

WISCONSIN STATE POLICIES AND PROCEDURES INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

(amended January 2003)



Wisconsin Department of Public Instruction
Elizabeth Burmaster, State Superintendent
Madison, Wisconsin

This publication is available from:

Special Education Team
Wisconsin Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707-7841
(608) 266-1787
or (800) 441-4563
or (608) 267-2427 (TDD)

The Wisconsin Department of Public Instruction does not discriminate on the basis of sex, race, religion, age, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability.



Printed on recycled paper

Table of Contents

I.	Free Appropriate Public Education	1
II.	Full Educational Opportunities Goal	1
III.	Child Find	2
IV.	Individualized Education Program	3
V.	Least Restrictive Environment	7
VI.	Procedural Safeguards	9
	Independent Educational Evaluation.....	9
	Written Notice.....	9
	Parental Consent.....	11
	Opportunity to Examine Records.....	11
	Mediation.....	12
	Hearings and Appeals.....	12
	Discipline Procedures.....	14
	Surrogate Parents.....	14
	Transfer of Parental Rights.....	15
VII.	Evaluation	15
VIII.	Confidentiality	17
	Notices.....	18
	Access Rights.....	18
	Hearing Rights.....	19
	Additional Public Agency Requirements.....	20
IX.	Transition From Part C to Preschool Programs	20
X.	Children in Private Schools	22
	Children Placed in, or Referred to, Private Schools by Public Agencies	22
	Placement of Children by Parents if FAPE Is at Issue.....	22
	Children With Disabilities Enrolled by Their Parents in Private Schools	23
XI.	State Educational Agency Responsible for General Supervision	24
	State Educational Agency (SEA) Monitoring Activities.....	25
	SEA Implementation Procedures.....	26
XII.	Obligations Related to and Methods of Ensuring Services	27
XIII.	Procedural Requirements Relating to Local Educational Agency Eligibility	28
XIV.	Comprehensive System of Personnel Development	29
XV.	Personnel Standards	30
XVI.	Performance Goals and Indicators	32
XVII.	Participation In Assessments	33
XVIII.	Supplementation of State, Local and Other Federal Funds	34
XIX.	Maintenance of State Financial Support	34
XX.	Public Participation	35
XXI.	State Advisory Panel	35
XXII.	Suspension and Expulsion Rates	36
XXIII.	State Educational Agency As Provider of Free Appropriate Public Education Or	36
	Direct Services	
XXIV.	Description of Use of IDEA Funds	36

PREAMBLE

Chapter 115, Wis. Stats. was amended in May 1998, to conform to the requirements of the Individuals with Disabilities Education Act (IDEA), as amended in 1997. State law requires that Local Education Agencies (LEAs) make available to children with disabilities a free appropriate public education (FAPE) "as required by...federal law." See §115.77(1m)(b). A similar provision applies to the department. See §115.762(3)(c). Consequently, the department and all LEAs in the state must comply with the requirements of 34 CFR Part 300, as well as with IDEA. In recognition of this change in state law, much of state administrative rule was repealed effective October 1, 1998. Remaining administrative rules include eligibility criteria for each area of impairment. Because state law requires conformance with federal regulation, this policies and procedures document reflects the primary requirements of federal law.

I. FREE APPROPRIATE PUBLIC EDUCATION

It is the policy of the State of Wisconsin to ensure that a free appropriate public education (FAPE) is available to all children with disabilities who are three years of age but not yet 22 years of age and who reside in this state, including such children who are suspended or expelled from school. Pursuant to 34 CFR 300.121(C)(2); If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. A public agency need not provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed. This policy is codified in state law at section 115.762 (3)(am), Wis. Stats., and is consistent with the requirements of 34 CFR 300.300–300.313.

II. FULL EDUCATIONAL OPPORTUNITIES GOAL

It is the policy of the State of Wisconsin that each public agency develop, implement, review, and revise an individualized education program (IEP) for each child with a disability served by that agency, in accordance with the requirements of IDEA and its regulations. This includes children who are referred to a private school or facility by a public agency. The Department of Public Instruction, Division for Learning Support: Equity and Advocacy (DPI/DLSEA) has published a number of bulletins regarding IEPs, such as Bulletin 98.03, "Individuals with Disabilities Education Act (IDEA) Requirements for all Individualized Education Programs (IEPs) effective beyond June 30, 1998". The DLSEA monitors public agencies to ensure these requirements are met.

The Department of Health and Family Services (DHFS) is responsible for the provision of early intervention to infants and toddlers below the age of three. Wisconsin is participating in the Part C program. The lead agency for the state is DHFS.

In meeting the goal of providing full educational opportunities, LEAs ensure that children with disabilities have available to them the same variety of educational programs and services, such as art, music, and vocational education, which are available to children without disabilities. Nonacademic and extracurricular activities must be provided to allow children with disabilities an equal opportunity for participation.

DLSEA monitors and supervises LEA provision of special education and related services. Approval of LEA plans for the delivery of special education and related services is made prior to the release of state and federal funds. The division's activities ensure a full educational opportunity for all children with disabilities.

III. CHILD FIND

Pursuant to section 115.762 (3)(a), Wis. Stats., it is the policy of the State of Wisconsin to ensure the identification, location, and evaluation of all children, including children enrolled in private schools, from birth until 22 years of age who are in need of special education and related services. DPI/DLSEA has assumed statewide leadership for planning and implementing a child identification effort. Procedures for referral are defined in section 115.777, Wis. Stats. Section 115.782, Wis. Stats. describes procedures for evaluation.

Child identification efforts focus on:

- public awareness/outreach activities to inform the public of the search for children and the services available.
- interagency cooperation to facilitate referrals and the transfer of children between and among different service agencies to ensure smooth transitions.
- data management and collection to provide continuous information on children suspected or identified as having a disability.

Pursuant to section 115.77 (1m)(a), Wis. Stats., all LEAs are required to conduct child identification efforts and to develop procedures to ensure such activities are continuous. DPI monitoring includes review of these procedures.

Section 115.777 (3), Wis. Stats., requires that LEAs provide information and inservice opportunities to all licensed staff to familiarize them with the agency's referral procedures. At least annually, LEAs also must inform parents and persons required to make referrals under section 115.777 (1), Wis. Stats., about the agency's referral and evaluation procedures. The department has developed inservice materials to train regular educators to screen for disabilities. Training packages include "Screening for Emotional Disturbance," "Decisions: Screening for Learning Disabilities," and "Strategies: Effective Practices for Teaching All Children."

Children in Wisconsin who are identified as having a disability receive special education and related services. DPI/DLSEA ensures that it obtains information related to the number of children with disabilities within each disability category that have been identified, located, and evaluated, and which children are currently receiving special education and related services through the following methods: data management and collection procedures, monitoring public agencies, the program approval process, and complaint procedures. LEA establishment of policies and procedures consistent with state and applicable federal law are monitored and approved as part of their application process for use of Part B funds under IDEA. DPI evaluates the effectiveness of LEA policies and procedures by monitoring LEA practices, program operation approval processes, ongoing technical consultation, verification of submitted child count data, and complaint investigation.

Active participation by other professionals and agencies in child identification efforts is reflected in section 115.77 (1)(a), Wis. Stats.:

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 LEA.

One focus of child identification activities is identifying children at an early age. Parents who suspect that a child below the age of three has a disability are encouraged to contact the appropriate public agency for an evaluation. Developmental disabilities boards, community service programs, and county human services programs serve the majority of infants and toddlers with disabilities in Wisconsin. However, some LEAs serve children with disabilities under the age of three pursuant to section 115.77 (1)(a), Wis. Stats.

The collection and use of data for child find activities is subject to the confidentiality requirements of state and federal law, as described in section VIII herein.

IV. INDIVIDUALIZED EDUCATION PROGRAM

It is the policy of the State of Wisconsin that each public agency develop, implement, review, and revise an individualized education program (IEP) for each child with a disability served by that agency, in accordance with the requirements of IDEA and its regulations. This includes children who are referred to a private school or facility by a public agency. The division has published a number of bulletins regarding IEPs, such as Bulletin 98.03, "Individuals with Disabilities Education Act (IDEA) Requirements for all Individualized Education Programs (IEPs) effective beyond June 30, 1998." DPI/DLSEA monitors public agencies to ensure these requirements are met.

Each LEA must provide special education and related services to a child with a disability in accordance with an IEP. Public agencies initiate and conduct IEP team meetings for the purpose of developing, reviewing, and revising a child's IEP. The LEA is responsible for the IEP process and appointment of IEP team participants. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

IEPs are required to be in effect before special education and related services are provided to a child with a disability and must be implemented as soon as possible following the meeting at which the IEP was developed. To ensure that the IEP is in effect prior to the provision of services, DPI/DLSEA has directed public agencies to develop the IEP after the IEP team determines the child has a disability and before obtaining parental consent for initial placement. An IEP team meeting to develop an IEP must be conducted within 30 days of a determination that a child needs special education and related services. IEPs must be in effect at the beginning of the school year.

An IEP team must review a child's IEP periodically, but not less than annually, to determine whether the child's annual goals are being achieved. The IEP team must revise a child's IEP as appropriate to address: any lack of expected progress toward the annual goals and in the general curriculum, if appropriate; the results of a reevaluation; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters. Each public agency must make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. The IDEA does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the Act does not prohibit a State or

public agency from establishing its own accountability systems regarding teacher, school, or agency performance.

A child's IEP must be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation. Each teacher and provider must be informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP.

Each IEP team must consist of the following individuals:

- the parents of the child.
- at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment.
- at least one special education teacher who has extensive and recent training and experience related to the child's known or suspected disability, or, where appropriate, at least one special education provider of the child.
- a representative of the LEA who is qualified to provide, or supervise the provision of special education, is knowledgeable about the general curriculum and is knowledgeable about and authorized to commit the available resources of the LEA .
- at the discretion of the parent or LEA, other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate.
- an individual who can interpret the instructional implications of evaluation results, who may be a team participant already listed above.
- whenever appropriate, the child.

