

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.

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.

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.

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 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:

- 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).

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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. 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.
- 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;
- 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.

"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.

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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.

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.

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;
- 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.

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 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:

- 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.

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).

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
 - (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
- (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 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.

