



Date: July 24, 2018

DMS Numbered Memo 2018-04

To: County Birth to 3 Program Coordinators  
County Department of Human Services Directors  
County Department of Social Services Directors  
County Department of Community Programs Directors  
Long-Term Support Supervisors and Leads

From: Heather Smith, Director *Heather K. Smith*  
Division of Medicaid Services  
Department of Health Services

**Birth to 3 Program: Local Education Agency (LEA) and State Education Agency (SEA)  
Notification and Parental Right to Opt Out of Notification**

**Background**

The federal Individuals with Disabilities Education Act (IDEA) (2004) section 637(a)(9)(A)(ii) and 34 C.F.R. §303.209 require states to have policies and procedures that ensure a smooth transition for children receiving early intervention services under IDEA Part C to preschool special education services under IDEA Part B or other appropriate services. These policies and procedures must include a description of how the Part C lead agency will notify the local education agency (LEA) and state education agency (SEA) in the area in which a child resides that the child is approaching the age of eligibility for preschool special education services, as well as how the Part C lead agency will notify the LEA and SEA that the child is potentially eligible for special education services. States may establish policies that allow parents to opt out of LEA and SEA notification under 34 C.F.R. § 303.401(e).

In the Wisconsin Birth to 3 Program, “parent” is defined according to 34 C.F.R. §303.27: A parent may be a biological or adoptive parent, a foster parent, a guardian generally authorized to act as the child’s parent, an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative), or a surrogate parent who has been appointed in accordance with 34 C.F.R. §303.422.

**Purpose**

This memo details the Wisconsin Birth to 3 Program’s LEA and SEA notification process and LEA and SEA notification opt-out policy. The memo discusses the actions that county Birth to 3 Program agencies must take to assure parents are aware of the LEA and SEA notification process and opt-out policy, implement the LEA and SEA notification process and opt-out policy, and process opt-out requests received from parents.

## **LEA and SEA Notification and Parental Right to Opt Out of Notification**

### **LEA and SEA Notification Process**

The Wisconsin Birth to 3 Program's LEA and SEA notification process first requires county Birth to 3 Program agencies to disclose contact information (child's name, child's date of birth, and parent contact information) to the LEA and SEA in which a child resides when a child is 27 months old. This step in the process, called "LEA and SEA Notification," notifies the LEA and SEA that a child is approaching the age of eligibility for preschool special education services. No fewer than 90 days prior to the child's third birthday, county Birth to 3 Program agencies must then send "LEA and SEA Notification-Referral" to the LEA and SEA for all children determined to be potentially eligible for preschool special education services. LEA and SEA Notification-Referral includes the child's name, child's date of birth, parent contact information, and at least one reason why the child is believed to be a child with a disability. With written parental consent additional information, such as a list of services the child received while in the Birth to 3 Program; evaluation, assessment, and discharge reports; and exit child outcomes ratings, may be shared with the LEA and SEA through the LEA and SEA Notification-Referral.

The purpose of the LEA and SEA notification process in the Birth to 3 Program is to fulfill child find obligations to the LEA and SEA in accordance with 34 C.F.R. §303.209(b) and to assure that LEAs and SEAs are aware of all children potentially eligible for special education services in accordance with 34 C.F.R. §303.401(d)(2). The LEA and SEA notification process also assists with the transition to LEA preschool special education services that a child may be eligible to receive at age 3 and helps ensure that children don't have a lapse in services.

### **Parental Right to Opt Out of LEA and SEA Notification**

Wisconsin has a long-standing philosophy of families being informed of and in control of the information shared about their children with other programs and agencies. With this philosophy in mind, and as a result of input from stakeholders across the state, the Wisconsin Birth to 3 Program has elected to permit parents to object to disclosure of information to the LEA and SEA under 34 C.F.R. § 303.401(e).

The Wisconsin Birth to 3 Program's LEA and SEA notification opt-out policy allows parents who do not want information disclosed to the LEA and SEA to opt out of having information sent to the LEA and SEA. In order to opt out of LEA and SEA notification, a parent must sign and return the "Opting Out of LEA and SEA Notification" form to the county Birth to 3 Program agency by the time their child is 27 months old. If parents choose to opt out of LEA and SEA notification, the LEA and SEA are not provided any information on the child participating in the Birth to 3 Program. This includes LEA and SEA Notification at 27 months, LEA and SEA Notification-Referral, and the transition planning conference.

Parents have a right to reverse their decision to opt-out of LEA and SEA notification at any time up to their child's third birthday. If parents choose to reverse their decision to opt-out of LEA and SEA notification, LEA and SEA Notification and LEA and SEA Notification-Referral will be sent to the LEA and SEA.

**Procedures to Effectuate LEA and SEA Notification and Parental Right to Opt Out of Notification**

County Birth to 3 Program agencies are required to undertake the following actions to effectuate the LEA and SEA notification process and opt-out policy:

1. Assure parents are aware of the LEA and SEA notification process and opt-out policy.
  - Discuss the LEA and SEA notification process and opt-out policy with parents early in the child's participation in the Birth to 3 Program at the time of initial Individualized Family Service Plan (IFSP) development.
  - Provide the "Opting Out of LEA and SEA Notification" form and the Wisconsin opt-out policy to parents during initial IFSP development.
2. Implement the LEA and SEA notification process and opt-out policy.
  - Send LEA and SEA Notification (child's name, child's date of birth, and parent contact information) to the LEA and SEA in which a child resides when a child is 27 months old, unless a parent signs and returns the "Opting Out of LEA and SEA Notification" form by the time their child is 27 months old.
  - No fewer than 90 days prior to the child's third birthday, send LEA and SEA Notification-Referral (child's name, child's date of birth, parent contact information, and at least one reason why the child is believed to be a child with a disability) to the LEA and SEA unless a parent signs and returns the "Opting Out of LEA and SEA Notification" form by the time their child is 27 months old.
  - When a child is determined eligible for the Birth to 3 Program after 27 months of age, notify the LEA and SEA as soon as possible that the child will shortly reach the age of eligibility for preschool special education services unless a parent signs the "Opting Out of LEA and SEA Notification" form and returns it within 10 days of receipt.
3. Process opt-out requests received from parents.
  - Document the decision of the parents to opt out of LEA and SEA notification in the statewide database when an "Opting Out of LEA and SEA Notification" form is received.
  - Documenting the parent's decision in the statewide database inhibits the LEA and SEA notification information from being sent.

**Effective Dates**

This memo details the Wisconsin Birth to 3 Program's LEA and SEA notification process and LEA and SEA notification opt-out policy. The U.S. Department of Education, Office of Special Education Programs approved the Wisconsin Birth to 3 Program's Opt Out Policy on September 23, 2009. This policy went into effect January 1, 2010.

**Assistance**

County Birth to 3 Program agencies are encouraged to direct any questions to the [DHS technical assistance lead](#) assigned to their county.