Pursuant to 34 CFR §300.344, the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the student's transition services needs under §300.347(b)(1). If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered. In addition, a representative of any other agency that is likely to be responsible for providing or paying for transition services must be invited. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Pursuant to 34 CFR §300.501(b) (1) and (2), each public agency shall provide notice consistent with §300.345(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of that regulation. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

A public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to allow them the opportunity to attend, and scheduling the meeting at a mutually agreed upon time and place. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance. The notice must inform the parents of the participation of other individuals on the IEP team who have knowledge or special expertise about the child. For a student with a disability

beginning at age 14, or younger, if appropriate, the notice must also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student and indicate that the agency will invite the student. The notice must inform the parents of the provisions in §300.344(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child). For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student. If neither parent can attend, the public agency must use other methods to afford parent participation, including individual or conference telephone calls.

If the LEA is unable to obtain parental participation, the meeting may be conducted without the parents but detailed records must be kept to document attempts to arrange a mutually agreeable time and place, such as: telephone calls made or attempted and results of those calls; copies of correspondence sent to parents and responses, if any; and detailed records of visits to parent's home or place of employment and results of those visits. Each public agency shall follow the procedures outlined above to ensure that parents of children with disabilities are members of any group that makes decisions on the educational placement of their child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement. The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English. Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. In Wisconsin, pursuant to section 115.787 (3)(e), Wis. Stats., the LEA must give a copy of the child's IEP to the child's parents with the notice of placement at no cost to the parent.

The IEP for each child must include:

- a statement of the child's present level of educational 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.
- a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, and to meeting each of the child's other educational needs that result from the child's disability.
- a statement of the special education and related services, and supplementary aids and services 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 advance appropriately toward the annual goals, to be involved and progress in the general curriculum and participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with and without disabilities.
- 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.
- a statement of any individual modifications in the administration of any statewide or LEA-wide assessment of pupil achievement that are needed for the child to participate in the

assessment. If the IEP team determines that a child will not participate in a particular statewide or LEA-wide assessment of pupil achievement, or part of such an assessment, a statement of why that assessment is not appropriate for the child and how the child will be assessed through alternate means.

- the projected date for initiation of services and modifications and the anticipated frequency, location and duration of the services and modifications.
- beginning when the child attains the age of 14, or younger, if determined appropriate by the IEP team, and annually thereafter until the child no longer is eligible for special education and related services, a statement identifying the courses of study needed to prepare the child for a successful transition to his or her goals for life after secondary school, such as participation in advanced placement courses or a vocational education program.
- beginning when the child attains the age of 16, or earlier if determined appropriate by the IEP team, and annually thereafter until the child no longer is eligible for special education and related services, a statement of the needed transition services of the child, including, when appropriate, a statement of the interagency responsibilities or any cooperative arrangements.
- beginning at least one year before the child attains the age of 18 (age of majority in Wisconsin), a statement that the child has been informed of the parental rights that will transfer to the child on reaching the age of 18.
- how the child's progress toward the annual goals will be measured.
- how the child's parents will be informed regularly, at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the effective period of the IEP.
- extended school year (ESY) services, only if the IEP team determines, on an individual basis, that the child requires ESY services in order to receive FAPE.

In developing each child's IEP, the IEP team considers the strengths of the child, the concerns of the child's parents for enhancing the education of their child, the results of the initial evaluation or most recent reevaluation of the child and, as appropriate, the results of the child's performance on any state- or district-wide assessment programs. The IEP team also must do all the following:

- in the case of a child whose behavior impedes his or her learning or that of others, consider strategies, when appropriate, including positive behavioral interventions, strategies and supports, to address that behavior.
- 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 IEP.
- in the case of a child who is visually impaired, provide for instruction in Braille and the use of Braille, unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child.
- 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 communication with peers and professional personnel in the child's language and communicative mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communication mode.
- consider whether the child requires assistive technology devices or services or both.

If, in considering the factors listed above, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program

modification) in order to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review and revision of the child's IEP. This participation includes assisting in the determination of appropriate positive behavioral interventions and strategies for the child and supplementary aids and services, program modification or supports for school personnel that will be provided for the child.

Before an LEA places a child with disabilities in, or refers a child with disabilities to, a private school or facility, the LEA must initiate and conduct the required IEP meeting for the purpose of developing an IEP for the child. The LEA must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the private school or facility including individual or conference telephone calls. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA. If the private school or facility initiates and conducts these meetings, the LEA must ensure the parents and a public representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented. Even if a private school or facility implements a child's IEP, responsibility for compliance with this policy remains with the LEA and DPI/DLSEA.

The department is developing an IEP training manual and companion PowerPoint training presentation, which has been available in draft form since early fall, 1998, awaiting finalization of federal regulations. It will be available in final form shortly to assist LEAs in meeting IEP requirements.

V. LEAST RESTRICTIVE ENVIRONMENT

It is the policy of the State of Wisconsin that children with disabilities for whom the LEA is responsible shall be provided a FAPE. Section 115.79 (3), Wis. Stats., requires that to the maximum extent appropriate, a child with a disability, including a child receiving publicly funded special education in a public or private institution or other care facility, is educated with nondisabled children. Section 115.78 (1m)(a), Wis. Stats. requires that parents are to be participants on the IEP team to determine placement.

Under section 115.787, Wis. Stats., an IEP must include:

- a statement of the child's present level of educational 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.
- a statement of measurable annual goals for the child, including benchmarks or short-term objectives related to meeting the child's needs that result from the child's disability, to enable the child to be involved and progress in the general curriculum and to meeting each of the child's other educational needs resulting from the child's disability.
- a statement of the special education and related services and supplementary aids and services 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 advance appropriately toward annual goals, to be involved and progress in the general curriculum and participate in extracurricular and other nonacademic activities, and to be

educated with other children with disabilities and nondisabled children in the activities described above.

Each IEP also must include 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 nonacademic activities.

Each LEA responsible for the education of children with disabilities establishes and implements procedures to ensure that to the maximum extent appropriate children with disabilities, including children publicly placed in public or private institutions or other care facilities, are educated with children without disabilities and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved.

Each LEA ensures a continuum of alternative placements is available to the extent necessary to implement the IEP for each child with disabilities. Each child's special education placement must be determined individually based on the IEP, determined at least annually, and is to be as close as possible to the child's home. Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not a child with disabilities. In selecting the LRE consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs. A child with a disability is not to be removed from an age-appropriate regular education classroom solely because of needed modifications in the general curriculum. In providing or arranging for the provision of nonacademic and extracurricular services and activities, each child with disabilities must participate with children without disabilities in those activities to the maximum extent appropriate for the child.

LEAs have been informed of their responsibilities to meet the LRE requirement. Technical assistance and training to carry out these requirements are provided to administrators, teachers, and other personnel by the DLSEA upon request and as part of Wisconsin's CSPD. If there is evidence that educational placements are inconsistent with the requirements included in this policy, the DLSEA will review the public agency's justification for its actions and will assist in planning and implementing any necessary corrective actions which may be required.

DPI is committed to the concepts specified in federal and state law regarding the needs of children with disabilities to be served in the least restrictive environment appropriate to their individual needs. In February 1989, Bulletin 89.1, in March 1989, Bulletin 89.2, and in October 1989, Bulletin 89.9 were sent to all public agencies serving children with disabilities to provide additional guidance in meeting the LRE requirement. In August 1993, Bulletin 93.12 was published; it contains a list of belief statements reflecting DPI's policy regarding inclusion. The DLSEA monitors public agencies to ensure these requirements are met. The department expects to distribute another bulletin on this topic.

In Wisconsin, state special education categorical aid is distributed as a percentage of the salary and fringe benefits of eligible special education and related services staff and other allowable costs. Distribution is unrelated to the type of setting in which children with disabilities are placed. The formula does not result in placements that violate the least restrictive environment.

VI. PROCEDURAL SAFEGUARDS

It is the policy of the State of Wisconsin, pursuant to sections 115.792, 115.797, and 115.80, Wis. Stats., that children with disabilities and their parents will be afforded due process of the law according to the provisions of IDEA and federal regulations. The department published Bulletin 98.08 "Procedural Safeguards Notice" which notified districts when a procedural safeguards notice must be given to parents and included a notice which could be adopted by districts when notifying parents of their procedural safeguards. This bulletin will be updated by the end of the 1999 calendar year to incorporate changes in the final federal regulations.

Independent Educational Evaluation

Parents of a child with a disability have the right to obtain an independent educational evaluation (IEE) of their child. The independent educational evaluation must be conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child. Each public agency provides to parents, on request, information about where an independent educational evaluation may be obtained and the agency criteria applicable for IEEs under 34 CFR 300.502.

An independent educational evaluation must be provided without undue delay at public expense if a parent requests the evaluation and disagrees with the evaluation obtained by the public agency and if the public agency does not initiate a hearing to show that its evaluation is appropriate. If the public agency's evaluation is deemed appropriate following a hearing, the parent still has the right to an independent educational evaluation but at private expense. If the parent obtains an independent educational evaluation at private expense, the evaluation may be presented as evidence at a hearing and, so long as the evaluation meets agency criteria, its results must be considered by the public agency in any decision made with respect to the provision of a FAPE.

If a hearing officer orders an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parents' right to an IEE. Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

The department has distributed information update bulletin 99.02 explaining the requirements relating to independent educational evaluations.

Written Notice

Pursuant to 34 CFR §300.504, the procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §§300.403, 300.500-300.529, and 300.560-300.577, and the State complaint procedures available under §§300.660-300.662 including a description of how to file a complaint and the timelines under those procedures.

Each local educational agency must give parents written notice a reasonable time prior to the public agency proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child or the provision of a FAPE. An LEA must provide parents with written notice of a change in placement prior to a child's graduation from high school with a regular diploma.

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the native language or other mode of communication used by the parent is not a written language, each LEA must take steps to ensure:

- the notice is translated to the parent orally or by other means in his or her native language or other mode of communication.
- the parent understands the content of the notice.
- there is written evidence that these requirements have been met.

The written notice includes:

- a statement that the parents have procedural safeguards under section 115.792 Wis. Stats. and federal law, and, in instances other than initial referrals for evaluation, reevaluations, or when the parent is being notified of an IEP team meeting, how to obtain a description of those rights.
- a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered including the reasons why those options were rejected.
- a description of each evaluation procedure, test, record, or report on which the action is based.
- if the notice proposes to evaluate or reevaluate the child, a listing of the qualifications of the evaluators and their names, if known.
- a listing of sources for parents to contact to obtain assistance in understanding subchapter V of Chapter 115 and federal law.
- a statement that the parents have the right to have additional time to permit meaningful participation during the evaluation, IEP planning or placement process.
- a statement that the parents have the right to receive a copy of the evaluation report.
- a description of any other factors which are relevant to the action.

