

Information UPDATE



Wisconsin Department of Public Instruction/John T. Benson, State Superintendent/125 S. Webster St./P.O. Box 7841/ Madison, WI 53707-7841

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TO: District Administrators, CESA Administrators, CCDEB Administrators,
Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Juanita S. Pawlisch, Ph.D., Assistant Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: Least Restrictive Environment

The least restrictive environment is both a legal principle and a set of legal requirements found in the Individuals with Disabilities Education Act (IDEA). Under IDEA, local educational agencies (LEAs) must ensure that a free appropriate public education (FAPE) is made available to children with disabilities. Consistent with these responsibilities, each child must receive an individualized program of specialized instruction and support services that is appropriate to his or her unique educational needs. Further, public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. The strong preference in the law is that the child will be educated using the general education curriculum in the regular education classroom. This preference reflects Congress' intent that special education is a *service*, not a *place*.

Neither federal nor state law uses the term "inclusion." Although inclusion is often used interchangeably with the LRE provisions, Part B does not require that every child with a disability participate in the regular education classroom. The overriding rule in determining a child's LRE is that it must be individually determined based on his or her unique abilities and needs. Recognizing that the regular education setting and/or general education curriculum may not be appropriate for every child with a disability, LEAs are required to make available a range of service, location, and building options (a "continuum of alternative placements") to meet the unique educational needs of students with disabilities. This requirement reinforces the importance of the individualized inquiry, not a "one size fits all" approach, in determining what is the FAPE in the least restrictive environment for each student with a disability.

This bulletin provides answers to frequently asked questions with regard to the least restrictive environment. It is a response, in part, to questions LEAs and parents are asking in light of the new federal regulations. Those regulations emphasize providing greater access for children with disabilities to the general curriculum and to educational reforms, as an effective means of ensuring better results for these children. This bulletin also reflects a growing emphasis on the need to educate children with disabilities in the same manner and the same setting as their non-disabled peers, to the maximum extent appropriate.

1. What is the least restrictive environment?

The IEP team makes two separate determinations: *what* the child should be learning and *where* a child should learn. The intersection of those two determinations is that particular child's *least restrictive environment*. Depending on a particular child's individual needs, some examples of a possible environment that could be the least restrictive include: a regular education classroom in the neighborhood school with the general education curriculum, with or without supplementary aids and services; a regular education classroom in the neighborhood school with a modified curriculum for some or all of the classes; a pull-out classroom in the neighborhood school with the general curriculum for part of the day with the remainder of the day being spent in the regular classroom or in activities with students who do not have disabilities; a special education classroom in the neighborhood school with modified curriculum; or even a separate school specializing in a certain type of disability. Thus, one child's least restrictive environment may be very different from another child's. The IEP team identifies the LRE for each child based upon the child's individual needs.

2. Who decides the least restrictive environment for the child?

The IEP team makes the least restrictive environment decisions, including the specific determinations of appropriate educational services, location, and building or facility.

The IEP team must include a special education teacher, a regular education teacher (if the child is, or may be, participating in the regular education environment), a LEA representative authorized to commit agency resources, the parents, an individual who can interpret the instructional implications of evaluation results, the child (if appropriate) and, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child.

3. How is the LRE determined for an individual child?

The IEP team is responsible for determining the curriculum and other educational programming, services, location of services, and building to meet an individual child's educational needs. "Location" is the type of environment that is the appropriate place for the provision of special education and related services (*e.g.*, a regular education classroom, a resource room). The decisions must be made on a case-by-case basis. To the maximum extent appropriate, the child must participate with nondisabled peers.

Under IDEA 1997 and the new federal regulations, LEAs must provide special education and related services in addition to and in conjunction with the general education curriculum, not separate from it. The general curriculum is defined as the curriculum provided to the same-aged nondisabled children.

Per the recent changes in special education law, the IEP team must focus on the accommodations and adjustments necessary to enable children with disabilities to participate in the general curriculum to the maximum extent appropriate. This focus is reflected in new IEP content requirements regarding present levels of performance (PLOP) and annual goals and short-term objectives, as well as in the continuing requirements regarding the description of special education and related services and the supplementary aids and services to be provided to each child. It would not be appropriate for the IEP to include specific details related to the general curriculum itself or to daily lesson plans.

The PLOP must now include a statement of how the child's disability affects the child's involvement and progress in the general curriculum (or for preschool children, as appropriate, how the child's disability affects

the child's participation in age-appropriate activities). This requirement is important because it provides the basis for determining what accommodations the child needs in order to participate in the general curriculum to the maximum extent appropriate. Thus, the programming and services for each individual child can be tailored to address the child's unique needs that impede the child's ability to make meaningful progress in the general curriculum.

The annual goals and short-term objectives must now include a statement 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 (or for preschool children, as appropriate, how the child's disability affects the child's participation in age-appropriate activities). Through this requirement, the focus of the IEP team is on the general curriculum when determining annual goals.

