

What is Special Education?

Special education provides an individualized education program created for a child with a disability to allow him or her to receive an educational benefit that s/he cannot otherwise receive without these special provisions.

Special education programs in Wisconsin are governed by **both federal and state laws**.

Specifically, Wisconsin state law conforms to Individuals with Disabilities Education Act (IDEA). In most instances, state law is the same as federal law.

State law requires that Local Education Agencies (LEAs) or the school district make available to children with disabilities a free appropriate public education (FAPE).

<http://sped.dpi.wi.gov/sites/default/files/imce/sped/pdf/intro-se.pdf>

<http://sped.dpi.wi.gov/sites/default/files/imce/sped/pdf/spec-ed-plain-lang-english.pdf>

Who is eligible for special education?

Children with a qualifying disability, who have not graduated from high school between ages 3 and 21, in need of special education are eligible for special education services. **Eligible disabilities include:**

Cognitive Disability;

Hearing impairments (including deafness);

Speech or language impairments;

Visual impairments;

Emotional behavioral disability;

Orthopedic impairment;

Autism;

Traumatic brain injury;

Significant developmental delay (for children aged three through five);

Other health impairment; or

Specific learning disabilities.

Wisconsin Administrative Code, Section PI 11.36; Wis. Stat. § 115.76(5)(a).



PARENTAL READINESS AND
EMPOWERMENT PROGRAM

WISCONSIN SPECIAL EDUCATION PARENT GUIDE

A child is not eligible for special education if the determinant factor for such eligibility is:

the lack of appropriate instruction in reading,

lack of instruction in the essential components of reading instruction,

lack of instruction in math; or

because the child has limited proficiency in English.

Wis. Stat. § 115.782(3).

LEAs also identify, locate and evaluate disabled children who are not yet 3 years of age. LEAs may also provide services to such children under an interagency agreement with a county agency responsible for the early intervention program.

Wis. Stat. § 115.77(1m)(a).

What type of education are children with a qualifying disability entitled to? What is a “free appropriate public education”?

Under both federal and state law, school districts must provide each student with a disability with a **free appropriate public education (FAPE)** which must:

be designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled persons;

be based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36;

“**Free education**” is defined as providing educational and related services without additional cost to the disabled person or to his or her parents or guardian.

34 C.F.R. § 104.33.

Different school districts may have different definitions of special education services. As defined by the Kaukauna school district within Wisconsin, special education services means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities including:

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

Instruction in physical education;

Speech-language pathology services, or any other related service, if the services consist of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under Wisconsin standards;



PARENTAL READINESS AND
EMPOWERMENT PROGRAM

WISCONSIN SPECIAL EDUCATION PARENT GUIDE

Travel training if it consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability; and

Vocational education if it consists of specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with disability.

See *Kaukauna Area School District Special Education*, available at:

<http://www.kaukauna.k12.wi.us/district/specialeducation.cfm>

Specially-designed instruction means:

“adapting, as appropriate to the needs of an eligible child...the content, methodology, or delivery of instruction—(i) to address the unique needs of the child that result from the child’s disability; and (ii) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” *34 C.F.R. § 300.39(b)(3)*.

Are children with disabilities entitled to additional services aside from a free appropriate public education? If so, what are they? What are related services?

School districts are also required to provide such students with “**related services**” at no cost. *Wis. Stat. § 115.76(7)*.

“**Related services**” means transportation and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education, including all of the following:

Speech–language pathology and audiology services;

Interpreting services;

Psychological services;

Physical and occupational therapy;

Recreation, including therapeutic recreation;

Social work services;

School nursing services designed to enable a child with a disability to receive a free appropriate public education as described in the child’s individualized education program;

Counseling services, including rehabilitative counseling;

Orientation and mobility services;

Medical services for diagnostic and evaluative purposes only; and



PARENTAL READINESS AND
EMPOWERMENT PROGRAM

WISCONSIN SPECIAL EDUCATION PARENT GUIDE

The early identification and assessment of disabling conditions in children.

Wis. Stat. § 115.76(14)(a).

Who provides special education?

The Department of Public Instruction, Division for Learning Support, local education agencies (LEAs), as well as the local school districts are responsible for making sure that appropriate special education services are provided to qualifying children. *Wis. Stat. § 115.762; Wis. Stat. § 115.77.*

For those children below the age of three (3), the Wisconsin Department of Health Services is the lead agency for early intervention services known as Wisconsin Birth to 3 Program. In Wisconsin, services are typically provided by the individual school district.