The LEA must give to the parents of a child with a disability, upon initial referral for evaluation, upon each notification of an individualized education program meeting and upon reevaluation of the child, and the Department of Public Instruction must give to parents who request a hearing, a full explanation of all the procedural safeguards available under state and federal law relating to:

- independent educational evaluation.
- prior written notice.
- parental consent.
- access to educational records.
- opportunity to present complaints to initiate due process hearings.
- the child's placement during the pendency of due process hearings.
- procedures for students who are subject to placement in an interim alternative educational setting.
- requirements for unilateral placement by parents of children in private schools at public expense.
- mediation.
- due process hearings, including requirements for disclosure of evaluation results and recommendations.
- civil actions.
- attorneys fees.
- state complaint procedures, including how to file a complaint and timelines.

The procedural safeguards notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the native language or other mode of communication used by the parent is not a written language, each LEA must take steps to ensure:

- the notice is translated to the parent orally or by other means in his or her native language or other mode of communication.
- the parent understands the content of the notice.
- there is written evidence that these requirements have been met.

Parental Consent

Parental consent must be obtained before conducting an initial evaluation of a child; before initial provision of special education and related services to a child; and, unless the LEA can demonstrate that it has undertaken reasonable measures to obtain consent but the parent has failed to respond, before administering tests during a reevaluation. Pursuant to 34 CFR s. 505(C) (1) and (2), when a parent has failed to respond to a request for reevaluation, the public agency must, to meet the reasonable measures requirement of this section, use procedures consistent with those in §300.345(d). Under s. 300.345(d), an agency may conduct a meeting without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as—(1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made the parent’s home or place of employment and the results of those visits.

Except for these instances, consent is not required as a condition of any benefit to the parent or child. Parental consent is not required prior to changing the placement of a child with a disability; however, the parent must be sent written notice, as required above, prior to changing the placement.

According to a June, 2002, interpretation of 34 CFR 300.505(b) by the federal Office of Special Education Programs (OSEP), a public agency may not initiate an impartial due process hearing to override a parent’s refusal to consent to the initial provision of special education and related services.

Opportunity to Examine Records

Public agencies, including DPI, which maintain educational records must provide parents with the opportunity to inspect and review all educational records maintained regarding the identification, evaluation, educational placement of the child, and provision of a FAPE to the child.

Mediation

DPI makes available an opportunity for LEAs and parents to resolve disputes through a mediation program which is administered by the DLSEA. DPI bears the cost of the mediation process. Pursuant to 34 CFR §300.506 (b) (3), the State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.

Section (d) states: “ (1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—(I) Who is under contract with a parent training and

information center or community parent resource center in the State established under section 682 or 683 of the [IDEA], or an appropriate alternate dispute resolution entity, and (ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process. (2) A public agency may not deny or delay a parent's right to a due process hearing under s. 300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section.

Bulletins 97.9 and 98.07 describe the program. On a voluntary basis parties may seek mediation when there is a dispute involving a proposal or refusal to initiate or change the identification, evaluation or educational placement of a child or the provision of FAPE to the child. This process is available when a hearing has been requested, as well as when a parent or LEA otherwise requests mediation. Both parties must agree to mediate in order for the process to be utilized. This process generally must be commenced within 21 days of the appointment of the mediator and may not delay or deny a parent's right to a hearing or any other rights otherwise available to them under IDEA. Mediation is conducted by impartial, qualified individuals who are trained in effective mediation techniques and who are knowledgeable about the law pertaining to special education and related services. Both parties are involved in selecting the mediator and agree with the selection.

The DLSEA maintains a list of qualified mediators who must attend initial and annual training approved by the division. Mediators may not be employees of an LEA or the department and may not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator is not an employee of an LEA or the department solely because he or she is paid by the agency to serve as a mediator.

Mediation sessions must be scheduled in a timely manner and must take place in a location which is convenient to the parties. An agreement reached through mediation must be set forth in a written mediation agreement. Discussions which occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil action. The parties may be required to sign a confidentiality pledge at the beginning of the process. Either party may withdraw from the mediation process at any time and no adverse inference may be drawn in a later adjudicative proceeding from the fact of such a withdrawal or refusal to mediate or a failure to reach a settlement.

Hearings and Appeals

The parent of a child with a disability or an LEA may initiate a due process hearing by filing a written request for a hearing with the division. The division appoints a hearing officer to conduct the hearing who is not employed by or under contract with an LEA (or otherwise employed by the department) and who does not have an interest in the matter which would undermine the individual's objectivity. On receiving a request for a hearing, the division must send to the child's parents a copy of the procedural safeguards which are available to them and must inform them of the availability of mediation to resolve the dispute. The LEA remains responsible for the cost of the hearing. Either party may appeal the decision of the hearing officer to state court or federal district court.

A parent, or the attorney representing the child, may file a written request with the DLSEA for a hearing which must remain confidential) whenever the LEA proposes or refuses to initiate or change his or her child's evaluation, IEP, educational placement or the provision of a FAPE. The DLSEA has developed a model form to assist parents in filing a request for a hearing. When requesting a hearing, parents or their attorney are required to include the child's name and address, the name of the school which the child is attending, a description of the nature of the dispute they have with the district, including facts relating to the problem; and, to the extent known and available to them at the time, a proposed resolution of the dispute. Failure to provide this information may not result in delay or denial of a hearing.

An LEA responsible for the education of a child may file a request with the DLSEA for a hearing to override a parent's refusal to grant consent for an initial evaluation, a reevaluation, or an initial educational placement or to contest the payment of an independent educational evaluation. The division must inform the parent, upon request or if the parent or agency initiates a hearing, of any free or low-cost legal and other relevant services available. The department maintains a list of persons who serve as hearing officers, including a statement of the qualifications of each.

Any party to a hearing has the following rights:

- to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
- to present evidence and confront, cross-examine, and compel the attendance of witnesses.
- Pursuant to 34 CFR §300.509 (a) (3), any party to a hearing conducted pursuant to §§300.507 or 300.520-300.528, or an appeal conducted pursuant to §300.510, has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
- to receive, at least five business days before the hearing, information from other parties regarding evaluations completed by that date and resulting recommendations which the party plans to use at the hearing.
- to obtain a written or, at the option of the parents, electronic verbatim record of the hearing.
- to obtain written or, at the option of the parents, electronic findings of fact and decisions.
- to present an independent educational evaluation as evidence at a hearing regarding the child.
- to bring a civil action if aggrieved by the findings and decision made in a hearing.

Parents have the right to have the child present and to open the hearing to the public. Hearings must be conducted at a time and place which is reasonably convenient to the parent and the child.

The hearing officer must reach a decision and mail a copy of the findings of fact and decision to both parties within 45 days after receipt of the request for the hearing. The hearing officer may grant specific extensions of time at the request of either party. The hearing officer's decision is final unless a party to the hearing appeals the decision to state court or federal district court.

A copy of the findings and decision, and the record of the hearing when requested by the parent, will be provided at no cost to the parent. After deleting personally-identifiable information, a copy of the findings and decision will be sent to the department for review by the state advisory panel and will be available to the general public.

A parent, the attorney representing the child or an LEA may file a written request for a hearing as provided in 20 USC 1415 (k). Except as provided in 20 USC 1415 (k), unless otherwise agreed upon by the parents and the public agency, the child will remain in his or her present educational placement until completion of any administrative or judicial proceedings. If the request for a hearing involves initial admission to a public school, the child must be placed in the public school program, with the consent of the parents, until the completion of the proceedings. If the decision of the hearing officer agrees with the child's parents that a change of placement is appropriate, that placement will be treated as an

agreement between the LEA and the parents for purposes of determining the child's placement during any appeal.

If parents prevail in a due process proceeding, they may be eligible for reimbursement of reasonable attorney's fees in state or federal court, as part of the costs to the parents of a child with a disability who is the prevailing party. Fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded. Such reimbursement may only be ordered by a court and, with regard to actions in state court, under the circumstances delineated in section 115.80 (9), Wis. Stats., which parallel the requirements of federal law relating to the award of fees. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to a due process proceeding.

Discipline Procedures

Wisconsin implements the requirements of 20 USC 1415 (k) of IDEA by making explicit references to it in subchapter V, Chapter 115, Wis. Stats. Section 115.77 (9), Wis. Stats., requires that an LEA "exercise its authority in compliance with 20 USC 1415 (k)." This ensures that LEAs are aware that they must comply with this provision of federal law precisely as it was enacted. Further, LEAs are required, under the authority of §115.77(1m)(b), to comply with the requirements of federal regulations, including the requirements in Part 300 relating to discipline. LEAs also are required to report to the DLSEA the number of children who are placed into appropriate interim alternative educational settings, as well as the number who are suspended or expelled. The department is required to comply with 20 USC 1415 (k), as well. The division has published Bulletin 97.6, "Discipline Provisions of the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) and the Implementation of IDEA 1997 in Wisconsin." Parents and LEAs may pursue the hearings authorized in 20 USC 1415 (k) under authority provided in section 115.80, Wis. Stats., and an exception to the "stay put" provision was included in the new statute consistent with the requirements of 20 USC 1415 (j). (See §115.80(8) Wis. Stats.) Hearing time restrictions may be shortened in recognition that parents and districts may request expedited hearings in discipline matters. Expedited hearings are to be conducted within 45 days of the request. Extension of this time limit will not be permitted for expedited hearings. The ten day time restriction which appears in 20 USC 1415 (k)(1)(A)(i) will be interpreted consistent with federal law. Interim alternative educational settings must be selected so as to enable the child to participate in the general curriculum, although in another setting, and to continue to receive services and modifications which will enable the child to meet IEP goals. Further, services and modifications must be provided in that setting to address behavior which resulted in the child's removal to that setting for longer than ten days in a school year as provided in federal law.

