

Special Education in Plain Language



Lighthouse

User-Friendly Handbook on Special Education Laws, Policies and Practices in Wisconsin

June 2009, Third Edition, Revised

On the Cover



"Lighthouse" was created by the Wisconsin outdoor artist and painter, Elton Krafft, (1914 – 2001).

The "Lighthouse" reflects the pure joy that Elton Krafft found in painting Wisconsin landscape themes. A prolific painter, the Lake Geneva artist spent most of his 87 years creating Wisconsin impressionist style paintings.

A gentle, sensitive and kind man, he was an inventive colorist and daring manipulator of paint and pictorial space, boldly manipulating strokes of paint with palette knife and paintbrush for the sake of painting - for the sheer pleasure of recording his perceptions of the visible world with extraordinary colors and resulting shapes. He enjoyed painting through the changing seasons and saw beauty in the darkest, gloomiest weather. "You discover things by painting," he once said. "It's been a lifetime of discovery for my own self. Every time you put something down on canvas something happens to something else."

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June 2009, Third Edition, Revised

Collaboratively developed and reviewed by Wisconsin Parents, Advocacy Organizations, School and Special Education Administrators, General and Special Educators, Service Providers, Union Members, Special Education Attorneys, and the Wisconsin Department of Public Instruction.

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Introduction

Some children who are having problems in school may need extra help through special education. Special education is for children who have a disability. Schools must follow certain procedures to decide if a child is eligible for special education. These procedures are written in state and federal laws. The special education laws and procedures are complicated and can be hard to understand. This book will help parents, school professionals and others understand some of the procedures of special education.

The book is not a complete explanation of all the special education laws, but it has information about many of the most common things readers may want to know. This book is not meant to give legal advice. If legal advice is needed, talk to a lawyer.

How to use this Book

The first part of this book is a large chart. There are five columns in the chart.

Column 1 **Topic:** use this to easily find the main topic.

Column 2 **What the Law Says** has the exact words from state or federal law about the topic. State law is shown as “115.xx.” It is from Chapter 115 of Wisconsin Statutes. When there is not a state law about the topic, federal law is noted. A citation that begins with “20 USC” is from the federal law called the Individuals with Disabilities Education Act (IDEA). A citation that begins 34 CFR 300 is from the federal regulations for IDEA. If Wisconsin has a policy on the topic, there is a reference to the Department of Public Instruction’s (DPI’s) “Update Bulletins.”

Column 3 **What the Law Means** is plain language wording about the law.

Column 4 **What Needs To Be Done** tells the things the school or the individualized education program (IEP) team must do.

Column 5 **What Parents Need to Know or Do** gives ideas for parents.

The law uses the term Local Educational Agency, or LEA. Most LEAs are public school districts in the local community. There are other agencies that have the same responsibilities as an LEA. These are usually state facilities that have schools. This book uses “LEA,” “district” and “school” as the same thing.

Part Two (Other School Choices), Part Three (Problem Solving) and Part Four (Special Education Behavior and Discipline) of this book tell what the law says as well as what experts say. Some of the information is also found in the list of procedural safeguards schools must give to parents when they send them special education forms or notices. State and national resources are listed at the end of the book.

This book refers to DPI Bulletins in many places. DPI Bulletins are used to explain some parts of special education law or requirements. They give more information on the topic. These bulletins can be read on the internet at <http://dpi.wi.gov/sped/bulindex.html>

Who is a child with a disability?

A *child with a disability* is a child who needs special education and related services. The child must be at least 3 years old, but not yet 21, and not yet graduated from high school. The term includes a person who becomes 21 during the school term for the remainder of the school term (the last day pupils attend in a school year, other than summer classes). The law has criteria for each category below to help IEP teams decide if a child has a disability.

- Cognitive disabilities (CD)
- Hearing impairments (HI)
- Speech or language impairments (SL)
- Visual impairments (VI)
- Emotional behavioral disability (EBD)
- Orthopedic impairments (OI)
- Autism
- Traumatic brain injury (TBI)
- Specific learning disabilities (SLD)
- Other health impairments (OHI)
- Significant developmental delay (SDD)

The Language of Special Education

Special education has a language of its own. School staff sometimes use letters instead of longer terms. This can sometimes be confusing. Here are a few terms used in this book. Look in the glossary on page 61 for more help with special education language.

IEP team - Individualized Education Program team is a group of school staff, parents, and others that either the school staff or parents choose to include.

LEA - Local Education Agency or the school district.

DPI – Wisconsin Department of Public Instruction, the state agency that oversees LEAs.

FAPE - Free Appropriate Public Education. LEAs are required to provide FAPE for all children enrolled in special education in that district.

What do we mean by “Parent”?

(DPI Bulletin # 00.05)

In this book, the word “parent” means:

- a biological parent;
- a husband who has consented to the artificial insemination of his wife;
- a male who is presumed to be the child’s father;
- a male who has been determined to be the child’s father by a court;
- an adoptive parent;
- a legal guardian;
- a person acting as a parent of a child;
- a person appointed as a sustaining parent;
- a person assigned as a surrogate parent; or
- a foster parent under certain circumstances (See DPI Bulletin # 00.11).

“Parent” does not include:

- any person whose parental rights have been terminated;
- the state or a county or a child welfare agency if:
 - a child was made a ward of the state or a county or child welfare agency; or if
 - a child has been placed in the legal custody or guardianship of the state or a county or a child welfare agency; 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.

Child Find

Schools are responsible for finding children with disabilities living in the school district. This includes children with disabilities attending private schools in the district and homeless children. Schools also must evaluate those children to see if they need special education.

School districts have policies and procedures for how they will find children with disabilities in their districts. The plans describe how the district will help children get needed services. The plans might include newspaper announcements, flyers in public places or mailings to doctors and hospitals in the area. Most districts also have scheduled screening programs.

Notice and Consent

In this book, the word “notice” is used with a legal meaning. Districts must give parents written notice before the district can change the identification, evaluation, or educational placement of a child. Districts must provide notice before refusing to change the identification, evaluation, or placement of a child. They must provide notice before starting or changing the provision of a free appropriate public education to the child. They must provide notice before refusing to start or change the provision of an appropriate education.

A notice must include a description of the action the district wants to take or refuses to take. It must explain why the district wants to take the action or refuses to take the action. The notice must include a description of any evaluation, assessment, record, or report used in deciding to take the action or refusing to take the action. The notice must tell parents that they have protections under special education law (see sections below). If it is not in response to an initial referral for evaluation, the notice must tell parents how they can get a copy of the procedural safeguards.

A notice also includes places for parents to contact for help in understanding special education requirements and procedures. The notice must describe other options the district considered and why those options were rejected. It must include a description of any other factors that were part of the district's decision.

Notices must be written in language understandable to the general public. They must be provided in the parent's native language or other mode of communication unless it is clearly not practical to do so. If the parent's native language is not written, the district must translate the notice for the parent and have written evidence it did so.

Parent consent is required for districts to do evaluations or place children in special education. It is sometimes required in other situations. Consent means the parent has been fully informed in the parent's native language of all information related to what the district is seeking consent. Consent means that the parent understands, and agrees in writing, to the carrying out of the activity for which the district is seeking consent. The request for consent must describe the activity. If the consent is for the release of records, the request must list the records that will be released and to whom the records will be released.

Consent is voluntary on the parent's part. Consent may be revoked at any time, but, if consent is revoked, it does not undo something that has already been done. If the revoked consent is for evaluation, the district must stop evaluating. If consent is revoked for placement in special education, before the child has begun getting special education services, the district may not provide the services. If consent for placement is revoked after special education services have started, the district will stop providing special education.

Withdrawal of consent for special education and related services

WHAT THE LAW SAYS:

If, at any time after the initial provision of special education and related services, the parent of a child revokes consent in writing for continuing special education and related services, the local educational agency--

1. May not continue to provide special education and related services to the child but must provide prior written notice before ending the special education and related services;
2. May not use the procedures in this law (including mediation or due process) in order to obtain agreement or a ruling the services may be provided to the child;
3. Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services; and
4. Is not required to convene an IEP Team meeting or develop an IEP for the child.

34 CFR 300.300 (b)(4)

WHAT THE LAW MEANS:

A parent may withdraw consent for special education at any time. The withdrawal must be in writing. If the parent withdraws consent, the school will provide the parent with a prior written notice explaining when it will stop providing the special education and related services. Once special education and related service stops, the school:

1. Is not required to make FAPE available to the child;
2. Is not required to have an IEP meeting or develop an IEP for the child;
3. Is not required to apply the special education discipline protections; and

4. Is not required to amend the child's educational records to remove any reference to the child's special education and related services.

WHAT NEEDS TO BE DONE:

The parent must notify the school in writing that he/she wishes to withdraw consent for special education and related services for the child. When the school receives the written withdrawal from the parent, the school must give the parent prior written notice a reasonable time before stopping special education and related services.

WHAT PARENTS NEED TO KNOW:

A parent may withdraw consent for special education and related services for his/her child at any time. The withdrawal must be for all special education and related services. In other words, a parent cannot decide to revoke consent for some services, but keep others. All special education and related services will be stopped when parental consent is withdrawn. Once special education and related services stop, the school district is not required to make FAPE available to the child and is not required to have an IEP meeting or develop an IEP for the child. If the child is disciplined, the district is also not required to apply the discipline protections that are available under IDEA. The school district is not required to amend the child's educational records to remove references to the child's previous special education services. If the child is referred for special education in the future, the district must conduct an evaluation, and the evaluation will be treated as an initial evaluation. Tip: Parents should thoroughly consider all of these consequences when removing their child from special education.

Pupil Records

Parents are permitted to review and inspect any education records relating to their child. Parent representatives have the same right of access as the parents. If the record contains information on more than one child, parents only have access to the information about their child. Parents may request copies of records if failure to provide copies of the records would effectively prevent the parent from exercising the right to inspect and review records.

Districts must respond to parental requests for records without unnecessary delay, prior to any meeting about an IEP or a hearing regarding identification, evaluation or placement of a child and in other cases no more than 45 days after the request is made. The building principal or designated staff member will explain and interpret the behavioral records with the parents on request. Districts provide parents, on request, a list of the types and locations of records collected, maintained, or used by the district. Parents can request a copy of their child's special education records. A district may charge a fee for copies of the records made.

Districts presume either parent has authority to review their child's records unless the district has been informed a parent does not have authority under state laws governing guardianship, separation, or divorce.

More information about pupil records and confidentiality is available in a booklet from DPI. The booklet can be found on the DPI website at: <http://dpi.wi.gov/sspw/pdf/srconfid.pdf>

Procedural Safeguards

Both state and federal special education laws give parents and schools certain rights. The law says that the school must tell parents about procedural safeguards. The school sends parents a written explanation of these rights at certain times. The items in the procedural safeguard notice are:

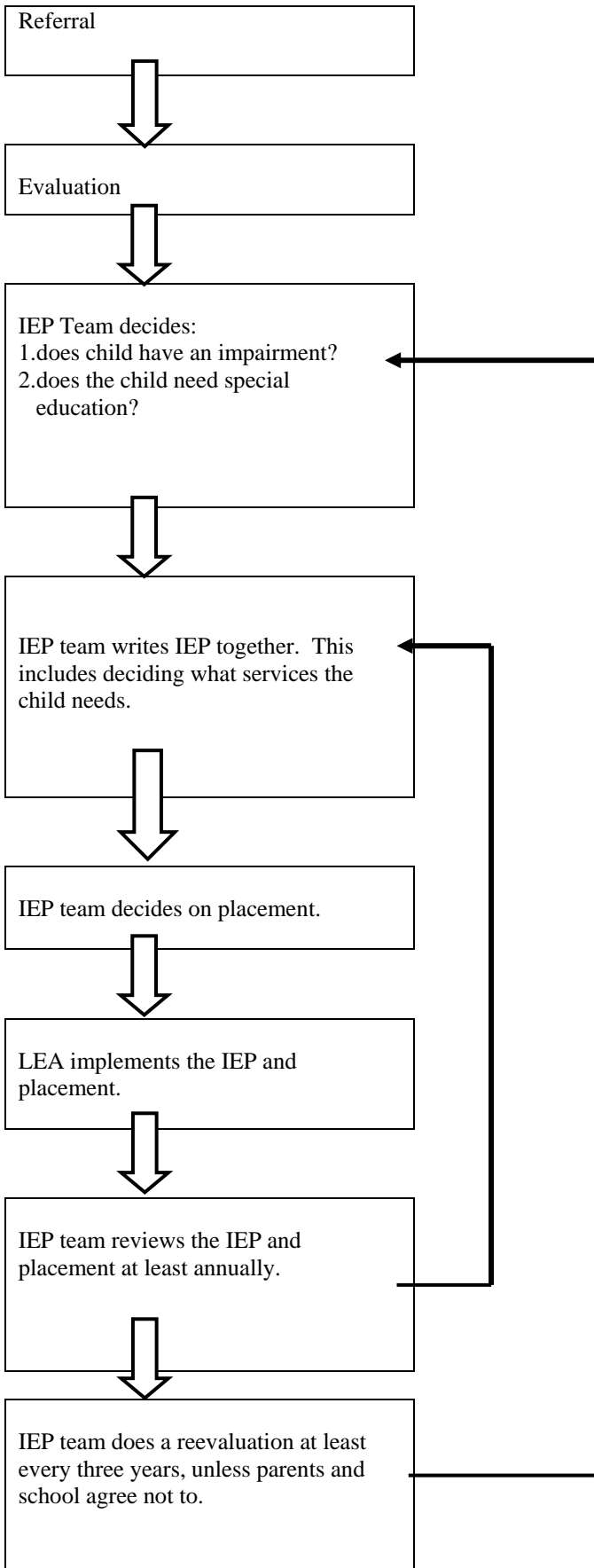
- Independent educational evaluation
- Prior written notice
- Parental consent
- Access to educational records

- How to start a due process hearing, including how to request a hearing may be asked for and the opportunity for the school to resolve the issues
- The child's placement during due process proceedings
- Procedures for pupils who are subject to placement in interim alternate educational settings
- Requirements for the unilateral placement by parents of pupils in private schools at public expense
- Mediation
- Due process hearings
- Civil actions (law suits), including when a civil action can be filed
- Attorney fees
- How to file an IDEA State Complaint with the department

For questions that are not answered in this book, talk to people at the child's school. Start with the child's teacher. If the teacher does not know the answer, or more information is needed, talk to the principal or the school district's director of special education. It is best to work out problems or get questions answered at the local school. The Department of Public Instruction (DPI) has many resources that can help parents. Parents may call the DPI when the local school cannot answer a question or solve a problem. Parents can also use the DPI web site <http://dpi.wi.gov> An index of special education topics is at <http://dpi.wi.gov/sped/tm-spedtopics.html> Parents can call DPI at 800-441-4563 (press 6 for the receptionist). Other resources are on page 60.

Special Education Process Map

The chart on the next page shows how a child gets into a special education program. State law has a timeline for the process. A district must ask a parent for consent for evaluation or send a notice that no tests are needed within 15 business days of receiving a written referral. The evaluation must be done within 60 calendar days of when the school gets parent consent to evaluate or the date the parent was notified that testing is not needed. An IEP and placement must be developed within 30 days of deciding a child is eligible for special education. The evaluation can take more than 60 days, if the parent does not make the child available for testing, or if the child moves to another school district before the evaluation is done. In some cases, and only if parents agree, the evaluation of children being evaluated for specific learning disabilities may be extended more than 60 days.



Although this chart shows a series of decisions, all the decisions are connected. All the decisions are centered on the needs of the child.

For example, when the IEP team talks about evaluation, they also think about what services the child will need and where the child will get the services.

For some children, all the IEP team's decisions can be made in one meeting. For other children, the IEP team will need to meet together more than once.

Anyone on the IEP team can ask for more time if it is needed. Anyone on the IEP team can also ask for an IEP team meeting to be held if there are changes to be talked about.