If the school district fails to ensure that special education services are provided, the Special Education Team within the Wisconsin Department of Public Instruction is ultimately responsible for providing these services.

Where should a child receive his/her special education and related services? What is a “least restrictive environment”?

Special education must be provided in the least restrictive environment (LRE), meaning that (1) as much as possible, all students with disabilities should be educated with students who are not disabled and (2) special classes, separate schooling, or other removal of the students with disabilities from the regular educational environment should occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *34 C.F.R. § 300.114.*

How is special education eligibility determined? Is there an assessment or evaluation?

Parents can make a referral to a district for a special education evaluation if they think their child might have a disability. *Wis. Stat. § 115.777(1)(c).*

Other professionals who interact with the child, such as doctors, teachers, or nurses **must make a referral** if they suspect the child has a disability. *Wis. Stat. § 115.777(1)(a)-(b).*

The referral must be in writing and must include the name of the child and the basis for thinking that the child has a disability. *Wis. Stat. § 115.777(2)(a).*

If someone other than the parents is making the referral (i.e. a teacher or professional), that person **must inform the child’s parents** that a referral is being made prior to actual completion of the referral. *Wis. Stat. § 115.777(2)(b).*



Within fifteen (15) business days of when the LEA receives a referral, the LEA must send the child's parents a request for permission to evaluate the child. *Wis. Stat. § 115.777(3)(e)*. However, if the LEA determines that no additional information is needed, it must notify the parents of that determination within fifteen (15) business days of receiving the referral. *Id.*

If the parents consent to an evaluation, the LEA has sixty (60) days after receiving parental consent to perform this evaluation and determine if the child is eligible for special education. *Wis. Stat. § 115.78(3)(a)*.

The sixty (60) day rule does not apply:

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

if the child enrolls in another school in the LEA after the 60-day period has begun and before the previous district determined whether or not the child has a disability. *Wis. Stat. § 115.78(3)(b)*.

The 60 day period does not apply only if the new district is making sufficient progress to promptly complete the evaluation and the child's parent and the new district agree on a specific time to complete the evaluation. *Wis. Stat. § 115.78(3)(b)*.

If the parent refuses to consent to the evaluation, the LEA may continue to pursue an evaluation by requesting mediation or a due process hearing. *Wis. Stat. § 115.782(1)(b)*.

If the child is eligible for special education, an individualized education program (IEP) must be developed, and a placement identified, within thirty (30) days of a determination that the child is a child with a disability. *Wis. Stat. § 115.78(3)(c)*.

Evaluations and assessments are conducted by a multidisciplinary team and focus on all areas of the suspected disability. The IEP team must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the child's parent that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program...." *Wis. Stat. § 115.782(2)(a)(1)*. No one assessment can solely determine eligibility or educational needs. *Wis. Stat. § 115.782(2)(a)*. Therefore, schools must use more than one test or evaluation to determine if a child qualifies for special education and to establish the child's program. *Wis. Stat. § 115.782(2)(a)*. Additionally, the tests used must not discriminate against a child because of the child's race or culture. *Wis. Stat. § 115.782(2)(a)(3)(a)*. The tests must be given in the language normally used by the child, or in whatever manner the child normally communicates, if possible. *Wis. Stat. § 115.782(2)(a)(3)(a)*.

Parents are entitled to a copy of the assessments. At any IEP team meeting, at the parent's request, the LEA must give the parents a copy of the most recently completed evaluation report. *Wis. Stat. § 115.78(3)(d)*.



If the parent disagrees with the findings or recommendations, the parent may request an independent education evaluation (IEE), which must be considered at the child's IEP meeting. The district must provide an IEE to the parent at no cost unless it chooses to seek a due process hearing to determine whether its own assessment was legally adequate. If the district seeks a due process hearing and prevails, the parents may still have an IEE done, but not at the public's expense. *34 C.F.R. § 300.502.*

Once a child is identified as being eligible for special education, what are the next steps? What is an "IEP" (Individualized Education Program)? Do parents have a voice in the IEP process?