Surrogate Parents

When a child with disabilities does not have a parent as defined at §115.76(12) Wis. Stats., the public agency with reasonable efforts cannot locate a child's parent, or if the child is a ward of the state such that there is no individual to protect the rights of the child, the public agency responsible for the child's education must insure that the rights of a child are protected by appointing a surrogate parent. A person selected in this capacity may not be an employee of the Department of Public Instruction, the LEA, or any agency involved in the education or care of the child, may not have an interest that conflicts with the interests of the child, and must have knowledge and skills to ensure adequate representation of the child. An LEA may select as a surrogate parent an individual employed by a nonpublic agency that provides only non-educational care for the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the

agency to serve as a surrogate parent. This individual represents the child in all matters related to the identification, evaluation, educational placement, and provision of FAPE for the child.

Surrogate parents are appointed by the LEA pursuant to section 115.792(1)(a)2., Wis. Stats. More detailed direction for and requirements of LEAs are delineated in PI 11, Wis. Admin. Code, dealing with surrogate parents. Wisconsin Statutes Chapter 48, Children's Code provides procedures to have a court appoint a legal guardian for educational purposes in appropriate circumstances. A legal guardian is included in the definition of parent under §115.76(12) Wis. Stats.

Transfer of Parental Rights

Pursuant to section 115.807, Wis. Stats., when a child with a disability, other than one who has been determined to be incompetent under Wisconsin's guardianship statute, reaches the age of 18, appropriate notice will be sent to the child and the child's parents. All rights available to parents under IDEA and state law will transfer to the child, and the parents and child will be notified of this change.

In addition, section 115.787 (2)(g)3, Wis. Stats., requires that beginning at least one year before the child attains the age of 18, and annually thereafter until the child no longer is eligible for special education and related services, the child's IEP contain a statement that the child has been informed of the parental rights that will transfer, or have transferred, to the child on reaching the age of 18 under section 115.807, Wis. Stats.

VII. EVALUATION

The State of Wisconsin has state statutory language to ensure that the requirements of 20 USC 614 of IDEA and implementing federal regulations are met. Each LEA is required to establish and implement procedures that meet these requirements. The model LEA special education policy document is being revised to reflect accurately the requirements of IDEA 1997, subchapter V, Chapter 115 and the final federal regulations. Each LEA conducts a full and individual initial evaluation, in accordance with section 20 USC 1415 of IDEA and implementing federal regulations, and section 115.782, Wis. Stats., before the initial provision of special education and related services to a child with a disability.

In Wisconsin, the IEP team is responsible for the evaluation of a child to determine the child's eligibility or continued eligibility for special education and related services and the educational needs of the child, the development of an IEP, and the determination of the special education placement for the child. The requirements for parent participation at IEP meetings, described in section IV herein, apply to all IEP team meetings, including those held to determine eligibility. A list of the required IEP team participants also is included in section IV.

In Wisconsin, under §115.78(3) Wis. Stats., the LEA must notify the parents of the educational placement of their child within 90 days after the LEA receives a special education referral for the child or initiates a reevaluation. If an extension becomes necessary, before the expiration of the 90-day period, the LEA must notify the parents and obtain agreement in writing to a specific extension of time beyond the 90-day period. Failing to obtain agreement, the LEA may request an extension from the DLSEA and must inform the division of the reason for the request. The division will grant a specific extension of time beyond the 90-day period if the LEA shows that it has acted in good faith and that there is good cause to grant the extension. Subject to these timeline requirements, if the parents of

the child or the LEA staff determines at any point during the process of the evaluation, development of the IEP or placement of the child, that additional time is needed to permit meaningful parental participation, the LEA must provide it.

Pursuant to section 115.782 (2)(a)1., Wis. Stats., in conducting the evaluation, the IEP team uses a variety of assessment tools and strategies to gather relevant functional and developmental information to determine whether a child is a child with a disability and to determine an appropriate educational program for the child, including information provided by the parent and 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. Technically sound instruments are used to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors the test purports to measure.)

Pursuant to section 115.782 (2)(a), Wis. Stats., each LEA selects and administers tests and other evaluation materials so as not to be racially or culturally discriminatory, and are provided and administered in the child's native language or other mode of communication, unless it clearly is not feasible to do so. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, not the child's English language skills. Standardized tests must be validated for the specific purpose for which they are used, administered by trained and knowledgeable personnel, and administered in accordance with instructions provided by the producer of such tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child must be used. Children are assessed in all areas of suspected disability. The child is assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

As part of an initial evaluation or reevaluation, the IEP team, in accordance with section 115.782 (2)(b), Wis. Stats., reviews existing evaluation data on the child, including evaluations and information provided by the child's parents, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and previous interventions and the effects of those interventions, current classroom-based assessments and observation, and observations by teachers and related services providers. Subsequent to that review, the IEP team identifies additional data, if any, that are needed to determine: whether the child has a particular category of disability, or continues to have such a disability; the present levels of performance and educational needs of the child; whether the child needs, or continues to need, special education and related services; whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable, annual goals specified in the child's IEP and to participate, as appropriate, in the general curriculum.

Pursuant to section 115.782 (2)(d), Wis. Stats., the IEP team determines whether the child is a child with a disability. A determination of eligibility may not be made solely because the

child has received insufficient instruction in reading or math or because the child has limited proficiency in English. A child may not be determined to be eligible under this part if the child does not otherwise meet the eligibility criteria.

A reevaluation is conducted before determining that a child no longer is a child with a disability. Such a reevaluation is not required before the termination of a child's eligibility for special education and related services due to graduation with a regular high school diploma, or exceeding the age of eligibility for FAPE. Pursuant to §115.782(4) Wis. Stats., reevaluations are conducted if the LEA determines that conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every three years. If the IEP team and other qualified professionals, as determined by the LEA, find that no additional data are needed to determine whether the child continues to be a child with a disability, the LEA must notify the child's parents of that finding, 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. The LEA is not required to conduct such an assessment unless the child's parents request it.

Each IEP team participant who administers tests, assessments or other evaluation materials as part of an evaluation or reevaluation of a child must prepare and make available to all IEP team participants at a team meeting a written summary of the participant's findings that will assist with program planning. If the IEP team determines that a child is a child with a disability, the team prepares an evaluation report that includes documentation of determination of eligibility. If the child's parents request a copy of the evaluation report at any point prior to developing the child's IEP or in the process of developing the child's IEP or when considering the child's educational placement, the LEA gives a copy of the report to the child's parents before continuing the process. If the parents do not request a copy of the evaluation report, the LEA gives a copy to the child's parents with the notice of placement or the notice of non-eligibility if the child is found not to be a child with a disability under §§115.782(3) and .792(1)(b) Wis. Stats.

VIII. CONFIDENTIALITY

It is the policy of the State of Wisconsin that all pupil records collected, maintained, or used by a public school agency are confidential. Bulletin 98.02, "Pupil Records of Children with Exceptional Educational Needs" addresses the most frequently asked questions about pupil records.

"Pupil records" are all records relating to individual pupils maintained by an elementary or secondary school. It does not include notes or records maintained for personal use by a teacher or other person who is required by the department under section 115.28(7), Wis. Stats., to hold a certificate, license, or permit, if such records and notes are not available to others, nor does it include records necessary for and available only to persons involved in the psychological treatment of a pupil. Pupil records are further defined to include three distinct sets of records: behavioral, progress, and directory data.

"Behavioral records" are those pupil records which include psychological tests, personality evaluations, records of conversations, any written statement relating specifically to an individual pupil's behavior, tests relating specifically to achievement or measurement of ability, the pupil's physical health records, and any other pupil records which are not progress records. "Progress records" are those pupil records which include the pupil's grades, a statement of the courses the pupil has taken, the pupil's attendance record, and records of the pupil's extracurricular school activities. "Directory data" means those pupil records which include the pupil's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of

members of athletic teams, dates of attendance, photographs, degrees and awards received, and the name of the school most recently or previously attended by the pupil.

Notices

Prior to any major identification, location, or evaluation activity, parents must be notified through public media with circulation adequate to notify parents throughout the State of such activities and their rights regarding the confidentiality of personally identifiable information, and the requirements relating to the identification, location, and evaluation of children with disabilities. This notice must be written in language understandable to the general public and also in language understandable to non-English speaking parents.

The notice must include a description of the children on whom personally identifiable information is obtained, the types of information sought, the methods used in obtaining the information, and the uses made of the information. The notice must also include a summary of the agency's confidentiality policies on storage, disclosure to third parties, retention, destruction, use of records, including the location where copies of the agency's written policies may be obtained upon request, and a description of parent's rights under 34 CFR 99, Family Educational Rights and Privacy Act (FERPA).

DLSEA ensures via program reviews, site reviews, and individual supervisory visits that LEAs provide information on confidentiality to parents. Methods of dissemination may include newspapers, school newsletters, parent handbooks, verbally, and letters to graduating seniors.

All public agencies responsible for the education of children with disabilities must provide to parents, upon request, a list of the type and locations of pupil records collected, maintained, or used by the agency.

Access Rights

Public agencies must permit parents to inspect and review pupil records relating only to their child or themselves, which are collected, maintained, or used by the agency. This includes the right to be otherwise informed of the information contained in the pupil record. Progress records must be shown and copies provided to the student and parent of a minor student upon request. However, section 118.125(2)(b), Wis. Stats., requires the adult student or the parent of a minor student be shown, upon request, the behavioral records in the presence of a person qualified to explain and interpret the records. Such adult students or parents of minor students shall be provided with a copy of the behavioral records upon request. Public agencies may charge a fee for the cost of copying the records if the fee does not effectively prevent the parents' right to inspect and review records, but the agency may not charge a fee to search for or retrieve the records. The agency is to provide copies of records containing information if failure to provide copies would effectively prevent the parent from exercising the right to inspect and review records.

The right to inspect and obtain a copy of education records may be extended to representatives of the parent or adult student upon their expressed or written permission. The parents have an opportunity to review all records related to the identification, evaluation, and placement of their child and of the provision of FAPE.

If any of the above requests are made of a public agency, the agency must comply with the request without unnecessary delay before any IEP meeting or hearing relating to the identification, evaluation, or placement of a child with disabilities and in no case later than 45 days from the date of the request. Agencies must respond to reasonable requests for explanation and interpretations of records.