PART 1: THE IEP PROCESS

Topic	What the Law Says	What the Law Means
Referral	<p>A physician, nurse, psychologist, social worker or administrator of a social agency who reasonably believes that a child brought to him or her for services has a disability shall refer the child to the local educational agency.</p> <p>A person who is required to be licensed..., who is employed by a local educational agency and who reasonably believes a child has a disability, shall refer the child to the local educational agency...</p> <p>Any person...who reasonably believes that a child is a child with a disability may refer the child to a local educational agency... 115.777(1)</p>	<p>Listed professional people, including DPI licensed school staff, who think a child has a disability, are required to make a referral to the school. Anybody else, including parents, who thinks a child might have a disability, may refer the child to the school for a special education evaluation.</p>
How to refer	<p>All referrals shall be in writing and shall include the name of the child and the reasons why the person believes that the child is a child with a disability. 115.777 (2)(a)</p>	<p>A person wishing to make a referral must make it in writing. The referral should say why the person thinks the child has a disability. It must also include the child's name.</p>
Informing parents before referral	<p>Before submitting a referral to a local educational agency..., a person required to make a referral... shall inform the child's parent that he or she is going to submit the referral. 115.777(2)(b)</p>	<p>Before teachers or professionals make a referral, they must let the child's parents know that they are going to make the referral.</p>
LEA procedures	<p>A local educational agency shall do all of the following:</p> <ul style="list-style-type: none"> (a) Establish written procedures for accepting and processing referrals; (b) Document and date the receipt of each referral; (c) Provide information and in-service opportunities to all its licensed staff to familiarize them with the agency's referral procedures; and (d) At least annually, inform parents and persons required to make referrals...about the agency's referral and evaluation procedures. 115.777(3) 	<p>Schools have written procedures for what happens to the referral when they receive it, including who referrals must be given to.</p> <p>They have to keep a record of the date they received the referral.</p> <p>The school must give information to all its licensed staff to make them aware of its referral procedures.</p> <p>At least once a year, the school must inform parents and those who are required to make referrals about its referral and evaluation procedures.</p>
IEP Team Participants		
IEP team	<p>The local educational agency shall appoint an individualized education program team for each child referred to it. Each team shall consist of the following: 115.78(1m)</p>	<p>The school appoints the participants of the IEP team. Parents are equal participants on the team.</p>
Parents	<p>The parents of the child. 115.78(1m)(a)</p>	<p>Parents are equal participants on the IEP team, along with the other participants.</p>

What Needs To Be Done	What Parents Need To Know or Do
<p>Schools have their DPI licensed staff make a referral when they believe a child has a disability.</p> <p>Schools cannot refuse to accept a referral. Teachers should document what they have tried to help a child before they refer the child for evaluation.</p>	<p>Parents can make a referral if they think their child might have a disability. Other people, like doctors, teachers, or nurses must make a referral if they think the child has a disability. Other people can make a referral if they think the child has a disability.</p>
<p>Referrals must be in writing. Many schools have a referral form that parents can use, but the referral can be just a letter from the person making the referral. Schools may help parents make the written referral.</p>	<p>A referral must be in writing. Some schools have a form. Parents can write a letter to the school to ask the school to evaluate the child. Referrals have to say why the person making the referral thinks the child has a disability. Schools or other agencies will help make a referral if asked. Parents should write the date at the top of the letter. They should keep a copy of the letter.</p>
<p>School staff will contact parents to tell them they are going to make a referral to evaluate.</p>	<p>People other than parents who make a referral should talk to the parents before making the referral. Parents should ask questions if they want more information about why the person wants to make a referral.</p>
<p>Schools must put their procedures for referral in writing for anyone to see. They must tell staff and other named professionals about these procedures. Schools date the referral when it comes in because the timeline begins when the referral is received.</p> <p>Schools often inform parents and others by printing a notice about referrals and child find in the local paper or district newsletter.</p> <p>A referral is received when the school, gets it. When school is out, it means when someone at the school gets it. Schools must remain open during normal business hours, not including legal holidays. So, if a referral can be made during the summer, the time lines apply during the summer, just like they do during the school year.</p>	<p>Parents can ask the school for a copy of the procedures for the special education process.</p> <p>Parents can ask the school who should get the referral.</p>

<p>The school decides who will be the school staff on the IEP team and sends parents an invitation to the IEP meeting. The invitation will list the names of the people, the categories they represent (see below for the categories). Schools make all participants welcome. School professionals listen to the information presented by parents and their child experts. School professionals understand that evaluation is more than their own testing.</p>	<p>Parents should tell the school that they are coming to the IEP meeting. They should tell the school who they are bringing along as child experts or support. At the meeting, the parents should make sure all required people are at the meeting to help make the decisions. Parents are equal partners on the IEP team.</p>
<p>The school must work to make the parents equal participants in the IEP process and on the IEP team.</p>	<p>Parents are equal participants on the IEP team.</p>

Topic	What the Law Says	What the Law Means
Regular teacher	At least one regular education teacher of the child if the child is, or may be, participating in a regular educational environment. 115.78(1m)(b)	A teacher from the child’s regular education classroom if the child is, or may be in regular education is a participant on the IEP team.
Regular teacher (continued)	The regular education teacher of the child, as a participant on the individualized education program team, shall, to the extent appropriate, participate in the development of the individualized education program of the child, including the determination of appropriate positive behavioral interventions an supports and other strategies and the determination of supplementary aids and services, program modifications and support for school personnel. 115.787(3)(c)	The regular education teacher helps write the IEP for the child. The regular education teacher helps to define the services, program modifications and support for school staff to help the child succeed in the regular classroom. The regular education teacher helps decide on positive behavioral supports for the child, if needed.
Special education teacher	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. 115.78(1m)(c)	There must be a special education teacher on the IEP team who is licensed in the child’s area of disability or who has training or experience related to the child’s needs arising from his or her disability. Whether a special education teacher has “recent training or experience” is based upon the child’s needs and the teacher’s training and experience.
LEA representative	A representative of the local educational agency who is qualified to provide, or supervise the provision of, special education, is knowledgeable about the general education curriculum and is knowledgeable about and authorized by the local educational agency to commit the available resources of the local educational agency. 115.78(1m)(d)	A principal, special education director, teacher, or anyone who can be sure the services in the IEP are provided to the child. This person must know about the regular education curriculum and the school district’s resources. The LEA representative must have the authority to commit resources.
Someone to explain tests	An individual who can interpret the instructional implications of evaluation results, who may [otherwise] be a team participant. 115.78(1m)(e)	Somebody on the IEP team must be able to explain what the tests mean in plain language or in the language the parents normally use.
Other participants	At the discretion of the parent or the local educational agency, other individuals who have knowledge or special expertise about the child, including related services personnel, as appropriate. 115.78(1m)(f)	The school or parents may bring other people to the IEP meeting. The law says these people must have “knowledge or expertise.” The one doing the inviting makes the decision about this person’s “knowledge or expertise.”
The child	Whenever appropriate, the child. 115.78(1m)(g)	The child may attend the meeting and participate.
Excuse participants	ATTENDANCE AT MEETINGS. (a) A member of an individualized education program team is not required to attend a meeting of the individualized education program team, in whole, or in part, if the parent of the child with a disability and the local educational agency agree that the attendance of the member is unnecessary because the member’s area of the curriculum or related service is not being modified or discussed at the meeting. 115.78(5)(a)	Required members may be excused from part or all of the meeting, if the parent and LEA agree in writing. At least one individual in each required category must attend or be excused: a regular education teacher of the child; a special education teacher of the child; an LEA representative; someone who can explain the tests; a person from the resident district, if a child attends school through open enrollment or a tuition waiver; an OT, a PT or a speech pathologist, if a child is suspected or known to need OT, PT, or speech therapy.

What Needs To Be Done	What Parents Need To Know or Do
<p>Most IEP teams will include a regular education teacher to help develop the IEP. If the child has more than one regular education teacher, they may not all be at the IEP meeting. The regular education teacher is a teacher who may be responsible for implementing the IEP. The school will decide which teacher will be at the meeting.</p>	<p>The parents should ask if they do not understand why a regular education teacher is not at the IEP meeting. The decision about the regular classroom teacher is made by the school.</p>
<p>The regular classroom teacher helps to write and develop a child's IEP. The regular education teacher helps determine what supplementary aids and services are needed. This teacher helps identify accommodations and modifications that will be needed for the child to be successful in the regular education programs. This teacher also helps to identify what support will be needed for school personnel to serve the child.</p>	<p>The IEP team, which includes the parent, decides if the child will be in regular education classrooms or programs for all or part of their school day.</p>
<p>The school makes sure the IEP team has a special education teacher who is licensed or has training or experience in the child's disability-related needs. The special education teacher should be one who is, or will be, responsible for implementing the IEP.</p> <p>Schools make sure teachers keep their skills up-to-date by sending them to teacher training events.</p>	<p>Parents may ask to have other teachers, who are not their own child's teachers, involved with the IEP team. The school has the right to decide which teachers will be at the meeting.</p> <p>Schools have many opportunities to get more training for their staff to help them understand the child's disability and needs.</p>
<p>The school chooses the LEA representative. The LEA representative has the knowledge of, and authority to, commit district resources the child needs.</p>	<p>Parents should ask who the LEA representative is for the meeting. They should write down the name and title of the LEA representative. The LEA representative may serve more than one role on the IEP team.</p>
<p>The school has someone on the team who can explain the test results. This person may also be one of the other participants.</p>	<p>Parents can ask to have test results explained if they do not understand them.</p>
<p>The school may bring others who work with or know the child to the meeting.</p> <p>The school must consider information from others who the parent brings.</p>	<p>Parents can bring other people with knowledge or special expertise to the IEP meeting. For example: friend, relative, neighbor, therapist, advocate, attorney, or child care provider.</p>
<p>The school must invite the child when transition issues are being discussed. This must begin with the IEP when the child will be 14.</p>	<p>Parents should strongly consider having the child go to the IEP team meeting. Parents can have the child at the IEP meeting whenever they want. The child should participate as much as possible.</p>
<p>When a member of the IEP team will not be at the IEP team meeting, if that member's area of service is not going to be talked about, then the parent can agree to have the meeting anyway. The school must tell the parent in writing, when and how they agreed about who will not be at the meeting.</p>	<p>If the parent thinks the member the school wants to excuse is important for that meeting, they should not agree to excuse that member. The school must get the parent's agreement in writing. If the parent does not agree, they may tell the school in writing. The meeting may need to be rescheduled to have the member at the meeting.</p> <p>The written agreement is needed only when no one in a required category will attend the meeting. For example, when at least one of the child's regular education teachers will attend the meeting, an agreement is not required to excuse additional regular education teachers.</p>

Topic	What the Law Says	What the Law Means
<p>Excuse participants (continued)</p>	<p>(b) A member of an individualized education program team may be excused from attending a meeting of the individualized education program team, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the child's parent and the local educational agency consent and, before the meeting, the member submits to the child's parent and to the individualized education program team, in writing, the member's input into the development of the child's individualized education program. 115.78(5)(b)</p>	<p>If the parent consents in writing, a required IEP team member, whose area of curriculum or related services will be discussed, may be excused from attending part or all of the IEP meeting. The member must give written input about developing the IEP to the parent and IEP team before the meeting.</p>
<p>Transition at age three</p> <p>DPI Bulletin #98.09</p>	<p>Ensures that children in early intervention programs..., who will participate in preschool programs...experience a smooth transition to those preschool programs, and that, by the third birthday of such child, an individualized education program has been developed and is being implemented for the child. The local educational agency shall participate in transition planning conferences arranged by the county administrative agency. 115.77(1m)(c)</p> <p>In the case of a child who was previously served under [birth to three], an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the [birth to three] service coordinator or other representative...to assist with the smooth transition of services. 34 CFR 300.321(f)</p> <p>[The notice of an IEP team meeting] must...inform the parents of the provision in ...§300.321(f) (relating to the participation of the Part C [Birth to 3] service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act). 34 CFR 300.322(b)(1)(ii)</p>	<p>There must be a smooth transition from Birth to Three programs to school programs, if that is the child's next step. With parent permission, the Birth to Three program should invite the school to a planning meeting before the child's third birthday, so an IEP can be in place by the time the child turns three. The school must participate in planning the child's transition and IEP before the child begins a school program. The IEP team looks at existing data and does any testing needed with the parents' permission.</p> <p>If the parent asks, the school must invite a representative from the Birth to Three program that served the child to the first IEP team meeting</p> <p>The invitation to an IEP team meeting must tell the parents that they can ask the school to invite a representative of the Birth to Three program to the first IEP team meeting for a child who was served by the Birth to Three program.</p>
<p>IEP TEAM'S JOB</p>		
	<p>DUTIES OF TEAM. The individualized education program team shall do all of the following:</p>	
<p>Evaluation</p>	<p>(a) Evaluate the child...to determine the child's eligibility or continued eligibility for special education and related services and the educational needs of the child. 115.78(2)(a)</p>	<p>In Wisconsin, the IEP team is responsible for evaluating children to determine if they are eligible for special education.</p>
<p>Write IEP</p>	<p>(b) Develop an individualized education program for the child...115.78(2)(b)</p>	<p>The IEP team develops an IEP for each child with a disability.</p>
<p>Decide placement</p>	<p>(c) Determine the special education placement for the child...115.78(2)(c)</p>	<p>As part of the IEP process, the IEP team determines the special education placement for children with disabilities.</p>

What Needs To Be Done	What Parents Need To Know or Do
<p>If a member of the IEP team will not be at the IEP team meeting and that member's area of curriculum or service is going to be talked about, the parent must give consent for the member to be absent. The absent member must write what their thoughts about the IEP are. The school must ask for consent from the parent in writing. The report must be given before the meeting.</p>	<p>Parents should know the school must get their consent in writing. Parents sign a form to give consent. If the parent wants the member at the meeting, the parent should not consent to excuse the member. The meeting may need to be rescheduled to have the required member at the meeting.</p>
<p>The school will send someone to the transition planning meeting to plan for the child's services in the school. The school should have an IEP for the child no later than the child's third birthday if the child is eligible for special education.</p> <p>If the parent asks the school to invite someone from the Birth-to-Three program to the first IEP meeting, the school must do it.</p> <p>The school must tell the parent they can ask to have a Birth to Three representative invited to the first IEP team meeting.</p>	<p>Some children get special services from birth to age three. The Birth to Three program asks the parents' permission and invites the school to a transition planning meeting before the child turns three. If a child needs special education, parents should make sure the Birth to Three program makes a referral. The parent should go to the school meeting where the IEP team will write an IEP. Parents are equal partners on the IEP team. Schools can also help if the child has other school needs. Parents can ask the principal for help. Parents should also talk to the new teachers and visit the new classroom.</p>
<p>An IEP team, including the parent, is appointed to do the evaluation of children suspected of having a disability.</p>	<p>Parents are part of the IEP team. They are involved in the review of records, deciding what testing is needed, and deciding if a child is eligible for special education.</p>
<p>The IEP team develops an IEP for each child with a disability.</p>	<p>The IEP team develops an IEP for each child with a disability.</p>
<p>The IEP team decides the special education placement for children with disabilities.</p>	<p>Parents are part of the IEP team that decides on the special education placement.</p>

Topic	What the Law Says	What the Law Means
<p>Parent participation</p> <p>Notice</p> <p>Schedule</p>	<p>Each public agency must take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including:</p> <p>(1) Notifying parents of the meeting early enough that they will have an opportunity to attend; and</p> <p>(2) Scheduling the meeting at a mutually agreed upon time and place. 34 CFR 300.322(a)</p>	<p>Schools must make sure parents are told about every IEP meeting. If parents cannot attend the meeting, they must be given another way to participate such as by phone, conference call, etc.</p> <p>(1) Schools must let parents know about any IEP meeting soon enough for the parents to attend.</p> <p>(2) Schools must arrange the meeting at a time and place that both parents and school agree is okay.</p>
<p>Timeline</p> <p>Intent to evaluate</p>	<p>The local educational agency shall[,] within 15 business days of receiving a referral, send 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 agency shall notify the child’s parent’s of that determination within 15 business days of receiving the referral. 115.777(3)(e)</p>	<p>Within 15 business days of when the school district receives a referral, the school must either send the parents a request for consent for evaluation or a notice that no tests are needed.</p>
<p>Evaluation</p>	<p>The local educational agency shall determine if a child is a child with a disability within 60 days after the local educational agency receives parental consent for the evaluation of the child...or, provides notice...that no additional data are needed, 115.78(3)(a)</p>	<p>The school has 60 calendar days after getting the parent’s consent to do an evaluation and decide if the child is eligible for special education.</p>
<p>IEP</p>	<p>The local educational agency shall conduct a meeting to develop an individualized education program...and determine a placement...within 30 days of a determination that a child is a child with a disability. 115.78(3)(c)</p>	<p>If the child is eligible for special education, an IEP must be developed, and a placement identified, within 30 calendar days of when the IEP team decides the child is eligible for special education.</p>
<p>Exception to Timeline</p>	<p>The 60-day period does not apply to a local educational agency if any of the following occur:</p> <ol style="list-style-type: none"> 1. A child enrolls in a school served by that local educational agency after the 60-day period has begun and before a determination by the child’s previous local educational agency as to whether the child is a child with a disability, the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the child’s parent and the subsequent local educational agency agree to a specific time when the evaluation will be completed. 2. The child’s parent repeatedly fails or refuses to produce the child for evaluation. 115.78(3)(b) 	<p>If a child moves to a new school district after a parent gives consent for evaluation, the new school does not have to finish the evaluation in the 60 days. The evaluation must be completed promptly by the new school. The new school and parents must agree on when the evaluation will be done.</p> <p>The 60 day limit does not apply if parents do not let the school evaluate the child.</p>
<p>Additional time for parent participation</p>	<p>Subject to pars. (a) to (c), if the parents of the child or the local educational agency staff determines at any meeting during the process of the evaluation, development of the individualized education program, or placement of the child that additional time is needed to permit meaningful parental participation, the local educational agency shall provide it. 115.78(3)(d)</p>	<p>Parents need to take part in every step of the IEP team process including evaluation, IEP writing and placement. Sometimes parents need more time to think about what school staff is saying at the meeting. School staff must give parents more time if they, or parents, think it is needed as long as the extra time does not make the school go past the timelines.</p>
<p>Copy of evaluation report</p>	<p>...Upon request the local educational agency shall provide a copy of the most recent evaluation report...to the child’s parent at any meeting of the individualized education program team. 115.78(3)(d)</p>	<p>At any IEP team meeting, if parents ask for it, the school must give the parents a copy of the most recently done evaluation report.</p>