Once it is determined that a child is eligible for special education, an Individualized Education Plan (frequently referred to as an "IEP") is developed for that child. An IEP outlines, in writing, the educational program for the student. It is developed at a meeting by a team that includes the parents, the child (if appropriate), a special education teacher, a regular education teacher, an LEA representative, someone who can explain the test results and, at the discretion of the LEA and the parent, other individuals who have knowledge or special expertise about the child. *Wis. Stat. § 115.78(1m)(a)-(g).* Other participants may include the school psychologist, therapists, and service providers, if appropriate. If the child is attending a public school in a nonresident school district, then a person from that school district with knowledge or expertise about the child should also attend. *Wis. Stat. § 115.78(1m)(h).* The IEP must be drafted to ensure the student receives access to specialized instruction and related services which are individually designed to provide him or her with an educational benefit. *See Hjortness ex rel. Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 1064 (7th Cir. 2007).

The IEP must include a statement about:

- The student's present levels of educational performance, including how the student's disability affects the student's involvement or progress in the general curriculum;
- Measurable annual goals, including academic and functional goals, designed to meet the student's needs to enable the student to be involved in and progress in the general curriculum;
- Benchmarks or short-term objectives for a child with a disability who takes alternate assessments;
- Specific special education and related services and supplementary aids and services to be provided to the student;
- The extent to which the child will not participate with nondisabled children in regular education classes as well as extracurricular and nonacademic activities;
- Any individual appropriate accommodations necessary to measure the student's achievement and performance on a LEA-wide or statewide assessment;
- Anticipated duration, frequency, and location of services and modifications;
- Transition services needed for students 14 years or older;
- Notice of transfer of the child's rights at age 18;
- How the student's progress toward attaining the annual goals will be measured;



- How the periodic reports regarding the child's progress toward the annual goals will be provided to the child's parents;
- Interventions, supports, and other strategies that address behavioral concerns if the individualized education program team determines that the use of seclusion or physical restraint may be reasonably anticipated for the student.

Wis. Stat. § 115.787(2)

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

Is not required to make FAPE available to the child; and

Is not required to have an IEP meeting or develop an IEP for the child.

34 C.F.R. § 300.300(b)(4).

What options does a parent have if he or she believes the school district is not meeting its legal requirements (i.e. failing to implement a valid Individualized Education Plan (IEP))?

If a parent believes that the IEP is not or has not been validly implemented, the parent can request a facilitated IEP as an option for early conflict resolution. A facilitated IEP uses a neutral, trained professional to help the IEP team with the process of determining what will be included in the IEP. This facilitation may take place at any IEP team meeting. Since this process is completely voluntary, if either the parent or the school does not want to use a facilitator, the IEP meeting will be conducted without one. See Wisconsin Special Education Mediation System Website, <http://dpi.wi.gov/sped/dispute-resolution/wsems> (last visited February 3, 2016).

Instead of the facilitated IEP, the parent or school district, or both, can elect to participate in mediation, a free process for both parents and the LEAs. The requesting party must complete a form, which is available from the Wisconsin Special Education Mediation System (WSEMS), in which the requestor describes the issues with the child's current IEP. The WSEMS intake coordinator can provide assistance in completing the form. If only one of the parties requests mediation, the other party must be notified within 5 business days after the request is received. During the mediation process, a neutral mediator helps parents and school districts resolve their disputes in an informal meeting. If a resolution is reached during the mediation, both parties will sign an agreement reflecting this resolution, which will be legally binding. Mediation does not delay or deny the right to a due process hearing. See Wis. Stat. § 115.797; Wisconsin Special Education Mediation System Website, <http://dpi.wi.gov/sped/dispute-resolution/wsems> (last visited February 3, 2016).

What options does a parent have if he or she disagrees with the proposed IEP placement or services?

Any individual or organization, including parents and teachers, may file an IDEA State Complaint when they believe a disabled child's school has not complied with applicable special education laws. See <http://dpi.wi.gov/sped/dispute-resolution/complain>

School districts must tell parents about their right to file this complaint. *34 C.F.R. §300.151(a)(2)*. An individual or organization must file the complaint within one year of the alleged violation. See <http://dpi.wi.gov/sped/dispute-resolution/complain>. IDEA State Complaints are sent to the Department of Public Instruction (DPI) for investigation. See <http://dpi.wi.gov/sped/dispute-resolution/complain>.

An IDEA State Complaint must be in writing, must be signed, and must include a statement that a public agency has violated a special education law, including the facts on which the statement is based. See <http://dpi.wi.gov/sped/dispute-resolution/complain>. DPI has a model form that can be utilized for filing complaints. See <http://dpi.wi.gov/sped/dispute-resolution/complain>.