Public agencies may presume that either parent of the student has the authority to inspect and review the pupil's records unless the agency has been provided with evidence that there is a legally binding instrument, such as a divorce decree or court order, that indicates one of the parents no longer has such authority or rights.

Public agencies must keep a record of parties, other than the parent, adult student, or authorized agency employees, who have had access to individual pupil records. This record of access must include the name of the party, the date the access was permitted and the purpose for which the individual was authorized to access the records.

All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures on confidentiality.

Hearing Rights

If a parent or adult student feels the information contained in their pupil records is inaccurate, misleading, or violates the rights of the child, the parent or adult student may request that the agency amend the records. If a public agency receives such a request, the agency must amend the records in accordance with the request within a reasonable period of time or, if it refuses to amend the records, the agency must inform the parent or adult student of the refusal and their hearing rights on the matter.

Upon request, the agency shall provide an opportunity for a hearing under applicable federal regulations to challenge information in education records to ensure it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. A hearing held under the applicable federal regulation must be conducted according to the procedures in section 99.22 of FERPA. The agency must inform the parent or adult student reasonably in advance of the date, time, and place of the hearing.

The hearing may be conducted by any party including an official of the agency who does not have a direct interest in the outcome of the hearing. The parent or adult student is to be afforded the opportunity to be assisted or represented during the hearing, at his or her expense, and to present evidence. The agency issues a decision within a reasonable time after the conclusion of the hearing with such decision based solely upon the evidence presented at the hearing. The decision also includes a summary of the evidence and the reasons for the decision.

If the decision indicates the information contained in the pupil records was inaccurate, misleading, or otherwise in violation of the rights of the child, the agency amends the records and so informs the parent or adult student in writing.

If the decision indicates the information contained in the pupil records was not inaccurate, misleading, or otherwise in violation of the rights of the child, the agency informs the parent or adult student of the right to place in the pupil records a statement commenting on the information and reasons for such disagreement. If any such statement is placed in the child's records, it must remain part of the record. When that record is disclosed to another party, such statement must accompany the record.

Additional Public Agency Requirements

Public agencies have been informed of their responsibility to comply with the requirements of FERPA and the confidentiality requirements contained in applicable federal and state law, including:

- a public agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- one official at a public agency shall be responsible for ensuring the confidentiality of any personally identifiable information.
- all persons collecting or using personally identifiable information shall receive training or instruction regarding state policies and procedures on confidentiality.
- a public agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.
- a public agency shall inform parents when personally identifiable information collected, maintained, or used under this section is no longer needed to provide educational services to the child. A public agency shall destroy the information at the request of parents except the student's name, address, phone number, grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.
- it is recommended the public agency inform parents or the adult student that such records may be needed for social security benefits or other purposes.

The rights to privacy described in this part apply to parents of minor children below age 18 and to adult students age 18 and above unless the student has legally been declared incompetent under Chapter 880, Wis. Stats. The above policies and requirements were distributed to all public agencies responsible for the education of children with disabilities in June 1990; specifically, 34 CFR, Part 99 and 34 CFR, Part 300 requirements. The department assures that these policies and procedures are implemented. Procedures to ensure that policies and procedures are followed may include submission of CAPs which may comprise inservice materials, including dates of inservice, attendance lists, evaluations of inservice activities, memos to staff, or representative samples of appropriate materials, such as behavioral records. Additional steps may include detailed documentation of noncompliance to the department's Office of Legal Services for recommendations to the State Superintendent for sanctions and other enforcement actions.

IX. TRANSITION FROM PART C TO PRESCHOOL PROGRAMS

In Wisconsin, DPI/DLSEA is responsible for mandated special education programs and CSPD under Part B of IDEA for children who are 3 years of age but not yet 22 years of age. DHFS/Division of Community Services (DCS) is the lead agency for Part C which establishes services to eligible infants and toddlers with disabilities and their families. DHFS/DCS has oversight responsibilities for the county boards which operate programs that serve these infants and toddlers with disabilities and their families. The DLSEA Assistant State Superintendent is a member of the Part C Interagency Coordinating Council. To ensure effective coordination, DPI employs an early intervention consultant to act as a liaison with DHFS in relationship to Part C. The early childhood special education consultant (consultant for special education programs for 3-5 year old children) also is involved in liaison activities.

DPI and DHFS have made effective transition a major focus of collaboration. The interagency agreement between the two state agencies, which is under review and will be revised, defines roles and responsibilities and serves as a model to facilitate collaboration at the local level. The agencies have worked together to develop consistent policies and procedures through Part C state administrative rules, DPI policy bulletins which include transition issues, and training and materials. Specific effort has been focused on local interagency agreements and timely referrals to ensure IEPs are in effect on the child's third birthday.

With the reauthorization of IDEA, the agencies have collaborated on the revisions to state statutes applicable to Part B and Part C. This has included education statutes that identify the responsibility of the LEA to participate in transition planning meetings convened by the Part C lead agency. Section 115.812 (3), Wis. Stats., provides that a school board, cooperative educational service agency (CESA) and county children with disabilities education board (CCDEB) may enter into an agreement with a county administrative agency to allow the employees of the school board, CESA or CCDEB to participate in the performance of evaluations and the development of individualized family service plans (IFSPs). New state statutory language also will impact on the transition of children from Part C as it relates to utilization of Birth to 3 evaluation materials, and a strong role for parents in the process. During monitoring and statewide training, this transition will be addressed with LEAs. Information update bulletin 98.09 addresses preschool transition questions and another bulletin on related topics is under development. Written transition booklets, developed through Project BEST, "Building Early Services Transitions", and written resource materials are being revised.

Part B and 619 CSPD activities have included transition activities. The DHFS/DCS has contracted with the Wisconsin Personnel Development Project (WPDP) at the Waisman Center, which is a university-affiliated program for the development and implementation of personnel development, standards, and statewide training for those who serve the Birth to 3 population. The DPI Birth to 3 liaison is a member of the WPDP task forces. The DPI/CSPD coordinator and the director of the Wisconsin Personnel Development Project also meet to discuss coordination. DPI and DHFS coordinate CSPD activities to ensure:

- state staff is available to meet on local or regional levels to assist Birth to 3 agencies and LEAs to develop interagency agreements and transition procedures.
- transition is addressed annually through statewide educational teleconference network sessions.
- LEA early childhood staff are invited to and participate in Part C sponsored workshops.
- DPI funds help support the WPDP training newsletter "Events", that provides training and information related to young children with disabilities birth to age 6 and is distributed to all Birth to 3 programs and 3-5 early childhood special education programs.
- joint involvement in planning and implementing the annual Families and Provider Conference for families and professionals who support young children with disabilities.
- joint involvement in planning and implementing the annual Birth-6 Collaborative Conference for professionals and parents who support children from birth to six.
- joint planning and implementation of workshops and/or projects specific to children with low incidence disabilities.
- written transition resource materials are available for parents, Birth to 3 program staff, and LEAs.

X. CHILDREN IN PRIVATE SCHOOLS

Children Placed In, or Referred to, Private Schools by Public Agencies

It is the policy of the State of Wisconsin that if a child with a disability is placed in or referred to a private school or facility by a public agency for the purpose of providing a FAPE to the child, special education and related services will be provided to the child in conformance with an IEP that meets the requirements of the law; at no cost to the parents; and at a school or facility that meets the standards that apply to the State and LEAs, including Part B requirements. Whenever private placements are made by a public agency, the child and parents have all the rights of a child with a disability available to them under the IDEA, federal regulations and subchapter V, Chapter 115, Wis. Stats. Public agencies ensure that

a representative of the private school attends or participates in meetings to develop IEPs for children who may be placed in private schools. The DLSEA monitors this under section 115.77 (4)(h), Wis. Stats., which requires LEAs to report to the DLSEA the way the LEA provides for a continuum of alternative placements that addresses the unique needs of children with disabilities and ensures that such children receive their educational programming in the least restrictive environment, including the agency's use of private placements.

Private schools and facilities receive notice of applicable standards through the Department of Public Instruction's legal mailing and are included in the department's directory of services. When state standards that apply to private schools and facilities in statute or rule are developed or revised, private schools and facilities are provided an opportunity to participate in their development or revision.

Placement of Children by Parents if FAPE Is at Issue

An LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the LEA made FAPE available to the child and the parents elected to place the child in the private school or facility. An LEA, however, includes that child in the population whose needs are addressed in the next section of this document (Children with Disabilities Enrolled by Their Parents in Private Schools). Section 115.791, Wis. Stats., provides that if the parents of a child with a disability who previously received special education and related services under the authority of an LEA enroll the child in a private preschool, elementary or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the LEA to reimburse the parent for the cost of that enrollment if the court or hearing officer finds that the LEA had not made FAPE available to the child in a timely manner before that enrollment and that the private placement is appropriate. Reimbursement may be required even if the private school placement does not meet standards applicable to education provided in public schools.

Reimbursement may be reduced or denied if at the most recent IEP meeting the parents attended before removal of the child from the LEA, the parents did not inform the IEP team of their concerns, their rejection of the placement proposed by the LEA including stating their concerns and their intent to enroll the child in a private school at public expense; or at least ten business days, including any holidays that occur on a business day, before the removal of the child from the LEA, the parents did not give written notice to the LEA of their concerns, their rejection of the placement and their intent to enroll the child in a private school at public expense. Costs for reimbursement also may be reduced or denied if, before the parents' removal of the child from the LEA, the LEA notified the parents of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation, or if a court finds the parents' actions unreasonable. Reimbursement may not be reduced or denied for failure to provide such notice if the parent is illiterate and cannot write in English, or providing the notice likely would result in physical or serious emotional harm to the child, or the LEA prevented the parent from providing such notice, or the LEA failed to provide notice of this requirement.

Children with Disabilities Enrolled by Their Parents in Private Schools

It is the policy of the State of Wisconsin that, to the extent consistent with their number and location within the state, provision is made for children with disabilities who are enrolled by their parents in private elementary and secondary schools to participate in programs assisted or carried out under Part B of the IDEA by providing them with special education and related services according to the requirements and conditions described here. The State ensures

each public agency receiving Part B funds for the education of children with disabilities provides private school children with disabilities with an opportunity for participation in programs assisted or carried out under Part B in accordance with the requirements of Part B, subchapter V, Chapter 115, Wis. Stats., and their respective regulations and rules. This opportunity for participation is provided in a manner consistent with the number of eligible private school children with disabilities in the public agency's jurisdiction.

