

# Lake Country Classical Academy

## Special Education Policies and Procedures

Adopted from  
Wisconsin Department of Public Instruction  
*August 2021*

Revised  
*August 2022*

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## **Model Independent Charter School Special Education Policies and Procedures**

### **Preface**

As a condition of funding under the Individuals with Disabilities Education Act (IDEA), independent charter schools are required to establish written policies and procedures for implementing federal special education laws. *Model independent Charter School Special Education Policies and Procedures* has been developed to assist independent charter schools meet their obligation to establish and implement special education requirements. The model policies and procedures are derived from IDEA regulations and applicable state special education requirements. The IDEA regulations may be found at 34 CFR Part 300, Vol. 71 Federal Register, No. 156 (August 14, 2006). State special education requirements may be found at Subchapter V of Chapter 115, Wis. Stats., and PI 11, Wis. Admin. Code.

An independent charter school may establish special education requirements by adopting the model policies and procedures. The document may also be used as a reference tool and for staff development activities to promote understanding of and compliance with special education requirements.

### **Definitions**

For the purpose of these policies, the following definitions apply:

- "Assistive technology device" means any item, piece of equipment or product system that is used to increase, maintain or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. 34 CFR § 300.5
- "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device, including all of the following:
  - evaluating the needs of the child, including a functional evaluation of the child in the child's customary environment;
  - purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
  - selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;
  - coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitative plans and programs;
  - training or technical assistance for a child with a disability or, if appropriate, the child's family; and training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers or other individuals who provide services to, employ or are otherwise substantially involved in the major life functions of that child. 34 CFR § 300.6
- "Business day" means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business day. 34 CFR § 300.11
- "Independent Charter school" means a school established by charter by one of the entities listed in Wis. Stats. §118.40(2r)(b).
- "Child" means any person between the ages of 3 and 21, inclusive, who has not graduated from high school with a regular high school diploma, and includes a child who is homeless, a foster child, a child who is a ward of the state, or in the custody of a public child welfare agency. 34 CFR §§ 300.19, 300.45, and 300.101, 300.102(a)(3)(i)
- "Child with a disability" means a child who by reason of any of the following, needs special

education and related services:

- intellectual disabilities;
- hearing impairments;
- speech or language impairments;
- visual impairments;
- emotional behavioral disability;
- orthopedic impairments;
- autism;
- traumatic brain injury;
- other health impairments; and/or
- specific learning disabilities.

If the independent charter school determines through an appropriate evaluation that a child has one of the impairments listed above but only needs a related service and not special education, the child is not a child with a disability.

"Child with a disability" may, at the discretion of the independent charter school and consistent with Department of Public Instruction rules, include a child who, by reason of his or her significant delay, needs special education and related services.

***NOTE: Under IDEA 2004 a LEA, which includes independent charter schools, using the term significant developmental delay must conform to both the State's definition of that term and to the age range that has been adopted by the State [34CFR300.111(b)(3)]. 34 CFR § 300.8 and 300.311(b)***

- "Consent" means:
  - the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
  - the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
  - the parent also understands the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). 34 CFR § 300.9
- "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substance Act [21 U.S.C. 812(c)]. 34 CFR § 300.530(i)(1)
- "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civic and government, economics, arts, history, and geography. 34 CFR § 300.10
- "Day" means calendar day unless otherwise indicated as business day or school day. 34 CFR § 300.11
- "Destruction," as used in the section on confidentiality in these policies, means physical destruction or removal of personal identifiers from information so the information is no longer personally identifiable. 34 CFR § 300.611(a)
- "Division" means the Division for Learning Support: Equity and Advocacy in the Department

of Public Instruction. Wis. Stat. § 115.76(6)

- "Education records" means the type of records covered under the definition of "education records" set forth in the regulations implementing the Family Educational Rights and Privacy Act of 1974. See Appendix. 34 CFR § 300.611(b)
- "Elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. State law defines elementary grades as including K4-8<sup>th</sup> grade. 34 CFR § 300.13; Wis. Stat. § 115.01(2)
- "Equipment" means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents; and other related materials. 34 CFR § 300.14
- "Evaluation" means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services the child needs. 34 CFR § 300.15
- "Extended school year services" means special education and related services that are provided to a child with a disability and meet the standards of the State of Wisconsin. These services are provided beyond the normal school year of the independent charter school in accordance with the individualized education program (IEP), and at no cost to the parents of the child. 30 CFR § 300.106(b)
- "Free appropriate public education" means special education and related services that are provided at public expense and under public supervision and direction, and without charge, meet the standards of the Department of Public Instruction, include an appropriate preschool, elementary or secondary school education; and are provided in conformity with an IEP. 30 CFR § 300.17
- "General curriculum" means the same curriculum as for nondisabled children. 34 CFR § 300.320(a)(1)(i)
- "Hearing officer" means an independent examiner appointed to conduct due process hearings under Wis. Stat. § 115.80. Wis. Stat. § 115.76(8), 34 CFR § 300.511(b) & (c)
- "Highly Qualified Teacher" means that a person has met the Department of Public Instruction's approved or recognized certification, licensing, registration in which he/she is providing special education or related services, consistent with provision 34 CFR § 300.18.
- "Homeless children" has the meaning given the term *homeless children and youths* in section 725 (42 U.S.C. 11434(a)) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.* See Appendix. 34 CFR § 300.19
- "Illegal drug" means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under federal law. 34 CFR § 300.530(i)(2)
- "Include" means that the items named are not all of the possible items that are covered whether like or unlike the ones named. 34 CFR § 300.20
- "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. 34 CFR § 300.502
- "Individualized education program" (IEP) means a written statement for a child with a

disability that is developed, reviewed and revised in accordance with 34 CFR §§ 330.320 through 300.324. 34 CFR § 300.22

- “IEP Team” means a group of individuals described in 34 CFR § 330.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. 34 CFR § 300.23
- “Limited English Proficiency” has the meaning given the term in section 9101 (25) of the Elementary and Secondary Education Act (ESEA).
- "Local educational agency," except as otherwise provided, means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of schools districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. 34 CFR § 300.28(a)
- "Native language," for individuals with limited English proficiency, means the language normally used by that individual. For children with limited English proficiency, the term means the language normally used by the parents of the child, except that in all direct contact with a child (including evaluation of the child), the term means the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). 34 CFR § 300.29
- "Nonacademic and extracurricular services and activities" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities and employment by the public agency and assistance in making outside employment available. 34 CFR § 300.107
- “Parent” means any of the following:
  1. a biological or adoptive parent (The biological or adoptive parent, when attempting to act as a parent of the child, must be presumed to be the parent unless that person does not have legal authority to make educational decisions for the child.)
  2. a foster parent, if the right and responsibility of all of the individuals listed in number 1 to make educational decisions concerning the child has been extinguished by termination of parental rights, by transfer of guardianship or legal custody or by other court order;
  3. a legal guardian;
  4. a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives or an individual who is legally responsible for the child’s welfare ; or
  5. a person assigned as a surrogate parent under 34 CFR § 300.519

If a judicial decree or order identifies a specific person or persons from 1-4 of the list to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent.) 34 CFR § 300.30

- "Participating agency," as used in the section on Confidentiality of Information in these policies, means any agency or institution that collects, maintains or uses personally-identifiable information, or from which information is obtained, under the Individuals with Disabilities Education Act. 34 CFR § 300.611(c)
- "Personally identifiable" means information that includes the name of the child, the child’s parent or other family member; the address of the child; a personal identifier such as the child’s social security number or student number; or a list of personal characteristics or other



information that would make it possible to identify the child with reasonable certainty.  
34 CFR § 300.32

- "Parentally-placed private school children with disabilities" are children with disabilities enrolled by their parents in private schools or facilities, including religious schools or facilities that meet the definition of elementary school or secondary school, other than children with disabilities placed or referred to private schools by public agencies. 34 CFR § 300.130
- "Public Agency" includes the State Educational Agency, Local Educational Agency, Cooperative Educational Service Agency (CESA), Charter Schools operating under Wis. Stat. § 118.40(2r), County Children with Disabilities Education Board, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. 34 CFR § 300.33
- "Pupil Records" means all records relating to individual pupils maintained by a school but does not include:
  - notes or records maintained for personal use by a teacher or other person to be licensed if such records or notes are not available to others;
  - records necessary for, and available only to persons involved in, the psychological treatment of a pupil; and
  - law enforcement unit records.Wis. Stat. § 118.125(1)(d)
- "Record" means any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. Wis. Stat. § 118.125(1)(e)
- "Related services" means transportation and such developmental, corrective and other supportive services (including speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; school health 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 IEP; parent counseling and training; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluative purposes only; and the early identification and assessment of disabilities in children) as may be required to assist a child with a disability to benefit from special education. "Related services" does not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of such a device. Nothing in this definition limits the rights of a child with a surgically implanted device to receive related services as determined by the IEP Team to be necessary, limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, while the child is transported to and from school or is at school; or prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly. 34 CFR § 300.34

In this definition:

- "Audiology" includes:
  - identification of children with hearing loss;
  - determination of the range, nature, and degree of hearing loss including referral for medical or other professional attention for the habilitation of hearing;
  - provision of habilitative activities such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation and speech conservation;
  - creation and administration of programs for prevention of hearing loss;

- counseling and guidance of pupils, parents and teachers regarding hearing loss; and
- determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.
- "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors or other qualified personnel.
- "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- "Interpreting services," as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, and special interpreting services for children who are deaf-blind.
- "Medical services" means services provided by a licensed physician to determine a child's medically-related disability that results in the child's need for special education and related services.
- "Occupational therapy" means services provided by a qualified occupational therapist, and includes:
  - improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
  - improving ability to perform tasks for independent functioning if functions are impaired or lost; and
  - preventing, through early intervention, initial or further impairment or loss of function.
- "Orientation and mobility services" means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, and includes teaching students the following, as appropriate:
  - spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street);
  - to use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
  - to understand and use remaining vision and distance low vision aids, as appropriate; and
  - other concepts, techniques, and tools.
- "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.
- "Physical therapy" means services provided by a qualified physical therapist.
- "Psychological services" includes:
  - administering psychological and educational tests, and other assessment procedures;
  - interpreting assessment results;
  - obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

- consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observations, and behavioral evaluations;
- planning and managing a program of psychological services, including psychological counseling for children and parents; and
- assisting in developing positive behavioral intervention strategies.
- "Recreation" includes:
  - assessment of leisure function;
  - therapeutic recreation services;
  - recreation programs in schools and community agencies; and
  - leisure education.
- "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
- "School health services" means health services provided by a qualified school nurse or other qualified person that are designed to enable a child with a disability to receive FAPE as described in the child's IEP.
- "School nurse services" mean health services provided by a qualified school nurse, designed to enable a child with a disability to receive FAPE as described in the child's IEP.
- "Social work services in schools" includes:
  - preparing a social or developmental history on a child with a disability;
  - group and individual counseling with the child and family;
  - working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
  - mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
  - assisting in developing positive behavioral intervention strategies.
- "Speech-language pathology services" include:
  - identification of children with speech or language impairments;
  - diagnosis and appraisal of specific speech or language impairments;
  - referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
  - provision of speech and language services for the habilitation or prevention of communicative impairments; and
  - counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- "Transportation" includes:
  - travel to and from school and between schools;
  - travel in and around school buildings; and
  - specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

34 CFR § 300.34

- "School day" means any day, including a partial day that children are in attendance at school

for instructional purposes. The term "school day" has the same meaning for all children in school, including children with and without disabilities. 34 CFR § 300.11

- "Scientific-based research" has the meaning given the term in section 9101(37) of the ESEA. See Appendix. 34 CFR § 300.35
- "Secondary school" means a nonprofit institutional day or residential school including a public secondary charter school that provides secondary education for grades 9-12. 34 CFR § 300.36
- "Serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. 34 CFR § 300.530(i)(3). See Appendix.
- "Special education" means specially-designed instruction, regardless of where the instruction is conducted, that is provided at no cost to the child or the child's parents, to meet the unique needs of a child with a disability, 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 service consists of specially-designed instruction and is considered special education rather than a related service under Wisconsin standards;
  - travel training; and
  - vocational education.

