the parents;
- is provided an education that meets the standards that apply to education provided by the Department of Public Instruction and local educational agencies including the requirements of Individuals with Disabilities Education Act, except that staff are not required to meet the highly qualified teacher requirements; and
- has all of the rights of a child with a disability who is served by a public agency.

34 CFR § 300.146.

Development, Review, and Revision of the IEP

Before the local educational agency places a child with a disability in, or refers a child to, a private school or facility, the local educational agency initiates and conducts a meeting to develop an IEP for the child in accordance with the law. The local educational agency ensures a representative of the private school or facility attends the meeting. If the representative cannot attend, the local educational agency uses other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local educational agency. If the local educational agency permits a private school or facility to initiate and conduct meetings to review and revise IEPs, the local educational agency ensures the parents and a local educational agency representative are involved in any decisions about the IEP and agree to any proposed changes in the IEP before those changes are implemented. Even if a private school or facility implements a child's IEP, the local educational agency retains responsibility for compliance with the requirements of special education law. 34 CFR § 300.325.

When the local educational agency places a child, in a private school as a means of providing special education and related services, the local educational agency ensures an IEP is developed and implemented for each child with a disability and the special education and related services are provided in conformance with an IEP and at no cost to the parents. Wis. Stat. § 115.77(1m)(d).

Children in Residential Care Centers

When the responsible local educational agency receives a notice from a county or a state agency that a child will be placed in a residential care center, the local educational agency does all of the following:

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- if the child is a child with a disability, as soon as reasonably possible and after consulting with the county or state agency, as appropriate, the local educational agency appoints an IEP team to review and revise, if necessary, the child's IEP and develop an educational placement offer;

- if the child has not been identified as a child with a disability, the local educational agency:

    - appoints staff to review the child's education records and develop a status report;

    - sends a copy of the status report to the county or state agency within 30 days after receiving the notice that the child will be placed in a residential care center;

    - appoints an IEP team to conduct an evaluation of the child if the local educational agency has reasonable cause to believe the child is a child with a disability;

    - ensures the IEP team conducts the evaluation; and

    - ensures the IEP team develops an IEP and an educational placement offer, in consultation with the county or state agency if the IEP team determines the child is a child with a disability.

Wis. Stat. § 115.81(3)(b).

When the responsible local educational agency offers an educational placement in a residential care center, the responsible local educational agency:

- ensures the child receives a free appropriate public education;

- ensures the child's treatment and security needs are considered when determining the least restrictive environment for the child;

- appoints an IEP team to reevaluate the child, as required by state law, while the child resides at the child caring institution;

- while the child resides at the residential care center, the local educational agency refers the child to another local educational agency after consulting the residential care center and a county department or state agency, if the responsible local educational agency determines that the child's special education needs may be appropriately served in a less restrictive setting in the other local educational agency; and

- assigns staff or an IEP team to develop a reintegration plan for a child leaving the residential care center, in cooperation with county and residential care center staff.

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Wis. Stat. § 115.81(4)(a).

When this school district receives a referral from the responsible local educational agency because the referring responsible local educational agency believes the child's special education needs could be met in a less restrictive setting, this school district assigns staff to determine whether the child can appropriately receive special education and related services in the school district. If the assigned staff determine the child can appropriately receive special education and related services in this school district, it provides such services and may apply for state tuition payments under Wis. Stat. § 121.79(1)(a), for the child's educational expenses. If the assigned staff determines the child cannot appropriately receive special education and related services in this school district, the school district keeps a written record of the reasons for that determination. Wis. Stat. § 115.81(4)(c).

Placement Disputes; School Board Referrals; Interagency Cooperation

When a dispute arises between the local educational agency and the Wisconsin Department of Health and Family Services, the Wisconsin Department of Corrections, or a county, or between local educational agencies over the placement of a child, the local educational agency seeks resolution of the dispute from the State Superintendent. This provision applies only to a placement in a nonresidential educational program made under Wis. Stat. § 48.57 (1)(c) or to a placement in a residential care center made under Wis. Stat. § 115.81.