Each LEA must locate, identify and evaluate all private school children, including religiously-affiliated school children, who have disabilities residing in the jurisdiction of the LEA. The activities undertaken to carry out this responsibility for private school children with disabilities will be comparable to those utilized for children with disabilities in public school. LEAs will consult with appropriate representatives of private school children with disabilities on how to carry out these activities.

Pursuant to section 115.77 (1m)(e), Wis. Stats., to the extent consistent with the number and location of children with disabilities residing in the LEA who are enrolled by their parents in private elementary and secondary schools, LEAs must ensure that those children have an opportunity to participate in special education and related services and that the amount spent to provide those services by the LEA is equal to a proportionate amount of federal funds available under Part B of the IDEA, consistent with the requirements of federal regulations. Decisions about services that will be provided are made in accordance with the procedures outlined in this section and Bulletin 99.07. This bulletin was disseminated during the 1999-00 school year.

A public agency applying for Part B funds must comply with federal regulations regarding the involvement of private agencies. Each public agency must consult in a timely and meaningful way with representatives of private school children with disabilities in light of funding requirements noted above; and the number of, location of, and needs of, private school children with disabilities. In light of these factors the LEA will decide which private school children with disabilities will receive services, what services will be provided, how and where the services will be provided and how the services provided will be evaluated. The program benefits provided for private school children with disabilities must be provided consistent with federal law with regard to comparability of services provided to children with disabilities enrolled in public schools.

Services provided to private school children with disabilities may be provided at a private school, including a religiously-affiliated school. When providing services at a private school, the LEA must ensure that safeguards are in place consistent with federal and state law.

To provide Part B services to private school children with disabilities, the public agency may enroll them on a shared-time basis. The services plan for each private school child with a disability who receives services under Part B must describe the special education and related services that the LEA has determined that it will provide to the child in light of the services that the LEA has determined, through the required consultation process described above, it will make available to private school children with disabilities. Services plans must, to the extent appropriate, be developed, reviewed and revised consistent with the requirements which relate to IEPs and meet the requirements which relate to IEP content. No private school child with a disability has an individual right pursuant to a services plan to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Services provided through a services plan will be provided by staff meeting the same standards as those which apply to staff who serve children who attend a public school. Transportation of private school children with disabilities to a site other than a child's private school will be provided consistent with state and federal law.

LEAs may not use Part B funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include public and private school students. These funds may not be used to finance the existing level of instruction in a private school or to otherwise benefit the private school. Program funds must be used to meet the special educational needs of private school students but not for the needs of a private school or general needs of the students enrolled in the private school. Wisconsin ensures an LEA uses program funds to make public personnel available in other than public facilities to the extent consistent with state and federal law.

LEAs shall ensure the equipment or supplies placed in the private school are used only for Part B purposes and must keep title to and exercise administrative control of all property, equipment and supplies that the agency acquires with Part B funds for the benefit of private school children with disabilities. No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

XI. STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION

Pursuant to section 115.762, Wis. Stats., the DLSEA is responsible for all the following:

- ensuring that all children with disabilities who are not yet 22 years of age, including children who are not yet three years of age, who reside in Wisconsin and who are in need of special education and related services are identified, located and evaluated.
- ensuring that a FAPE is available to all children with disabilities, ages three but not yet 22 who reside in Wisconsin, including such children who are suspended or expelled from school.
- developing and implementing a practical method to determine which children with disabilities are receiving special education and related services.
- complying with the requirements of subchapter V, Chapter 115 and applicable federal law, including 20 USC 1415 (k).
- coordinating and supervising the provision of all publicly funded special education and related services for children with disabilities in Wisconsin and ensuring that such education and services meet the educational standards of the department, including any criteria established by the department relating to enrollment.
- approving the LEA plan for its provision for the delivery of special education and related services.
- monitoring and enforcing LEA and residential care center (RCC) compliance with subchapter V, Chapter 115, Wis. Stats. and applicable federal law.
- maintaining current information on all publicly funded special education and related services within Wisconsin and making this information public.
- coordinating a comprehensive system of personnel development (CSPD) that is designed to ensure an adequate supply of qualified special education, regular education and related services personnel and that meets the requirements of applicable federal law, including participation, as appropriate, by institutions of higher education (IHE), state and local agencies and other public and private organizations.
- examining data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs or compared to such rates for nondisabled children within such agencies. If discrepancies are occurring, the division will review and, if appropriate, revise or require the affected LEA to revise its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and procedural safeguards to ensure that such policies, procedures and practices comply with subchapter V, Chapter 115, Wis. Stats.

Section 115.762 (1)(am), Wis. Stats., requires the DLSEA to be responsible for ensuring that a FAPE is available to all children with disabilities who reside in the state, including such children who are suspended or expelled from school. The design and delivery of special education and related services for children with disabilities are under the general supervision of the DLSEA within the department. This "fixing of responsibility," however, does not limit the responsibility of agencies other than educational agencies in Wisconsin from providing or paying for some or all the costs of a FAPE for children with disabilities in Wisconsin.

Each LEA providing special education and related services to children with disabilities shall follow the requirements of IDEA and shall meet education standards established by the department. Section 115.762, Wis. Stats., provides the authority for this responsibility.

State Education Agency (SEA) Monitoring Activities

It is the policy of the State of Wisconsin to monitor agencies, institutions, and organizations responsible for carrying out programs to educate children with disabilities. The state agrees to cooperate in carrying out any evaluation of a program conducted by or for the secretary or other federal official. If the public agency's processes and procedures are determined to be inconsistent with state or federal requirements, corrective action must be completed within specific timeframes.

Monitoring is accomplished through a variety of means, including onsite visits to agencies, internal paper review of agencies' policies and procedures, by investigation of complaints and by program approval procedures, including monitoring for certification of special education staff. Procedures are also in place to assure Part B funds are spent according to plan. LEAs are required to submit annually, under section 115.77 (4), Wis. Stats., their plan for serving children with disabilities. Using the information contained in this electronic report, DLSEA staff review the overall design for the delivery of special education and related services within each district and recommend appropriate action regarding funding approval.

Prior to 1997-98, DLSEA conducted onsite visits to LEAs on a six year cycle. This aspect of monitoring will be refocused again for the 1999-00 school year, as was done during the preceding two school years to permit DLSEA to impact all LEAs in the state. All districts and other public agencies (LEAs) providing special education services to students with disabilities will be asked to undertake a self-assessment using a sample of student records to determine whether the records demonstrate compliance with selected new procedural requirements. LEAs also will be required to submit the forms which they use to complete the referral to placement process and to comply with other requirements of special education law. LEAs which use the forms developed by the department will be permitted to submit a certification of this fact in lieu of submission of the actual forms. Finally, 96 districts, whose student population totals nearly half the total student census in the state, have been selected for onsite visits. These visits will include review of a portion of the records which were reviewed by the LEA in its self-assessment, as well as an additional sample of records. Selected staff will be interviewed about details of the LEA's special education system, and parents will be interviewed regarding their experiences with the special education system. Beginning with the 2000-01 school year, the department will resume an onsite monitoring process comparable to that which was in place prior to the passage of IDEA 1997. LEAs will be visited for this purpose on a six year cycle and compliance monitoring regarding the revised federal regulations, as well as state and federal statutes, will be carried out in part through this process.

Division staff also provides technical assistance in the form of CSPD activities, including workshops and inservice presentations, through the publication of information bulletins,

assessment and programming guides, through formal and informal liaisons with educational organizations, through the monitoring of institutions of higher education (IHEs) offering certification programs in special education and related services, through data collection activities, and through telephone contacts with LEAs and parents.

Complaint procedures are adopted and implemented in accordance with the requirements of IDEA, subchapter V, Chapter 115, Wis. Stats., and federal regulations. These procedures apply to all public agencies responsible for providing education for children with disabilities. An organization or an individual may file a written, signed complaint with the department. The written complaint must include a statement that DPI or an LEA has violated a requirement of a state or federal statute or regulation that applies to a special education program and the facts on which the statement is based. Upon receipt of a complaint, a determination is made if an onsite investigation is necessary. The nature of the complaint dictates what type of investigation is done. Within 60 days of receipt of the complaint, DPI investigates and issues a report with directives for resolution, which may include remediation of the denial of services. An extension of time is permitted if exceptional circumstances exist on a particular complaint.

Fiscal auditors from the department carry out field visits to audit expenditures. Actual use and implementation of Part B funds is reviewed through a combination of program reviews, onsite visits, and supervisory visits.

DLSEA provides technical assistance to public agencies which apply for federal funds; assists public agencies in the evaluation of their grants; takes whatever action is necessary to properly administer each program and to avoid illegal, imprudent, wasteful, or extravagant uses of funds by the state or by the public agencies receiving a grant; and monitors the financial programmatic aspects of a grant.

SEA Implementation Procedures

The department, through a variety of activities, informs each LEA of its responsibility for ensuring effective implementation of procedural safeguards for the children it serves. The division periodically publishes Information Update Bulletins which it distributes to all LEAs. These bulletins are one of the primary ways in which the division communicates with LEAs regarding their responsibilities under state law and IDEA, particularly as significant developments unfold. While the bulletins do address other topics, they often concern issues relating to procedural safeguards.

Following passage of IDEA 1997 and the amendment of state law in 1998, the department developed sample forms for use by districts during the process of determining eligibility, program planning and placement. These sample forms have been modified to conform to new requirements in federal regulation and were mailed to each district in June, permitting time for formatting by each district for use at the beginning of school in the fall. DPI also is updating its publication, "Wisconsin Model Special Education Policy Guide." This publication will include sample policies and procedural guidelines for adoption by board action. Adoption of these policies will conform district policies to the requirements of state and federal law.

Department inservice presentations frequently focus on the topic of procedural safeguards. Technical assistance is provided to LEA staff on an ongoing basis and the department's compliance monitoring process emphasizes procedural safeguards.