What Needs To Be Done	What Parents Need To Know or Do
<p>Schools need to make sure all IEP team members are told about the IEP meeting. They try to make it possible for parents to attend the meeting.</p> <p>(1) School sends the parent a letter inviting them to the IEP meeting early enough so the parents can arrange to be at the meeting. (2) The letter will list a suggested time and place for the meeting.</p>	<p>Parents should make plans to attend the IEP meeting. If they cannot get to school, they may ask to attend the meeting by phone or in another way. The parent can ask to have the IEP team meeting at a different time or place.</p> <div data-bbox="740 302 1377 449" style="border: 1px solid black; padding: 5px;"> <p>TIP: If parents do not speak or understand English very well, they have the right to have an interpreter or translator for parents to be equal partners on the IEP team.</p> </div>
<p>When the school gets a referral, it writes down the date they received it. When the school gets a written referral, it must start the evaluation process. Within 15 business days, the school sends the parents a request for consent for evaluation. If the IEP team, including the parents, thinks no tests are needed, it sends a notice saying that. The school must have a process for receiving referrals, even during school breaks.</p>	<p>Parents are part of the IEP team that decides if tests are needed. Parents will be contacted by someone from school to talk about whether tests are needed. They will get a written notice from the school about the decision if tests are needed. If tests are needed, the notice will ask for parents consent for evaluation. (Review Existing Data, page 20)</p> <div data-bbox="760 655 1351 739" style="border: 1px solid black; padding: 5px;"> <p>TIP: It is recommended that parents keep copies of all notices they get from the school.</p> </div>
<p>Within 60 calendar days of when the school gets parent permission to do testing or after sending a notice that no tests are needed, testing and a decision about if the child is eligible for special education must be done.</p>	<p>Parents are members of the IEP team that decides if the child is eligible. The decision must be made within 60 calendar days of when the school receives parent consent for testing or sends a notice that no tests are needed. Parents help decide if their child is eligible for special education.</p>
<p>If a child is eligible for special education an IEP must be written within 30 calendar days of deciding the child is eligible. A placement to provide the services in the IEP must be done in the same 30 days.</p>	<p>Parents are members of the IEP team that decides what services a child needs. The IEP team decides what services are needed within 30 calendar days of deciding the child is eligible for special education. They also help decide about where the services will be given. This can be at the same meeting when the IEP team decides the child is eligible.</p>
<p>If a child moves to a new school district after parents have given consent for evaluation, the old school does not finish the evaluation. The new school must work with the parent to agree on a date when the evaluation will be finished. The 60 day timeline does not apply to the new school. Both the old school and the new school must work together to get information so the evaluation can be done promptly.</p>	<p>Parents should let the new school know right away that the old school was doing an evaluation. This will help the new school ask for the right information from the old school so that the evaluation can be done in a reasonable time. Parents work with the new school to set a new date for when the evaluation will be done.</p>
<p>If parents do not let the school evaluate their child, then the 60 day timeline does not apply.</p>	<p>Parents should work with the school to help get the evaluation done in time.</p>
<p>If anyone on the IEP team, including the parents, thinks more time is needed to allow parents to participate in the IEP process in a meaningful way, the school must give more time, within the limits of the timeline.</p>	<p>Everyone on the IEP team, including the parents, has the right to ask for more time as long as it does not go past the timeline. The school must allow extra time if it is needed. Parents are equal partners on the IEP team. Parents may ask for the meeting to stop. The IEP team will set a new date to meet. Parents may want to take the information home to read and study. They may want to talk about it with family members or other child experts.</p>
<p>If parents want or need a copy of the most recent evaluation report, they can ask for one and the school will give it to them.</p>	<p>At any IEP team meeting, if the parent asks for a copy of the most recent evaluation report, the school must give it to them before the IEP team continues.</p>

Topic	What the Law Says	What the Law Means
EVALUATION PROCEDURES		
Evaluation notice	The local educational agency shall notify the parents of the child...of any evaluation procedures the agency proposes to conduct and the names of the individuals who will conduct the evaluation if known. 115.782(1)(a)	The school must let parents know that they want to evaluate a child for special education and related services. The school must tell the parents in writing about the evaluation. Every evaluation starts with the IEP team reviewing existing data and deciding whether or not more tests are needed. If new testing is needed, the school must tell the parents in writing who will do the testing (if known) and what kind of testing they will do.
Consent for evaluation	The local educational agency shall, before conducting an initial evaluation of a child, obtain informed consent from the child's parent. Parental consent for the evaluation does not constitute consent for placement for receipt of special education and related services. 115.782(1)(b)	The school cannot give new tests in an evaluation until they have the parent's written permission (consent). Permission is for evaluation only, not for being in special education.
If parents refuse consent	If the child's parents do not consent to the evaluation, the local educational agency may continue to pursue an evaluation using the procedures under 115.797 [mediation] or 115.80 [due process] 115.782(1)(b)	If the parent does not give consent for the evaluation, the school has three choices: <ul style="list-style-type: none"> • Do nothing and the process stops; • Ask for mediation; or • File for a due process hearing to get consent from a hearing officer.
More than one evaluation procedure	In conducting the evaluation, the individualized education program team shall not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child. 115.782(2)(a)	Schools must use more than one test or evaluation procedure to decide if a child qualifies for special education and to decide the child's program.
Information from more than one source	The individualized education program team shall...: Use 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 individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities. 115.782(2)(a)1	The IEP team will get information about the child from many sources. The information can come from parents, tests, observations, the child's doctors or therapists. The information will be used to decide if the child qualifies for special education. The information will also help the team write the IEP so that the child can participate in the general curriculum.
Evaluations and tests	The individualized education program team shall...: use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 115.782(2)(a)2	School staff use tests that give accurate information.
Nondiscriminatory testing	The individualized education program team shall...ensure: that 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 language and 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. 115.782(2)(a)3.a	The tests used must not discriminate against a child because of the child's race or culture. The tests must be given in the language normally used by the child, or in whatever way the child uses to communicate, if at all possible.

What Needs To Be Done	What Parents Need To Know or Do
<p>If new tests are needed, the school will send a form asking for parent permission to test their child. The form will include information about the evaluation. The school selects the tests and the staff who will give them.</p> <p>If no new testing is needed, the school does not need to get parent permission. The school sends the parents a form telling them that no testing is needed.</p>	<p>Parents will get a notice telling them what kinds of tests will be given and who will give the tests, if the school knows.</p>
<p>The school must tell the parent in writing about the evaluation. If new testing is needed, the school must also tell the parents who will do the testing (if known) and what kind of testing they will do. The school must get the consent of the parent before giving the tests.</p>	<p>Parents can ask the school to explain the evaluation before giving permission. Parents should be sure they understand what they are giving permission for.</p> <p>Parents sign the consent form to give their permission for evaluation. Parents should send the consent form back to school as soon as possible. The 60 day timeline does not start until the school gets the parent's consent.</p>
<p>The district must take its responsibility to provide special education very seriously. The school has to decide how important it is to test the child.</p>	<p>Parents have the right to refuse consent.</p> <p>If parents refuse consent, the school may ask the parents to participate in mediation (see page 44) to encourage the parents to give consent.</p> <p>The school may request a due process hearing (see page 47) to get permission to do an evaluation without the parent's consent.</p>
<p>Members of the IEP team do the testing. They do not use just one test.</p>	<p>The IEP team must look at many things before saying a child has a disability. Parents should tell the IEP team about their child at home, with family, and in the community. Parents may also give the IEP team information from the child's doctors, therapists, or others.</p>
<p>The IEP team will gather information to understand the whole child.</p>	<p>Parents may write down information about their child for the IEP team. Parents should tell the other members of IEP team about the things the child can do well. They should also tell what the child likes to do and what is difficult. Parents can also ask a doctor or therapist to tell the IEP team about the child. Doctors or therapists may tell the IEP team in person, in writing or on a speakerphone.</p>
<p>The school gives the tests or does other evaluation procedures to get the information the IEP team needs. The parent gets a written notice telling which tests the school plans to use.</p>	<p>Parents may ask to see information about the tests their child will take. Parents should ask the school staff to explain the tests. Parents can look at their child's answer sheet. Parents cannot look at the test kit itself.</p>
<p>The IEP team picks tests and assessments that do not discriminate because of a child's race or culture. As much as possible, the tests must be given in the language the child normally uses. The school may use interpreters when children do not speak English or use sign language. Children may also use communication boards or other communication tools.</p>	<p>Testing must be fair to children of all cultures and languages. Parents should tell the school how their child communicates best. Parents should make sure the school uses their child's communication methods for the testing.</p>

Topic	What the Law Says	What the Law Means
Valid testing	The individualized education program team shall...ensure: that assessments and other evaluation materials given to the child are used for the purposes for which they are valid and reliable, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of the assessments or evaluation materials. 115.782(2)(a)3.b	The IEP team selects the appropriate tests to measure the child's needs; the people giving the tests are properly trained, and follow the test's directions.
Complete assessment	The individualized education program team shall...ensure: that the child is assessed in all areas of suspected disability. 115.782(2)(a)3.c	The child is tested or evaluated in all areas of a suspected disability by the IEP team. The evaluation must be broad enough to find all the child's special education needs.
Relevant assessment	The individualized education program team shall...ensure: that assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are used. 115.782(2)(a)3.d	Any tests given must help people decide what the child's educational needs are.
Evaluation	As part of an initial evaluation of a child and as part of any reevaluation of a child...the individualized education program team and other qualified professionals, as determined by the local education agency, shall do all of the following: 115.782(2)(b)	The IEP team, which includes the parents and people appointed by the school, must do all of the following:
Review existing data	1. Review 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.	The team must examine all the current information available on the child from various sources, including information from the child's parents. The IEP team will look at anything that was tried prior to this evaluation and what changes may have occurred. The IEP team looks at any current assessments from the classroom. There may be observations made by teachers, other professionals, and qualified persons who have training in the suspected area of disability.
Identify additional data needed to determine:	2. On the basis of that review and information provided by the child's parents, identify the additional data, if any, that are needed to determine all of the following:	By gathering all of the above information, including information from the child's parents, the IEP team will decide if any additional testing might be needed. The IEP team will also decide if any qualified evaluators need to be added to the team to determine the following:
If child has disability	a. Whether the child has 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 have such a disability and such educational needs.	Whether the child has a disability (in the case of a reevaluation, does the child continue to have a disability)?
Present levels of academic achievement	b. The present levels of academic achievement and related developmental needs of the child.	What is the child's achievement in school and related developmental needs?
If child needs special education	c. Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services.	Does the child need special education and related services? In the case of reevaluation, does the child continue to need special education and related services?

What Needs To Be Done	What Parents Need To Know or Do
The IEP team selects the appropriate tests to measure the child's needs; the people giving the tests are properly trained, and follow the test's directions.	Parents can ask why the school used one test instead of another one. Parents may ask the school to use a particular test, but the school makes the final decision on which test it will use.
Tests and other assessment procedures are picked to evaluate all of the child's needs. The IEP team does not look at just one part of the child's needs.	Parents can ask that their child be tested in an area they are concerned about.
The IEP team gives tests to get information to help determine the child's educational needs.	Parents provide information about their child to help the IEP team participants understand the child's educational needs.
The IEP team must review existing information and testing the child has done. If there is a need to have other people on the IEP team, the school must appoint them to the team and tell the parents.	Parents should write down their ideas about what their child needs. This will help the school in doing the evaluation. Parents can give the names of other people who have knowledge of the child. These other people may also be part of the IEP team.
Members of the IEP team will review all of the child's records, including medical, attendance, behavioral, state and district testing information, etc. and will also look at any information provided by the parents. The IEP team will look at anything that has been tried to help the child's education and look to see if those special things that were tried helped the child's education in any way. The IEP team will be looking at how the child learns and participates in regular education classes and other activities in the school.	Parents tell the IEP team about their child. Parents will be contacted by the school to go over existing records, what teachers have seen in the classroom, and what they have tried to help the child learn. Parents may ask to read the child's record. This part of the evaluation happens within 15 business days after the school receives a referral or within 15 business days from a notice of reevaluation.
The IEP team decides what information they may still need to get. If more information is needed, the IEP team decides what kind of testing is needed. The IEP team also decides what qualifications the person doing the testing will need to have.	As part of the IEP team, parents help decide what other information is needed to answer the following questions:
Is more information needed for the IEP team to answer the question: Does the child have a disability or continue to be a child with a disability?	Does the child have a disability or continue to be a child with a disability?
The IEP team looks at how well the child is performing at the present time. Is more information needed for the IEP team to answer the question: What are the educational needs of the child?	What are the educational needs of the child? How is the child doing right now?
Is more information needed for the IEP team to answer the question: Does the child need special education and related services?	Does the child need special education and related services?

Topic	What the Law Says	What the Law Means
If additions or modifications are needed	d. 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 individualized education program and to participate, as appropriate, in the general curriculum.	Are any changes to the child's special education and related services needed? These changes must be needed to allow the child to reach the measurable annual goals that are written in the child's IEP. What is needed for the child to participate in the general curriculum?
Administer tests	The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified [above]. 115.782(2)(c)	The school must use the tests and evaluation materials to get the information the IEP team needs.

EVALUATION REPORT

IEP team decides if the child is eligible	Upon completion of the administration of assessments and other evaluation measures, the individualized education program team shall determine whether the child is a child with a disability and the educational needs of the child. The team may not determine that a child is a child with a disability if the determinant factor for the determination is lack of appropriate instruction in reading, including in the essential components of reading instruction,...or lack of instruction in math, or because the child has limited English proficiency. 115.782(3)(a)	After reviewing existing information and the results of new tests, if any, the IEP team decides if the child has a disability. They cannot say that the child has a disability if the child's problems are only because of a lack of instruction in basic subjects or because the child has limited English skills.
Evaluation report	The individualized education program team shall prepare an evaluation report that includes documentation of determination of eligibility for special education. The local educational agency shall give a copy of the evaluation report, including the documentation of eligibility, to the child's parents. 115.782(3)(b)	The IEP team's evaluation report must include the reasons why the child qualifies for special education. It has information from the team participants. It will tell the parent if the child has a disability according to special education law. The school will send the parents a copy.
Notice if child is not eligible	The local educational agency shall...ensure that a child's parents are provided prior written notice whenever the local educational agency proposes to initiate or change, or refuses to initiate or change, the evaluation or educational placement...of the child... 115.792(1)(b)	Whenever the IEP team decides a child is not eligible for special education, the school must tell the parent in writing of that decision.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

When in effect	REQUIREMENT THAT PROGRAM BE IN EFFECT. At the beginning of each school year, each local educational agency shall have in effect, for each child with a disability, an individualized education program. 115.787(1)	Each child eligible for special education must have a current IEP at the beginning of each school year.
Who sees the IEP	<i>Accessibility of child's IEP to teachers and others.</i> Each public agency must ensure that - (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) Each teacher and provider...is informed of- (i) His or her specific responsibilities related to implementing the child IEP; and (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 CFR 300.323(d)	Everyone at school who works with the child should be able to see the IEP.

What Needs To Be Done	What Parents Need To Know or Do
Is more information needed for the IEP team to determine what changes or additions are needed to special education and related services to meet the goals in the child's IEP and learn what other children learn?	What changes might be needed to help their child be successful?
The school must be sure all of the tests and evaluations results are given and reviewed to help the IEP team determine the above information.	Parents should make their child available to the members of the IEP team who will do the testing.
The school staff members, or other qualified professionals on the IEP team, do the testing with the child. Then the entire team, including the parents, decides if the child qualifies for special education. The IEP team will use state law to decide if the child qualifies for special education. The IEP team cannot decide the child has a disability if the child's problems are only because of poor or limited instruction in basic subjects or the child has limited English.	<p>Parents tell the IEP team about their child's needs. It is easier if parents have their information organized and written. They may give copies of their information to all participants for better understanding.</p> <p>Parents can ask school staff to explain what it takes for the child to be eligible for special education. Parents are equal participants on the IEP team that decides if the child is eligible for special education.</p>
The IEP team will write an evaluation report. The report tells how the child has qualified for special education. The IEP team decides if the child meets the criteria for a disability. The IEP team also decides if the child needs special education because of the disability. The evaluation report will give the reasons for these decisions. The school will send a copy of the evaluation report.	<p>Parents should make sure they understand why their child qualifies or does not qualify for special education.</p> <p>If the parent wants to study the <i>Evaluation Report</i> at home, they should ask for a copy of the report and additional time. The IEP team will schedule another meeting for writing the IEP.</p>
If the IEP team decides a child is not eligible for special education, the school sends the parent a written notice of that decision. The notice tells the parents what was decided and why and what else was considered. A copy of the evaluation report is included with the notice.	If the IEP team finds the child is not eligible for special education, parents will get a written notice saying why their child is not eligible. Parents need to be sure they understand why the child does not qualify for special education. They should carefully read the evaluation report. If parents want help in understanding the report, they can call the person listed on the notice. If the parents disagree with the IEP team decision, they can use the problem solving procedures in Part 3 of this book.
The school will make sure that the IEP for each child who qualifies for special education services is up-to-date and ready for the beginning of the school year.	Parents should review their child's IEP at the beginning of the school year. They should make sure that all parts of the IEP fit the new school year. If the child has changed in some way that needs a change in the IEP, the parent can ask for a meeting to review the IEP.
<p>The school must make sure all of the child's teachers and service providers can look at or get a copy of the IEP.</p> <p>The school must make sure all of the child's teachers and service providers know their specific responsibilities for implementing the IEP and what accommodations, modifications, and supports must be provided.</p>	<p>Parents can give copies of the IEP to anybody they want.</p> <p>The school makes sure all of the child's teachers and service providers can look at or get a copy of the IEP.</p>

Topic	What the Law Says	What the Law Means
Parent copy of the IEP	The local educational agency shall give a copy of the child's individual education program to the child's parents with the notice of placement. 115.787(3) (e)	When the Notice of Placement is given to parents, the LEA must give a copy of the child's IEP to parents.
Required Components	Required Components. An individualized education program shall include all of the following:	The required parts of the IEP are:
Present level of performance	A statement of the child's present level of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for a preschool child, as appropriate, how the disability affects the child's participation in appropriate activities. 115.787(2)(a)	The IEP must include the child's present level of learning and functional performance, addressing each area of need. The present level of performance describes how the child is doing in specific areas of need found during the evaluation. Functional performance is how the child uses his learning and other skills like self-care. It includes the child's strengths, interests, and needs.
Annual goals	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 make progress in the general curriculum, and meet each of the child's other educational needs that result from the child's disability. 115.787(2)(b)	Goals are to help the child learn the general curriculum and meet other educational needs. Measurable goals usually cover what the child can be expected to meet in about one year.
Benchmarks or short-term objectives	For a child with a disability who takes alternate assessments aligned with alternate achievement standards, a description of benchmarks or short-term objectives. 115.787(2)(bm)	If the IEP team decides that a child with a disability will take an alternate assessment for a statewide or district test, then the goals in the IEP must have benchmarks or short-term objectives.
Progress toward goals	A statement of all of the following: 1. How the child's progress toward attaining the annual goals described in par. (b) will be measured. 2. When periodic reports, such as quarterly reports or other periodic reports issued concurrently with report cards, on the child's progress toward attaining the annual goals described in par. (b) will be provided to the child's parents. 115.787(2)(h)	The child's progress toward annual goals must be measured. Parents will be told how well their child is moving toward reaching the annual goals on a schedule the IEP says.
Special education and related services	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 for the child to do all of the following: 1. Advance appropriately toward attaining the annual goals. 2. Be involved and make progress in the general curriculum in accordance with par. (a) and participate in extracurricular and other non-academic activities. 3. Be educated and participate with other children with disabilities and nondisabled children in the activities described in this subsection. 115.787(2)(c)	The IEP must include: <ul style="list-style-type: none">• The special education and related services, extra help and supplementary aids and services that will be given to the child or provided for the child.• A statement about program changes, or help for school staff that will help the child do all of the following:<ul style="list-style-type: none">○ Move appropriately toward the annual goals,○ Learn the general education curriculum,○ Be part of any school activities that any other children do, and○ Be educated with children with and without disabilities.