The terms in the definition of special education are defined as follows:

- "At no cost" means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
- "Physical education" means the development of:
  - physical and motor fitness;
  - fundamental motor skills and patterns; and
  - skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).The term includes special physical education, adaptive physical education, movement education, and motor development.
- "Specially-designed instruction" means adapting content, methodology or delivery of instruction:
  - to address the unique needs of an eligible child that result from the child's disability; and
  - to ensure access of the child to the general curriculum, so that he or she can meet the educational standards of the independent charter school that apply to all children.
- "Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

34 CFR § 300.39

- "Supplementary aids and services" mean aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and

nonacademic settings to enable a child with a disability to be educated with nondisabled children to the maximum extent appropriate. 34 CFR § 300.42

- A "transfer pupil with a disability" means a child with a disability under the Individuals with Disabilities Education Act whose residence has changed from a local educational agency in this state to another local educational agency in this state or from a public agency in another state to a local educational agency in this State. 34 CFR § 300.323(e) and (f)
- "Transition services" means a coordinated set of activities for a child with a disability that:
  - is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including:
    - postsecondary education,
    - vocational education,
    - integrated employment (including supported employment)
    - continuing and adult education
    - adult services
    - independent living, or
    - community participation
  - is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:
    - instruction;
    - related services;
    - community experiences;
    - the development of employment and other post-school adult living objectives; and
    - if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

34 CFR § 300.43

- "Universal Design" has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002. 34 CFR § 300.44 See Appendix.
- "Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.  
34 CFR § 300.530(i)(4) See Appendix.

### **Full Educational Opportunity Goal**

It is the goal of the independent charter school to provide full educational opportunity to all children with disabilities served by the independent charter school. The independent charter school has available to all of its children with disabilities the variety of educational programs and services available to nondisabled children in the independent charter school including: art, music, industrial arts, consumer and homemaking education, and vocational education or any program or activity in which nondisabled children participate. The independent charter school provides supplementary aids and services determined appropriate and necessary by the child's IEP Team, to ensure that children with disabilities have an equal opportunity to participate in nonacademic and extracurricular services and activities. 34 CFR §§ 300.107; 300.109; 300.110; 300.201

### **Free Appropriate Public Education**

**General.** All children with disabilities for whom the independent charter school is responsible are provided a free appropriate public education. Special education and related services are provided to these children with disabilities, including, as required by 34 CFR § 300.530(d), children with disabilities

who have been suspended or expelled from school. Children with disabilities entitled to a free appropriate public education are children between the ages of 3 and 21, inclusive who have not graduated from high school with a regular high school diploma. A regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED). The special education and related services provided to children addresses all of their special education and related services needs and are provided by personnel qualified as required by 34 CFR § 300.156.

34 CFR §§ 300.101(a), 300.102(a)(3)(iv), 300.156

The independent charter school provides prior written notice of a change in placement consistent with the requirements in the law when a child with a disability graduates from high school with a regular diploma. Additionally for those students who graduate from high school with a regular diploma as well as students who exceed the age of eligibility, the independent charter school provides a summary of their academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals.

34 CFR §§ 300.102(a)(3)(iii); 300.305(e)(3)

If a placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, is provided at no cost to the parents of the child. 34 CFR § 300.104

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, for any subsequent removal, the independent charter school provides services, although in another setting, so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP. In such a case, school personnel, in consultation with at least one of the child's teachers, determine the extent of the services. When there is a change of placement, the IEP team determines the appropriate services. 34 CFR § 300.530(d)

**Hearing Aids and External Components of Surgically Implanted Medical Devices.** The independent charter school ensures that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. The independent charter school ensures that the external components of surgically implanted medical devices are functioning properly, but is not responsible for the post-surgical maintenance, programming, or replacement of the medical devices that has been surgically implanted, or of an external component of the surgically implanted medical device. 34 CFR § 300.113

**Physical Education.** Physical education services, specially designed if necessary, are made available to every child with a disability unless the independent charter school does not provide physical education to children without disabilities in the same grades. Each child with a disability is afforded the opportunity to participate in regular physical education programs available to nondisabled children unless the child is enrolled full time in a separate facility, or the child needs specially-designed physical education as prescribed in the child's IEP.

If specially-designed physical education is prescribed in a child's IEP, the independent charter school provides the services directly or makes arrangements for those services to be provided through other public or private programs. The independent charter school ensures that a child with a disability who is enrolled in a separate facility receives appropriate physical education services in compliance with the law. 34 CFR § 300.108

**Assistive Technology.** The independent charter school makes available assistive technology devices or assistive technology services, or both, to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services. If a child's IEP team determines that access to school-purchased assistive technology devices or services in the child's home or in other settings is necessary for the child to receive a free appropriate public education, the devices or services are provided. 34 CFR § 300.105

**Extended School Year.** The independent charter school ensures that extended school year services are available to each child with a disability as necessary to provide a free appropriate public education. Extended school year services are provided when a child's IEP team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education to the child. The independent charter school does not limit extended school year services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services. 34 CFR § 300.106

**Participation in Assessments.** Children with disabilities attending this independent charter school are included in all state-wide and independent charter school assessment programs with appropriate accommodations. Those children who cannot participate in state-wide or independent charter school assessments participate in alternate assessments. Needed accommodations or alternate assessments are identified by the IEP team and are specified in the child's IEP. 34 CFR § 300.157; Wis. Stats. 118.30(1)(r)

**Methods of Ensuring a Free Appropriate Public Education.** If a public agency, other than an independent charter school fails to meet its obligation under federal or state law or under state policy or interagency agreement to provide or pay for any services that are also considered special education and related services that are necessary for ensuring a free appropriate public education to a child, the independent charter school provides or pays for these services to the child in a timely manner. 34 CFR § 300.154(b)(2)

When the independent charter school uses Medicaid or other public insurance benefits programs in which a child participates to provide or pay for special education and related services necessary for the child to receive a free appropriate public education as permitted under the public insurance program, the independent charter school obtains parent consent each time access to public benefits or insurance is sought.

Furthermore, the independent charter school does not:

- require parents to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education under Part B of the Act;
- require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for special education and related services; or
- use a child's benefits under a public insurance program if that use would:
  - decrease available lifetime coverage or any other insured benefit,
  - result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school,
  - increase premiums or lead to the discontinuation of benefits or insurance or
  - risk loss of eligibility for home and community-based waivers based on aggregate health-related expenditures.

Each time the independent charter school proposes to access the proceeds of a parents' private insurance to provide services necessary for the child to receive a free appropriate public education, the independent charter school:

- obtains informed parent consent; and
- informs the parents that their refusal to permit the independent charter school to access their private insurance does not relieve the independent charter school of its responsibility to ensure that all required services are provided at no cost to the parents.

34 CFR § 300.154

The independent charter school timely provides instructional materials in accessible formats to children who are blind, children with print disabilities, or other children with disabilities as required in the child's IEP. 34 CFR § 300.210

### **Public Information**

The independent charter school regularly publicizes information about its special education procedures and services. Further, the independent charter school makes available to any person, upon request, all documents relating to the independent charter school's eligibility for state and federal special education funds. 34 CFR § 300.212

If the independent charter school receives a notice from the Department of Public Instruction that it is in noncompliance with respect to federal special education law or applicable state special education law and the Department of Public Instruction is proposing to reduce or withhold any further payments to the independent charter school until the Department of Public Instruction is satisfied that the independent charter school is complying with that requirement, the independent charter school gives public notice of the pending state actions. 34 CFR § 300.222(b)

### **Child Find**

**General.** The independent charter school identifies, locates, and evaluates all children with disabilities enrolled in the independent charter school, regardless of the severity of their disability, who are in need of special education and related services including children who are made a ward of the state, county, or child welfare agency under chapter 54 or 880, highly mobile children such as migrant and homeless children, and children who are suspected of being a child with a disability even though they are advancing from grade to grade. 34 CFR § 300.111

**Referral.** The independent charter school accepts and processes referrals of children attending the independent charter school suspected to have a disability. The independent charter school has written procedures for accepting and processing referrals. Licensed school personnel who reasonably believe a child has a disability are required to make a referral. Prior to submitting a referral, the people required to make referrals inform the parents of their intent to make a referral.

The local educational agency accepts written referrals. Each referral includes the name of the child and reasons why the person making the referral believes that the child is a child with a disability. The local educational agency documents and dates the receipt of each referral.

At least annually, the independent charter school informs parents of each student at the independent charter school and persons required by law to make referrals about the local educational agency's referral and evaluation procedures.

The local educational agency provides information and in-service opportunities for its licensed staff to



familiarize them with the local educational agency's referral procedures. Wis. Stat. § 115.777

***NOTE: independent charter schools are required to locate and identify children with disabilities. One method of doing this is to establish a referral system and policies and procedures for referrals as described above.***

## **IEP Team**

**Participants.** The IEP team for each child consists of all of the following:

- the parents of the child;
- at least one regular education teacher of the child if the child is, or may be, participating in a regular education environment;
- at least one special education teacher of the child who has recent training or experience related to the child's known or suspected area of special education needs or, where appropriate, at least one special education provider of the child;
- a representative of the independent charter school:
  - who is qualified to provide or supervise the provision of special education,
  - who is knowledgeable about the general education curriculum, and
  - who is knowledgeable about the available resources of the school (who may be another member of the IEP team if the criteria are met);
- an individual who can interpret the instructional implications of evaluation results, who may otherwise be a team member;
- an appropriate therapist if the child is suspected to need occupational therapy or physical therapy or both.

Wis. Admin. Code, Chap. OT 4 and Chap. PT 5

- a department-licensed speech or language pathologist when documenting a speech or language impairment and the need for speech or language services.

Wis. Stats. § 459.24, Wis. Admin. Code § PI 11.36(5)(e)

- at the discretion of the parent or independent charter school other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate. The determination of the individual's knowledge or special expertise is made by the party (parents or independent charter school) who invited the individual to be a member of the IEP team;
- whenever appropriate, the child;

In addition to the above members, the independent charter school invites the following:

- To the extent appropriate, a representative of any participating agency that is likely to be responsible for providing or paying for transition services, if the parents or the child who has reached the age of majority provides consent; and
- The student, when the purpose of the meeting will be consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. If the student does not attend the IEP Team meeting, the independent charter school takes other steps to ensure consideration of the student's preferences and interests.
- If requested by the parent, at the initial IEP Team meeting for a child previously served under Part C, the Part C service coordinator or other representatives of the Part C System will be invited. 34 CFR § 300.321

**IEP Team Attendance.** An IEP Team member is not required to attend an IEP Team meeting, in whole, or in part, if the parent of a child with a disability and the independent charter school agree, in

writing, that attendance is not necessary because the member's area of curriculum or related services is not being modified or discussed.

An IEP Team member may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if the parent, in writing, and the independent charter school consent to the excusal, and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior the meeting. 34 CFR § 300.321(e)

**Parent Participation in IEP Team Meetings.** The independent charter school takes steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

- notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- scheduling the meeting at a mutually agreed on time and place.

The notice required in this policy:

- indicates the purpose, time, and location of the meeting and who will be in attendance; informs the parents of the provisions in these policies relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child; and
- informs the parents that they can request the Part C coordinator or other representatives of the Part C system be at the initial IEP Team meeting for a child previously served under Part C of IDEA.

Beginning no later than in the first IEP that will be in effect when the child turns 16, or younger if determined appropriate by the IEP Team the notice also:

- indicates that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the child;
- indicates that the independent charter school will invite the student; and
- identifies any other agency that will be invited to send a representative.

If neither parent can attend, the independent charter school uses other methods to ensure parent participation, including individual or conference calls.