DPI must make a decision on the complaint within sixty (60) days of receipt. See *34 C.F.R. § 300.152(a)*. If a parent files an IDEA State Complaint and requests a due process hearing on the same issues, DPI will not investigate the issues until the due process hearing and any appeals are completed since the due process proceedings will be binding. See *34 C.F.R. § 300.152(c)*.

If DPI finds that a district did violate the law, the district must develop and implement a plan to correct the violations. See <http://dpi.wi.gov/sped/dispute-resolution/complain>.

What are the procedures for a due process hearing?

Instead of filing an IDEA State Complaint, a parent may request a due process hearing.

Wis. Stat. § 115.80. The request for a due process hearing must be filed within one year of the action that forms the basis of the request. *Wis. Stat. § 115.80*. The requesting party must include in the request:

- identifying information
- the nature of the problem
- proposed solutions to the problem. *Wis. Stat. § 115.80*.

This request must be submitted to the school district as well as the DPI. *Wis. Stat. § 115.80*. The party receiving a request for a hearing must send a written response to the party requesting the hearing addressing the issues raised in the complaint. *Wis. Stat. § 115.80*. This response must be sent within ten (10) days of receiving the complaint. *Wis. Stat. § 115.80*. When DPI receives a request for a due process hearing, a neutral hearing officer is assigned. See <http://dpi.wi.gov/sped/dispute-resolution/due-process>.

In many instances, schools are represented by legal counsel at due process hearings. Parents may also find a lawyer to represent their interests at a due process hearing if they would rather not represent themselves. Once the request for a hearing is received, DPI will send parents a list of agencies that may provide free or low-cost legal representation. See <http://dpi.wi.gov/sped/dispute-resolution/due-process>. Additionally, both schools and parents may use experts to help support their positions. *Wis. Stat. § 115.80(3)*.

Before the due process hearing, there must be an opportunity for a resolution meeting to take place. A resolution meeting is an informal meeting between the parties in which they attempt to settle the problem without third party involvement. The school must schedule the resolution meeting within fifteen (15) days of receiving the parent's hearing request. The parties may agree in writing to waive the resolution meeting or use mediation. If the complaint is not settled within thirty (30) days of its submission, then the hearing may proceed. *Wis. Stat. § 115.80(2m)*.

The due process hearing typically includes witness testimony, questioning of both parties, cross-examination, and presentation of evidence by both the parents and the school. *Wis. Stat. § 115.80(3)*.

- At least five (5) business days before a hearing, each party must "disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing." *Wis. Stat. § 115.80(4)*.
- The hearing officer sets the process for the hearing and makes the ultimate ruling on the parent's claims. The hearing officer is not legally required to use common law or statutory rules of evidence and has the power to order any reasonable solution to the problem. *Wis. Stat. § 115.80(5)*.
- The hearing officer has forty-five (45) days to make a decision after the hearing. *Wis. Stat. § 115.80(6)*.
- The hearing officer's decision is final and binding unless it is appealed and overturned by a federal or state court.
- Appeals by either party must be filed within forty-five (45) days of the hearing decision in the circuit court for the county in which the child resides or in a U.S. district court. *Wis. Stat. § 115.80(7)*.

Though the school district pays for the due process hearing, parents must pay for their own attorneys if they have retained any. However, the prevailing party may petition a circuit court for reimbursement of "reasonable attorney fees and actual costs in any action or proceeding brought in circuit court." *Wis. Stat. § 115.80(9)*.

Both the school and the parents are responsible for ensuring that the child's education is not interrupted during the hearing process. *34 C.F.R. § 300.518(a)*. Unless the parents agree otherwise, the LEA cannot change the child's educational placement while the hearing process is ongoing. *Wis. Stat. § 115.80(8)*. This is called the "stay-put" rule. Parents and the school district may agree to a new placement if they believe this option is best for the child. If a parent unilaterally advocates for a change



in placement, and the hearing officer agrees that a change in placement is appropriate, the placement decided by the hearing officer will become the child's current placement until the end of any appeals. *34 C.F.R. § 300.518(d)*. However, the "stay put" rule is different in some discipline situations, which are discussed in the following section.

Can a special education student be disciplined?

Federal and state laws make it illegal to discriminate against a person on the basis of disability. Therefore, students with disabilities are subject to the same suspension rules as nondisabled students.

According to federal law, a student with a disability may be suspended for up to ten (10) consecutive days without any requirement of a manifestation determination (described below), but suspensions in excess of ten (10) days require a manifestation determination meeting. *20 U.S.C. § 1415(k)(1)(B)*.