What Needs To Be Done	What Parents Need To Know or Do
The school must give a final copy of the IEP to the child's parents when they send the Notice of Placement.	Parents will get a copy of the new IEP with the Notice of Placement, unless they ask for it earlier. Parents should keep copies of the IEP and check it to see if the goals are being met. When parents get their copy of the IEP, they should read it carefully. If parents have questions, they should call the school. They may ask for a new IEP meeting, if they want to talk about changes.
Schools make sure all parts of the IEP are up-to-date.	Parents make sure all parts of the IEP are up-to-date.
Schools make sure that each area of need has a present level of achievement and functional performance. There are two parts to the present level of performance. The IEP will say how the child's participation in the general curriculum or other activities is affected by the disability. It will also describe how the child performs in both academic and nonacademic areas of need.	Information from the parents is helpful to the school in planning for the child's educational needs. Parents share with the IEP team how the child's disability affects everyday activities such as homework, play, and self care. They can share information about the child's interests and activities. They provide information about the child's strengths and areas of need. It helps if parents give information about outside services.
The IEP team writes annual goals that the child will likely complete in one year. The goal will say what kind of change is expected. The goals relate to the child's needs that are due to the child's disability. The goals help the child be included in the general curriculum and other activities at school.	<p>Parents will help the rest of the IEP team understand what they expect of their child in the general curriculum and other activities.</p> <p>Parents should share what they would like their child to be able to do.</p>
If the IEP team decides that the child will take a different kind of test instead of the required state tests, then each goal will have small steps the child will master on the way to meeting the annual goal.	<p>If the IEP team decides that the child will take a different kind of test instead of the required state tests, then each goal will have small steps the child will master on the way to meeting the annual goal.</p> <div data-bbox="743 1100 1382 1226" style="border: 1px solid black; padding: 5px;"> <p>TIP: Benchmarks or short term objectives can be written for any IEP if the team decides to do so.</p> </div>
The IEP will include how the school will measure the progress the child is making towards the annual goal. The IEP will also include when the parents will be told about that progress.	Parents must make sure they get reports about their child's progress on the IEP goals. The reports can be written or told to parents. If parents have questions about the report, they should ask the school staff to explain it in plain language.
<p>The IEP team will decide which special education services and which related services, modifications, accommodations and other services, the child will need to be part of the general curriculum and other activities and advance toward annual goals. To the extent possible, the services are to be shown to be effective by research. The IEP team decides how the program will be changed for the child and what kinds of help school staff need so the child can:</p> <ul style="list-style-type: none"> • Make progress toward annual goals; • Have as much success as possible in the general curriculum; and • Be part of the other school activities. • Be educated with children without disabilities. 	<p>The IEP team decides what special help and services the child will receive.</p> <p>The child has the right to be educated with other children with disabilities and with children who do not have disabilities.</p>

Topic	What the Law Says	What the Law Means
Participation in general curriculum	An explanation of the extent to which the child will not participate with nondisabled children in regular classes, in the general curriculum and in extracurricular and other nonacademic activities. 115.787(2)(d)	If participation in the regular class or general curriculum is not right for the child, the IEP must explain how much the child would not be part of regular classes or other school activities or learning what other children learn.
Statewide assessments	<ol style="list-style-type: none"> 1. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on statewide or local educational agency-wide assessments. 2. If the individualized education program team determines that a child will take an alternate assessment on a particular statewide or local educational agency-wide assessment of pupil achievement, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child. 115.787(2)(e) 	<p>Most children with disabilities will participate in state and district-wide tests. The IEP says what changes might be needed in how the test is given. It also explains what help the child will have for state tests or school district tests.</p> <p>Most children with disabilities will take the state and district-wide tests, with or without accommodations. For the few children who cannot take the regular tests, the IEP team must explain why and provide for a different test.</p>
Beginning date, frequency, & duration of services	The projected date for the beginning of the services and modifications described in ... [the IEP] and the anticipated frequency, location and duration of those services and modifications. 115.787(2)(f)	Each IEP must have a beginning date for the services identified in the IEP. The IEP will say how often each service will happen, where it will happen and how long it will happen.
Transition	<ol style="list-style-type: none"> 1. Beginning not later than in the first individualized education program that will be in effect when the child is 14, and updated annually thereafter, a statement of appropriate, measurable postsecondary goals for the child based on age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. 2. Beginning not later than in the first individualized education program that will be in effect when the child is 14, and updated annually thereafter, a description of the transition services, including courses of study, needed to assist the child in reaching the goals under subd. 1. 115.787(2)(g). 	<p>Transition planning begins no later than the IEP that will be in place when the child turns 14. Transition planning is part of the IEP every year after that. The IEP team writes measurable goals for after high school. The goals are based on age appropriate assessments of the child's needs for training, education, employment, and independent living skills.</p> <p>No later than age 14, the IEP describes transition services the child will need to reach the after high school goals. Transition planning is part of the IEP every year until the child is out of school.</p>

What Needs To Be Done	What Parents Need To Know or Do
<p>The IEP team will decide if, when, and why the child will not be in the regular classroom. They will also talk about if, when and why, the child may be pulled out of the regular curriculum and other activities. The IEP team will decide what modifications are needed for the child to succeed in regular classes.</p>	<p>Parents need to understand why and how much their child will not be in the general classroom with children who do not have disabilities, learning what the other children learn. Parents also need to understand if, when, and why their child will not be in extra curricular and other nonacademic activities, such as lunch, recess, gym, art and music.</p>
<p>The IEP team will decide what kind of help the child may need for state and school district tests.</p> <p>The IEP team decides if the child cannot take the statewide tests. The team uses the Wisconsin Alternate Assessment Participation Checklist to decide if an alternate assessment is needed in each area of curriculum.</p> <p>For the few children who cannot take district-wide tests, a different test is given.</p>	<p>Parents, as part of the IEP team, help decide what help their child may need to take the district or statewide tests.</p> <p>A few children will take different tests called alternate assessments. Parents help decide when alternate tests are necessary. Alternate assessments might not be written tests.</p> <p>DPI has guidelines for alternate assessments. The school may also have guidelines for alternate assessments. Ask to see them.</p>
<p>The IEP says when the services and modifications will begin. The IEP also says how often, where and the amount of those services and modifications.</p>	<p>Parents are part of the IEP team that decides when services begin, where they are provided, how often they are provided, and how long they continue.</p>
<p>Transition planning must include the child's strengths, preferences and interests. The school invites the pupil to participate in the meeting. If the pupil does not come, the IEP team still must consider the child's strengths, preferences, and interests.</p> <p>The IEP team writes measurable postsecondary goals. The pupil's course of study, coordinated set of activities, and annual IEP goals should lead to the pupil's measurable postsecondary goals.</p> <p>The IEP team decides which classes and other activities will help the pupil reach the goals s/he would like to achieve after high school. Transition services may include instruction, related services, community experiences, the development of employment and other post-school living objectives, acquiring daily living skills, and functional vocational evaluation.</p>	<p>Transition is about preparing for life as an adult. Parents and their child are very important in transition planning. Parents, as well as their child, can contribute information to transition assessments. Parents should talk with their child about their strengths, preferences, and interests. Parents and youth can help the rest of the IEP team identify measurable goals that the pupil would like to achieve after high school.</p> <p>Parents can encourage their child to come to the IEP team meeting and tell the rest of the IEP team what the child wants for life beyond high school, so classes and services can be selected.</p> <div style="border: 1px solid black; padding: 5px;"> <p>TIP: Wisconsin Division of Vocational Rehabilitation (DVR) provides job and employment services for adults with disabilities. Call DVR to find out what it can offer young adults. Find your county DVR in the Resource Directory of the Wisconsin Statewide Transition Initiative (WSTI): http://www.wsti.org/resource_directory.php</p> <p>TIP: Refer to WSTI Project website at: http://www.wsti.org</p> </div>

Topic	What the Law Says	What the Law Means
<p>Transfer of rights at age of majority</p>	<p>Beginning at least one year before the child attains the age of 18, and annually thereafter, a statement that the child has been informed of the child rights that will transfer to the child on reaching the age of 18... 115.787(2)(g) 3</p> <p>When a child with a disability, other than a child who has been determined to be incompetent..., reaches the age of 18, all of the following apply:</p> <p>(1) The local educational agency shall provide any notice required by this subchapter to both the individual and individual's parents.</p> <p>(2) All other rights accorded to the individual's parents under this subchapter transfer to the individual.</p> <p>(3) The local educational agency shall notify the individual and the individual's parents of the transfer of rights. 115.807</p>	<p>When the child is 17 years old, the school will tell the child that next year he or she will legally be an adult.</p> <p>When a child with a disability reaches the age of 18, all rights under special education law go to the adult pupil. Parents and the adult pupil both get notices. The LEA notifies both the adult pupil and the parents of the transfer of rights.</p>
<p>Extended school year services</p> <p>DPI Bulletin #96.01</p>	<p>Local educational agency duties. A local educational agency shall demonstrate to the satisfaction of the division that it does all of the following:</p> <p>(b) Makes available a free appropriate public education to children with disabilities as required by this subchapter and applicable state and federal law. 115.77(1m)(b)</p> <p>(a)General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE...</p> <p>(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis,...that the services are necessary for the provision of FAPE to the child.</p> <p>(3) In implementing the requirements of this section, a public agency may not—</p> <p>(i) Limit extended school year services to particular categories of disability; or</p> <p>(ii) Unilaterally limit the type, amount, or duration of those services.</p> <p>(b) Definition. ...the term extended school year services means special education and related services that--</p> <p>(1) Are provided to a child with a disability--</p> <p>(i) Beyond the normal school year of the public agency;</p> <p>(ii) In accordance with the child's IEP; and</p> <p>(iii) At no cost to the parents of the child and</p> <p>(2) Meet the standards of the SEA</p> <p>34 CFR 300.106</p>	<p>The school must give extended school year (ESY) services to children who need it in order to receive a free appropriate public education. ESY is special education and related services beyond the regular school year. The LEA may give ESY services during summer or other school breaks. The LEA must give services that are listed in the IEP. The LEA cannot charge the parent for ESY services.</p>

What Needs To Be Done	What Parents Need To Know or Do
<p>Schools tell pupils and families that at age 18 the pupil is legally an adult.</p> <p>Schools inform adult pupils about their rights under special education law. Schools inform parents about the change. Schools send notices to both adult pupils and their parents.</p>	<p>At age 18, the pupil is legally an adult. Schools send notices to both the adult pupils and their parents.</p> <p>Some children may need guardianship because of their disability. Guardianship is a legal process. Parents need to consult an attorney for help with the process. Only a court can appoint a guardian. Guardians are appointed for persons who are unable to make decisions about their health, finances, and well-being.</p> <p>Parents should inform the school if they are in the process of filing for guardianship or need more information about it.</p>
<p>If the child may need extended school year (ESY) services, the IEP team needs to discuss it. The IEP team decides if a child needs ESY services. ESY is not just for children with certain disabilities. A child may need ESY services one year and not the next. The IEP team looks at all appropriate factors. The IEP team considers whether the child's gains made during the regular school year are threatened if the LEA does not give ESY services. Each child is different. The IEP team should look at:</p> <ul style="list-style-type: none"> • the extent of the disability; • the extent of the skills lost or that may be lost; • the time needed to relearn skills; • whether parents can help; • how quickly the child learns; • skill just being introduced; • the child's behavior and physical needs; • emerging skills; and • other appropriate factors. <p>This list is not all the things for the IEP team to consider. A child does not have to meet all of these items. Not one item controls the decision.</p> <p>ESY services are:</p> <ul style="list-style-type: none"> • not always the same as regular school year services; • sometimes just related services such as occupational therapy or physical therapy, and • given in a variety of places such as home, school, or community. <p>The IEP team writes the ESY services into the IEP.</p>	<p>Parents can ask for extended school year (ESY) services by asking for an IEP meeting. The IEP team decides if ESY services are needed. The IEP team does not have to discuss ESY unless a participant on the team asks about it. Parents may want to talk about ESY services with the IEP team. Parents can discuss their child's possible loss of skills. Parents may look at the length of time it takes a child to regain skills after long vacation times from school.</p> <p>Parents may have other information about their child that may help the IEP team.</p> <div style="border: 1px solid black; padding: 10px; margin-top: 20px;"> <p>TIP: It is most helpful for parents to ask about ESY well in advance of the school break.</p> <p>TIP: If parents disagree with the IEP team decision about ESY, see Part 3, Problem Solving, page 42.</p> </div>

Topic	What the Law Says	What the Law Means
OTHER IEP CONSIDERATIONS		
Consider child's strengths and evaluations	In developing each child's individualized education program, the individualized education program team shall consider the strengths of the child, the concerns of the child's parents for enhancing the education of their child, the results of the initial evaluation or most recent reevaluation of the child, and the academic, developmental, and functional needs of the child. 115.787 (3)(a)	In writing an IEP, the IEP team will take into account the strengths of the child. The IEP team will listen to any concerns the parents have about their child's education. The IEP team will look at information from the latest evaluations of the child. The IEP team will look at the unique academic and nonacademic needs of the child.
	The individualized education program team shall do all of the following:	
Behavior	1. In the case of a child whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior. 115.787(3)(b)1	Some children have behaviors that do not allow them to learn easily. Some children have behaviors that keep other children from learning. The IEP team must think about positive ways to help the child change behaviors so they can learn.
Limited English proficiency	2. In the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's individualized education program. 115.787(3)(b)2	The IEP team must consider the special language needs of a child who has difficulties understanding and speaking English. The team must take these needs into consideration when writing the child's IEP.
Braille DPI Bulletin #98.04	3. In the case of a child who is visually impaired, provide for instruction in Braille and the use of Braille unless the individualized education program 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. 115.787(3)(b)3	If a child is visually impaired, the IEP team must look at providing instruction in Braille and the use of Braille. The IEP team will decide after testing of the child's reading and writing skills, see if the child needs, or would benefit from, special reading and writing media, or would have needs in the future for learning and using Braille. If the IEP team decides Braille is not appropriate for the child, it must state that in the IEP.
Communication needs	4. Consider the communication needs of the child, and, in the case of a child who is hearing impaired, consider 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. 115.787(3)(b)4	The IEP team must consider the communication needs of the child. If a child is hearing impaired, the IEP team must consider the child's language and communication needs, and opportunities for direct communication with peers and professional personnel. These needs must address the child's language and communication mode. The IEP team must consider the child's academic level and full range of needs, including opportunities for direct instruction in the child's language and mode of communication.
Assistive technology	5. Consider whether the child requires assistive technology devices and services. 115.787(3)(b)5	The purpose of assistive technology and assistive technology services is to make sure the child gets a Free Appropriate Public Education (FAPE). The IEP team must decide if the child needs assistive technology devices and services in their regular education classrooms or special education settings.