The independent charter school may conduct meetings without a parent in attendance if the independent charter school is unable to convince the parents that they should attend. In this case the independent charter school has a record of its attempts to arrange a mutually agreed on time and place, such as:

- detailed records of telephone calls made or attempted and the results of those calls;
- copies of correspondence sent to the parents and any responses received; and
- detailed records of visits made to the parent's home or place of employment and the results of those visits.

The independent charter school takes whatever action is necessary to ensure that the parent understands the proceedings at the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

The independent charter school gives the parent a copy of the child's IEP at no cost to the parent.  
34 CFR § 300.322, 34 CFR § 300.306(a)(2)

## **Evaluation**

**General.** As part of an initial evaluation of a child and as part of any reevaluation of a child, the IEP team and other qualified professionals, as appropriate:

- review existing evaluation data on the child, including evaluations and information provided by the child's parents, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related services providers; and
- on the basis of that review and information provided by the child's parents, identifies the additional data, if any, that are needed, to determine:
  - whether the child is a child with a disability, as defined in 34 CFR § 300.8 and the educational needs of the child or, in case of a reevaluation of a child, whether the child continues to have such a disability and the educational needs of the child;
  - the present levels of academic achievement and related developmental needs of the child;
  - whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
  - 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 education curriculum.
- The independent charter school administers such assessment and other evaluations as may be needed to produce the additional data.
- The review of existing evaluation data on the child may occur without conducting a meeting.

34 CFR § 300.305

The independent charter school does not require parental consent before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered

to all children unless, before administration of that test or evaluation, the independent charter school requires consent for all children. 34 CFR § 300.300(d)(1)

Screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services. 34 CFR § 300.302

The independent charter school provides the parents of the child with proper written notice, of any evaluation procedures the school proposes to conduct. 34 CFR § 300.304(a)

**Initial Evaluations.** The independent charter school obtains informed consent from the child's parent before administering assessments or other evaluation materials to the child. Parental consent for the evaluation does not constitute consent for placement for receipt of special education and related services. 34 CFR § 300.300(a)

If the child is a ward of the state and is not residing with the child's parent, the independent charter school is not required to obtain informed consent from the parent for an initial evaluation if: the independent charter school cannot, after reasonable efforts, locate the parent of the child; the rights of the parents of the child have been terminated in accordance with state law; or, the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. 34 CFR § 300.300(a)(2)

If the parent of a child enrolled in an independent charter school or seeking to be enrolled in an independent charter school does not provide consent for an initial evaluation or fails to respond to a request to provide consent, the independent charter school may, but is not required to, pursue the initial evaluation by utilizing mediation or due process. 34 CFR § 300.300(a)(3)

The independent charter school does not use a parent's refusal to consent to activities relating to conducting an initial evaluation to deny the parent or child any other service, benefit, or activity of the independent charter school. 34 CFR § 300.300(d)(3)

**Determination of Eligibility or Continuing Eligibility (Initial and Reevaluation).** Following a review of existing data and administration of assessments and other evaluation materials (if any), a group of qualified professionals and the parent of the child (evaluation team) determine whether the child is or continues to be a child with a disability. For a child who does not otherwise meet the eligibility criteria under 34 CFR § 300.8, the evaluation team does not determine that the child is a child with a disability solely because the child has received inappropriate instruction in reading or math or because the child has limited proficiency in English. In interpreting evaluation data for the purpose of determining if a child is a child with a disability, and the educational needs of the child, the independent charter school draws upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The independent charter school ensures that information obtained from all of these sources is documented and carefully considered. 34 CFR § 300.306

**Timeline.** The independent charter school determines if a child is a child with a disability within 60 days after receiving parental consent for the evaluation or provides notice that no additional data are needed. The 60-day period does not apply:

- if the child enrolls in this independent charter school before the previous public agency has made an eligibility determination, sufficient progress is being made to ensure a prompt completion of the evaluation, and the child's parents agree to a specific time when the evaluation will be completed;
- if the child's parent repeatedly fails or refuses to produce the child for the evaluation; or
- if a child is being evaluated for a specific learning disability and the timeline is extended by mutual written agreement of the child's parents and IEP team.

The independent charter school conducts a meeting to develop an IEP within 30 days of a determination that a child is a child with a disability, and as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. 34 CFR §§ 300.301; 300.309(c); 300.323

**Reevaluation.** In conducting reevaluations, the independent charter school:

- evaluates a child with a disability in accordance with the law before determining that the child is no longer a child with a disability, and reevaluates a child with a disability in accordance with the law if the independent charter school determines that the educational or related services needs of the child, including the child's academic and functional performance, warrant a reevaluation or if the child's parent or teacher requests a reevaluation. The independent charter school shall reevaluate a child no more than once a year unless the child's parents and the independent charter school agree otherwise, and at least once every three years unless the child's parent and independent charter school agree that a reevaluation is unnecessary. 34 CFR §§ 300.303, 300.305(e)(1)

An evaluation is not required before the termination of a child's eligibility for special education and related services because he or she graduated from secondary school with a regular diploma or because he or she reached the age of 21. Under these circumstances, the independent charter school provides the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting his or her postsecondary goals. 34 CFR § 300.305(e)(2) and (3)

In conducting a reevaluation, the independent charter school obtains informed consent from the child's parent before administering new assessments and other evaluation materials. The independent

charter school proceeds without consent only if it has taken reasonable measures to obtain the consent and the child's parents have failed to respond. Reasonable measures are the measures required for conducting an IEP meeting without a parent in attendance. If the parent of a child enrolled in an independent charter school or seeking to be enrolled in an independent charter school refuses to provide consent, the independent charter school is not required to pursue the reevaluation, but may pursue the reevaluation by utilizing mediation or due process.

34 CFR § 300.300(c) and (d)

If the IEP team and other qualified professionals, as appropriate, finds no additional information is needed to determine whether a child continues to be a child with a disability, and to determine the child's educational needs, independent charter school notifies the child's parents of that finding and the reasons for it, and that the parent has a right to request an assessment to determine whether the child continues to have a disability, and to determine the child's educational needs. The independent charter school conducts such an assessment if the parent requests it.

34 CFR § 300.305(d)

**Evaluation Safeguards.** When an independent charter school evaluates a child with a disability, it:

- does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;
- uses 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 IEP, including information related to enabling the child to be involved in and progress in the general education curriculum or, for preschool children, to participate in appropriate activities;
- uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and
- ensures all of the following:
  - assessments and other evaluation materials used to assess a child are selected and administered so as not to be racially or culturally discriminatory and are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do, academically, developmentally, and functionally, unless it is clearly not feasible to do so;
  - any assessments given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of such assessments or evaluation materials;
  - assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient;
  - assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment 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 skills the test purports to measure);
  - the child is assessed in all areas of suspected disability; including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

- assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are used and;
- 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.

34 CFR § 300.304

**Evaluation Report.** When the independent charter school determines a child's eligibility, the evaluation team prepares an evaluation report that includes documentation of the determination of eligibility for special education. The independent charter school gives a copy of the evaluation report including the documentation of determination of eligibility at no cost to the child's parents.

34 CFR § 300.306(a)

**Additional Requirements for Specific Learning Disabilities.**

When a school begins to use data from a multi-level system of support to consider if the student meets the Insufficient Progress criterion, the IEP team shall include the following additional members:

- at least one licensed person who is qualified to assess data on individual rate of progress using a psychometrically valid and reliable methodology;
- at least one licensed person who has implemented scientific, research-based or evidence-based, intensive interventions with the referred pupil
- at least one licensed person who is qualified to conduct individual diagnostic evaluations of children; and
- if the child does not have a licensed general education teacher, a general education classroom teacher licensed to teach a child of the same age, or for a child of less than school age, an individual qualified by the Department of Public Instruction to teach a child of his or her age.

PI 11.36(6)

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall include:

- whether the child has a specific learning disability;
- the basis for making that determination, including an assurance that the eligibility determination was based on a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and that the information obtained from all of these sources is documented and carefully considered;
- the relevant behavior, if any, noted during observation of the child and the relationship of that behavior to the child's academic functioning in the area of potential specific learning disability;
- documentation that the intensive intervention was applied in a manner highly consistent with its design, was closely aligned to pupil need, and was culturally appropriate;
- the educationally relevant medical findings, if any;
- whether the child does not achieve adequately for the child's age or to meet state approved grade-level standards and the child does not make sufficient progress to meet age or State-approved grade-level standards; or until November 30, 2013, the child exhibits a significant discrepancy between the child's academic achievement in any of the

- eight areas of potential specific learning disabilities and intellectual ability.
- the determination of the team concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child’s achievement level; and
- if the child has participated in a process that assesses the child’s response to scientific, research-based intervention, documentation that the child's parents were notified about the following:
  - the progress monitoring data collected;
  - strategies for increasing the child's rate of learning including the intensive interventions used, and
  - the parents' right to request an evaluation.

Each IEP team member certifies in writing whether the report reflects his or her conclusion. If the evaluation report does not reflect the IEP team member’s conclusions, the member submits a separate statement presenting his or her conclusions.

PI 11.36(6)

### **Determination of Eligibility**

A child shall be identified as a child with a disability if the independent charter school has determined from an evaluation conducted in accordance with §§ 300.304 through 300.311 that the child is a child with a disability as defined in §§ 300.8, 300.111(b)(3) and 300.307(b) and in accordance with the eligibility criteria contained in these policies.

A child will not be determined to be a child with a disability if:

- The determinant factor for that determination is
  - Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in 20 USC 6368(3); or
  - Lack of appropriate instruction in math; or
  - Limited English proficiency; and,
- The child does not otherwise meet the eligibility criteria under 34 CFR §§300.8 300.111(b)(3) and 300.307(b).

34 CFR §§ 300.8, 300.306(b).

### **Areas of Impairment**

All provisions in these policies shall be construed consistent with 20 USC 1400 et. Seq. and the regulations promulgated thereunder.

Wis. Admin. Code § PI 11.36

**Autism.** 34 CFR § 300.8 (c)(1) Wis. Admin. Code § PI 11.36(8)

Autism means a developmental disability significantly affecting a child’s social interaction and verbal and nonverbal communication, generally evident before age 3 that adversely affects learning and educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional behavioral disability as defined in Wis. Admin. Code § PI 11.36(7).

The results of standardized or norm-referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as



criterion-referenced assessments, achievement assessments, observation and work samples shall be considered to identify a child under this paragraph. Augmentative communication strategies, such as facilitated communication, picture boards or signing shall be considered when evaluating a child under this paragraph. To identify a child as a child with autism, the criteria under 1. and 2. and one or more criteria under 3. through 6. shall be met.

1. The child displays difficulties or differences or both in interacting with people and events. The child may be unable to establish and maintain reciprocal relationships with people. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.
2. The child displays problems which extend beyond speech and language to other aspects of social communication, both receptively and expressively. The child's verbal language may be absent or, if present, lacks the usual communicative form which may involve deviance or delay or both. The child may have a speech or language disorder or both in addition to communication difficulties associated with autism.
3. The child exhibits delays, arrests, or regressions in motor, sensory, social or learning skills. The child may exhibit precocious or advanced skill development, while other skills may develop at normal or extremely depressed rates. The child may not follow normal developmental patterns in the acquisition of skills.
4. The child exhibits abnormalities in the thinking process and in generalizing. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverant thinking and impaired ability to process symbolic information may be present.
5. The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement. The child may have a visual or hearing impairment or both in addition to sensory processing difficulties associated with autism.
6. The child displays marked distress over changes, insistence on following routines and a persistent preoccupation with or attachment to objects. The child's capacity to use objects in an age-appropriate or functional manner may be absent, arrested or delayed. The child may have difficulty displaying a range of interests or imaginative activities or both. The child may exhibit stereotyped body movements.

