

West Virginia Department of Education Policy 2419 (<http://wvde.state.wv.us/policies/>)

Chapter 5, Section 1.A Purpose of Meeting

Placement decisions must be considered after the special education services are determined

Chapter 5, Section 2.J Least Restrictive Environment Considerations and Placement Decisions Least Restrictive Environment (LRE)

An eligible student must be educated with general education students in the general education classroom to the maximum extent appropriate. Removal from the general education environment occurs only when the nature or severity of the exceptionality is such that education in general classes and other settings with general education students cannot be achieved satisfactorily even with the use of supplementary aids and services. This requirement is known as the LRE. An appropriate LRE is one that enables the student to receive IEP services and make reasonable gains toward goals identified in an IEP.

In determining an appropriate placement in the LRE, the IEP Team begins with the general education environment with supplementary aids and services. If the student's IEP cannot be implemented in that environment with an expectation of reasonable progress on and achievement of IEP goals, a placement on the continuum of placement options providing less education with students without disabilities may be considered. An eligible student is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and modifications to the general education curriculum.

The IEP must explain the extent, if any, to which the student will **not** participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities and indicate the percentage of time in general and special education.

Participation in Nonacademic and Extracurricular Services and Activities: The IEP Team determines the supplementary aids and services appropriate and necessary for the student to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include, but are not limited to, meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development and assistance in making outside employment available.

Note: The district's reassignment of students to another classroom or building in the district is **not** a change of placement for a student as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; and going to a different school as a result of moving from one grade level to another grade level.

The IEP Team must consider the following when determining the LRE in which the IEP can be implemented:

1. LRE: A student receiving special education services is to be educated with age appropriate non-exceptional peers to the maximum extent appropriate based on the IEP.

The LRE decision focuses on with whom the student is educated rather than where the student is educated. This provision includes students placed in public or private institutions or other care facilities.

2. Basis of Placement: Placement decisions are made individually for each student. The services and placement needed by each student must be based on the student's unique needs that result from his or her disability or giftedness, not on the student's category of exceptionality or the availability of placement options, services, staff or space.

3. When to Make and Review Placement Decisions:

a. Placement decisions for a student are made after all sections of the IEP, except the educational environment section, have been completed.

b. Placement is determined at least annually by the IEP Team.

4. Neighborhood School: A student with a disability must be enrolled in the school he or she would attend if not disabled, unless the IEP requires another location. If the student cannot be educated in the neighborhood school, the student must be provided an educational program as close to the student's home as possible.

5. Similar-age Peers: In considering a setting outside the general education environment, the IEP Team must determine placement in environments, including classrooms and schools, with similar-age peers.

6. Harmful Effects of Placement: Consideration must be given to any potentially harmful effects of the placement on the student or on the quality of services

7. Array of Services and a Continuum of Placement Options: The IEP Team must consider an array of services and a continuum of placement options to meet the individual needs of each student. The continuum of placement options includes those options listed in this section for students ages six through twenty-one and students ages 3 through 5.

Placement Decisions

In determining an appropriate placement for a student with an exceptionality in the LRE, the IEP Team must consider the student's needs and the services required to meet those needs. The continuum of services for school-age students is described in subsection A below. The services for preschool students are described in Section B. Regardless of placement, the student must be given access to the general education curriculum unless the IEP Team determines it to be inappropriate.

A. Placement Options for Students Ages Six Through Twenty-one

Educational time spent in age-appropriate community-based settings that include individuals with and without disabilities, such as college campuses or vocational sites, should be counted as time spent inside the general education classroom.

General Education: Full-Time - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for 80% or more of the school day. This may include students placed in:

- General education class with special education/related services provided within general education class;
- General education class with instruction within the general education class and with special education/related services provided outside the general education class; or
- General education class with special education services provided in a resource room.

General Education: Part-Time - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for no more than 79% of the school day and no less than 40% of the school day. This may include students placed in:

- Resource rooms with special education/related services provided within the resource room; or
- Resource rooms with part-time instruction in a general education class.

Special Education: Separate Class - The student's specially designed instruction and related services are delivered inside the general education classes or integrated community settings for less than 40% of the school day. This may include students placed in:

- Separate special classrooms with part-time instruction in a general education class; or
- Separate special classrooms with full-time special education instruction on a regular school campus.

Special Education: Special School - The student's specially designed instruction and related services are delivered in public or private separate day school facilities. This includes students receiving special education and related services, at public expense, for greater than 50% of the school day in public or private separate schools. This may include students placed in:

- Public and private day schools for students with disabilities;
- Public and private day schools for students with disabilities for a portion of the school day (greater than 50%) and in regular school buildings for the remainder of the school day; or
- Public and private residential facilities if the student does not live at the facility.

Special Education: Out-of-School Environment - The student's specially designed instruction and related services are temporarily delivered in:

- A non-school environment, such as a public library, group home or mental health center;
- A medical treatment facility/hospital; or
- The home.

Special Education: Residential Facility - The student's specially designed instruction and related services are delivered in a facility which provides twenty-four hour care and supervision. This

includes students with disabilities who received education programs and lived in public or private residential facilities during the school week, including students receiving special education and related services, at public expense, for greater than 50% of the school day in public or private residential facilities. This may include students placed in:

- Public and private residential schools for students with disabilities; or
- Public and private residential schools for students with disabilities for a portion of the school day (greater than 50%) and in separate day schools or regular school buildings for the remainder of the day.