Under Wisconsin law, a student (whether disabled or non-disabled) cannot be suspended for more than five (5) days unless the school has sent the parents a notice of an expulsion hearing. *Wis. Stat. § 120.13(1)(b)(2)*.

Both suspensions for more than ten (10) consecutive school days and removal of a student to an alternative educational setting for more than ten (10) consecutive school days are considered "changes of placement," and schools cannot change special education students' placements without parental consent, or without a manifestation determination meeting, except in certain circumstances such as where the student is involved with drugs, weapons, or has inflicted serious bodily injury upon another person at school, on school premises, or at a school function. *20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g)*. In such cases, the district may place the student in a temporary alternative setting for up to forty-five (45) days. *20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g)*.

What are the requirements for a manifestation determination meeting?

A manifestation determination meeting must be held within ten (10) days of the school's decision to change the student's placement. *20 U.S.C. § 1415(k)(1)(E)*. The manifestation determination is made by the district, the parents, and relevant members of the IEP team. The team must consider two issues:

- 1) was the behavior caused by, or did it have a direct and substantial relationship to, the child's disability,
- 2) was the behavior the direct result of the school's failure to implement the IEP. *20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e)(1)*.

If the team determines that the child's behavior is a manifestation of the child's disability, the IEP team must:

- 1) conduct a functional behavioral assessment and implement a behavior plan for the student,



2) review the behavioral intervention plan if one has already been developed and modify it as necessary to address the behavior, or

3) return the student to the placement from which the student was removed unless the parent and LEA agree to a change of placement as part of the modification of the behavioral intervention plan. *34 C.F.R. § 300.530(f)*. On the other hand, if it is determined the behavior is not a manifestation of the child's disability then the student can be subject to disciplinary changes in placement that exceed ten (10) consecutive school days just as a child without a disability would be. *34 C.F.R. § 300.530(c)*.

If a parent disagrees with a manifestation determination or with any decisions regarding placement for disciplinary reasons and requests a due process hearing, then the hearing must be expedited. *34 C.F.R. § 300.532(c)*. Hearings must also be expedited when the district seeks a change in placement for safety reasons or when the district seeks to extend the child's placement in an interim alternative educational setting because it believes that returning the child to his or her prior setting poses a danger to the child or others. *34 C.F.R. § 300.532(a)*.

An expedited hearing must be held within twenty (20) school days of the date of the request for the hearing. *34 C.F.R. § 300.532(c)*.

A resolution meeting must occur within seven (7) days of the request for a hearing, unless the parents and district agree to waive such meeting. *34 C.F.R. § 300.532(c)*.

A decision must be made no more than ten (10) school days after the hearing, and extensions of the timeline are not permitted. *34 C.F.R. § 300.532(c)*.

The child must remain in the temporary alternative setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 C.F.R § 300.530(c) or (g), whichever occurs first. *34 C.F.R. § 300.533*. However, if the parent and LEA agree to an alternate arrangement, that arrangement will be sustained. *Id.*

Do parents have a right to view or obtain the school records of their special education child?

Parents and parent representatives are permitted to review and inspect any education records relating to the child's progress records and behavioral records. See Wisconsin Department of Public Instruction, "Student Records and Confidentiality (2010)," available at <http://dpi.wi.gov/sspw/pupil-services/school-social-work/contents/confidentiality/student-records>; *Wis. Stat. § 118.125(2)(a),(b)*.

Parents may receive copies of records if failure to provide such copies would effectively prevent the parent from exercising the right to inspect and review records. See http://www.specialed.us/pl-07/SpEd_in_Plain_Language-07.pdf.



PARENTAL READINESS AND
EMPOWERMENT PROGRAM

WISCONSIN SPECIAL EDUCATION PARENT GUIDE

Federal law requires schools to respond to parental requests for records without unnecessary delay (no more than 45 days after the request is received). *34 C.F.R. § 99.10(b)*. The district may charge a fee for copying the records since federal law allows schools to charge “incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.” *34 C.F.R. § 300.39(b)(1)*.

Useful links and documents

Wisconsin Special Education Laws in Plain Language -

<http://sped.dpi.wi.gov/sites/default/files/imce/sped/pdf/spec-ed-plain-lang-english.pdf>

Wisconsin DPI Student Records and Confidentiality Publication - <http://dpi.wi.gov/sspw/pupil-services/school-social-work/contents/confidentiality/student-records>

Wisconsin Early Childhood Special Education Information - <http://dpi.wi.gov/sped/early-childhood>