**Intellectual Disability.** Wis. Admin. Code § PI 11.36(1)

Intellectual disability means significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills and manifested during the developmental period that adversely affects the child's educational performance. The IEP team may identify a child as having an intellectual disability if the child meets the following criteria:

1. The child has a standard score of 2 or more standard deviations below the mean on an individually administered intelligence test which takes into account the child's mode of communication and is developed to assess intellectual functioning using this mode. More than one intelligence test may be used to produce a comprehensive result.
2. The child has significant limitations in adaptive behavior that are demonstrated by a standards score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments that include interviews of the parents, tests, and observations of the child in adaptive behavior which are relevant to the child's age, including at least one of the following:
  - a. Conceptual skills;
  - b. Social adaptive skills;
  - c. Practical adaptive skills; or

- d. An overall composite score on a standardized measure of conceptual, social, and practical skills.
- 3.a. The child is age 3 through 5 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in the following areas: language development and communication, cognition, and general knowledge.
  - b. The child is age 6 through 21 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in general information and at least 2 of the following areas: written language, reading, and mathematics.

When it is determined that reliable and valid assessment results are not possible due to the child's functioning level or age, a standardized developmental scale or a body of evidence including informal measures shall be used to assess the child.

Upon re-evaluation, a child who met identification criterion for cognitive disability prior to September 1, 2015, and continues to demonstrate a need for special education under s. PI 11.35 (2), including specially designed instruction, is a child with a disability under this section.

***NOTE: Intellectual disabilities typically manifest before age 18. An etiology should be determined when possible, so the IEP team can use this information for program planning.***

**Emotional Behavioral Disability.** Wis. Admin. Code § PI 11.36(7)

Emotional behavioral disability, pursuant to Wis. Stat. § 115.76(5)(a)5, means social, emotional or behavioral functioning that so departs from the generally accepted, age appropriate ethnic or cultural norms that it adversely affects a child's academic progress, social relationships, personal adjustment, classroom adjustment, self-care or vocational skills. The evaluation team may identify a child as having an emotional behavioral disability if the child meets the preceding definition and meets all of the following:

- The child demonstrates severe, chronic and frequent behavior that is not the result of situational anxiety, stress or conflict.
- The child's behavior described under par.(a) occurs in school and in at least one other setting.
- The child displays any of the following:
  - Inability to develop or maintain satisfactory interpersonal relationships.
  - Inappropriate affective or behavioral response to a normal situation.
  - Pervasive unhappiness, depression, or anxiety.
  - Physical symptoms, pains or fears associated with personal or school problems.
  - Inability to learn that cannot be explained by intellectual, sensory, or health factors.
  - Extreme withdrawal from social interactions.
  - Extreme aggressiveness for long period of time.
  - Other inappropriate behaviors that are so different from children of similar age, ability, educational experiences and opportunities that the child or other children in a regular or special education program are negatively affected.

The evaluation team shall rely on a variety of sources of information, including systematic observations of the child in a variety of educational settings and shall have reviewed prior, documented interventions. If the evaluation team knows the cause of the disability under this paragraph, the cause may be, but is not required to be, included in the evaluation team's written evaluation summary.

The evaluation team may not identify or refuse to identify a child as a child with an emotional behavioral disability solely on the basis that the child has another disability, or is socially maladjusted, adjudged delinquent, a dropout, chemically dependent, or a child whose behavior is primarily due to cultural deprivation, familial instability, suspected child abuse or socio-economic circumstances, or when medical or psychiatric diagnostic statements have been used to describe the child's behavior.

**Hearing Impairment.** Wis. Admin. Code § PI 11.36(4)

Hearing impairment, including deafness, means a significant impairment in hearing, with or without amplification whether permanent or chronically fluctuating, that significantly adversely affects a child's educational performance including academic performance, speech perception and production, or language and communication skills. A current evaluation by an audiologist licensed under Wis. Stat. ch. 459 shall be one of the components for an initial evaluation of a child with a suspected hearing impairment.

**Specific Learning Disability.** Wis. Admin. Code § PI 11.36(6)

Specific learning disability, means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, motor disabilities, intellectual disabilities, emotional disturbance, cultural factors, environmental, or economic disadvantage.

The IEP team may identify a child as having a specific learning disability if both of the following apply:

1. Inadequate Classroom Achievement

Upon initial identification, the child does not achieve adequately for his or her age, or meet state-approved grade-level standards in one or more of the following eight areas of potential specific learning disabilities when provided with learning experiences and instruction appropriate for the child's age: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving.

A child's achievement is inadequate when the child's score, after intensive intervention, on one or more assessments of achievement is equal to or more than 1.25 standard deviations below the mean in one or more of the eight areas of potential specific learning disabilities. Assessments shall be individually administered, norm-referenced, valid, reliable, and diagnostic of impairment in the area of potential specific learning disabilities.

The 1.25 standard deviation requirement may not be used if the IEP team determines that the child cannot attain valid and reliable standard scores for academic achievement because of the child's test behavior, the child's language proficiency, an impairment of the child that interferes with the attainment of valid and reliable scores, or the absence of individually administered, norm-referenced, standardized, valid, and reliable diagnostic assessments of achievement appropriate for the child's age. If the IEP team makes such a determination, it shall document the reasons why it was not appropriate to consider standardized achievement testing, and shall document that inadequate classroom achievement exists in at least one of the eight areas of

potential specific learning disabilities using other empirical evidence.

The IEP team may consider scores within 1 standard error of the measurement of the 1.25 standard deviation criterion above to meet the inadequate classroom achievement criteria if the IEP team determines the child meets all other criteria.

2. Insufficient Progress. Upon evaluation, the child has made insufficient progress in one of the following areas:

- a. *Insufficient response to intensive, scientific, research-based or evidence-based intervention.* The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the eight areas of potential specific learning disabilities when using a process based on the child's response to intensive, scientific, research-based or evidence-based interventions.

Intensive interventions may be implemented prior to referral, or as part of an evaluation, for specific learning disability. The IEP team shall consider progress monitoring data from at least two intensive, scientific, research-based or evidence-based interventions, implemented with adequate fidelity and closely aligned to individual student learning needs. The median score of three probes is required to establish a stable baseline data point for progress monitoring. IEP teams shall use weekly or more frequent progress monitoring to evaluate rate of progress during intensive, scientific, research-based or evidence-based interventions.

Rate of progress during intensive interventions is insufficient when any of the following areas are true: the rate of progress of the referred child is the same or less than that of his or her same-age peers; the referred child's rate of progress is greater than that of his or her same-age peers but will not result in the referred child reaching the average range of his or her same-age peers' achievement for that area of potential disability in a reasonable period of time; or the referred child's rate of progress is greater than that of his or her same-age peers, but the intensity of the resources necessary to obtain this rate of progress cannot be maintained in general education.

If the LEA decides to use insufficient response to intensive, scientific, research-based or evidence-based intervention for any child being evaluated for specific learning disabilities enrolled in a school, the LEA shall use insufficient response to intensive, scientific, research-based or evidence-based interventions for all such evaluations of children enrolled in that school. At least ten days in advance of beginning to use insufficient response to intensive, scientific, research-based or evidence-based intervention in a school, the LEA will notify parents of all children enrolled in that school of the intent to use insufficient response to intensive, scientific, research-based or evidence-based intervention.

- b. *Significant discrepancy or insufficient progress in achievement as compared to measured ability.* LEAs are permitted to use this option until November 30, 2013.

Upon initial evaluation, the child exhibits a significant discrepancy between the child's academic achievement in any of the eight areas of potential specific learning disabilities and intellectual ability as documented by the child's composite score on a multiple score instrument or the child's score on a single score instrument.

The IEP team may base a determination of significant discrepancy only upon the results of individually administered, norm-referenced, valid, and reliable diagnostic assessment of achievement. A significant discrepancy means a difference between standard scores for ability and achievement equal to or greater than 1.75 standard errors of the estimate below expected achievement, using a standard regression procedure that accounts for the correlation between ability and achievement measures.

This regression procedure shall be used except when the IEP team determines that the child cannot attain valid and reliable standard scores for intellectual ability or achievement because of the child's test behavior, the child's language, another impairment of the child that interferes with the attainment of valid and reliable scores, or the absence of valid and reliable standardized, diagnostic tests appropriate for the child's age. If the IEP team makes such a determination, it shall document the reasons why it was not appropriate to use the regression procedure and shall document that a significant discrepancy exists, including documentation of a variable pattern of achievement or ability, in at least one of the eight areas of potential specific learning disabilities using other empirical evidence.

If the discrepancy between the child's ability and achievement approaches but does not reach the 1.75 standard error of the estimate cut-off for this subdivision paragraph, the child's performance in any of the eight areas of potential specific learning disabilities is variable, and the IEP team determines that the child meets all other criteria, the IEP team may consider that a significant discrepancy exists.

The IEP team may not identify a child as having a specific learning disability if the team's findings of inadequate classroom achievement or insufficient progress are primarily due to one of the following exclusionary factors:

- environmental, economic disadvantage or cultural factors;
- lack of appropriate instruction in reading, including in the essential components of reading instruction;
- lack of instruction in math;
- limited proficiency in English;
- any of the other impairments; and
- lack of appropriate instruction in the area(s) of potential specific learning disability under consideration.

The child must be systematically observed in the child's learning environment, including the general classroom setting when possible, to document the child's academic performance and behavior in any of the eight areas of potential specific learning disabilities.

The systematic observation of routine classroom instruction and monitoring of the child's performance in at least one of the eight areas of potential specific learning disabilities may be conducted before the child was referred for evaluation, or the systematic observation of the child's academic performance in at least one of the eight areas of potential specific learning disabilities shall be conducted after the child has been referred for an evaluation and parental consent is obtained. If the child is less than school age or out of school, at least one member of the IEP team will conduct a systematic observation of the child in an environment appropriate for a child of that age.

If the child has participated in a process that assesses the child's response to intensive, scientific,

research-based or evidence-based interventions, the IEP team will use information from a systematic observation of pupil behavior and performance in the area or areas of potential specific learning disability during intensive intervention for that area, conducted by an individual who is not responsible for implementing the interventions with the referred pupil.

In addition to all other determinations, the IEP team shall base its decision of whether a child has a specific learning disability on a comprehensive evaluation using formal and informal assessment data regarding academic achievement and learning behavior from sources such as standardized tests, error analysis, criterion referenced measures, curriculum-based assessments, pupil work samples, interviews, systematic observations, analysis of the child's response to previous interventions, and analysis of classroom expectations and curriculum.

Upon reevaluation, a child who met initial identification criteria and continues to demonstrate a need for special education, including specially designed instruction, is a child with a disability under this section, unless the exclusionary factors now apply. If a child with a specific learning disability performs to generally accepted expectations in the general education classroom without specially designed instruction, the IEP team shall determine whether the child is no longer a child with a disability.

**Orthopedic Impairment.** Wis. Admin. Code § PI 11.36(2)

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes but is not limited to impairments caused by congenital anomaly, such as clubfoot or absence of some member; impairments caused by disease such as poliomyelitis or bone tuberculosis; and impairments from other causes such as cerebral palsy, amputations, and fractures or burns that cause contractures.

**Other Health Impairment.** 34 CFR § 300.8 (c)(9); Wis. Admin. Code § PI 11.36(10)

Other health impairment means having limited strength, vitality or alertness due to chronic or acute health problems. The term includes but is not limited to asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome or acquired injuries to the brain caused by internal occurrences or degenerative conditions, which adversely affects a child's educational performance.

**Significant Developmental Delay.** Wis. Admin. Code § PI 11.36(11)

Significant developmental delay means children, age 3 through 9 years of age, who are experiencing significant delays in the areas of physical, cognition, communication, social- emotional or adaptive development.

All other suspected impairments are considered before identifying a child's primary impairment as significant developmental delay.

A child may be identified as having significant developmental delay when delays in development significantly challenge the child in two or more of the following five major life activities:

- Physical activity in gross motor skills such as the ability to move around and interact with the environment with appropriate coordination, balance and strength; or fine motor skills, such as manually controlling and manipulating objects such as toys, drawing utensils and other useful objects in the environment.
- Intellectual activity such as the ability to acquire, use and retrieve information as demonstrated by the level of imitation, discrimination, representation, classification, sequencing and

problem-solving skills often observed in a child's play.