XII. OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES

Section 115.812 (1), Wis. Stats., provides authority to the state superintendent to resolve a dispute arising between an LEA and DHFS, DOC or a county department or between LEAs. Section 115.812 (3), Wis. Stats., provides that a school board, cooperative educational service agency (CESA) and county children with disabilities education board (CCDEB) may enter into an agreement with a county administrative agency to allow the employees of the school board, CESA or CCDEB to participate in the performance of evaluations and the development of individualized family service plans (IFSPs).

Policies and procedures for establishing interagency agreements provide for the development and implementation of agreements that define the financial responsibility of each agency for providing children with disabilities with a FAPE; that set conditions, terms and procedures under which LEAs must be reimbursed by other agencies; that establish procedures for resolving interagency disputes among agencies that are parties to the agreements; that establish procedures under which public agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement; and that establish policies and procedures for identifying the interagency coordination responsibilities of each agency to promote coordination and timely service delivery. When an issue is identified that requires a formal agreement among and/or between agencies, staff are assigned to develop a draft interagency agreement.

DPI has interagency agreements with Department of Health and Social Services, Head Start and Division of Vocational Rehabilitation, Department of Workforce Development (DWD). Developed through an interagency process, these agreements describe the roles/responsibilities of each agency, define services/payments provided, and establish procedures for dispute resolution. Existing interagency agreements are being reviewed and modified, as needed, to ensure compliance with state and federal law. DPI also has a procedure through which LEAs can secure reimbursement from agencies party to the agreements. State administrative rules were promulgated in June, 1996, to authorize reimbursement of the cost of specified covered services provided to children who are eligible under the Medical Assistance (Medicaid) program. Appeals procedures applicable to all providers of medical services are available to challenge reduction or denial of claims.

If a public agency that is required by federal or state law or by an interagency agreement to provide or pay for the location, identification or evaluation of a child with a disability, including a child with a disability who is not yet three years of age, or for assistive technology devices or services, supplementary aids or services, transition services or special education or related services for a child with a disability, and fails to do so, the LEA must provide or pay for the services. The public agency must reimburse the LEA for the cost of providing the services.

LEAs may not require parents to enroll in public insurance programs in order for their child to receive FAPE, nor may parents be required to incur out-of-pocket costs, such as payment of deductibles or co-payments. Further, LEAs may not use a child's public insurance benefits if doing so would reduce available lifetime benefits, result in the family paying for services otherwise covered by public insurance and that are required for the child when not in school, increase premiums or lead to discontinuation of insurance, or risk loss of eligibility for home and community-based waiver programs based on aggregate health-related expenditures.

An LEA may access a parent's private insurance proceeds only if the parent provides required informed consent each time access is sought. Each time the public agency proposes to access the parent's private insurance proceeds, it must inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. If a public agency is unable to obtain parental consent to use the parent's

private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts). Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.154 and 300.231.

XIII. PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY

It is the policy of the State of Wisconsin that prior to taking a final action on the denial of an application for funds under IDEA, the LEA is to be provided with a notice and an opportunity for a hearing in accordance with the requirements of 34 CFR 76.401 of the EDGAR. When the department intends to disapprove an LEA application, it shall do the following:

- notify the applicant.
- give the applicant 30 days to request a hearing.
- hold a hearing on the record and review its action within 30 days after receiving the request .
- issue a written ruling no later than 10 days after this hearing.
- rescind its action if the action is contrary to state or federal statutes or regulation.

If the department does not rescind its final action after review, the LEA may appeal to the secretary within 20 days after it has been notified of the department's ruling. All records of the department's review as well as the records of other applicants shall be available to the LEA at reasonable times and places. If supported by substantial evidence, findings of fact of the department are final. All applicants are provided a copy of the procedures to follow in the event of a denial of application for funds.

XIV. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

The department is responsible for the development and implementation of a comprehensive system of personnel development (CSPD) under section 115.762 (3)(i), Wis. Stats. The department coordinates a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education and related services personnel and that meets the requirements of applicable federal law, 20 USC 612(a)(14), including participation, as appropriate, by IHEs, state and local agencies and other public and private organizations. The CSPD is designed to ensure an adequate supply of qualified special education, general education and related services personnel to meet the requirements of the State Improvement Plan .

The department complies with 20 USC 612(a)(14) of IDEA, which requires a CSPD consistent with the purposes of the Act and the CSPD requirements in Part C of the Infant and Toddlers section. The department also complies with the requirements of 20 USC 635(a)(8) requiring a CSPD, including the training of paraprofessionals and primary referral sources, regarding the basic components of early intervention services available in the state.

The CSPD under Part C of IDEA may include:

- implementing innovative strategies for the preparation of fully and appropriately qualified early intervention providers.
- training personnel to work in rural and inner-city areas.
- training personnel to coordinate transition services for toddlers served under this part to preschool or other services.

If Wisconsin desires to receive a grant under 20 USC 653, the state will meet requirements of 20 USC 653(b)(2)(B) and 653(c)(3)(D), IDEA , for a State Improvement Plan, including an analysis of state and local needs for professional development for personnel to serve children with disabilities including at a minimum:

- the number of personnel providing special education and related services.
- information on current and anticipated personnel vacancies and shortages (including the number of individuals with temporary licenses).
- the extent of licensure or retraining necessary to eliminate such shortages. This analysis should be based on existing assessment of personnel needs.

The department is proceeding to develop a state improvement plan even if the state does not seek funding under 20 USC 653. The department uses a portion of the Part B funds which are retained for administration purposes to fund a system of regional support networks (RSNs). Each RSN receives funding to support activities on a regional level. Beginning in January 1999, meetings with the RSNs were conducted to explain Wisconsin's approach to developing a CSPD. A questionnaire was distributed to gather data regarding personnel development policy and practice within each region. Regional meetings were held in the Spring of this year to help determine the direction of the state improvement plan. General themes were identified. Further, beginning July 1, 1999, the department, through receipt of the Special Education Plan required by §115.77(4) to be submitted by each LEA in the state, will receive answers to 15 questions regarding CSPD planning undertaken by each district. The information from these sources and others will be utilized to develop a state improvement plan and to determine a CSPD approach.

As required under Part D, 20 USC 653(c)(3)(D) of IDEA, Wisconsin will address the needs in 20 USC 653(b), including the identified needs for inservice and preservice preparation to ensure that professional and paraprofessional personnel who provide special education,

general education, related services and early intervention services have the skills and knowledge to meet the needs of children with disabilities, including a description of how Wisconsin will:

- prepare general and special education personnel with the content knowledge and collaborative skills to meet the needs of children with disabilities including how the state will work with other states on common certification criteria.
- prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills to meet needs of infants and toddlers with disabilities.
- work with IHEs and other entities that on both a preservice and inservice basis prepare personnel who work with children with disabilities to ensure that those IHEs and entities develop the capacity to support quality professional development that meet state and local needs.
- work to develop collaborative agreements with other states for joint support and development of programs to prepare personnel for which there is not sufficient demand within the state to justify support or development of such programs.
- collaborate with other states to address lack of uniformity and reciprocity in the licensing of teachers and other personnel.
- enhance the ability of teachers and others to use strategies such as behavioral interventions that address the conduct of children with disabilities that impedes the learning of children with disabilities and others.
- acquire and disseminate significant knowledge derived from educational research and other sources, and how the state will, when appropriate, adopt promising practices, materials and technology.
- recruit, prepare and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in regular education, special education and related services.
- integrate the plan, to the maximum extent possible, with other professional development plans and activities developed and carried out under other federal and state laws that address personnel recruitment and training.
- provide for the joint training of parents, and regular education, special education and related services personnel.

XV. PERSONNEL STANDARDS

Wisconsin has established and maintains standards to ensure that personnel are appropriately and adequately prepared and trained. Standards must:

- be consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.
- to the extent the standards described in 20 USC 612 (a)(15)(A) are not based on the highest requirements in the state applicable to a specific profession or discipline, ensure that the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the state.
- allow paraprofessionals and assistants who are trained and supervised appropriately, in accordance with state law, administrative rules, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities.

LEAs must make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children

with disabilities, including, in a geographic area of the state where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing, within three years, applicable course work necessary to meet the standards consistent with state law.

In order to assure compliance with 20 USC 612 (a)(15)(B)(i), Wisconsin will continue to provide support to IHEs developing innovative training programs and professional development opportunities for persons who are pursuing licenses in special education and related services shortage areas. Priority will continue to be given to innovative programs assisting special education teachers and related services staff holding emergency certification. Support also will be given to IHEs that are developing innovative training options, both preservice and inservice, that focus on broadening skills of currently licensed categorical teachers.

Previous efforts at the state level under Project Select have proven successful in decreasing the number of emergency licensed staff in the major shortage categories of emotional behavioral disturbance (EBD) and specific learning disabilities (LD). Continuation of some of the components of that project, expanded to other shortages on a statewide level will further assure qualified staff serving in Wisconsin's special education programs. Components such as portfolio assessment, modular instruction, both onsite and via internet, and mentoring support, have proven effective in assisting emergency licensed special education staff to reach their goal of full licensure.

All personnel standards applicable to LEAs are contained in state statute and administrative code. State statute specifies the procedures for amending the statute and administrative code. The specific sections of the statutes and administrative code most relevant to personnel standards are found in the following state statutes and administrative rules:

- Section 121.02, Wis. Stats. School district standards. (1) Each school board shall: (a) Ensure that every teacher, supervisor, administrator, and professional staff member holds a certificate, license, or permit to teach issued by the department before beginning duties for such position. (b) Annually establish with school board employees a professional staff development plan designed to meet the needs of individuals or curriculum areas in each school.
- Section 118.19, Wis. Stats. Teacher certificates and licenses. (1) Any person seeking to teach in a public school or in a school or institution operated by a county or the state shall first procure a certificate or license from the department.
- Section PI 8.01(2), Wis. Admin. Code. (a) Each school district board shall certify annually that every teacher, supervisor, administrator, and other professional staff member has been issued a valid certificate, license, or permit by the department for the position for which he/she is employed before beginning duties for such position and that a copy of the valid certificate, license, or permit is on file in the district. (b) Each school district board shall annually establish a professional staff development plan designed to meet the needs of individuals or curriculum areas in each school. The plan shall be developed with the cooperative efforts of licensed support staff, instructional staff, and administrative staff.