In addition to the new emphasis on access to the general curriculum, IDEA continues to emphasize that districts must provide instruction to children with disabilities in the regular education classroom alongside their nondisabled peers, to the maximum extent appropriate. Even though IDEA does not mandate that districts provide special education and related services to all children in the regular education classroom, IDEA presumes that the first location that is considered for each child with a disability is the regular education classroom (in the school that the student would attend if not disabled), with appropriate supplementary aids and services to facilitate the provision of special education in that location.

Thus, before an IEP team determines that special education and related services should be provided outside of the regular education classroom, the full range of supplementary aids and services that could be provided to facilitate the student's success in the regular education classroom must be considered. "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. While determinations of what supplementary aids and services are appropriate for a particular student must be made on an individual basis, some supplementary aids and services that educators have used successfully include providing a special seating arrangement for a child; raising the level of a child's desk; allowing the child more time to complete a given assignment; working with the parents to help the child at home; and providing extra help to the child before, during, or after the school day. Other accommodations could involve providing a particular assistive technology device for the child, modifying the child's desk in some manner that facilitates the child's ability to write or hold books, etc.

When determining the location of services, the IEP team should consider the educational and nonacademic benefits to the child with a disability. The IEP team should also consider, if applicable, the degree of disruption to the education of other students. In determining the location in which a child with behavioral problems will be educated, the IEP team must consider strategies, including positive behavioral interventions, strategies and supports to address the child's behavior. However, if a student with a disability has behavioral problems that are so disruptive in a regular classroom that, even with the use of supplementary aids and services, the education of other students is significantly impaired, the regular education classroom is not appropriate to meet the student's needs.

Decisions regarding the location in which the district will provide special education and related services should not be based solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, needed modifications to the general curriculum, or administrative convenience. Further, the provisions of a collective bargaining agreement cannot supercede a LEA's obligation to instruct students with disabilities in the appropriate location.

After developing or reviewing and revising, if necessary, a child's IEP (including determining the curriculum to be used and the location of the services), the IEP team must choose the building or facility in which to implement the child's IEP in a manner consistent with the IEP. Unless a child's IEP requires some other arrangement, the child must attend the school that he or she would attend if not disabled.

4. What options must a LEA provide to meet the required “continuum of alternative placements” for children with disabilities?

LEAs are required to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities. In this context, “placement” refers to three components of a child's educational environment: the special education, related services, and supplementary aids and services set out in the student's IEP; the location in which the services will be provided; *and* the building or facility the child will attend. Thus, a LEA is responsible for having a range of available services (supplementary aids and services, modifications, accommodations, etc.), locations (regular education classrooms, special education classrooms, etc.) and sites (neighborhood schools, separate schools, state schools, etc.). The availability of a continuum allows the IEP team to determine an appropriate environment in which an individual child will learn.

The LEA is not required to provide full continuums of services and locations in every school within its jurisdiction. Neither is a LEA required to provide full continuums of services, locations, and buildings or facilities within its borders. Transportation must be included in the IEP as a related service and must be provided at no cost to the parent if the IEP team determines that transportation is necessary to permit the child to benefit from special education.

The IEP team determines the services, the location and the building or facility. If an IEP team determines that an individual child should be transported to a building or facility outside the boundaries of the LEA because the need for specialized services cannot be met by the LEA, the IEP team must still determine the extent to which the child will participate in the general curriculum and in the regular education location.

5. Does a child have to fail in the regular education classroom before the IEP team considers another location in which to provide services?

No. A student need not fail in the regular classroom before another location can be considered. Conversely, a student does not need to demonstrate that he or she will be able to achieve satisfactorily in the regular classroom as a prerequisite for providing services in that location.

6. Does the LRE requirement apply to related services and non-academic activities?

Yes. All services to children with disabilities – including academic, nonacademic activities (e.g., meals and recess periods), extracurricular services and activities, related services, and transportation – must be provided in the least restrictive environment. Further, the IEP must contain an explanation of the extent, if any, to which the child will not participate with nondisabled peers in academic, nonacademic and extracurricular services and activities.

7. How do the LRE requirements apply to preschoolers?

Preschoolers with disabilities must be provided special education and related services in the least restrictive environment. LEAs that do not operate programs for nondisabled preschool children are not required to initiate those programs solely to satisfy the LRE requirement. However, the full continuum of services, including integrated setting options (such as community-based settings with typically developing age peers) must be available to preschool children with disabilities.

The issue of the least restrictive environment as it applies to preschoolers received recent attention from the federal courts. In *Board of Education of LaGrange School District Number 105 v. Illinois State Board of Education* (attached), the Court of Appeals for the Seventh Circuit found a school district in violation of the least restrictive environment requirement when the district failed to consider alternatives to a segregated school placement for a preschooler. As rulings by the Seventh Circuit control federal courts in this state, this case is of heightened importance to LEAs in Wisconsin.