- Communication activity in expressive language such as the production of age-appropriate content, form and use of language; or receptive language, such as listening, receiving and understanding language.
- Emotional activity such as the ability to feel and express emotions and develop a positive sense of oneself; or social activity, such as interacting with people, developing friendships with peers and sustaining bonds with family members and other significant adults.
- Adaptive activity, such as caring for his or her own needs and acquiring independence in age-appropriate eating, toileting, dressing and hygiene tasks.

Documentation of significant developmental delays and their detrimental effect upon the child's daily life shall be based upon qualitative and quantitative measures including all of the following:

- A developmental and basic health history including results from vision and hearing screenings and other pertinent information from parents and, if applicable, other caregivers or service providers.
- Observation of the child in his or her daily living environment such as the child's home with a parent or caregiver or an early education or care setting which includes peers who are typically developing. If observation in these settings is not possible, observation in an alternative setting is permitted.
- Results from norm-referenced instruments are used to document significant delays of at least one and one-half standard deviations below the mean in two or more of the developmental areas which correspond to the major life activities. If it is clearly not appropriate to use norm-referenced instruments, other instruments such as criterion-referenced measures are used to document the significant delays.

**Speech and Language Impairment.** Wis. Admin. Code § PI 11.36(5)

Speech or language impairment of speech or sound production, voice fluency, or language that significantly affects educational performance or social, emotional or vocational development. The evaluation team may identify a child as having a speech or language impairment if the child meets the preceding definition and meets any of the following criteria:

- The child's conversational intelligibility is significantly affected and the child displays at least one of the following:
  - The child performs on a norm referenced test of articulation or phonology at least 1.75 standard deviations below the mean for his or her chronological age.
  - Demonstrates consistent errors in speech sound production beyond the time when 90% of typically developing children have acquired the sound.
- One or more of the child's phonological patterns of sound are at least 40% disordered or the child scores in the moderate to profound range of phonological process use in formal testing and the child's conversational intelligibility is significantly affected.
- The child's voice is impaired in the absence of an acute, respiratory virus or infection and not due to temporary physical factors such as allergies, short term vocal abuse or puberty. The child exhibits atypical loudness, pitch, quality or resonance for his or her age and gender.
- The child exhibits behaviors characteristic of a fluency disorder.
- The child's oral communication or, for a child who cannot communicate orally, his or her primary mode of communication, is inadequate, as documented by all of the following:
  - Performance on norm referenced measures that is at least 1.75 standard deviations below the mean for chronological age.

- Performance in activities is impaired as documented by informal assessment such as language sampling, observations in structured and unstructured settings, interviews, or checklists.
- The child's receptive or expressive language interferes with oral communication or his or her primary mode of communication. When technically adequate norm referenced language measures are not appropriate as determined by the evaluation team to provide evidence of a deficit of 1.75 standard deviations below the mean in the area of oral communication, then two measurement procedures shall be used to document a significant difference from what would be expected given consideration to chronological age, developmental level, and method of communication such as oral, manual, and augmentative. These procedures may include additional language samples, criterion referenced instruments, observations in natural environments and parent reports.

The evaluation team may not identify a child who exhibits any of the following as having a speech or language impairment:

- Mild, transitory or developmentally appropriate speech or language difficulties that children experience at various times and to various degrees.
- Speech or language performance that is consistent with developmental levels as documented by formal and informal assessment data unless the child requires speech or language services in order to benefit from his or her educational programs in school, home, and community environments.
- Speech or language difficulties resulting from dialectical differences or from learning English as a second language, unless the child has a language impairment in his or her native language.
- Difficulties with auditory processing without a concomitant documented oral speech or language impairment.
- A tongue thrust which exists in the absence of a concomitant impairment in speech sound production.
- Elective or selective mutism or school phobia without a documented oral speech or language impairment.

The evaluation team shall substantiate a speech or language impairment by considering all of the following:

- Formal measures using normative data or informal measures using criterion referenced data.
- Some form of speech or language measures such as developmental checklists, intelligibility ratio, language sample analysis, minimal core competency.
- Information about the child's oral communication in natural environments.
- Information about the child's augmentative or assistive communication needs.

An evaluation team shall include a department-licensed speech or language pathologist and information from the most recent assessment to document a speech or language impairment and the need for speech or language services.

**Traumatic Brain Injury.** Wis. Admin. Code § PI 11.36(9)

Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; speech and language; memory; attention; reasoning; abstract thinking; communication; judgment; problem-solving; sensory, perceptual and



motor abilities; psychosocial behavior; physical functions; information processing; and executive functions, such as organizing, evaluating and carrying out goal-directed activities. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other impairments.

The results of standardized and norm-referenced instruments used to evaluate and identify a child as traumatic brain injured may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessment, achievement assessment, observation, work samples, and neuropsychological assessment data are considered to identify a child who exhibits total or partial functional disability or psychosocial impairment in one or more areas listed above. Before a child may be identified as traumatic brain injured, available medical information from a licensed physician is considered.

**Visual Impairment.** Wis. Admin. Code § PI 11.36(3)

Visual impairment means even after correction a child's visual functioning significantly adversely affects his or her educational performance. The evaluation team may identify a child as having a visual impairment after all of the following events occur:

- A certified teacher of the visually impaired conducts a functional vision evaluation which includes a review of medical information, formal and informal tests of visual functioning and the determination of the implications of the visual impairment on the educational and curricular needs of the child.
- An ophthalmologist or optometrist finds at least one of the following:
  - Central visual acuity of 20/70 or less in the better eye after conventional correction.
  - Reduced visual field to 50° or less in the better eye.
  - Other ocular pathologies that are permanent and irremediable.
  - Cortical visual impairment.
  - A degenerative condition that is likely to result in a significant loss of vision in the future.

An orientation and mobility specialist, or teacher of the visually impaired in conjunction with an orientation and mobility specialist, evaluates the child to determine if there are related mobility needs in home, school, or community environments.

**Developing, Reviewing and Revising IEPs**

**IEP in Effect.** At the beginning of each school year independent charter school has in effect an IEP for each enrolled child with a disability. The independent charter school ensures that a meeting to develop an IEP is conducted within 30 days of determination that the child is a child with a disability. The independent charter school ensures an IEP is in effect before special education and related services are provided to children with disabilities and is implemented as soon as possible following the meetings at which the IEP is developed. The independent charter school develops and implements an IEP for each child with a disability served by that school including children placed in or referred to a private school or facility by the independent charter school.

The independent charter school ensures each child's IEP is accessible to each regular education teacher, special education teacher, related service provider and any other service provider who is responsible for its implementation. The independent charter school ensures each teacher and provider

responsible for implementing a child's IEP is 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 for the child in accordance with the IEP. The independent charter school provides special education and related services to a child with a disability in accordance with the child's IEP.

The independent charter school gives a copy of the IEP to the child's parents at no cost.

34 CFR §§ 300.322(f), 300.323(a),(c)and(d)

**IEP Development.** 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, and the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

The IEP team considers the following special factors:

- ☐ the use of positive behavioral interventions and supports, and other strategies, to address that behavior in the case of a child whose behavior impedes the child's learning or that of others;
- the language needs of the child as such needs relate to the child's IEP in the case of a child with limited English proficiency;
- instruction in Braille and the use of Braille in the case of a child who is visually impaired 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;
- the communication needs of the child and, in the case of a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level and full range of needs including opportunities for direct instruction in the child's language and communication mode; and
- whether the child requires assistive technology devices and services.

If when considering these special factors, the IEP team determines a child needs a particular device or service in order to receive a free appropriate public education, the IEP team includes a statement to that effect in the IEP.

The child's regular education teacher, as a member on the IEP team, participates in the development of the IEP of the child to the extent appropriate. The teacher participates in the determination of appropriate positive behavioral interventions and supports and other strategies, supplementary aids and services, program modifications and supports for school personnel. 34 CFR § 300.324(a)

**IEP Review and Revision.** The IEP team reviews the child's IEP periodically, but at least once a year, to determine whether the annual goals for the child are being achieved and revises the IEP as appropriate to address:

- any lack of expected progress toward the annual goals and in the general education curriculum;
- the results of any reevaluation;
- information about the child provided to or by the parents;
- the child's anticipated needs; or
- other matters.

In conducting a review of the child's IEP, the IEP team considers the special factors listed above under the development of the IEP section.

To the extent appropriate, the regular education teacher of the child, as a member on the IEP team, participates in the review and revision of the IEP of the child.

If a participating agency, other than the independent charter school fails to provide transition services described in the IEP, the independent charter school reconvenes the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP. 34 CFR § 300.324(b) and (c)

**Amendments to the IEP.** In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the independent charter school may agree not to convene an IEP team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child's current IEP. If changes are made without a meeting, the independent charter school informs the child's IEP team of those changes.

Changes to the IEP may be made by either the entire IEP Team at an IEP team meeting or as described above by amending the IEP rather than redrafting the entire IEP. Upon request the independent charter school gives the child's parent a copy of the revised IEP with the amendments incorporated. 34 CFR § 300.324(a)(4) and (6)

**IEP Content.** The IEP for each child with a disability includes:

- a statement of the child's present levels of academic achievement and functional performance including how the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children) 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 academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general education curriculum and to meet each of the child's other educational needs that result from the child's disability;
- for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided to enable the child to:
  - advance appropriately toward attaining the annual goals;
  - be involved in and make progress in the general education curriculum and to participate in extracurricular and other non academic activities; and
  - be educated and participate with other children with disabilities and nondisabled children in the activities described above;
- an explanation of the extent to which the child will not participate with nondisabled children in regular classes in the general education curriculum and in extracurricular and other nonacademic activities;
- a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance on state- wide or independent charter school assessments;

- if the IEP team determines a child must take an alternate assessment instead of participating in a particular regular state-wide or independent charter school assessment of student achievement, a statement indicating why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;
- the projected date for the beginning of the services and modifications described in the IEP, and the anticipated frequency, duration and location of those services and modifications;
- beginning not later than in the first IEP that will be in effect when the child is 16 or younger if determined appropriate by the IEP team and updated annually thereafter until the child is no longer eligible for special education and related services, a statement of appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and a description of the transition services, including courses of study, needed to assist the child in reaching those goals;
- beginning at least one year before the child attains the age of 18 a statement that the student has been informed of the parental rights that will transfer to the pupil under special education law on reaching the age of 18;
- a description of how the child's progress toward attaining the annual goals will be measured; and
- ☐ a description of when periodic reports, such as quarterly reports or other periodic reports issued concurrent with report cards, on the child's progress toward attaining the annual goals will be provided to the parents. 34 CFR § 300.320

### **Placement**

The independent charter school ensures that a full and individual initial evaluation is conducted before the initial provision of special education and related services to a child with a disability and an educational placement is provided to implement each child's IEP. Placement decisions are made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The placement is based upon and implements the child's IEP, is determined at least annually, and in uniformity with the least restrictive environment provisions described below. 34 CFR §§ 300.301(a); 300.116(b)

**Least Restrictive Environment.** The independent charter school ensures the following:

- Unless the IEP requires a different arrangement, the child is educated in the school he or she would attend if not disabled.
- The placement is provided as close as possible to the child's home.
- In selecting the least restrictive environment consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.
- 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 children who are not disabled.
- Special classes, separate schooling or any other removal of a child from the regular educational environment occurs only when the nature or severity of a child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- The independent charter school ensures a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

- The independent charter school ensures a continuum of alternative placements is available and will be used that includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.
- The continuum makes provision for supplementary services (such as resource room or itinerant instruction) that are provided in conjunction with regular class placement.
- ☐ The independent charter school provides or arranges for nonacademic and extracurricular services and activities including meals and recess periods so each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The independent charter school ensures that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. 34 CFR §§ 300.114 through 300.117

**Notice of Placement.** Following the development of a child's IEP a written notice, that meets the content requirements of notice as described in the notice section contained in these policies and is given to the child's parent(s) a reasonable amount of time before implementing the IEP.