What Needs To Be Done	What Parents Need To Know or Do
<p>The IEP team will consider the child's:</p> <ul style="list-style-type: none"> • strengths; • the parent's concerns for enhancing the education of their child; • the results of the initial evaluation or most recent reevaluation; • the academic needs of the child; • the developmental needs of the child; and • the functional needs of the child. 	<p>Parents should be part of planning their child's educational program. They should ask questions and make suggestions. Parents should talk about what their child should learn and how to help the child learn. Parents should state what they think their child's strengths and weaknesses are.</p>
<p>The IEP team will look at what affects a child's behavior. The school will examine if the behavior prevents other children from learning. The IEP team will develop a behavior plan to teach the child strategies to manage his or her behavior positively.</p>	<p>Parents may have ideas about what makes a child behave in a certain way. Parents may have ideas about how to help the child learn new behaviors.</p>
<p>The IEP team must look at the special language needs of each child when writing a child's IEP.</p>	<p>If the child does not speak or understand English well, the parents should make sure the school knows this. The IEP team will make sure the special language needs are in the IEP.</p>
<p>The IEP team must look at the need for providing Braille instruction and to teach the use of Braille to a child who is visually impaired. The IEP team will test the child's reading and writing skills. The IEP team will determine if the child would benefit, now or in the future, from the use of Braille. If the IEP team does not feel Braille is appropriate, they must write why it is not in the IEP.</p>	<p>If the child is blind or visually impaired, the parents may want to talk with the IEP team about Braille and Braille instruction. With the parent's input, the IEP team will decide if Braille is appropriate for the child.</p>
<p>The IEP team must look at the communication needs of the child. If the child is hearing impaired, the IEP team must consider the child's:</p> <ul style="list-style-type: none"> • language; • communication needs; • opportunities for direct communication with peers and professional personnel; • language and communication mode; • academic level; • full range of needs; and • opportunities for direct instruction in the child's language and mode of communication. 	<p>Sometimes children have special communication needs. Parents should tell the IEP team about how their child communicates best with friends and family. They should help the IEP team understand how the child communicates with others. If the child is deaf or hearing impaired, the parent and IEP team should look at what the child needs for communication.</p>
<p>The IEP team talks about any device (from a simple pencil grip to computerized equipment) that may help the child learn. The IEP team may get information from a specialist to help them with the child's needs. The IEP team talks about, and chooses services, to help the child get and use assistive technology devices. For example, the IEP team would talk about evaluating the child in the child's learning setting, getting equipment, and choosing, customizing, and repairing devices. They would talk about providing training on using the device too.</p>	<p>The IEP team must talk about using assistive technology. Parents can tell about the child's skills with knobs, switches, computers, etc. and how any of these things may help the child in school. They can tell the IEP team about what the child can do at home and in the community.</p> <div style="border: 1px solid black; padding: 5px;"> <p>TIP: Assistive Technology is an important topic. Parents may call WI FACETS at 1-877-374-4677 to get information. Information is also available from the Wisconsin Assistive Technology Initiative at 1-800-991-5576 or at www.wati.org. CESAs also have Assistive Technology staff.</p> </div>

Topic	What the Law Says	What the Law Means
Review and Revision	REVIEW AND REVISION. (a) the individualized education program team shall do all of the following:	
Review	1. Review the child's individualized education program periodically, but at least annually, to determine whether the annual goals for the child are being achieved.	The IEP team must reexamine and change a child's IEP from time to time, at least once a year. The IEP team must decide if the child's annual goals are being accomplished.
Revise	2. Revise the individualized education program as appropriate to address all the following:	The IEP team must look at all of the following and revise if appropriate:
Lack of progress	a. Any lack of expected progress toward the annual goals and in the general curriculum.	The IEP team must see if the child is not making the expected progress toward achieving the annual goals, including progress in the general curriculum.
Other information	b. The results of any reevaluation... c. Information about the child provided to or by the child's parents... d. The child's anticipated needs e. Other matters. 115.787(4)	In reviewing and rewriting, the IEP team must consider the results of any other information provided to them by anyone, especially the parents. The IEP team must consider the results of reevaluation information. The IEP team must see if there are any new needs expected within the coming year. The IEP team must look to see if anything else needs to be in the IEP.
Changes to IEP without a meeting	After the annual individualized education program meeting for a school year, the entire individualized education program team may make changes to the child's individualized education program, or the child's parent and the local educational agency may agree not to convene an individualized education program team meeting for the purpose of making changes to the child's individualized education program. If the child's parent and the local educational agency agree not to convene an individualized education program team meeting, they shall instead develop a written document to modify the child's current individualized education program. The local educational agency shall give the child's parent a copy of the child's revised individualized education program. 115.787(4)(c) The public agency must ensure that the child's IEP Team is informed of those changes. (34CFR 300.324 (a)(4)(ii).	The IEP must be reviewed and revised if needed by the whole IEP team each year. If changes are needed after that meeting, the changes can be made by either the whole IEP team or some members of the team and the parents without a meeting, if they agree. If the parents and school agree to make changes without a meeting, the school must send the parents the changes that were made in writing. The school must also send a copy of the changed IEP. The school must record how they informed the rest of the IEP team of the changes made in the IEP.

What Needs To Be Done	What Parents Need To Know or Do
<p>The IEP team must meet together to look at a child’s IEP from time to time, at least yearly, to decide if the child is making progress in his or her annual goals.</p>	<p>The IEP team must meet at least once every year to review and revise the IEP. Parents will be given a report on how well their child is reaching IEP goals on a schedule the IEP says. Parents can ask the IEP team to change the IEP if needed. The IEP team will meet to talk about the changes.</p>
<p>The IEP team looks at all of the following and rewrites the IEP if appropriate:</p>	<p>As a member of the IEP team, parents help to rewrite the IEP. They should tell the IEP team about changes in their child. They should help the IEP team to understand what needs to be worked on for the next school year.</p>
<p>The IEP team must look at the child’s IEP to see if there has been any area where the child has not made gains as written in the IEP, which includes the regular education setting.</p>	<p>Parents can ask questions and bring suggestions to the team. Parents can look at the child’s IEP to see if there has been any area where the child has not made gains as written in the IEP, which includes the regular education setting.</p>
<p>The IEP team must look at information the parents provide. The IEP team must look at any current information that is available to them regarding the child’s IEP. The IEP team must look at reevaluation information. The IEP team must look to see if there are any new needs that must be addressed.</p>	<div data-bbox="716 690 1377 953" style="border: 1px solid black; padding: 5px;"> <p>TIP: Here’s information you can bring:</p> <ul style="list-style-type: none"> • Do you know of anything that needs to be looked at in your child’s IEP? • Is there anything new that needs to be added? • Do you know of anything that needs to be worked on for the coming year? </div>
<p>If the parents and school agree to make changes to the IEP without a meeting, the changes need to be put in writing and sent to the parents. The school has to inform the rest of the IEP team about the changes made to the IEP and keep a record of informing the team.</p>	<p>Parents do not have to agree to make changes to their child’s IEP without a meeting. If it is not a big change, parents may want to agree to make the changes without a meeting, if they agree with the changes. This will save a meeting.</p> <p>The school has to let the rest of the IEP team know what changes were made and keep a record to show this was done.</p>

Topic	What the Law Says	What the Law Means
PLACEMENT		
Placement decision process	<p>In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—</p> <p>(a) The placement decision—</p> <p>(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and</p> <p>(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;</p> <p>(b) The child’s placement—</p> <p>(1) Is determined at least annually;</p> <p>(2) Is based on the child’s IEP; and</p> <p>(3) Is as close as possible to the child’s home;</p> <p>(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;</p> <p>(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and</p> <p>(e) 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. 34 CFR 300.116</p>	<p>Decisions about the placement of a child with a disability must be made by a group of people. In Wisconsin, that group is the IEP Team.</p> <p>Placements must meet the requirements for least restrictive environment (LRE).</p> <p>Placement must be decided at least once a year and must be based on the child’s IEP. The placement must be as close to the child’s home as possible.</p> <p>Unless the child’s IEP requires something else, the child is educated in the school the child would attend if not disabled.</p> <p>When the IEP team selects the least restrictive environment, it must consider any possible harmful effects on the child or the quality of the services the child needs.</p> <p>A school cannot remove a child from the regular classroom just because the child needs to have the curriculum modified.</p>
Least restrictive environment	<p>(a) <i>General</i></p> <p>(2) Each public agency must ensure that—</p> <p>(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and</p> <p>(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 300.114</p>	<p>Children with disabilities must be educated with nondisabled children as much as is appropriate.</p> <p>Children with disabilities are removed from regular classes to special classes or separate schools only if the child’s disability is so severe that education in regular classes with aids and services is not satisfactory.</p>
Continuum of alternative placements	<p>(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.</p> <p>(b) The continuum required in paragraph (a) of this section must—</p> <p>(1) Include the alternative placements listed in the definition of special education under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and</p> <p>(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. 34 CFR 300.115</p>	<p>Each school district must have a range of alternative special education placements available including:</p> <ul style="list-style-type: none"> • Instruction in regular classes • Special classes • Special schools • Home instruction • Instruction in hospitals and institutions <p>Schools must provide for supplementary services like resource rooms or itinerant instruction to be used with instruction in regular classes.</p>

What Needs To Be Done	What Parents Need To Know or Do
<p>The IEP team decides on the special education placement for a child with a disability.</p> <p>Placement decisions must meet the requirements for LRE.</p> <p>Each child's placement must be decided at least once a year. The child's placement is based on the IEP. Placement must be as close as possible to the child's home. Unless the child's IEP requires something else, the placement must be in the school the child would otherwise attend.</p> <p>In deciding on a placement, the IEP team has to consider any harmful effects on the child and on the quality of services the child needs.</p> <p>Children with disabilities cannot be removed from regular classes only because modifications are needed in the general curriculum.</p>	<p>In Wisconsin, the IEP team, which includes the parent, decides the educational placement.</p> <p>The IEP team has to think about many things in deciding on a placement. The IEP team must consider the LRE requirements (see next topic).</p> <p>The placement must be decided at least once a year. The services are based on the IEP and provide an appropriate education. The placement must be as close to the child's home as possible. Unless the child needs something else, the child should be educated in the school the child would attend if he did not have a disability. Sometimes the IEP cannot be carried out at the school the child would attend if he did not have a disability. Then the services must be at the closest possible school where the IEP can be carried out.</p> <p>The team considers how the child will do and how well services can be delivered in the environment or school chosen.</p> <p>A school cannot remove a child from the regular classroom just because the child needs to have the curriculum modified.</p>
<p>The school must be sure that children with disabilities are educated with children who are not disabled as much as is appropriate.</p> <p>Children with disabilities are removed from regular classes to special classes or special schools only if the child's disability is so severe that education in regular classes with supplementary aids and services is not satisfactory.</p>	<p>Most children with disabilities should be educated with nondisabled children their own age. This includes children in institutions or other care centers.</p> <p>Children with disabilities can be removed from the regular classroom when the child's needs are so great they cannot be met in the regular classroom even with extra help.</p>
<p>The district must have a range of alternative placements available, including:</p> <ul style="list-style-type: none"> • Instruction in regular classes • Special classes • Special schools • Home instruction • Instruction in hospitals and institutions <p>School districts must provide for supplementary services, like resource rooms or itinerant instruction, to be used with instruction in regular classes.</p>	<p>Each district must have a range of options available to be able to implement the IEPs for all children in the district.</p> <p>School districts must provide for supplementary services, like resource rooms or itinerant instruction, to be used with instruction in regular classes.</p>

Topic	What the Law Says	What the Law Means
Nonacademic settings	In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that 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 public agency must ensure 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 300.117	Each district must be sure that every child with a disability participates with nondisabled children in extracurricular services and activities to the maximum extent appropriate to the needs of the child. Examples of these activities include: <ul style="list-style-type: none"> • Lunch, • Recess, • Counseling, • Athletics, • Transportation, • Recreational activities, and • Health services. The district must be sure that each child with a disability has the supplementary aids and services appropriate and necessary for the child to participate in nonacademic settings, as determined by the IEP team.
Consent for placement	A local educational agency shall seek to obtain informed consent from the parent of a child with a disability before providing special education and related services to the child. If the parent of a child with a disability denies consent, the local educational agency shall not provide special education and related services to the child. 115.79(2)	Before the school can start special education for the first time, it must get written consent from the child’s parents.
Effect of refusing consent for placement	If the parent of a child with a disability denies consent or does not respond to a request for consent, all of the following apply: (a)The local educational agency is not in violation of the requirement to make available to the child a free appropriate public education. (b)The local educational agency is not required to convene an individualized education program team meeting or to develop an individualized education program for the child for the special education and related services for which the local educational agency sought consent. 115.79(2)	If a parent refuses consent for special education services, the school is not required to make an appropriate education available to the child. The school does not have to have an IEP team meeting or write an IEP for the child.
TRANSFER PUPILS WITHIN STATE DPI bulletin #00.10	(e) <i>IEPs for children who transfer public agencies in the same state.</i> If a child with a disability (who had an IEP that was in effect in a previous public agency in the same state) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency) until the new public agency either- (1) Adopts the child’s IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP ... 34 CFR 300.323(e)	When a pupil transfers from one district to another within Wisconsin, the pupil must get special education services, without interruption. Services must be like the services in the IEP from the other school, as much as possible. Services must be provided until the new school either adopts the previous school’s IEP or develops a new IEP.

What Needs To Be Done	What Parents Need To Know or Do
<p>As much as is appropriate based on the child’s needs, schools must help children with disabilities participate in nonacademic and extracurricular services with children who are not disabled. Examples of these activities include:</p> <ul style="list-style-type: none"> • Lunch, • Recess, • Counseling, • Athletics, • Transportation, • Recreational activities, and • Health services. 	<p>Parents may think about what nonacademic and extracurricular activities are appropriate for their child. Children with disabilities should participate in those activities with nondisabled children as much as is appropriate. Some of these activities are lunch, recess, and afterschool activities. The IEP team determines which supplementary aids and services are needed for the child to participate.</p>
<p>The school sends a notice to the parents and asks for consent for placement before it starts special education. After special education is started, the school does not need to get consent for special education placement again.</p>	<p>Parents give consent if they want their child to have special education services to be provided. If they do not want their child to have special education, they refuse consent. If parents disagree with the IEP or placement proposed by the school, see Problem Solving on page 42.</p>
<p>When a parent does not give consent for special education, the school does not have to have an IEP team meeting or write an IEP.</p>	<p>Parents have the right not to give consent for special education services. If parents do not consent, their child will not receive special education.</p>
<p>The child’s new school must get the current IEP and evaluation from the old school. Special education must start right away.</p> <p>The new school will review the most recent evaluation, eligibility determination, and IEP. The IEP team may evaluate to see if the child is eligible. Until the evaluation is done and a new IEP is written, the school will provide services as close as possible to the old IEP.</p>	<p>Be sure to tell the new school your child received special education. It will help the school if parents bring their child’s IEP to the new school. Bring a copy of the most recent evaluation. Bring the phone number of your old school.</p> <p>The new school must let your child start school right away.</p> <p>The new school must provide special education to your child right away.</p> <p>Give the new school your child’s most recent evaluation and IEP. You should participate in any meetings about your child’s evaluation, eligibility, IEP, or educational placement.</p>

Topic	What the Law Says	What the Law Means
TRANSFER PUPILS FROM OUTSIDE WISCONSIN	<p>(f) <i>IEPs for children who transfer from another State.</i> If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency-</p> <p>(1) Conducts an evaluation...(if determined to be necessary by the new public agency, and</p> <p>(2) Develops, adopts, and implements a new IEP, if appropriate... 34 CFR 300.323(f)</p>	<p>When a pupil transfers from a school outside Wisconsin, the new school must enroll the child right away. The school must continue the child’s special education.</p> <p>The services must be a close as possible to what was in the IEP in the other state. The school must continue providing services under the old IEP until it does an evaluation and new IEP, if needed.</p>

REEVALUATION		
Reasons for reevaluation	<p>A local educational agency shall ensure that the individualized education program team does all of the following:</p> <p>1.Evaluates a child with a disability in accordance with this section before determining that the child is no longer a child with a disability...</p> <p>2.Reevaluates a child with a disability ... if the local educational agency determines that the educational or related services needs of the child, including the child’s academic performance warrant a reevaluation or if the child’s parent or teacher requests a reevaluation,...but at least once every 3 years... 115.782(4)(a)</p>	<p>Reevaluation must be done by an IEP team before removing a child from special education.</p> <p>The school reevaluates the child at least every three years. A parent or teacher may ask for a reevaluation any time. Reevaluation does not always mean giving tests. The IEP team reviews existing information and decides if new tests are needed.</p>
No more than 1 reevaluation per year	<p>...The individualized education program team shall reevaluate a child no more frequently than once a year unless the child’s parent and the local educational agency agree otherwise, and at least once every 3 years... 115.782(4)(a)2.</p>	<p>A school is not required to do a reevaluation more than one time a year, even if the parent asks for one, but must do a reevaluation at least once every three years.</p>
If reevaluation is not necessary	<p>...The individualized education program team shall reevaluate a child...at least once every 3 years unless the child’s parent and the local educational agency agree that a reevaluation is not necessary. 115.782(4)(a)2.</p>	<p>If the school and the parents agree that there is no need to do a reevaluation, the school does not have to do one.</p>
Consent	<p>The local educational agency shall obtain informed consent from the child’s parent before reevaluating a child with a disability, except that such consent need not be obtained if the local educational agency has taken reasonable measures to obtain such consent and the child’s parents have failed to respond. 115.782(4)(b)</p>	<p>The school must get the parent’s informed written consent before any new testing is done. The school can go ahead with the testing if a parent does not respond to the request for consent. The school must show that they tried to get the consent from any parent who doesn’t return the consent form.</p>
If Testing is Not Needed	<p>If the [IEP] team and other qualified professionals, as determined by the local educational agency, find...that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall notify the child’s parents of that finding and the reasons for it and the right of the child’s parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child’s educational needs. The [LEA] is not required to conduct such an assessment unless the child’s parent requests it. 115.782(4)(c)</p>	<p>Reevaluations must be done at least every three years. The IEP team, which includes the parent, decides whether or not more testing is needed. The school must tell the parents, in writing, about this decision. If the IEP team decides no additional testing is needed, they must also explain why they decided not to do the testing. Parents have the right to have additional testing in a reevaluation, if they think it is needed.</p>

What Needs To Be Done	What Parents Need To Know or Do
<p>The child's new school must get the current IEP and evaluation from the old school. Special education must start right away.</p> <p>The new school will review the most recent evaluation, eligibility determination, and IEP. The IEP Team may evaluate to see if the child is eligible. Until the evaluation is done and a new IEP is written, the school will provide services as close as possible to the old IEP.</p>	<p>Be sure to tell the new school your child received special education. It will help the school if parents bring the old IEP to the new school. Bring a copy of the most recent evaluation. Bring the phone number of your old school.</p> <p>The new school must let your child start school right away.</p> <p>Give the school the most recent evaluation and IEP. You should participate in any meetings about your child's evaluation, eligibility, IEP, or educational placement.</p>
<p>The school will send a notice about the reevaluation. The IEP team reviews existing information and decides if new testing is needed. The notice will say why the reevaluation is needed. Reevaluations happen:</p> <ol style="list-style-type: none"> 1) if the parents or teacher asks for a reevaluation; 2) for a regular 3-year reevaluation; and 3) when school staff thinks the child no longer qualifies for special education. <p>Reevaluations follow the same procedures as evaluations. See Evaluation Procedures on page 18.</p>	<p>If the parent thinks the child does not need special education any more, they should ask for a reevaluation. They should say why they think the child does not need special education. If the child's needs change, parents or school staff can ask for a reevaluation.</p> <p>The IEP team will do a reevaluation. Parents are equal partners on the IEP team. The IEP team decides when a child no longer needs special education.</p> <p>Reevaluations follow the same procedures as evaluations. See Evaluation Procedures on page 18.</p>
<p>If a teacher or parent asks for a reevaluation less than a year after the last one, the school does not have to do one. The school sends the parent a notice explaining it will not do the reevaluation, unless the school and parent agree that one should be done.</p>	<p>If there are special reasons, parents may ask for a reevaluation more than once a year. The district does not have to agree to do a reevaluation more than once a year.</p>
<p>The school sends a written notice to the parent saying when and how the school and parents agreed that a reevaluation is not needed.</p>	<p>Parents can agree if the school thinks a reevaluation is not needed. If the parents think a reevaluation is needed, they do not have to agree. Parents can also suggest to the school that a reevaluation is not needed.</p>
<p>The school must get written parent consent to do testing to determine if the child continues to be eligible for special education. If the parents do not respond to the request for consent, the school may go ahead with the testing.</p>	<p>The school must get the parents' written consent before doing any new testing. If parents agree to the testing, they should sign the consent. If they have questions about it, they should ask the school.</p> <p>If the parents say they do not want new testing, the school may ask for mediation or a due process hearing to allow the testing.</p>
<p>The school will notify the parent if the IEP team decides that testing is not needed as part of the reevaluation.</p> <p>See also: Evaluation Procedures</p>	<p>Sometimes the IEP team will feel more testing is not needed. Then, the school must tell the parents why. The parents still have a right to ask for testing to be done. They should ask for testing in a letter.</p>

PART 2: OTHER SCHOOL CHOICES

Introduction

There are a number of choices about where a child goes to school.