A number of LEAs in Wisconsin are providing early childhood special education (ECSE) itinerant services to preschoolers with disabilities in childcare, playgroups, and other community-based settings. LEAs are also offering programs in which ECSE teachers are teaming with staff from four-year-old kindergartens, Title I preschools, childcare centers, and Head Start programs.

8. What are the LRE considerations for children with hearing impairments?

In IDEA 1997, Congress added an additional requirement, which was codified in the new federal regulations, with respect to hearing impaired children because of the unique communication and related needs of many children who are deaf or hearing impaired. In the case of the child who is deaf or hard of hearing, the IEP team must consider, among other things, the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for instruction in the child's language and communication mode.

The regular education classroom may be the appropriate location to meet the unique needs of particular children who are deaf or hard of hearing. For others, special classes or special schools may be the appropriate location in which to provide the services to meet the child's unique needs. A full range of alternative placements must be available to the extent necessary to implement each child's IEP. Location considerations begin with the regular education classroom and move along the continuum to include special schools, if appropriate. Just as learning in the regular educational classroom is required when it is appropriate to meet the unique needs of a child who is deaf, so is another location required when the child's needs cannot be met in the regular education classroom even with the use of supplementary aids and services.

The IEP team must also determine whether the child can participate full-time in the general curriculum. Teachers can instruct the child in the general curriculum in any location that is found to be appropriate for the child. If the child attends a specialized school, the LEA and the staff at the specialized school need to coordinate efforts to ensure that the child is receiving instruction in the general curriculum to the maximum extent appropriate.

9. When a parent disagrees with the LEA regarding the placement decision, what is a LEA required to do?

The IEP meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint, informed decisions regarding the child's placement. Parents are considered equal partners with school personnel in making these decisions.

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the child receives FAPE. Both state and federal law contain provisions under procedural safeguards on how to proceed whenever a parent does not agree with an IEP team's determination of a child's initial or continued placement.

If parents disagree with the initial placement proposed by the LEA and refuse to grant consent for placement, the LEA may not place the child in special education. The LEA may use mediation or a due process hearing to resolve the refusal to consent.

If the parent revokes consent for initial placement in special education prior to the child receiving special education for the first time, the LEA may not place the child in special education. The LEA may use mediation or a due process hearing to resolve the revocation.

In the above scenarios, the LEA is obligated to resolve the refusal to grant consent or the revocation if the LEA believes that the parent's refusal or revocation would result in the LEA's failure to provide free appropriate public education to the child. The LEA may resolve the revocation or refusal through an IEP team meeting, mediation, or a due process hearing.

If the parent revokes consent for placement in special education after the child first receives special education, the revocation is not relevant. If the parent requests that the LEA stop the child's special education because the parent believes the child no longer needs special education, the IEP team should reevaluate the child to determine whether the child continues to need special education. If the parent requests that the LEA stop or change the provision of special education because the parent and the LEA do not agree about the child's special education program or placement, the LEA may conduct an IEP team meeting to discuss changing the child's IEP or placement. If the parent and the LEA cannot reach agreement, either the parent or the district may request mediation or a due process hearing to resolve the dispute. Pending the resolution of the dispute, the child would remain in the current placement unless the parent and the LEA agree on another placement.

10. Are LEAs permitted to use Part B funds to pay for special education and related services and supplementary aids and services provided in a regular class or other education-related locations, even if one or more of children without disabilities benefit from the services?

Yes, in certain cases. If special education and related services are being provided in a regular education classroom to meet the requirements of the IEP for a child with a disability, federal regulations permit other children to benefit. However, the regulations do not permit Part B funds to be expended in a regular class except for special education and related services and supplementary aids and services to a child with a disability in accordance with the child's IEP. In such circumstances no time and effort records are required under federal law, thus reducing unnecessary paperwork.

11. What are some resources that discuss LRE and inclusion principles?

The Wisconsin School Inclusion Project, a collaboration among DPI and various public agencies and non-profit agencies throughout the state, created a series of informational packets on inclusion resources and practices. While the Project is no longer funded, materials may be available by contacting:

Patricia Yahle, Milwaukee Public Schools
Division of Special Services
5225 West Vliet Street
Milwaukee, WI 53208

The National Information Center for Children and Youth with Disabilities receives funding from the Office of Special Education Programs to develop training projects that address the needs of students with disabilities in inclusive educational programs. Information is available by contacting:

National Information Center for Children and Youth with Disabilities
P.O. Box 1492
Washington, D.C. 20013-1492
Telephone: 1-800-695-0285
(Deaf and hearing-impaired individuals may also call this number for TDD services)

For more information on the least restrictive environment requirement or other special education issues, please contact Stephanie Petska, Director, at (608) 266-1781.

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This information update can also be accessed through the Internet:
<http://www.dpi.state.wi.us/dpi/dlsea/een/bulindex.html>