34 CFR § 300.503

**Consent For Placement.** The independent charter school obtains informed and written parental consent prior to the initial provision of special education and related services to a child with a disability in a program providing special education and related services.

The independent charter school makes reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. If the parent of a child fails to respond or refuses to consent to services, the independent charter school cannot provide special education or related services and cannot use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child.

If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the independent charter school will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the independent charter school requests consent; and is not required to convene an IEP Team meeting or develop an IEP for the child for the special education and related services for which the independent charter school requests such consent.

34 CFR § 300.300(b)

**Parent Revocation of Consent:**

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district:

- Will stop providing special education and related services to the child, but before doing so, will provide prior written notice in accordance with 34 CFR § 300.503;
- Will not use special education dispute resolution procedures, including mediation and due process, in order to obtain agreement or a ruling that the services may be provided to the child;
- Is not considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

- Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services;
- Is not required to amend the child's education records to remove any reference to the child's receipt of special education and related services because of the revocation of consent.

34 CFR § 300.300

### **Related Services: Physical and Occupational Therapy**

If a child is suspected to need occupational therapy or physical therapy or both, the IEP team includes an appropriate therapist.

Wis. Stats. § 448; Wis. Admin. Code § OT 4; Wis. Admin. Code § PT 5

**Physical Therapists' Licensure and Service Requirements.** The independent charter school ensures the following:

- Physical therapists are licensed by the Department of Public Instruction as school physical therapists.
- The school physical therapist has medical information from a licensed physician regarding a child before the child receives physical therapy.

34 CFR § 300.18; Wis. Stats. §§118.19(1), 118.40(2r)(b)2., 448.51; Wis. Admin. Code §§ PI 34.34(16) and PT 5

**Responsibility of A School Physical Therapist.** The independent charter school ensures the following:

- A school physical therapist conducts all physical therapy evaluations and reevaluations of a child, participates in the development of the child's IEP, and develops physical therapy treatment plans for the child.
- A school physical therapist is not represented by a school physical therapist assistant on an IEP team.

Wis. Stats. §§ 448.50(4) and 448.56(1); Wis. Admin. Code § PT 5

### **Delegation and Supervision of Physical Therapy.**

- The school physical therapist delegates to a school physical therapist assistant only those portions of a child's physical therapy which are consistent with the school physical therapist assistant's education, training and experience.
- The school physical therapist supervises the physical therapy provided by a school physical therapist assistant. The school physical therapist develops a written policy and procedure for written and oral communication to the physical therapist assistant. The policy and procedure includes a specific description of the supervisory activities undertaken for the school physical therapist assistant which includes either of the following levels of supervision:
  - the school physical therapist has daily, direct contact on the premises with the school physical therapist assistant; or
  - the school physical therapist has direct, face-to-face contact with the school physical therapist assistant at least once every 14 calendar days. Between direct contacts the school physical therapist is available by telecommunication. The school physical therapist providing general supervision provides an onsite reevaluation of each child's physical therapy a minimum of one time per calendar month or every tenth day of physical therapy, whichever is sooner, and adjusts the physical therapy as appropriate.
- A full-time school physical therapist supervises no more than two full-time equivalent school

physical therapist assistant positions which may include no more than three physical therapist assistants.

- Acts undertaken by a school physical therapist assistant are considered acts of the supervising physical therapist who has delegated the act.

Wis. Stats. §. 448.56; Wis. Admin. Code § PT 5

**School Physical Therapist Assistants' Qualifications and Supervision of Physical Therapy.** The independent charter school ensures the following:

- Physical therapist assistants are licensed by the Department of Public Instruction as school physical therapist assistants.
- The school physical therapist assistant providing physical therapy to a child is supervised by a school physical therapist as specified in these policies and in accordance with Wis. Admin. Code § PT 5.

Wis. Stats. §§118.19(1), 118.40(2r)(b)2., 448.535; Wis. Admin. Code §§ PI 11.24(8) PI 34.34(15) and PT 5

**Occupational Therapists' Licensure and Service Requirements.** The independent charter school ensures the following:

- Occupational therapists are licensed by the Department of Public Instruction as school occupational therapists.
- The school occupational therapist has medical information before a child is evaluated for occupational therapy.

34 CFR § 300.503; Wis. Stats. §§118.19(1), 118.40(2r)(b)2., 448.961(1); Wis. Admin. Code §§ PI 34.34(14) and OT 4

**Responsibility of a School Occupational Therapist.** The independent charter school ensures the following:

- A school occupational therapist conducts all occupational therapy evaluations and reevaluations of a child, participates in the development of the child's IEP and develops occupational therapy treatment plans for the child.
- A school occupational therapist may not be represented by a school occupational therapy assistant on an IEP team.

Wis. Stats. § 448.96; Wis. Admin. Code § OT 4

**Delegation and Supervision of Occupational Therapy.** The independent charter school ensures the following:

- The school occupational therapist may delegate to a school occupational therapy assistant only those portions of a child's occupational therapy which are consistent with the school occupational therapy assistant's education, training and experience.

- The school occupational therapist supervises the occupational therapy provided by a school occupational therapy assistant. The school occupational therapist develops a written policy and procedure for written and oral communication to the occupational therapist assistant. The policy and procedure includes a specific description of the supervisory activities undertaken for the school occupational therapist assistant which includes either of the following levels of supervision:
  - the school occupational therapist has daily, direct contact on the premises with the school occupational therapy assistant or
  - the school occupational therapist has direct face-to-face contact with the school occupational therapy assistant at least once every 14 calendar days. Between direct contacts the school occupational therapist is available by telecommunication. The school occupational therapist providing general supervision provides an onsite reevaluation of each child's occupational therapy a minimum of every two weeks, and adjusts the occupational therapy as appropriate.
- A full-time school occupational therapist supervises no more than two full-time equivalent school occupational therapy assistant positions which includes no more than three occupational therapy assistants;
- An act undertaken by a school occupational therapy assistant is considered the act of the supervising school occupational therapist who has delegated the act.

Wis. Stats. § 448.96(6); Wis. Admin. Code § OT 4

**School Occupational Therapy Assistants' Qualifications and Supervision.** The independent charter school ensures the following:

- Occupational therapy assistants are licensed by the Department of Public Instruction as school occupational therapy assistants.
- The school occupational therapy assistant providing occupational therapy to a child is supervised by a school occupational therapist as specified in these policies.

Wis. Stats. §§ 448.96(6) and 448.961(2); Wis. Admin. Code §§ PI 34.34(15) and OT 5

### **Transition from Birth to Three Programs**

The independent charter school participates with birth to three programs to ensure a smooth and effective transition of children with disabilities from the birth to three program for infants and toddlers with disabilities to preschool programs, if any, operated by the independent charter school. The independent charter school participates in transition planning conferences arranged by birth to three programs.



For children participating in birth to three programs who will participate in a special education preschool program operated by the independent charter school, the independent charter school has an IEP in effect by the child's third birthday.

If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP will begin.

34 CFR §§ 300.124, 300.101(b)

### **Transfer Pupils**

**In-State Transfer Students.** When a child with a disability (who had an IEP that was in effect in a previous Wisconsin local educational agency) enrolls in this independent charter school within the same school year, this independent charter school (in consultation with the parents) provides FAPE to the child, including services comparable to those described in the child's IEP from the previous agency, until this independent charter school either:

- Adopts the child's IEP from the previous public agency; or
- Develops, adopts, and implements a new IEP.

The independent charter school adopts the evaluation and the eligibility determination of the sending local educational agency or conducts an evaluation and eligibility determination of the transfer pupil. The independent charter school does not adopt the evaluation and eligibility determination or the IEP of the sending local educational agency if the evaluation and eligibility determination or the IEP do not meet federal and applicable state requirements.

34 CFR § 300.323(e)

**Out-of-State Transfer Students.** When a child with a disability (who had an IEP that was in effect in a previous public agency in another State) enrolls in this independent charter school within the same school year, this independent charter school, in consultation with the parents, provides the child with FAPE, including services comparable to those described in the child's IEP from the out-of-state agency, until this independent charter school:

- Conducts an evaluation and determines eligibility if determined to be necessary by this independent charter school; and
- Develops, adopts and implements a new IEP, if appropriate.

34 CFR § 300.323(f)

**Transmittal of Records.** When this independent charter school receives a transfer pupil with a disability and does not receive the pupil's records from the child's previous public agency, this independent charter school takes reasonable steps, to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child from the previous public agency in which the child was enrolled.

When this independent charter school receives such a request for records for a transfer pupil, this independent charter school promptly transfers the pupil's records to the requesting public agency.  
34 CFR § 300.323(g)

### **Due Process Procedures**

**Opportunity To Examine Records and Parent Participation in Meetings.** The parents of a child with a disability are afforded, in accordance with the policies in the "Confidentiality" section of this document, an opportunity to:

- inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child; and
- participate in meetings with respect to the identification, evaluation and educational placement of the child and the provision of a free appropriate public education to the child.

The independent charter school notifies parents consistent with the policies in the *Parent Participation in IEP Team Meetings* section of these policies to ensure that parents of children with disabilities have the opportunity to participate in meetings described above. The term "meeting" in this policy does not include informal or unscheduled conversations involving agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that independent charter school personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The parent of a child with a disability is a member of the group that makes decisions on the educational placement of their child. In implementing this policy, the independent charter school uses procedures consistent with the policies described above. 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 independent charter school uses other methods to ensure their participation including individual or conference telephone calls, or video conferencing. A placement decision may be made by the group without the involvement of the parent if the independent charter school is unable to obtain the parent's participation in the decision. In this case, the independent charter school must have a record of its attempt to ensure parent involvement.

CFR §§ 300.501, 300.322

**Notice.** The independent charter school ensures a child's parents are provided prior written notice a reasonable time before it proposes to initiate or change, or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child. The notice contains:

- a description of the action proposed or refused;

- an explanation of why the independent charter school proposed or refused to take action;
- a statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- a description of any other options considered and the reason(s) they were rejected;
- a description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action;
- a description of any other factors relevant to the proposal or refusal; and
- sources for parents to contact to obtain assistance in understanding special education law.

Each prior written notice is written in language understandable to the general public, in the parent's native language or other means of communication unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the independent charter school takes steps to ensure the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; the parent understands the content of the notice; and there is written evidence that these requirements have been met.

34 CFR § 300.503

**Procedural Safeguards Notice.** A copy of the procedural safeguards available to the parents of a child with a disability is given to the parents one time a school year, except that a copy is given to the parents:

- upon initial referral or parent request for evaluation;
- upon receipt of the first IDEA State complaint and the first due process complaint;
- on the date on which the decision is made to make a disciplinary removal that constitutes a change of placement;
- upon request by a parent.

The procedural safeguards notice includes a full explanation of the procedural safeguards available under special education law written so as to be easily understood by the general public and in the native language of the child's parents unless it is clearly not feasible to do so, relating to:

- independent educational evaluation;
- prior written notice;
- parental consent;
- access to educational records;
- opportunity to present and resolve complaints through the due process complaint and State IDEA complaint procedures, including:

- the time period in which to file a complaint;
  - the opportunity for the agency to resolve the complaint; and
  - the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.
- the child's placement during pendency of due process proceedings;
  - procedures for pupils who are subject to placement in interim alternative educational settings under 20 USC § 1415(k);
  - requirements for the unilateral placement by parents of pupils in private schools at public expense;
  - availability of mediation;
  - due process hearings including requirements for disclosure of evaluation results and recommendations;
  - civil actions, including the time period in which to file those actions; and
  - attorney fees.
- 34 CFR § 300.504

**Independent Educational Evaluations.** A parent may obtain an independent educational evaluation of his or her child. If a parent requests information from the independent charter school about an independent evaluation, the independent charter school provides the parent with information about where an independent evaluation may be obtained and the agency criteria applicable for independent educational evaluations. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the independent charter school. "Public expense" means the independent charter school either pays for the full cost of the evaluation or ensures the evaluation is otherwise provided at no cost to the parent.