There are several choices other than traditional public school.

Charter Schools

A charter school is a public school. It is tax supported, and it must follow the IDEA. Student selection in a charter school may depend on the focus of the school. For example:

- A charter school that focuses on advanced academics will select students who can be successful in that program.
- A charter school that focuses on vocational education will select students who want to learn to do a specific job the school teaches.

In each case, the charter school must accommodate any student with disabilities who can do the program.

LEA Placement in Private Schools

Sometimes a child's needs are so great, or so unusual, the LEA cannot meet them. Then the IEP team may decide to send the child to a private school that specializes in that child's needs. The school must meet DPI requirements for private schools.

The IDEA is followed in providing special education and related services for the child. The IEP and all other parts of the special education process are followed.

The LEA pays for the private school and any related expenses such as transportation from the child's home to and from the private school. The LEA is responsible for making sure the child's IEP is being carried out correctly.

Parent Placement in Private School

Parents may decide that a private school will meet their child's needs best. A private school is a school that is not tax supported. Parents pay tuition for their child to attend a private school. A private school can choose the students who attend the school. Private schools do not have to follow IDEA.

Parents have a right to choose to send their child to a private school. If parents choose to send their child to a private school, there may be no special education services from the district or the services may be limited. The district must offer FAPE in the public school, but the child does not have an individual right to special education or related services in a private school. In consultation with representatives of private schools and parents of private school children, the district where the private school is located decides what services it will provide, which children will be served, and how and where they will be served. The district must spend a part of its federal special education money on this group of children. Each private school child being served by a district also has a *Services Plan* that lists any services the district will provide (transportation, speech, etc.). See DPI Bulletin #06.03 for more information.

What If Parents Disagree?

If parents disagree with the child's Services Plan, they cannot use a due process hearing or mediation to solve the problem. If parents disagree with the child's evaluation or eligibility decision, they can request mediation or a due process hearing to solve the problem. If parents believe the district did not follow the laws relating to private school children, they may file a written IDEA complaint with DPI. Parents can also use the informal methods of solving problems described in Part Three: Problem Solving.

District Pays For Private School If FAPE Not Provided

If a child was enrolled in special education in the district, and if parents decide to send the child to a private school because they think the district did not provide FAPE, a hearing officer or a court can look at the situation and may require the district to pay for the child to go to the private school. In order to win such a case, in most cases, parents must notify the school district in advance of their decision before they remove their child from public school. Parents should do so in writing, with an explanation of why they believe the public school did not provide FAPE to their child.

Homebound Schooling

Homebound schooling is an option for a child with a disability who cannot go to school because of medical problems. For example, a child needing a long recovery time after surgery or a child who is very weak due to chronic illness may receive homebound schooling. Homebound schooling is not intended as a way to simply keep children with behavior problems out of school.

Home-based or Home Schooling

Home-based schooling, or home schooling, is a parent choice to educate the child at home. If the district gets a written referral for a home-schooled child with a suspected disability, they must accept the referral and evaluate the child. If the child is found to be a child with a disability, the school must make free appropriate public education available in the public school.

If parents decide to keep the child in home-based schooling, the district has no responsibility for providing any education services. However, a school district must allow a child in a private school or in a home-based education program to take up to two high school courses each semester if:

- the child is a resident of the district;
- the child meets the standards for high school; and
- the school board decides there is enough space in the classroom.

Child Find

The school district is required to identify children with disabilities attending private schools in the district, including religious schools. So, any child suspected of having a disability could be referred to the school district for evaluation. The school district will gather an IEP team including staff from the public and private schools, parents, and others. The district also has an obligation to find other children with disabilities who live in the district.

PART 3: PROBLEM SOLVING

Introduction

Parents and schools have a “built-in” partnership with the child as the focus. This partnership will grow when parents and school staff work together. Disagreements may happen, but disagreements can also help to make the child’s education better. Disagreements that get solved happily make the parent/school relationship stronger.

INFORMAL MEETING

What to do when issues arise?

- When issues arise, talk directly with the people involved as soon as possible.
- First, you can call to schedule an informal meeting to discuss the situation.
- Second, you can prepare for the meeting by making a list of issues and some possible solutions.

What can you do in the meeting?

- See if you can agree on the issue(s) that must be addressed.
- Listen actively to understand the other person’s perspective.
- Communicate your concerns clearly. Use notes to keep you and the meeting on track and focused on the child.
- Ask questions or restate so you and others are clear in your understanding.
- Work together to suggest some possible options to resolve the issue(s).
- Analyze all of the options to see if you can find areas of agreement.
- Discuss what should happen next.

What about dealing with emotions in the meeting?

- Try to explain your emotions calmly, and describe what your concerns are about the future to the other participants.
- Ask someone to come with you to the meeting to help you stay focused positively.
- If, by chance, you make a mistake or cause offense, say you are sorry. An apology can go a long way to resolving the situation.

What if the issues are not fully resolved in the meeting?

- Consider scheduling another informal meeting with different or additional people.
- Call others for suggestions on possible future action.
- Call the Wisconsin Special Education Mediation System, 888-298-3857 (toll-free voice) or 262-538-1618 (TTY) or seek information on the WSEMS website at: <http://www.wsems.us> A facilitated IEP meeting or mediation could be helpful.

Next Steps: What can be done if informal ways of solving problems don’t work?

Parents and the school can use one or more of the formal problem solving methods. Schools must tell parents about these formal ways to solve problems:

- Independent Educational Evaluations (IEEs),
- Facilitated IEP,
- Mediation,
- IDEA State Complaints, and
- Due process hearings.

These formal ways to solve problems can help the school and the parent to talk together. Schools and parents should try the informal methods first and should use the formal methods if the informal methods don’t work.

Before using any of these formal problem-solving methods, parents should understand how they work and with which types of problems they work best. Other parts of this book give information about independent educational evaluations, special education mediation, IDEA State Complaints, and due process hearings.

Before using these formal problem-solving methods, many parents find it helpful to talk to someone at WI FACETS or someone with another support group. Check the list of resources in the back of this book. Help is often free of charge.

INDEPENDENT EDUCATIONAL EVALUATION (IEE)

(34 CFR 300.502)

DPI Bulletin # 99.02

An evaluation done by qualified people outside of school is called an independent educational evaluation, or IEE. If the parents do not agree with the evaluation and testing done by the school district, they can request that the school pay for an IEE. A parent may only have one IEE for each evaluation done by the school district.

The district must tell parents where they can get an IEE when the parent asks. The school also must tell the parents about the school's IEE criteria. Parents can pick who will do the IEE, but the people who do the IEE must be at least as qualified as the person doing the testing for the school. Districts can set up policies or criteria for IEEs. The school's criteria can say who can do IEEs and where IEEs can be done. The criteria must be the same as what the district uses when it has its own evaluator do evaluations.

When a parent asks for an IEE (in writing is best) at district expense, the district has two choices. Without unnecessary delay, the district must either pay for the IEE or file for a due process hearing to argue that its evaluation was appropriate or that the IEE did not meet the criteria of the law.

If the district goes to a due process hearing and the hearing officer says the district is right, the parents may still have an IEE done, but then the parents pay for it.

No matter who pays for an IEE, parents can bring the results to the IEP team. The IEP team must talk about the results of the IEE as it makes special education decisions.

Parents can also use the results of an IEE they paid for in a due process hearing. If a hearing officer orders an IEE as part of a due process hearing, the district must pay for it.

FACILITATED IEP

A facilitated IEP (Individualized Education Program) is an option for early conflict resolution that is available to parents and schools. A facilitated IEP uses a neutral trained professional to help the IEP team with the process of deciding what will be included in the IEP. This facilitation may take place at any IEP team meeting.

The facilitated IEP option is voluntary. If either the parents or school do not want to use a facilitator, the IEP meeting will be conducted without one.

Early processes such as expert IEP facilitation . . . to increase collaboration and problem solving skills of school staff and parents can help avoid expensive disputes and promote efforts to help students.”

-The President's Commission on Excellence in Special Education

The process is free. WSEMS (Wisconsin Special Education Mediation System) pays the facilitators with Wisconsin Department of Public Instruction grant funds.

DPI supports the Wisconsin IEP facilitation system. DPI supports an increase in the number of options available to parents and schools to resolve their disputes. Such options will assist the parties in building long lasting, trustful and collaborative relationships.”

-Dr. Stephanie Petska, Director, Special Education Team, Wisconsin DPI

Why would I want to participate in a facilitated IEP?

A facilitated IEP is used to help when the school and family think an IEP meeting will be difficult to manage due to lack of trust or communication problems. A facilitated IEP is most effective when requested in the very beginning of the IEP process.

How do I request a facilitated IEP?

The parent, guardian, adult student, school representative, or both parties may decide a facilitator is needed to help with the IEP meeting. Call WSEMS, 888-298-3857 (toll-free voice) or 262-538-1618 (TTY) to request a facilitated IEP.

Is the facilitator a part of the IEP team?

The neutral facilitator is not part of the IEP team. The role of the facilitator is only to help the group work together. Only the IEP team makes program decisions (not the facilitator).

Who are the facilitators?

WSEMS has a list of skilled facilitators. They come from many backgrounds - law, social work, psychology, and business. Each facilitator has been well trained in effective communication.

Where and when is a facilitated IEP meeting held?

The facilitated IEP meeting is usually scheduled by the school district. The meeting is held at a time and place that is acceptable to all IEP team members, including the parents.

What is the role of the facilitator?

The facilitator:

- Helps IEP team focus on developing an effective IEP.
- Guides the discussion by keeping the team’s energy centered on the student.
- Offers ways to address and resolve conflicts in the development of the IEP.
- Models and helps maintain open, respectful communication among team members.
- Helps team members develop and ask clarifying questions about issues that may have come up in past IEP meetings.
- Helps to keep team members on task and within the time scheduled for the meeting.
- Maintains impartiality and does not take sides, place blame, or determine if a particular decision is right or wrong.

“The staff person leading the IEP meeting is able to be free to be the expert in raising and discussing educational issues. The IEP facilitator was responsible to guide the negotiation and consensus building aspect of the IEP session.”
- Facilitator

MEDIATION

(Wis. Stat. 115.797)

DPI Bulletin # 98.07

What is Mediation?

Mediation is facilitated negotiation. A neutral party, a mediator, helps parents and school districts resolve their disputes in an informal meeting. Mediation is voluntary. The parent(s), school district or the mediator may end the mediation at any time. The mediator does not make a decision for the parties, like a judge or a due process hearing officer. The mediator helps the parties do the following: identify issues, discuss viewpoints, generate options, and create solutions agreeable to all. When the parties resolve all or some of the issues, they work together to write an agreement. They both sign the agreement. Parties may ask an attorney to review the agreement before signing. If the parties are not comfortable with the agreement, they should not sign it. The signed agreement is a contract and is legally binding.

Mediation does not delay or deny the right to a due process hearing. Mediation encourages mutual respect, promotes communication and contributes to a more positive working relationship in the future.

What is a Request for Mediation Form?

A form is available from the Wisconsin Special Education Mediation System (WSEMS) at 888-298-3857 (toll-free voice), 262-538-1618 (TTY) or at: <http://www.wsems.us> The form is simple to complete. The person(s) requesting mediation describes the issues and signs the form. The WSEMS intake coordinator can provide assistance in completing the form.

How Is Mediation Requested?

A request for mediation form is filled out:

- Together: after discussing the issues, the parents (or guardian or adult student) and the school representatives may decide they need a neutral person to help them to resolve the issues. This is called a joint request.

OR

- Individually: a parent, adult student, or school representative may request mediation.

What Happens if a Parent Requests Mediation Individually?

WSEMS notifies the other person identified on the request form. The intake coordinator explains the mediation process and finds out if the non-requester would like to try mediation. The non-requester is not required by law to participate in mediation. The mediation process is voluntary. The non-requester has five business days to decide whether or not to participate.

Who Pays for Mediation?

Mediation is a free process for both parents and schools. WSEMS pays the mediators with grant funds from the Wisconsin DPI. However, participants in the system must pay for their own attorney's fees, if any.

When is Mediation Helpful?

Mediation is a process that is right when there is:

- An ongoing relationship between family and school representatives
- A need for privacy
- A need for creative and flexible solutions

Under special education law, mediation may be used for disputes involving:

- Identification
- Evaluation
- Individualized education program (IEP)
- Placement
- Free appropriate public education (FAPE)

Mediation is most effective when used early in a dispute.

Who May Participate in Mediation?

Wisconsin law provides that those who may participate are the parent(s) (or adult student or guardian) and two school district representatives. However, others may participate - with the permission of the parents and school representatives. Other participants may include:

- Advocate
- Attorney
- Relative
- Psychologist/Psychiatrist
- Social worker
- Minister, priest, rabbi
- Family friend
- Doctors or other medical providers

Participants may request a break at any time during the mediation session to talk with someone not present in the session by telephone or in person.

Who Are the Mediators?

WSEMS, along with the Wisconsin Department of Public Instruction, has a list of well-trained mediators. The mediators come from a wide range of professional backgrounds, including law, psychology, social work, business and education. There is no advantage or disadvantage to having a lawyer or non-lawyer mediator. Each mediator has completed a five day training on special education mediation. Each is also required to complete one day of training each year in order to remain on the list.

After the parties agree to participate, WSEMS appoints a mediator. If one (or both) party objects to the mediator, then WSEMS appoints a different mediator. Either party may request a specific mediator. A mediator who is not on the list may be used, but at the parties' expense. The intake coordinator asks both parties a few standard questions about the case and, along with the mediation director, matches the needs of the individual case to the training, education, experience and personality of a particular mediator.

What About the Law?

The Individuals with Disabilities Education Act (IDEA) is the federal law designed to assure that children with disabilities receive a free appropriate public education (FAPE). The IDEA requires that all states offer mediation as a voluntary option. State law creates the mediation to be offered as an option in Wisconsin. DPI Information Update Bulletin # 98.07 describes the mediation system in detail.

The Mediation Session

Before Starting:

- The session is held within 21 business days after the mediator is agreed upon by the participants.
- The mediator works with the participants to find a convenient location, date, and time to meet.
- Mediations may be held in libraries, community centers, the school, school district offices, attorneys' offices, or other locations agreeable to the participants.
- The mediator helps the participants decide who else may be present at the session.

The Day Has Arrived:

- Everyone sits around a table with the mediator in a relaxed, informal manner.
- The mediator explains the agreement to mediate and then asks the parties to sign it.
- The mediator explains the mediation process and the mediator's role.
- The mediator asks each participant to explain his or her viewpoints on the situation.
- The mediator may ask questions to clarify, brainstorm, or create options.
- Typically, there will be no audio, video or written record of the session.
- Anyone may ask the mediator for a break at any time, or the mediator may decide to call for a break.
- A mediation session may last from one hour to one day. The parties are asked to agree to a general schedule before the session begins. Sometimes more sessions are needed.
- The parents and school district representatives work together to write down how they have decided to resolve their dispute. They both sign this written statement, which is called the mediation agreement. A participant may, at his or her own cost, have a lawyer review the agreement.

After the Session:

All participants are asked to complete a survey about the session. The information is given anonymously and remains confidential. The survey helps WSEMS to measure how the mediation process is working.

IDEA STATE COMPLAINTS

(34 CFR 300.151)

Parents can use an IDEA State Complaint when they think the school has not followed special education law. Districts must tell parents about their right to file an IDEA complaint. Any person (parent, teacher, and other people) or organization can file an IDEA State Complaint. An individual or organization must

file the complaint within one year of the alleged violation. IDEA State Complaints are sent to DPI for investigation.

An IDEA State Complaint says how the district has violated special education law. An IDEA State Complaint must be in writing, signed, and must tell the facts about how the law might have been broken. DPI has a form that can be used for filing complaints. It can be found at: <http://www.dpi.wi.gov/forms/doc/f2117.doc> If the complaint alleges violations regarding a specific child, it must include the child's name and address and the name of the school the child is attending. The complaint must also include a proposed resolution of the problem, to the extent known by the person making the complaint. A copy of the complaint must be sent to the district at the same time it is sent to DPI.

The district must have an opportunity to respond to the complaint, including a proposal to resolve the complaint. The district and parent can agree to use mediation to resolve the complaint. The DPI must investigate the complaint. Generally, DPI will look at records and talk to people by phone. If necessary, DPI staff will visit the school.