Pursuant to state statute and administrative rule, DPI has established a system for auditing compliance with these requirements in LEAs and in IHEs. These audits ensure teacher education programs and LEAs are held to standards necessary for personnel to be appropriately and adequately prepared, trained, and inserviced.

XVI. PERFORMANCE GOALS AND INDICATORS

The DLSEA in conjunction with the State Advisory Panel has established goals under this section. The State Advisory Panel formally endorsed these goals on March 12, 1998. Performance goals and indicators include:

GOAL #1 The percentage of children with disabilities who participate in statewide assessment in reading, language arts, math, science, and social studies will increase and their performance will improve.

The department, with advice from the State Advisory Panel and through a public participation process,:

- is establishing a goal for the number of children with disabilities who will be included in statewide assessment.
- has received and is evaluating baseline data on the number of children with disabilities included in statewide assessment.
- will determine baseline data on the performance of children with disabilities in statewide assessment.
- has produced technical assistance materials on how to make modifications in assessments and how to include children in alternate assessments.

Performance Indicators The department is establishing baseline data, and will establish targets for rates of participation of children with disabilities and will have established targets for the performance of children with disabilities.

GOAL #2 The percentage of children with disabilities who have been suspended and/or expelled will decrease.

The department, with advice from the State Advisory Panel and through a public participation process, will:

- establish a goal to decrease the number of children with disabilities who have been suspended; establish a goal to decrease the number of children with disabilities who have been expelled.
- gather baseline data on the number of children with disabilities who have been suspended, and on the number of children with disabilities who have been expelled.

Performance Indicators The department is establishing baseline data, and will establish targets for a decrease in the number of children with disabilities who are suspended and in the number expelled.

GOAL #3 The percentage of children with disabilities who graduate with a diploma will increase and the percentage of children with disabilities who drop out from school will decrease.

The department, with advice from the State Advisory Panel and through a public participation process, will:

- establish a goal for the number of children with disabilities who will graduate with a diploma.
- following LEA submission of information required to be included in the special education plan, beginning July 1, 1999, gather baseline data on the number of children with disabilities who graduate with a diploma.

- establish a goal to decrease the number of children with disabilities who drop out.
- following LEA submission of information required to be included in the special education plan, beginning July 1, 1999, gather baseline data on the number of children with disabilities who drop out.
- develop a process for gathering data about persons who no longer attend high school, such as whether they are employed, are living independently and are enrolled in postsecondary education, per section 115.77 (4)(j)9., Wis. Stats.

Performance Indicators The department is establishing baseline data, and is establishing targets for rates of children with disabilities who graduate and who drop out.

The State Advisory Panel will assist in the establishment of these and other goals for the performance of children with disabilities to ensure that:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.
- the rights of such children and their parents are protected.

These goals are to be consistent, to the maximum extent appropriate, with other goals and standards for children established by the state.

Additional goals may be established through the state improvement plan process. Performance indicators will be established and baseline data gathered to be used to assess progress toward achieving these goals. Every two years, the department will report to the Secretary and the public on the progress of the state and of children with disabilities toward meeting the goals.

XVII. PARTICIPATION IN ASSESSMENTS

Section 115.77 (1m)(bg), Wis. Stats., requires LEAs to include children with disabilities in statewide and LEA-wide assessments, with appropriate modifications where necessary, or in alternate assessments for those children who cannot participate in statewide or LEA-wide assessments. In addition, the LEA is required under section 115.77 (4), Wis. Stats., to report the rate of participation of the LEA's children with disabilities in statewide and LEA-wide assessments, including alternate assessments, and results of those assessments, to the department and in a performance report to all parents of children enrolled in the LEA. The department, through its instructions to LEAs regarding this reporting, ensures capture of the information required by federal regulation. One of the performance goals established for the state is to increase the rate of participation of children with disabilities in statewide and LEA-wide assessments and improve their performance.

Through the school performance report (SPR), the department makes available on its website for the general public all assessment reports required in 34 CFR 300.139. Pursuant to this regulation, the department shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information: (1) The number of children with disabilities participating (i) In regular assessments; and (ii) In alternate assessments. The performance results of the children described in paragraph (a)(1) of this section if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children (i) On regular assessments (beginning not later than July 1, 1998); and (ii) On alternate assessments (not later than July 1, 2000).

Reports to the public under paragraph (a) of this section must include – (1) Aggregated data that include the performance of children with disabilities together with all other children; and (2) Disaggregated data on the performance of children with disabilities (c) Timeline for disaggregation of data. Data relating to the performance of children described under paragraph (a)(2) of this section must be disaggregated – (1) For assessments conducted after July 1, 1998; and (2) For assessments conducted before July 1, 1998, if the State is required to disaggregate the data prior to July 1, 1998.

DPI has funded two systems change projects focusing on including children with disabilities in statewide assessments. The department also has contracted with a national expert for the development and publication of several manuals to assist parents and LEA staff to understand and implement these provisions. The department's Website includes information which was developed through these activities, including guidelines regarding how participation in assessment should be determined and a listing of potential accommodations. In addition, the department distributed an information update bulletin advising how districts may conduct alternate assessments (bulletin 98.14) and it has established alternate performance indicators tied to the state standards. The department has on file with the Secretary information to demonstrate that the State or LEA (1) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; (2) Develops alternate assessments in accordance with paragraph (b) (1) of 34 CFR 300.138; and (3) beginning not later than July 1, 2000, conducts the alternate assessments described in paragraph (b) (2) of 34 CFR 300.138."

XVIII. SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS

Federal funds made available under the act will not be commingled with state funds and will be so used as to supplement the level of federal, state, and local funds (including funds that are not under the direct control of state or local educational agencies) expended for special education and related services provided to children with disabilities under IDEA and will in no case be used to supplant such federal, state, and local funds except that the state may request that the requirements of this clause be waived, in whole or in part, if the department provides clear and convincing evidence to the Secretary that all children with disabilities have available to them a FAPE. If the Secretary concurs with the evidence provided by the state, the Secretary may waive, in whole or in part, the requirements of this clause.

XIX. MAINTENANCE OF STATE FINANCIAL SUPPORT

The State of Wisconsin will not reduce the amount of state financial aid for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating children with disabilities, below the amount of that support for the preceding fiscal year.

The state may request a waiver of this requirement which may be granted by the Secretary, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of this state, or if this state can provide clear and convincing evidence that all children with disabilities have available to them a FAPE.

XX. PUBLIC PARTICIPATION

The State Advisory Panel reviews and comments on Wisconsin State Policies and Procedures. The Panel formally endorsed the document submitted in July 1998, which continues in effect until required amendments are approved. This amended document will be provided to the panel at its next scheduled meeting in September for its consideration. The panel's action will be communicated to the United States Department of Education. The department seeks other public response to changes in the special education system. The process of developing performance goals and indicators is particularly inclusive, as is the process for completing a state improvement plan. These activities inform the public of developments related to these policies and procedures and provide a mechanism for including public sentiment in this document.

The department makes the State Policies and Procedures available to LEAs and the general public. Notice of the availability of the State Policies and Procedures document is made on the DPI Website, access to which is available to all school districts in Wisconsin. When the United States Department of Education approves the document, DPI provides information on how copies may be obtained. Announcements include press releases and legal notices.

XXI. STATE ADVISORY PANEL

State law creates a council on special education within the department. The council advises the state superintendent of public instruction about the unmet educational needs of children with disabilities, in developing evaluations and reporting on data to the federal department of education, in developing plans to address findings identified in federal monitoring reports, in developing and implementing policies relating to the coordination of services for children with disabilities, and on any other matters upon which the state superintendent wishes the council's opinion. The council also comments publicly on any rules proposed by the department regarding the education of children with disabilities. The state superintendent appoints the members of the council for three-year terms, and ensures that a majority of the members are individuals with disabilities or parents of children with disabilities and that the council is representative of the state population. The council must be composed of individuals who are involved in, or concerned with, the education of children with disabilities, including all of the following:

- teachers of regular education and teachers of special education.
- representatives of institutions of higher education that train special education and related services personnel.
- state and local education officials.
- administrators of programs for children with disabilities.
- representatives of agencies other than the department of public instruction involved in the financing or delivery of related services to children with disabilities.
- representatives of private schools and charter schools.
- at least one representative of a vocational, community or business organization that provides transition services for children with disabilities.
- representatives from the department of corrections.
- parents of children with disabilities.
- individuals with disabilities.

The council meets eight times per year and may meet more often, as needed. At least annually the council submits a report of its activities to the department. The report is made available to the public. Official minutes, which are available at public request, are maintained for each meeting. All meetings are announced in advance, as are the agendas of each meeting, and the meetings are open to the public. Interpreters are provided for council members or participants. Council members serve without compensation but are reimbursed for reasonable and necessary expenses.

XXII. SUSPENSION AND EXPULSION RATES

State law requires that DLSEA collect data to determine whether significant discrepancies are occurring in the rate of suspensions and expulsions of children with disabilities among LEAs compared to such rates for nondisabled children within LEAs. If such discrepancies are occurring, the DLSEA must review and, if appropriate, revise or require affected LEAs to revise their policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and procedural safeguards to ensure that such policies, procedures and practices comply with state and federal special education law.

XXIII. STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES

No LEA in Wisconsin is unable or unwilling to provide programs of FAPE for identified students with disabilities. An LEA may have one or more children with disabilities who can best be served at state schools designed to meet the needs of those children--specifically, the Wisconsin School for the Deaf and/or the Wisconsin School for the Visually Handicapped. In these instances, LEAs provide a FAPE to the child through these two state schools.

XXIV. DESCRIPTION OF USE OF IDEA FUNDS

Of the total amount of Part B funds granted to Wisconsin in each fiscal year, at least seventy-five percent will flow through to LEAs. The amount of funds to flow to each agency in each fiscal year will be based on the formula promulgated in the IDEA 1997 amendments (see 34 CFR 300.712). An LEA may submit an individual application for flow-through funds or may participate with other LEAs in submitting a consolidated application.

Of the total amount of Part B funds granted to Wisconsin in each fiscal year, less than twenty-five percent will be retained by DPI as a state setaside. A small percentage of the total amount of Part B funds for each fiscal year will be used solely for administration purposes. The remainder of the state allocation will be used for statewide services administered through the DLSEA and will be granted to LEAs on a discretionary basis according to identified performance goals.