If a parent requests an independent educational evaluation at public expense, the independent charter school, without unnecessary delay, either initiates a due process hearing to show its evaluation is appropriate or ensures an independent educational evaluation is provided at public expense unless the independent charter school demonstrates in a due process hearing that the evaluation obtained by the parent did not meet independent charter school criteria.

If a parent requests an independent educational evaluation, the independent charter school may ask for the parent's reason why he or she objects to the public evaluation. However, the independent charter school does not require the explanation and does not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation. A parent is entitled to only one independent educational evaluation at public expense each time the independent charter school conducts an evaluation with which the parent disagrees.

If the independent charter school initiates a hearing and the final decision is that the independent charter school's evaluation is appropriate, the parent still has the right to an independent educational evaluation but not at public expense. If the parent obtains an independent educational

evaluation at public expense or shares with the independent charter school an evaluation obtained at private expense, the results of the evaluation must be considered by the independent charter school, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. When 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, is the same as the criteria that the independent charter school uses when it initiates an evaluation to the extent that those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described above, the independent charter school does not impose conditions or timelines related to obtaining and independent educational evaluation at public expense.

34 CFR § 300.502

**Surrogate Parents.** The independent charter school ensures the rights of a child are protected if no parent can be identified; the independent charter school, after reasonable efforts, cannot locate a parent; the child is a ward of the State; or the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act. In such instances, the independent charter school assigns an individual to act as a surrogate for the parents. The independent charter school has a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child's case.

The independent charter school ensures that a person selected as a surrogate parent is not an employee of the Department of Public Instruction, the independent charter school, or any other agency that is involved in the education or care of the child; has no personal or professional interest that conflicts with the interest of the child he or she represents; and has knowledge and skills that ensure adequate representation of the child. A person who otherwise qualifies to be a surrogate parent is not an employee of the independent charter school solely because he or she is paid by the independent charter school to serve as a surrogate parent.

For an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate parent can be appointed that meets all of the requirements for selection of surrogate parents.

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

The independent charter school makes reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after it determines that one is needed.

34 CFR § 300.519

**Mediation.** When an independent charter school participates in a mediation under the Wisconsin Special Education Mediation System, the independent charter school:

- keeps discussion that occurs during mediation confidential;
- does not use discussion that occurs during mediation as evidence in any subsequent hearing or civil proceeding;
- does not record a mediation session unless both parties and the mediation agree;
- may be represented by two individuals, unless the parties agree to additional representatives;
- may withdraw from mediation at any time;
- may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator;
- assumes responsibility with the parents for additional compensation if the parties agree that the amount of the mediator's compensation should be greater than the Wisconsin Special Education Mediation System schedule allows; and
- assumes responsibility with the parents for the compensation of a mediator who is not on the mediation system roster.

If the parties resolve the dispute or a portion of the dispute through the mediation process, the parties must execute a legally binding agreement. The agreement is reduced to writing, signed by the parties, and a copy is given to each party. The agreement states that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The agreement is legally binding upon the parties and is enforceable in circuit court or in a district court of the United States. The agreement is signed by a representative of the independent charter school who has the authority to bind the independent charter school.

The Wisconsin Mediation System is voluntary on the part of the parties and the local educational agency does not use it to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under special education law.

34 CFR § 300.506, Wis. Stat. § 115.797

**Due Process Hearings.** When the independent charter school files a request for a due process hearing, it will provide a copy of the hearing request to the other party, a copy to the Department of Public Instruction and will keep the hearing request confidential.

If the parent or the child's attorney files a written request for a due process hearing, the independent charter school will:

- inform the parent of any free or low cost legal and other relevant services available in the area;
- (unless it has previously sent a written notice to the parent regarding the item in dispute) within 10 days of receiving the hearing request, provide a written response that includes an explanation of why the agency proposed or refused to take the action raised in the hearing request; a description of other options that the IEP team considered and the reasons why

those options were rejected; a description of each evaluation procedure, assessment, record, or report the independent charter school used as the basis for the proposed or refused action; and, a description of the other factors that are relevant to the agency's proposed or refused action;

- within 10 days of receiving the request, send a written response that addresses the issues raised in the hearing request; and
- (except when the parents and independent charter school agree in writing to waive a resolution meeting or use mediation) within 15 days of receiving the request and before the hearing is conducted, convene a resolution meeting with the child's parents, a representative of the independent charter school who is authorized to make decisions on behalf of the agency, and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the hearing request as determined by the parent and the agency. If the meeting resolves any subject matter of the hearing request, the parents and the independent charter school will execute and sign a legally binding agreement. The agreement is enforceable in any state court or in a district court of the United States.

When the independent charter school is a party to a due process hearing under Wis. Stat. § 115.80, the independent charter school:

- pays for the cost of the hearing;
- pays for the cost of an independent educational evaluation ordered by the hearing officer;
- discloses to all other parties, at least five business days before a hearing is conducted (other than an expedited hearing under the provisions of the Individuals with Disabilities Education Act), all evaluations completed by that date and recommendations based upon the independent charter school evaluations that the independent charter school intends to use at the hearing; and
- except as provided in the "discipline" section of the independent charter school policies, the independent charter school does not change the educational placement of a child during the pendency of a hearing or judicial proceedings unless the child's parents agree to the change. If the child is applying for initial admission to a public school, the child, with the consent of the parents, is placed in the public school program until all due process proceedings have been completed.

Before filing a civil action under any federal law seeking relief that is also available under special education law, the independent charter school exhausts the due process hearing procedures to the same extent as would be required had the action been brought under special education law .

34 CFR §§ 300.502(e), 300.507, 300.508, 300.510, 300.512 and 300.518 Wis. Stat. § 115.80

**Transfer of Rights at Age of Majority.** When a child with a disability reaches the age of 18, unless he or she has been determined to be incompetent as defined by state law, the

independent charter school transfers the rights of parents under the Individuals with Disabilities Education Act to the individual pupil. The independent charter school provides any required notices to both the parents and the adult pupil. The independent charter school notifies both the parents and the individual pupil of the transfer of rights.

34 CFR § 300.520

### **Discipline Procedures**

**Authority of School Personnel.** School personnel consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the discipline procedures of the Individuals with Disabilities Education Act, is appropriate for a child with a disability who violates a code of school conduct.

School personnel are authorized to remove a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting (IEAS), another setting, or suspension for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities) consistent with state requirements relating to the suspension of pupils.

A child with a disability may be suspended for more than ten consecutive school days only if the conduct is not a manifestation of the child's disability and the requirements provided below are followed.

School personnel are authorized to remove a child with a disability for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

If a child with a disability has been removed from his or her placement for 10 school days or less, the independent charter school provides services to the child if the independent charter school also provides services to children without disabilities who have been similarly removed.

For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if the removal is for more than ten consecutive school days or the child is subjected to a series of removals that constitute a pattern because,

- the series of removals total more than ten school days in a school year;
- the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- such additional factors as the length of each removal, the total amount of time the child is removed and the proximity of the removals to one another.

The independent charter school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.



After a child with a disability has been removed from the current placement for ten school days in the same school year during any subsequent days of removal the independent charter school provides services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the appropriate services.

The independent charter school applies the relevant disciplinary procedures for children without disabilities to a child with a disability only if, as a result of the manifestation determination review, the independent charter school determines the behavior of the child was not a manifestation of the child's disability. The independent charter school applies the relevant disciplinary procedures in the same manner in which they would be applied to children without disabilities.

A child with a disability whose behavior is determined not to be a manifestation of the child's disability continues to be provided education services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

34 CFR §§ 300.530; 300.536

**Placement in Interim Alternative Educational Settings.** School personnel are authorized to remove a child with a disability to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if:

- the child carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the state or a local educational agency;
- the child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the state or a local educational agency; or
- the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or a local educational agency.

34 CFR § 300.530(g)

The IEP team determines the interim alternative educational setting and the appropriate services to be provided. A child placed in an interim alternative educational setting:

- continues to receive educational services to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

- if the behavior is not a manifestation of the child’s disability, receives, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur;
- if the behavior is a manifestation of the child’s disability, the child receives either:
  - a functional behavior assessment, unless the independent charter school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implemented a behavioral intervention plan, or
  - if a behavioral intervention plan already has been developed, reviews the behavioral intervention plan, and modifies it, as necessary, to address the behavior.

34 CFR §§ 300.530, 300.531

On the date on which the decision is made to place the child in an interim alternative educational setting or to make a removal that constitutes a change of placement for violating a code of conduct, the independent charter school notifies the parents of that decision and provides the parents a procedural safeguards notice.

34 CFR § 300.530(h)

When the independent charter school determines that maintaining the current placement of a child with a disability is substantially likely to result in injury to the child or others, the agency may request an expedited due process hearing to change the child’s placement to an appropriate interim alternative educational setting for not more than 45 school days. The request for a due process hearing may be repeated if the independent charter school believes that returning the child to the original placement is substantially likely to result in injury to the child or others.

34 CFR § 300.532

**Manifestation Determination Reviews.**

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the, independent charter school the parent, and relevant members of the child's IEP team (as determined by the parent and the independent charter school):

- review all relevant information in the student's file, including the child's IEP;
- any teacher observations; and
- any relevant information provided by the parents.

The conduct is determined to be a manifestation of the child's disability if the independent charter school, the parent, and relevant members of the child's IEP team determine that either:

- the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

- the conduct in question was the direct result of the independent charter school's failure to implement the IEP.

If the independent charter school, the parent, and relevant members of the child's IEP team determine the conduct in question was the direct result of the independent charter school's failure to implement the IEP, the independent charter school takes immediate steps to remedy those deficiencies.

If the conduct was a manifestation of the child's disability, the IEP team returns the child to the placement from which the child was removed, unless the child has been placed in an interim alternative educational setting, or the parent and independent charter school agree to a change of placement as part of the modification of the behavioral intervention plan, and either:

- conducts a functional behavioral assessment, unless the independent charter school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implements a behavioral intervention plan for the child; or
- if a behavioral intervention plan already has been developed, the IEP team reviews the behavioral intervention plan, and modifies it, as necessary, to address the behavior.

If the conduct was not a manifestation of the child's disability, the child receives, as appropriate:

- a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur; and
- educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

CFR § 300.530(d)(e) and (f)

### **Placement During Appeals.**

The parent of a child with a disability who disagrees with any decision regarding a disciplinary change in placement or a manifestation determination, or the independent charter school believes that maintaining the current placement is substantially likely to result in injury to the child or others may appeal the decision by requesting a hearing. During such appeal, the child will remain in the placement to which the child was removed pending the decision of the hearing officer or until the expiration of the disciplinary placement, whichever occurs first. The parent and the independent charter school may agree to a different placement during the appeal.

Unless independent charter school and the parents agree in writing to waive the resolution meeting or agree to use the mediation process, the independent charter school conducts a resolution meeting within seven days of receiving notice of the parent's due process complaint.

34 CFR §§ 300.532; 300.533

**Protections for Children Not Yet Eligible For Special Education and Related Services.** The independent charter school provides the protections asserted for a child under the Individuals with Disabilities Education Act-Part B to a child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of conduct of the independent charter school if the independent charter school had knowledge (as determined in accordance with the provisions below) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

The independent charter school has knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- the parent of the child expressed concern in writing to supervisory or administrative personnel of the independent charter school, or a teacher of the child, that the child is in need of special education and related services;
- the parent of the child requested a special education evaluation of the child; or
- the teacher of the child, or other personnel of the independent charter school, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the school or to other supervisory personnel of the school.

The independent charter school does not have knowledge that a child is a child with a disability if:

- the parent of the child has not allowed an special education evaluation of the child or has refused special education services; or
- the independent charter school conducted an evaluation and determined that the child was not a child with a disability.

If the independent charter school does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the independent charter school may subject the child to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors.

34 CFR § 300.534

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation is conducted in an expedited manner. Until the evaluation is completed, the independent charter school maintains the child in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the independent charter school's evaluation and information provided by the parents, the independent charter school provides special education and related services in accordance with the Individuals with Disabilities Education Act-Part B and applicable state law, including legal

requirements relating to discipline and the provision of a free appropriate public education to children with disabilities.