Annually, on or before August 15, the local educational agency reports to the county departments under Wis. Stat. §§ 51.42 and 51.437 the names of resident children who are at least 16, are not expected to be enrolled in an educational program two years from the date of the report and may require services from the county department.

If a public agency, as defined by Wis. Stat. § 166.20(1)(i), except that it does not include a local educational agency, is required by federal or state law or by an interagency agreement to provide or pay for the location, identification or evaluation of a child with a disability, including a child with a disability who is not yet 3 years of age, or for assistive technology devices or services, supplementary aids or services, transition services or special education or related services for a child with a disability, and fails to do so, the local educational agency provides or pays for the services. The local educational agency seeks reimbursement for the cost of providing the services from the public agency. Wis. Stat. § 115.812.

Local Educational Agency Reporting to State

The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has established and implemented policies, procedures and programs that are consistent with state and federal special education requirements, policies and procedures. The local educational agency will modify them to the extent

necessary to ensure compliance with the law if the provisions of federal or state laws or regulations are amended, if there is a new interpretation of Individuals with Disabilities Education Act by federal or state courts, or if there is an official finding of noncompliance with federal or state law or regulations. 34 CFR § 300.201; Wis. Stat. § 115.77(1m)(f).

The local educational agency files with the Department of Public Instruction information to demonstrate all personnel necessary to carry out the requirements of state and federal special education law are appropriately and adequately prepared, subject to the requirements of the personnel requirements of the Individuals with Disabilities Education Act and the Elementary and Secondary Education Act. 34 CFR § 300.207.

The local educational agency provides to the Department of Public Instruction information needed for the Department to meet its responsibilities under state and federal special education laws, including information related to the performance of children with disabilities participating in local educational agency special education programs. 34 CFR § 300.211; Wis. Stat. § 115.77(2).

The local educational agency reports its plan for providing special education and related services to children with disabilities to the Department of Public Instruction on a schedule and using instructions provided by the Department of Public Instruction. The plan includes:

- statements of assurance as required by applicable federal law;
- information relating to access of private school pupils to the local educational agency's special education and related services;
- assurances that the local educational agency, in providing for the children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with this subchapter and applicable federal law;
- the local educational agency's plan for ensuring that all personnel necessary to carry out the requirements of this subchapter are appropriately and adequately prepared according to applicable state and federal law;
- the data regarding children with disabilities and nondisabled children in the local educational agency that the division is required to collect or report to be in compliance with 20 U.S.C. §§ 1400 to 1482; and
- any other information the division requires to permit its review of the plan.

34 CFR § 300.200; Wis. Stat. § 115.77(4).

When the local educational agency participates in a county children with disabilities education board program, annually by October 1, the local educational agency and the county children with disabilities education board submit a report to the state superintendent. The report includes the portion of each school day that each pupil enrolled in the county program, who is also enrolled in the local educational agency,

spent in county program classes in the previous school year, and the portion of the school day that the pupil spent in the local educational agency classes in the previous school year. Wis. Stat. § 115.817(5)(d).

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Appendix of Federal Law and Regulations

Referenced in the Model Policies and Procedures

34 CFR § 99.3 - Family Educational Rights and Privacy Act of 1974 – Definition of Education Records

(a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Section 99.8.

(3) (i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

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(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, ``treatment'' does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

42 U.S.C. § 11434a – McKinney-Vento Homeless Assistance Act, Definition of Homeless Children

(2) The term “homeless children and youths”—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

18 U.S.C. § 1365(h) – Definition of Serious Bodily Injury

(3) the term “serious bodily injury” means bodily injury which involves—

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

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(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(4) the term “bodily injury” means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary.

29 U.S.C. § 3002(19) - Definition of Universal Design

The term “universal design” means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

18 U.S.C. § 930(g)(2) - Definition of Weapon

The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than 2 1/2 inches in length.

20 U.S.C. § 7801(37) – Definition of Scientifically Based Research

The term "scientifically based research"--

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that--

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple

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measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

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