



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR - 2 1999

Mr. Paul T. Halverson  
Director  
Special Education  
Wisconsin Department of Public Instruction'  
P.O. Box 7841  
Madison, Wisconsin 53707-7841

Dear Mr. Halverson:

This is in response to your letter of January 29, 1999, in which you requested guidance regarding the age through which Part B of the Individuals with Disabilities Education Act (IDEA) requires States to make a free appropriate public education (FAPE) available to children with disabilities. Specifically, you inquire as to whether "federal law, independent of any requirement in state law, [requires] that a FAPE be made available to children with disabilities until they reach the age of 22."

The Part B regulations that are currently in effect set forth, at 34 CFR §300.122, the IDEA requirements regarding the ages at which FAPE must be made available. Section 300.122(a) requires that each State "...ensure that FAPE is available to all children with disabilities ... aged 3 through 21 within the State ... ," but §300.122(c) further provides that this requirement does not apply to a State with respect to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21 to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State." Thus, so long as the State complies with the provisions of §§300.122 and 300.300(b)(1)-(4)1, Part B does not require that States establish procedures requiring that FAPE be provided until age 22, and it would not be inconsistent with Part B for Wisconsin to amend State law to provide that FAPE must be made available to children with disabilities until the end of the school year during which they become 21 years old. Please note that the response to your question is not changed by the final Part B regulations, that were published on March 12, 1999 and will take effect on May 11, 1999.

1 Section 300.300(b)(1)-(4) provides, with respect to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21:  
"(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability. (2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age. (3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act. (4) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part."

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If you have any further questions regarding this matter, please free to contact Barbara Route (202-205-9029) or Larry Ringer (202-205-9079) of my staff.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education Programs