34 CFR § 300.534

When the independent charter school reports a crime committed by a child with a disability, it ensures copies of the child's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom it reports the crime. The independent charter school transmits copies of the child's special education and disciplinary records only to the extent that the Family Educational Rights and Privacy Act permit transmission.

34 CFR § 300.535

### **Confidentiality of Information**

**Notice to Parents.** The independent charter school notifies parents before any major child identification, location or evaluation activity. The notice is published or announced in newspapers or other media, or both, with circulation adequate to notify parents of children attending the independent charter school of the activity.

34 CFR § 300.612(b)

The independent charter school gives notice that is adequate to fully inform parents about the confidentiality of personally-identifiable information requirements in the law, including:

- a description of the extent that the notice is given in the native languages of the various population groups in the independent charter school;
- a description of the children on whom personally-identifiable information is maintained, the types of information sought, the methods the independent charter school intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- a summary of the policies and procedures that independent charter school follow regarding storage, disclosure to third parties, retention, and destruction of personally-identifiable information; and
- a description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and the implementing regulations.

34 CFR § 300.612(a)

**Access Rights.** The independent charter school permits parents to inspect and review any education records relating to their children that are collected, maintained or used by the school under the Individuals with Disabilities Education Act-Part B. The independent charter school complies with a request without unnecessary delay and before any meeting regarding an IEP, or

any due process hearing or resolution session, and in no case more than 45 days after the request has been made.

The right to inspect and review education records includes:

- the right to a response from the independent charter school to reasonable requests for explanations and interpretations of the records;
- the right to have copies of the records upon request; and
- the right to have a representative of the parent inspect and review the records.

The independent charter school presumes that the parent has authority to inspect and review records relating to his or her child unless the independent charter school has been advised that the parent does not have authority under state law.

34 CFR § 300.613

The independent charter school keeps a record of parties obtaining access to education records collected, maintained or used under the Individuals with Disabilities Education Act (except access by parents and authorized employees of the independent charter school), including the name of the party, the date access was given and the purpose for which the party is authorized to use the records.

34 CFR § 300.614

The independent charter school provides parents on request a list of the types and locations of education records collected, maintained or used by the school. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

34 CFR §§ 300.615, 300.616

The independent charter school does not charge a fee for copies of records that are made for parents if the fee effectively prevents the parents from exercising their right to inspect and review those records. The independent charter school does not charge a fee to search for or to retrieve information in educational records.

34 CFR § 300.617

**Amendment of Records at Parent's Request.** A parent who believes information in the education records collected, maintained or used under the Individuals with Disabilities Education Act is inaccurate or misleading or violates the privacy or other rights of the child may request the independent charter school to amend the information. The independent charter school decides whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the independent charter school decides to refuse to amend the information in accordance with the request, it informs the parent of the refusal and advises the parent of the right to an educational records hearing.

34 CFR § 300.618

The independent charter school, on request, provides an opportunity for a hearing to challenge information in education records to ensure it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child.

34 CFR § 300.619

The hearing is conducted according to the procedures described in the Family Educational Rights and Privacy Act implementing regulations. If, as a result of the hearing, the independent charter school decides the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and so informs the parent in writing. If, as a result of the hearing, the independent charter school decides the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it informs the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the independent charter school.

34 CFR §§ 300.619-621

Any explanation placed in the records of the child is maintained as part of the records of the child as long as the record or contested portion is maintained. If the records of the child or the contested portion are disclosed to any party, the explanation is also disclosed to the party.

34 CFR § 300.620(c)(2)

**Consent.** Parental consent is obtained before personally-identifiable information is disclosed, unless the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act, 34 CFR § 99. Parental consent is not required before personally-identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the Individuals with Disabilities Education Act with the following exception:

- Parental consent or the consent of an eligible child who has reached the age of majority under state law, is obtained before personally-identifiable information is released to officials of participating agencies providing or paying for transition services.

34 CFR § 300.622

**Safeguards.** The independent charter school protects the confidentiality of personally-identifiable information at collection, storage, disclosure and destruction stages. One official at the independent charter school assumes responsibility for ensuring the confidentiality of any personally-identifiable information. All persons collecting or using personally-identifiable information receive training or instruction regarding the state's policies, and procedures described in the regulations implementing the Individuals with Disabilities Education Act and the Family Educational Rights and Privacy Act. The independent charter school maintains, for public inspection, a current listing of the names and positions of those employees within the school who may have access to personally-identifiable information.

**Destruction of Information.** The independent charter school informs parents when personally-identifiable information collected, maintained or used under the Individuals with Disabilities Education Act is no longer needed to provide educational services to the child. The information is destroyed at the request of the parents. However, a permanent record of the student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

34 CFR § 300.624

**Transfer of Confidentiality Rights at Age of Majority.** Under the regulations for the Family Educational Rights and Privacy Act, the rights of parents regarding education records are transferred to the student at age 18. When the rights accorded to parents under the Individuals with Disabilities Education Act are transferred to a student who reaches the age of majority, the rights regarding educational records in the Individuals with Disabilities Education Act also transfer to the student. However, the independent charter school provides any notice required under the Individuals with Disabilities Education Act to the student and the parents.

34 CFR § 300.625(b) and (c)

**Parentally Placed Children in Private Schools When FAPE is At Issue**

The independent charter school 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 independent charter school made FAPE available to the child and the parents elected to place the child in a private school or facility. The child is then considered a parentally placed private school child with a disability.

34 CFR § 300.148

**Children with Disabilities in Private Schools Placed or Referred by the Independent Charter School**

When, pursuant to an IEP, a child with a disability is or has been placed in or referred to a private school or facility by the independent charter school as a means of providing special education and related services, the independent charter school ensures that the child:

- is provided special education and related services in conformance with an IEP that meets the requirements of the law and at no cost to the parents;
- is provided an education that meets the standards that apply to education provided by the Department of Public Instruction and local educational agencies including the



requirements of Individuals with Disabilities Education Act, except that staff are not required to meet the highly qualified teacher requirements; and

- has all of the rights of a child with a disability who is served by a public agency.
- 34 CFR § 300.146

**Development, review, and revision of the IEP.** Before the independent charter school places a child with a disability in, or refers a child to, a private school or facility, the independent charter school initiates and conducts a meeting to develop an IEP for the child in accordance with the law. The independent charter school ensures a representative of the private school or facility attends the meeting. If the representative cannot attend, the independent charter school uses other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the independent charter school. If the independent charter school permits a private school or facility to initiate and conduct meetings to review and revise IEPs, the independent charter school ensures the parents and a independent charter school representative are involved in any decisions about the IEP and agree to any proposed changes in the IEP before those changes are implemented. Even if a private school or facility implements a child's IEP, the independent charter school retains responsibility for compliance with the requirements of special education law.

34 CFR § 300.325

### **Policy: Service Animals**

The independent charter school will evaluate the need for reasonable accommodations in order to permit the use of service animals by individuals with disabilities in accordance with state and federal law. Any request for the use of a service animal must be made, in writing, to the school two weeks prior to an individual being accompanied by a service animal. A “service animal” is defined by the Americans with Disabilities Act (ADA) as a guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of the individual with disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. The provision of emotional support, well-being, comfort, or companionship does not constitute work or tasks for the purposes of this definition.

Service animals must be immunized against diseases common to that type of animal. All vaccinations must be current. Dogs must wear a rabies vaccination tag. [Wisconsin statutes 95.21(2)(f)]. State law requires all dogs to be licensed by the time they reach five months. [Wisconsin statutes 174.07(1)]. Dogs must be on a leash at all times, unless it is unfeasible due to the student’s disability. The owner/keeper must be in full control of the animal at all times. The care and supervision of the animal is the sole responsibility of the owner/keeper.

The school is not responsible for training, daily care, or healthcare of the service animal. The school does not assume responsibility for personal injury or property damage arising out of or related to the presence or use of service animals on school property or at school-sponsored events. In the event that a service animal must be separated from the student whom the animal is accompanying, it is the responsibility of the owner/keeper to arrange for the care and supervision of the animal during the period of separation. The owner/keeper may be asked to remove the service animal from a district facility if the animal’s behavior or presence poses a direct threat to the health or safety of others.

Animals not covered under ADA can be asked to leave a school district facility or activity.

### **Independent Charter School Reporting to State**

The independent charter school in providing for the education of children with disabilities enrolled in its school has established and implemented policies, procedures and programs that are consistent with federal special education requirements policies and procedures, and applicable state requirements, policies and procedures. The independent charter school will modify them to the extent necessary to ensure compliance with the law if the provisions of federal or applicable state laws or regulations are amended, if there is a new interpretation of Individuals with Disabilities Education Act by federal or state courts or if there is an official finding of noncompliance with federal or applicable state law or regulations.

34 CFR § 300.201

The independent charter school files with the Department of Public Instruction information to demonstrate all personnel necessary to carry out the requirements of federal and applicable state special education law are appropriately and adequately prepared, subject to the requirements of the personnel requirements of the Individuals with Disabilities Education Act and the Elementary and Secondary Education Act.

34 CFR § 300.207

The independent charter school provides to the Department of Public Instruction information needed for the Department to meet its responsibilities under the IDEA and applicable state laws, including information related to the performance of children with disabilities participating in independent charter school special education programs.

34 CFR § 300.211

The independent charter school reports its plan for providing special education and related services to children with disabilities to the Department of Public Instruction on a schedule and using instructions provided by the Department of Public Instruction. The plan includes:

- statements of assurance as required by applicable federal law;
- assurances that the independent charter school in providing for the children with disabilities enrolled in its school, has in effect policies, procedures, and programs that are consistent with IDEA and applicable state law;
- the independent charter school's plan for ensuring that all personnel necessary to carry out the requirements of the IDEA are appropriately and adequately prepared according to federal law and applicable state law;
- the data regarding children with disabilities and nondisabled children enrolled in the independent charter school that the Department of Public Instruction is required to collect or report to be in compliance with 20 USC 1400 to 1482; and
- any other information the Department of Public Instruction requires to permit its review of the plan.

34 CFR §§ 300.200, 300.207, 300.209(c), 300.211

**Appendix of Federal Law and Regulations Referenced in the Model  
Policies and Procedures**

**34 CFR 99.3 - Family Educational Rights and Privacy Act of 1974 – Definition of Education Records**

- (a) The term means those records that are:
  - (1) Directly related to a student; and
  - (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.
- (b) The term does not include:
  - (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
  - (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Sec. 99.8.
  - (3) (i) Records relating to an individual who is employed by an educational agency or institution, that:
    - (A) Are made and maintained in the normal course of business;
    - (B) Relate exclusively to the individual in that individual's capacity as an employee; and
    - (C) Are not available for use for any other purpose.
  - (ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.
  - (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
    - (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
    - (ii) Made, maintained, or used only in connection with treatment of the student; and
    - (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and
  - (5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

## **42 USC 11434a – McKinney-Vento Homeless Assistance Act, Definition of Homeless Children**

- (2) The term “homeless children and youths”—
- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and
  - (B) includes—
    - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
    - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(2)(C) of this title);
    - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
    - (iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

## **18 USC 1365(h) – Definition of Serious Bodily Injury**

- (3) the term “serious bodily injury” means bodily injury which involves—
- (A) a substantial risk of death;
  - (B) extreme physical pain;
  - (C) protracted and obvious disfigurement; or
  - (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and
- (4) the term “bodily injury” means—
- (A) a cut, abrasion, bruise, burn, or disfigurement;
  - (B) physical pain;
  - (C) illness;
  - (D) impairment of the function of a bodily member, organ, or mental faculty; or
  - (E) any other injury to the body, no matter how temporary.

### **29 USC 3002(19) - Definition of Universal Design**

The term “universal design” means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

### **18 USC 930(g)(2) - Definition of Weapon**

The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

### **20 USC 7801(37) – Definition of Scientifically Based Research**

The term "scientifically based research"--

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that--

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.