This does not include students who received education programs at the facility, but do not live there.

Special Education: Parentally-Placed in Private School – The student who is enrolled by his or her parents or guardians in regular parochial or other private schools, whose basic education is paid through private resources, and whose specially designed instruction and related services, at public expense, are provided by the district under a service plan. This does not include students who are placed in private schools by the district.

Special Education: Correctional Facilities - The student's specially designed instruction and related services are delivered in correctional facilities. This includes all students receiving special education in:

- Short-term detention facilities (community-based or residential), or
- Correctional facilities.

B. Placement Options for Students Ages Three Through Five

Early Childhood Program – The student is attending an early childhood program and receives specially designed instruction either in the early childhood environment or in another community setting. The early childhood programs include at least 50% students without disabilities and include, but are not limited to:

- Head Start;
- Kindergarten;
- reverse mainstream classrooms;
- private preschools;
- preschool classes offered to an eligible pre-kindergarten population by the public school system; and
- group child care.

Three educational environment categories within early childhood setting include:

1. The student attends the early childhood program at least 80% of the time in school.
2. The student attends the early childhood program 40% to 79% of the time in school.
3. The student attends the early childhood program less than 40% of the time in school.

The time the child spends in both the early childhood program, whether public or private and whether funded by the district or the parents, and the time in special education is considered when determining the total amount of time the child is in “school.”

Special Education Program – Special education programs include, but are not limited to, special education and related services provided in:

1. Special education classrooms: The student attends a program in a class that includes less than 50% students without disabilities and receives no services in an early childhood setting.

This includes classrooms in:

- a. Regular school buildings;
- b. Child care facilities;
- c. Hospital facilities on an outpatient basis; and
- d. Other community – based settings.

2. Separate schools: Students who receive education programs in public or private day schools designed specifically for children with disabilities and do not attend an early childhood program.

3. Residential facilities: Students who receive education programs in publicly or privately operated residential schools or residential medical facilities on an inpatient basis and do not attend a early childhood program.

Home – The student receives some special education and related services in the principal residence of the student’s family or caregivers, and receives no services in an early childhood setting or in a special education setting. The student may receive some services in a service provider location. The term caregiver includes babysitters.

Service Provider Location – The student receives **all** of their special education and related services from a service provider, does not attend an early childhood program or a special education program and does not receive services in the home. Examples of service provider locations include, but are not limited to:

- Private clinicians’ offices;
- Clinicians’ offices located in school buildings,
- Hospital facilities on an outpatient basis, and
- Libraries and other public locations.

Chapter 5, Section 3.C Other IEP Reviews

If any other member of the IEP Team feels that the student’s placement or IEP services are not appropriate, that team member may request an IEP Team meeting.

Chapter 5, Section 5.D Child’s Status During Due Process Hearing Proceedings

Following the development of an IEP or an IFSP, if an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot “stay put” in Part C when he or she is over the age of three. With written consent of the parent, the child must be placed in the public school until completion of all the hearing proceedings. If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.

Section 6 Students with Disabilities in Adult Prisons

The IEP Team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

Chapter 7 Discipline

Placement issues related to disciplinary actions will be discussed in the Discipline module.

Chapter 8, Section 1.B Definition of District Placement

At times, the district may place a student in a private school or facility to fulfill its obligation to provide FAPE. These placements are always made by an IEP Team in accordance with the requirements of Section 3 of this chapter.

Chapter 8, Section 1.C Definition of Unilateral Placement by a Parent

A parent may withdraw a student with a disability from a public school and then enroll the student in a private school or provide services from a private provider at parent expense because he or she believes the district has not provided FAPE in a timely manner. In this case, the parents may be seeking reimbursement for the costs associated with the placement. This is considered a unilateral placement. All students who are unilaterally placed are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of a unilateral placement is included in Section 4 of this chapter.

Chapter 8, Section 3 Students Placed by the District

When the district, through the IEP Team, places a student with a disability in a private school or facility, the district must ensure the following:

7. The placement in the private school or facility is the LRE for that student.

Chapter 10, Section 3 Prior Written Notice

Requirements of prior written notice with regard to placement will be discussed in the PWN section of this training.

Chapter 10, Section 6.C Refusal to Give Consent

For initial evaluations, if the parent refuses consent or the parent fails to respond to a request to provide consent, mediation or due process procedures may be used, if appropriate. The district may not use the mediation or due process procedures if consent for the initial evaluation involves a student who has been parentally enrolled in a private school or is being home schooled.

If the parent refuses consent for or refuses to respond to a request for consent to initial provision of special education and related services after the district has documented reasonable efforts to obtain consent, the district cannot use mediation or due process to obtain placement.

Chapter 10, Section 8 Surrogate Parents

A surrogate parent is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA 2004. The surrogate parent may represent a student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of FAPE to the student.

Chapter 11 Dispute Resolution

A variety of options are available to resolve disagreements between parents/adult students and districts related to the implementation of state and federal special education laws and regulations regarding the identification, evaluation or educational placement of a student or the provision of FAPE.

Issues of placement will be discussed in the Dispute Resolution module with regard to placement requirements.