DPI must make a decision on the complaint within 60 days of getting it. DPI's decision will tell the facts and will tell whether or not the district has broken the law. Sometimes, DPI will extend the 60-day limit to finish the investigation.

If a parent files an IDEA State Complaint and requests a due process hearing on the same issues, DPI will not investigate the issues until the hearing and any appeals are over. The decision in the due process proceedings will be binding. If the parent and the school decide on mediation, DPI may extend the investigation of the IDEA State Complaint until the mediation is over, if the parent and the school agree to the extension. The parent may withdraw their IDEA State Complaint at any time before DPI makes a decision.

If DPI finds that a district did violate the law, the district must make a plan to fix the problem. This is called a Corrective Action Plan, or CAP. If the person filing the complaint wants to know what is in the CAP, a copy can be requested from DPI.

To find out more about filing an IDEA State Complaint, call WI FACETS at 877-374 - 4677 or call DPI at 608/266 - 1781 or 800/441- 4563 for help in filing an IDEA State Complaint.

Complaints must be in writing and signed and should be sent to:

Assistant Superintendent
DPI Division for Learning Support: Equity and Advocacy
PO Box 7841
125 S. Webster St.
Madison, WI 53707-7841

DUE PROCESS HEARINGS

(WI Ch. 115.80)

A due process hearing is a legal process used by parents and districts to decide issues. It is usually used when every other attempt to solve the problem has failed. Due process hearings can be used for problems with evaluations, IEPs, educational placement decisions, or FAPE. Schools may request a due process hearing if a parent of a child in public school refuses to give consent to evaluate. The district can also file for a due process hearing if it feels it should not pay for an IEE. Parents may file a request for a due process hearing on any issue related to the IEP process or FAPE. A request for a due process hearing must be filed within one year of when the party knew or should have known about the action that forms the basis of the request for a hearing.

Schools must tell parents how to ask for a due process hearing. Parents can also call DPI at 608/266-1781 or 800/441-4563 to ask for a form or print one from the DPI website at: <http://www.dpi.wi.gov/forms/pdf/pod2115.pdf> They would fill out the form and send it to the school

district with a copy to DPI. The form will ask for information on the problem and will ask for ideas to solve the problem.

When DPI receives a request for a due process hearing, a hearing officer is named from a list. The school cannot ask for a specific hearing officer; neither can the parents.

Schools usually have lawyers representing them at due process hearings. Schools can use experts from the school or can use any other expert to support the school's side. Parents may use a lawyer to represent them and their child at a due process hearing, or they may represent themselves at the hearing. DPI will send parents a list of agencies that may provide a free or low-cost lawyer. Parents can also use experts to help support their case.

TIP: Parents are encouraged to talk to a lawyer before requesting a hearing.

Resolution Process/Meeting

Before a hearing can be held, there must be a chance for a resolution meeting, if the parent requested the due process hearing. A resolution meeting is an informal meeting with the school and parents to try to settle the problem. The school must schedule the resolution meeting within 15 days of getting the parent's hearing request. They can use a facilitator from the WSEMS at the resolution meeting, if they agree. If the problem is not settled within 30 days, then the hearing can happen. The school and parents can agree not to have a resolution meeting and go directly to a hearing. They can agree to use mediation instead of a resolution meeting.

What is the resolution process/meeting?

- An option for dispute resolution required to be made available whenever a due process hearing has been requested by a parent.
- The resolution process is an informal meeting between the school and parents to give them an opportunity to resolve the specific dispute that is the basis of the due process hearing request.
- The resolution meeting may be held with or without the help of a facilitator.
- Facilitators are available from WSEMS.

Is there a fee for facilitation?

- No.
- Facilitation services from WSEMS for the resolution meeting are free to parents and schools.

How to request a facilitator?

- Call WSEMS, 888-298-3857 or 262-538-1618 (TTY).
- If either the parents or school do not want a facilitator, one will not be provided.

May the meeting be waived?

- Yes - but, the parents and the school district must both agree in writing to waive a resolution meeting.
- They must sign a written waiver and either use the mediation process or go on to a due process hearing.

Who may participate in a resolution meeting?

- Parents, school representative (with decision-making authority on behalf of the school), and relevant member(s) of the IEP team.
- The parents and school district decide who from the IEP team they would like to have participate.
- The school district may not bring an attorney unless the parents bring an attorney. (No attorney's fees will be awarded in the resolution process.)

Is there a timeline?

- The resolution meeting must be held within 15 days of the school receiving the due process hearing request. The process can consist of one or more meetings.

- If the school is not able to resolve the dispute to the satisfaction of the parents within 30 days, the due process hearing may proceed.

What about confidentiality?

- There is no legal requirement to keep discussions in the resolution meeting confidential.

TIP: A confidential agreement could be considered for parties to sign at the beginning of resolution meeting, but the legal effect of such an agreement is unclear.

Due Process Hearing Procedures

The due process hearing includes witnesses, questioning and cross-examination, and presentation of evidence by both the parents and the school. At least five business days before a hearing, the parents and the schools must both tell what information they are going to present in the hearing. The hearing officer may subpoena and swear in witnesses. The hearing officer will direct the hearing and will decide how the hearing will be done. The hearing officer does not have to use statutory or common law rules of evidence. He or she allows all reasonable testimony and will not allow testimony about topics that have nothing to do with the disagreement. The hearing officer will use facts, the law, and the evidence to make a decision on the case.

The hearing officer has the power to order any solution to the problem that is reasonable. The hearing officer has 45 days to make a decision after the resolution process is finished. The hearing officer can give extensions for specific amounts of time for either side if there is a good reason. Timelines are shorter in discipline situations. See Part 4.

The district pays for the due process hearing. Parents pay for their own attorneys and, if the parents win the case, they can request from a court their attorney expenses be reimbursed by the school. There are some limits, so parents should work with a lawyer that understands special education.

The hearing officer's decision is final and binding unless appealed. If either side does not agree with the hearing officer's decision, they can file for a civil action (lawsuit) in the circuit court (state court) where the child lives, or in a U.S. district court (federal court). Appeals to state or federal court must be filed within 45 days of the hearing decision. The court makes a decision based on the evidence. The decision of the hearing officer and the hearing officer's report is part of the evidence.

Stay-Put Rule: What Happens to the Child While the Hearing is Going On?

The school and the parents both have the responsibility to make sure their child's education is not interrupted while the hearing is going on. Unless the parents agree to it, the school cannot change the child's educational placement while the hearing is going on. This is called the "stay-put" rule. Parents and the district may agree to a new placement if they think that's what is best for their child. If the issue involves the child's first admission to school, the child, with the parents' consent, must be placed in the school until all proceedings are over.

If a hearing officer's decision agrees with the parents that a change in placement is appropriate, the placement decided by the hearing officer becomes the child's current placement until the end of any appeals.

Stay-put is different for some discipline situations. See Part 4.

PART 4: SPECIAL EDUCATION, BEHAVIOR, AND DISCIPLINE

Introduction:

Most legal problems around special education and discipline can be prevented. Parents and districts can work together as a team to:

- prevent behaviors from becoming problems;
- make and use good IEPs that help the child learn new behaviors;
- give children the level of services they need to succeed in learning new behaviors;
- place children so their behavior does not interrupt their own or other children's learning.

How to prevent behaviors from becoming problems:

All children, including children without disabilities, sometimes have behaviors that get in the way of their own learning or that of their classmates. Children with disabilities, like all children, sometimes make bad choices, do things that break the rules or act in a way that may directly result from problems associated with their disability. For many children with disabilities, it makes sense to use the regular classroom rules and consequences to help teach appropriate behavior. However, for some children, this is not enough.

If a child's behavior keeps interrupting his or her own learning, or the learning of other children, schools and parents can work together to make changes. If the district or parents think a child *might* behave in a way that interrupts learning, they can work together to make plans to prevent or avoid the behavior and to help the child learn other ways of acting. Documenting behavior is an important step in helping to problem solve and coming up with positive solutions for the student.

When an IEP team meets, the district and the parents should talk about behavior if it is one of the child's needs. The law does not require every child with a disability have a *behavioral intervention plan*, but some experts say it is a good idea to have a behavior plan in the IEP if it is likely that a child's behavior will become a problem.

Behavior plans are like tools. They can be used by the school to help the child learn better ways of behaving. Behavior plans are usually used for behaviors the child is already doing, or tends to do. The IEP team can create a behavioral intervention plan that helps the school to:

- understand the meanings of the behaviors,
- understand what might cause the behaviors to happen, and
- understand how to respond to the behavior so the child can learn a better behavior.

Functional behavioral assessment

DPI Bulletin #07.01

For many children with behavior problems, using the common strategy of consequences for misbehavior does not seem to work. When this happens, the IEP team can use a process called *functional behavioral assessment* (FBA) to try to understand the child's behavior. Districts either have someone who understands FBA or can locate someone to help them learn how to do it.

A FBA will try to look at each problem behavior to figure out when, where, and why it is occurring. The person or people doing the FBA will probably want to observe the child, interview parents and teachers, and investigate all the places and times when the child's behavior occurs.

When a district uses an FBA to take a closer look at the child's behavior, they will be trying to find an answer to the question, "What function does this behavior have for this child?"

Experts say there are only two answers to that question. All behaviors either:

- get something (attention, sensory stimulation, status, rewards, power) or
- escape or avoid something (pain, boredom, anxiety, fear, someone not liked).

A good FBA will look beyond what the behavior IS to what the behavior DOES for the child. A good FBA will:

- look at the places or situations where the behavior happens,
- look at the events that happen just before it and just after it,
- look at how the child is feeling (angry, tired, thirsty, anxious, including side-effects of medication), and
- try to find out what events, times or situations predict the behavior and will tell what happens after the behavior occurs.

A good FBA will lead to answers to two important questions:

- What causes the behavior to happen?
- What will cause the behavior to NOT happen?

Behavioral Intervention Plans: Teaching Alternative Behaviors

DPI Bulletin #07.01

Any IEP team can address behavior. It is much better to deal with behavior issues as early as possible to prevent problems later. An IEP team can make a positive behavioral intervention plan using the information from a FBA. A positive behavioral intervention plan does not excuse a behavior. It provides the school with a carefully thought out action plan so that when the behavior does occur, teachers and others will know how to act to decrease the behavior and teach a better alternative behavior.

An IEP team can use the information from the FBA to make a plan to teach alternative behaviors which have the same function as the problem behavior. A positive behavioral intervention plan does not simply list the consequences. It also plans for teaching the child alternative behaviors while reducing the problem behavior.

Here are the steps of a basic positive behavioral intervention plan. The goal is to reduce or eliminate the problem behavior:

- What is the function (cause) of the behavior? (A FBA will give a lot of information to answer this.)
- What behavior do we want to teach this child to replace the problem behavior? The replacement behavior **MUST** have the same function for the child.
- What will the teacher (other person) do to prevent the problem behavior? (Again, the FBA will give information on this.)
- What will the teacher (other person) do when the child exhibits the correct or alternative behavior in any situation? (Positive reinforcers and taking away something that acts in a negative way)
- When and how will the teacher (other person) practice teaching the replacement behavior?

Behavior Goals in the IEP

For many children, behavior can be a part of the IEP just like any other subject area. The IEP team can use the present level of academic achievement and functional performance, annual goals, and specific services to help the child learn appropriate behaviors in the same way they can help the child learn other things. The goal must tell:

- a. When? (How long until the child will reach this goal? A week? A year?)
- b. What needs to be happening for the child to do this behavior? (“when on the playground,” “when asked by his teacher,” etc)
- c. Which behavior? (“will begin to comply with the instructions,” “will step away from his peers”, etc.)
- d. To what specific level? (“in all small and large group settings,” “for three days in a row,” “8 out of 10 times,” etc.)

Here are some examples:

- In 18 weeks, when teased by his peers, Robert will walk away from the situation across all settings and times in school.

- In 30 weeks, during all classroom activities that need turn taking, Josephine will wait her turn 8 out of 10 times, for three days in a row.

When the IEP is implemented, the teachers teach the child the skills needed to reach each goal.

The IEP Team’s Job in Dealing with Behavior

For many children, frustration or boredom leads to behavior problems. If a child has a good IEP, which meets his or her individual needs and is helping him or her to learn and succeed, many behavior problems can be prevented. If any member of the IEP team feels that the IEP is no longer working, he or she can ask the IEP team to come back together to make changes to the IEP.

When a good IEP is matched with a good, appropriate placement for services, a child’s opportunities to learn are greatly increased. The child’s opportunities for problem behavior are often decreased. If a child has continual behavioral problems that keep the child or other children from learning, the IEP team should ask these questions:

1. Is this IEP being implemented? If not, what do we need to change?
2. Is this IEP working? Is it meeting this child’s special needs?
3. Is this child getting all the services he or she needs to learn? If not, does the IEP team need to add or change some of the services?
4. Is this child’s placement (classroom or learning situation) a good fit for the child’s needs?
5. Will a FBA help the IEP team to understand the behavior and develop a good behavior plan?

The IEP team can use information from an FBA to develop a positive behavior plan. The IEP team can also talk about changing the services a child needs, changing the placement or learning situation, or changing the IEP to better meet the child’s needs.

When a Problem Occurs

Children with disabilities have many protected rights. One of them is the right to participate in the least restrictive environment, learning alongside peers without disabilities, as much as possible. For many children with disabilities, the IEP team will decide it is appropriate for the child to have the same consequences for behavior as any other child in the school. Some IEP teams will put this into the IEP. Most children with disabilities are able to understand and follow the same school rules as their peers without disabilities. They have the same legal protections as every other child.

TIP: Address behavior problems with the IEP team when they occur to avoid more serious problems later.

A school is responsible for keeping children and others safe, while protecting the rights of individual children. If any child is acting in a way that is dangerous for others, or for the child, it is the school’s first job to deal with the danger and keep people safe. Special education law cannot interfere with school safety.

Schools may use a variety of punishments or consequences for breaking rules. A child with a disability can receive the same consequences or punishments as other children with only one exception: long term exclusion from education (see below). However, state law has some restrictions. For example, in Wisconsin, it is illegal to use corporal punishment to discipline a child in school. “Corporal punishment” includes punishments like paddling, slapping or making a child stay in a painful position, when used as a means of discipline. This is true for all children, not just those with disabilities.

TIP: Wisconsin law requires schools to implement a Code of Classroom Conduct. Parents should ask their district for a copy of their Code of Classroom Conduct and review it when writing the IEP behavior plan.

The IEP team should talk about possible behavior problems. They should also discuss whether or not the regular consequences in the school’s or classroom’s policy have meaning for the child.

TIP: Punishment alone generally will not solve the problem. It only tells the child what *not* to do. It does not tell the child *what to do*.

When a problem with behavior occurs, a good first step is to call the IEP team back together to talk about it. The IEP team can take action to prevent a repeat of the problem using behavior planning, FBA, IEP revision, change of services, or change in placement. As always, the parents are equal partners in the discussion. If disagreements occur, first informal and then formal methods of solving problems should be used.

Disciplinary Consequences and School Rules

The most important step for the parents and school is to think ahead. They should know the school rules. If a behavior or set of behaviors is going to be a problem, deal with it in the IEP. The IEP team should create a behavior plan to teach alternative behaviors.

TIP: If the IEP team does not mention behavior, the parent can bring it up at any IEP meeting.

An IEP team can talk about patterns of behaviors that may cause problems. Some disabilities have “common” behaviors. If these are a problem, the IEP team should address them. Not every child will show every “common” behavior typical of that disability. Some children might show behaviors that are not common for the disability. It is important for the IEP team to talk about what behaviors are being noticed at home, in school, or in the community. If there are behaviors that are, or will likely become, a problem, NOW is the time to work on them. The IEP team can make a plan.

Federal and state laws say it is illegal to discriminate against a person on the basis of disability. A child with a disability cannot be disciplined more severely than a non-disabled child for breaking the same rule. If a child without a disability may be suspended for three days for breaking a rule, a child with a disability cannot be suspended for more than three days for breaking the same rule. There is no law that says a student who has a disability cannot be disciplined.

In addition, schools have the right and responsibility to report crimes to the police. To report a crime, schools do not need a parent’s permission. For a child with a disability, if the police are called, the school must provide them with copies of the child’s special education and disciplinary records if the police request them. However, the school cannot provide the special education or disciplinary records unless it either gets parent permission, has a court order, or is responding to a situation where the child’s health and safety are at issue.

Suspensions (In-school Suspensions and Removal from School)

When a child is suspended, the child is removed from school or class for a certain number of days as a consequence of breaking school or classroom rules. During in-school suspensions (removals) the child is in the school building, but not attending classes. Sometimes, in-school suspension will include doing work or getting instruction without being in the classroom as usual. Schools must promptly tell the parents if the child is suspended. Many schools will do it in writing. Parents can call and ask for district policies. Parents also have a right and need to know why their child is suspended. Parents have a right under state law to meet with someone other than the person who suspended the child to appeal the suspension.

TIP: Parents should call or visit the school when their child is suspended and find out why the child was suspended, how long the suspension is, and what services, if any, the child is receiving during the suspension period.

In Wisconsin, a child with a disability can be suspended for up to five days in a row, the same as a child without a disability. A school can suspend a child for more than five days in a row only if the school sends the parents a notice of an expulsion hearing. The school and parents, as the IEP team, can agree to a change in placement. (See also Part 3 on “Problem Solving”.)

TIP: If a child with a disability is suspended and then another problem behavior occurs, the consequence of suspension probably did not work. It is a good idea for the IEP team to meet and talk about developing a positive behavioral intervention plan to help prevent on-going problems and teach new behaviors. A FBA can help the team develop a plan. A functional behavioral assessment and the positive behavioral intervention plan may be done in one meeting, if the team has enough information.

Exclusion through Patterns of Suspension or Expulsion

Generally, schools can suspend a child with a disability from school for up to a total of ten days in a school year without having to take special steps and without providing services during the suspension. In Wisconsin this can be up to five days at a time.

Federal special education law permits a suspension of ten consecutive school days for one incident. However, state law is different. Wisconsin law only allows a ten day suspension if a notice of an expulsion hearing has been sent to the child and parents. Therefore, five days is the longest suspension allowed if no notice of an expulsion hearing has been sent.

The law does not set a specific limit on the total number of days a child can be removed in a school year. After a total of ten days removal in a school year, for additional removals the school must provide services, even if in another setting. If the additional suspensions or removals are for less than ten days, and not a change in placement, school personnel, including at least one of the child’s teachers, decide how much service is needed. If the suspension results in a change of placement, the IEP team participants decide on the appropriate services.

TIP: If the child is getting suspended over and over again, then the IEP team should meet and take a closer look at how to prevent or reduce the behavior problems.

If the child is being suspended or removed frequently, school staff should begin to look at whether the removals are creating a pattern. A pattern of shorter suspensions that add up to more than ten days in the year should be a caution. This could be a change in placement requiring appropriate procedures.

Multiple suspensions that total more than ten days in a school year may be a change of placement in some cases. The school decides if there has been a change in placement. Things the school considers when deciding if there is a change in placement include:

- the length of each removal,
- the total amount of time the child is removed,
- the proximity of the removals to one another,
- the similarity of the child’s behavior to the child’s behavior in previous incidents in the series of removals.

If a suspension creates a change of placement, the school must be sure to follow proper procedures. The district, parent, and relevant members of the IEP team must do a manifestation determination. See *Long-term Removal Options*. If the behavior was a manifestation of the disability, the school may not suspend the child. The IEP team must meet to develop or review the behavior intervention plan.

If the behavior was not a manifestation of the disability, the school may suspend the child. The school may have the IEP team do a FBA and behavior intervention plan if it thinks it is appropriate. However, during the suspension the child must receive the IEP services that the team decides upon. Patterns of removal cannot keep a child from progressing in the general education curriculum, receiving services listed in the IEP, or working on goals in the IEP.

TIP: If it looks like a pattern of removals is happening, experts recommend that the school call the IEP team together to revise the IEP and possibly to change the child’s placement. If the parents and the rest of the IEP team agree to the change in placement, then the IEP is implemented and a change in behavior generally occurs.

If the child has had multiple suspensions totaling ten days in a school year, and the school thinks an additional suspension would not be a placement change, the school personnel and one of the child’s teachers together decide the services the child receives during the suspension. (See also part on “Problem Solving”).

All children have the right to a hearing before being expelled from school. Children with disabilities have additional rights. Sometimes a child with a disability will do something that normally results in an expulsion or a suspension which results in a change of placement. The school must inform the parents, the same as if the child was not in special education. Then, the school must be sure to follow additional rules because their child is in special education. Things may be done in a different way if the behavior involves drugs, weapons, or serious bodily injury.

Long-term Removal Options—No Weapons, Drugs, or Serious Bodily Injury

A *manifestation determination* is made by the district, the parents, and relevant members of the IEP team. This group determines whether the behavior which got the child in trouble is a manifestation of the child’s disability. The law prevents a school from using expulsion or other long-term removal if the cause of the behavior was the disability itself. If the behavior is a manifestation of the child’s disability and if not already done, the IEP team must do a functional behavioral assessment and develop a positive behavior plan. If the child already has a positive behavior plan, the IEP team must meet to review the plan and revise it to address the behavior. If the behavior is not a manifestation of the child’s disability, the IEP team does a FBA and behavior intervention plan if it is appropriate.

TIP: Experts agree that the IEP team can and should talk about and document a child’s disability-related behavioral needs using a FBA before the crisis event. FBA leading to prevention, teaching, and planning can often prevent the crisis in the first place.

To make a manifestation determination, the district, the parent, and relevant members of the IEP team must look carefully at relevant information in the child’s file, including:

- the child’s IEP,
- information from the parents,
- observations of the child, and
- new and/or existing evaluation results,

The IEP team determines the behavior is a manifestation of the child’s disability if:

- the behavior in question was
 - caused by the child’s disability, or

- had a direct and substantial relationship to the child’s disability.

OR

- the behavior was the direct result of the school’s failure to implement the child’s IEP.

Not a manifestation of the disability

If it is determined the behavior is NOT a manifestation of the child’s disability, then the child can be expelled or removed as a child without a disability would be. The school must continue to provide services so that the child progresses in the general education curriculum and advances toward IEP goals, even if the child is no longer served in the same school environment. The IEP team decides what services the child needs and where those services will be provided. See DPI Bulletin #06.02.

Manifestation of the disability

If it is determined the behavior is a manifestation of the child’s disability, then the school can seek a change of placement through the IEP team process, but the child cannot be expelled. The IEP team must do a FBA and develop a behavioral intervention plan. If there is already a behavioral intervention plan, the IEP team must review it and make changes, if needed, to deal with the behavior. The IEP team must decide how to provide the child with the services he or she needs in the least restrictive environment.

Long-term Removal Options—Danger to Self or Others

If the school believes a child with a disability is substantially likely to hurt others or self, it can suspend the child (within suspension limits talked about above) and have the IEP team meet and revise the IEP and placement. If the IEP team, which includes the parents, believes a FBA and behavioral intervention plan (or a revision of a plan) is what’s needed, they should do it.

The IEP team can develop a different placement for the child that better meets his or her needs. Unless the parent requests a due process hearing, the child goes to that new placement to continue:

- to receive special education and related services,
- to progress in the general education curriculum,
- to work on IEP goals and objectives, and
- to learn more appropriate behaviors.

TIP: Parents should find out the school’s crisis intervention and police referral policies.
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If the IEP team can’t resolve the problem, and the district believes that keeping the child in the current placement is likely to result in injury to the child or others, the district may request a hearing to have the child placed in an Interim Alternative Educational Setting (IAES) for up to 45 school days. An Interim Alternative Educational Setting is a temporary setting that’s different from the child’s usual one and is designed so the child can:

- continue to progress in the general education curriculum, but in another setting;
- continue to get the services in the IEP;
- continue to work on the goals in the IEP;
- get services to help prevent the behavior problem from happening again.

After the child’s time in the Interim Alternative Educational Setting (up to 45 school days), if the school believes it would be dangerous for the child to return to the setting the child was in before, the school can ask a hearing officer to order the child stay in the Interim Alternative Educational Setting for additional periods of up to 45 school days each. One of the jobs of the Interim Alternative Educational Setting is to help the child prevent the behavior problems.

If school officials think keeping a child in an educational placement is likely to result in injury to the child or others, the school can go to court to get an order to remove the child from school or to change the child’s placement. However, the school remains responsible for providing FAPE to the child.

Not a manifestation of the disability

If the behavior is NOT a manifestation of disability, then the child can be expelled as a child without a disability would be, BUT the school must continue to provide the services the child needs to progress in the general education curriculum and advance toward IEP goals, even if the child is no longer served in the same school environment. The IEP team decides what services the child needs and where those services will be provided.

Manifestation of the disability

If the behavior IS a manifestation of disability, then the school can seek a change of placement through the IEP team process, but the child cannot be expelled. The IEP team must decide how to provide the child with the services he or she needs in the least restrictive environment.

Long-term Removal Options—Weapons, Illegal Drugs, or Serious Bodily Injury

There are three types of situations where a school district can remove a child with a disability from their current placement for up to 45 school days whether or not the behavior is a manifestation of the child's disability:

1. if the child has brought a weapon to school or to a school function or is found to have a weapon the child got while at school or a school function;
2. if the child knowingly possesses or uses illegal drugs or sells or solicits controlled substances while at school or at a school function.
3. if the child has inflicted serious bodily injury on another person while at school or a school function.

In addition to calling the police, school officials can immediately suspend the student for up to ten school days (providing the parents with notice of possible expulsion) and move the child into an Interim Alternative Educational Setting for up to 45 school days. If the parent challenges the Interim Alternative Educational Setting by requesting a due process hearing, the child will stay in that setting until the end of the hearing or the end of the 45 school days (whichever is first), unless the parent and the school agree otherwise.

The IEP team must make a manifestation determination. If the behavior is a manifestation of the child's disability, then the IEP team must do a functional behavioral assessment and a behavior intervention plan. If a behavior intervention plan is already in place, the IEP team must review the plan and change it as necessary to address the behavior. During the time in the Interim Alternative Educational Setting, the child continues to get the services and teaching needed to keep making progress in the general education curriculum, to keep working on IEP goals, and to learn alternate behaviors. At the end of the time period, the child returns to the prior placement, unless the IEP team determines a different placement for the child. The child must continue receiving FAPE, regardless of the setting.

Schools have the right to seek an order from a hearing officer or judge if they believe the child is a danger to self or others. See *Long-term Removal Options-Danger to Self or Others*. In addition, the school has the right and the responsibility to involve law enforcement officers if they think a crime has been committed. Parents may request a copy of their district's police referral policy.

Not a manifestation of the disability

If the behavior is NOT a manifestation of disability, then the child can be expelled as a child without a disability would be, BUT the school must continue to provide the services the child needs to progress in the general education curriculum and advance toward IEP goals, even if the child is no longer served in the same school environment. The IEP team decides what services the child needs and where those services will be provided.

Manifestation of the disability

If the behavior IS a manifestation of disability, the school can still place the child in an Interim Alternative Educational Setting for up to 45 school days. The school also can seek a change of placement through the IEP team process, but the child cannot be expelled. The IEP team must decide how to provide the child with the services he or she needs in a least restrictive environment.

Progressing in the General Education Curriculum and IEP Goals

After a child has been suspended for ten school days in a school year, the child must get the services needed to progress in the general education curriculum and advance toward the child's IEP goals. Throughout any exclusion from the child's special education program that is a change of placement, the child has the right to keep getting educational services. A child probably won't get the exact same teaching in the exact same classroom(s) or settings during suspensions or other exclusions. However, the school must continue to provide the child with FAPE.

The child must continue to get the services listed in the current IEP. The IEP team may meet to change the IEP if needed, and, if the parent doesn't agree with the changes, the parent can use the same informal and formal methods of solving problems as usual. The setting must be designed to help the child keep progressing in the general education curriculum, even if the child is going to a different place. The child will keep working toward IEP goals. If the child is in an Interim Alternative Educational Setting (IAES), the program must also help the child learn more appropriate behavior so that the problem can be prevented in the future. If the child's behavior interferes with learning, the IEP team must consider strategies and supports to address the behavior.

When a child is also in special education, the processes of helping the child, while protecting the safety of others, are not always simple or straightforward. If parents or districts have questions about legal rights and actions, they should contact an attorney.

Throughout the process of dealing with severe behaviors and their consequences, the IEP team, which includes the parents, takes a lead role. The IEP team has the ability to deal with many problems. If parents agree with changes in the IEP or changes in placement to help the child with the behavior, then the school can focus its energy on helping the child improve behavior. Parents continue to have important rights and roles during the process, and their understanding of the laws and the processes is critical.

IF PARENT DISAGREES

Expedited Hearing

A due process hearing must be expedited (held quickly) in some cases. This includes when a parent disagrees with a manifestation determination or with any decisions regarding placement for disciplinary reasons. Hearings must also be expedited when the district wants a change in placement for safety reasons or when the district wants to extend an Interim Alternative Educational Setting (IAES) because it thinks it is dangerous for the child to return to the prior setting.

An expedited hearing is one where the hearing must be held within 20 school days of the request for the hearing. A resolution meeting must occur within seven days of the request for a hearing, unless the parents and district agree to waive the resolution meeting. (See Bulletin #06.02) A decision is made no more than 10 school days after the hearing. Extensions of the timeline are not permitted. The child stays in the alternative setting until the time has ended or the hearing process is finished, whichever happens first.

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

If a child has not been identified as being eligible for special education but does something that violates school rules, he/she may have the protection of special education law if, before the behavioral violation:

- the parents have expressed concern in writing to school supervisors or administrators, or one of the child's teachers, that the child needs special education and related services;

TIP: If a parent is concerned about their child's behavior or performance, it's best to make a referral for an IEP team evaluation and give it to the principal. If needed, parents can ask someone to help them put it in writing.

- the parent of the child has asked for an IEP team evaluation;
- the child's teacher or other school staff has expressed concern about a pattern of behavior demonstrated by the child to the special education director or other supervisory staff.

The school is not considered to have knowledge the child was a child with a disability if the child's parent has refused consent for evaluation or special education services, or an evaluation was done and the child was found to not be eligible for special education.

RESOURCES

More Information for Parents

(For most current lists, go to: <http://www.dpi.wi.gov/sped/tm-spededtopics.html> or <http://www.specialed.us>)

Wisconsin Agencies

Wisconsin Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707-7841
(800) 441-4563
TTY: (608) 267-2427
Fax: 608 267-3746
Website: <http://www.dpi.wi.gov>

Wisconsin Family Assistance Center for Education, Training and Support, Inc. (WI FACETS)
2714 North Dr. Martin Luther King Drive
Milwaukee, WI 53212
(414) 374-4645
(877) 374-4677 (toll-free)
TDD: (414) 374-4635
Fax: 414-374-4655
Website: <http://www.wifacets.org>
Email: wifacets@wifacets.org

Wisconsin Statewide Parent-Educator Initiative (WSPEI)
Building D-2, Mailbox 65
800 Wisconsin Street
Eau Claire, WI 54703
(877) 844-4925 (toll-free)
Website: <http://www.dpi.wi.gov/sped/parent.html>

Wisconsin Special Education Mediation System (WSEMS)
Burns Mediation Services,
P.O. Box 107
Hartland, WI 53029-0107
(888) 298-3857 (toll-free)
Fax: (262) 538-1348
TTY:(262) 538-1618
Website: <http://www.wsems.us>

Disability Rights Wisconsin (DRW)
131 W. Wilson St. Suite 700
Madison, WI 53703-2716
(608) 267-0214
(800) 928-8778
Website: <http://www.disabilityrightswi.org/>

National

Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, DC 20202-7100
(202) 245-7468
(800) 872-5327
TTY: 800-437-0833
Fax: (202) 401-0689
Website:
<http://www.ed.gov/policy/spced/guid/idea/idea2004.html>

Other Websites

Websites with links to multiple resources

Family Village
<http://familyvillage.wisc.edu/>

First Step Searchable Database
<http://www.resourcehouse.info/en/wi/cgi-bin/location.asp>

Disability Info
<http://www.disabilityinfo.gov>

GLOSSARY

Assistive technology (AT): Any item a child needs to increase, maintain or improve how the child does in school. AT includes low-tech and high-tech items, from a calculator to a computer. AT also can mean services a child needs to help in choosing, getting, or using the item.

Behavioral Intervention Plan (BIP): The IEP Team makes a plan to help prevent problem behaviors. The plan helps a child learn new appropriate behaviors. A positive behavior plan is not a list of punishments. The plan uses information from a functional behavioral assessment.

CESA: Cooperative Educational Service Agency. An agency that provides special education and other services to schools. Schools buy services from a CESA, but the school is still responsible for the services.

Consent: The parent tells the school in writing the parent understands and agrees to what the school plans to do. The consent form says the parent understands consent is voluntary, and the parent can take it back at any time before the school does what it plans to do. Parents can revoke the consent, but it does not cancel what the LEA has already done.

Evaluation: When a professional gathers information about a child to decide if the child qualifies for special education or the kind and amount of services the child needs. Evaluation can be testing, observing, or talking to people who work with the child.

Evaluation Report: The IEP team gathers all evaluation information about a child who is being evaluated. They work together to write a final report about the evaluation. The report includes whether the child qualifies for special education.

Free Appropriate Public Education (FAPE): Every child who is eligible for special education must receive a FAPE which means the school cannot charge for the child's education, and that education must enable the child to be involved in, and make progress in, the general education curriculum.

Functional Behavioral Assessment (FBA): The IEP Team finds out what makes the child keep doing problem behaviors and how to help the child learn how to behave differently.

General education curriculum: What children without disabilities learn in the regular education classroom.

Home-based schooling: Parents choose to teach their child at home instead of sending their child to school to learn basic subjects.

Homebound schooling: When the child's IEP Team decides it is appropriate, the school teaches a child at home. The IEP Team's decision must be based on the child's needs.

Individualized Education Program (IEP): The plan developed by the child's IEP team which indicates the child's annual goals, and specifies the special education and related services which the child will receive.

Itinerant instruction: Instruction that is provided by staff traveling to multiple schools or school districts and offer services in such areas as Visual Impairment, Hearing Impairment, Orientation and Mobility, Physical Therapy, Occupational Therapy, etc.

LEA representative: A person on the IEP Team who has knowledge about, and can commit the school's resources so that the child receives the IEP services. All IEP meetings must have an LEA representative.

Least Restrictive Environment (LRE): LRE is a concept referring to the extent of removal of a child from education with children who do not have disabilities as little as possible.

Placement: The child's setting (regular class, resource room, self-contained class), and the school building the child attends for receiving special education.

Related Services: Things a child may need to benefit from special education. They are included in the IEP. Examples of related services are occupational therapy and physical therapy.

Special Education: Specially designed instruction to meet the unique needs of a child with a disability. The services are provided at no cost to the parents. The services can be provided in many different settings.

Supplementary Aids and Services: Services and supports provided in regular education classes and other settings to help a child with a disability be educated with children who do not have disabilities as much as is appropriate.

Transition: Transition is the term for preparing a child for life after high school. Transition planning is a required part of every child's IEP starting at age 14. Transition planning is also required for every child moving from Birth to Three Programs to a school's Early Childhood special education. Sometimes transition planning happens when a child moves from one grade to the next, or one school to the next. Transition can also mean moving from one class to the next class in school.

Wisconsin Alternate Assessment (WAA): State guidelines for testing children with disabilities who cannot take the regular required state tests.